

ombudsman VICTORIAN

**A section 25(2) report to Parliament on the
proposed integrity system and its impact
on the functions of the Ombudsman**

December 2012

Ombudsman Act 1973

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Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament my report titled *A section 25(2) report to Parliament on the proposed integrity system and its impact on the functions of the Ombudsman*.



G E Brouwer

OMBUDSMAN

10 December 2012

Introduction

On the 14 November 2012 the Government presented Parliament with two Bills¹ that will complete a new integrity framework for Victoria. Unfortunately, my examination of those Bills, in combination with the other legislation relevant to the integrity scheme, has identified that, if passed, the Bills will significantly diminish the State's integrity system in a number of ways, including by reducing the effectiveness and independence of the Office of the Ombudsman.

As an independent officer of Parliament with the function under section 25(2) of the Ombudsman Act, of reporting to the Parliament 'on any matter arising in connection with the performance of his or her functions' I have prepared this report to advise the Parliament and, in particular the Legislative Council, of my concerns regarding the two Bills currently before that House so as to allow the Legislative Council to make informed decisions when considering those Bills.

¹ The *Integrity and Accountability Legislation Amendment Bill 2012* and the *Protected Disclosure Bill 2012*.

The IBAC Policy

Following the 2010 election the Government sought to establish:

*a broad-based anti-corruption commission, modelled on world's best practice in other jurisdictions.*²

The objective of the policy was to create a broad-based anti-corruption commission (IBAC) 'modelled most closely on New South Wales' Independent Commission Against Corruption (ICAC)³ which was intended to be a "one-stop shop", fighting corruption across the entire public sector'.⁴

The policy anticipated that 'IBAC will work cooperatively with the Auditor-General and the Ombudsman to provide a seamless coverage of the range of integrity issues from probity and maladministration to corruption'.⁵

The policy also stated that 'the exception powers' to be provided to IBAC (which were intended to include telephone interceptions, covert surveillance and controlled operations⁶) 'demand that there be strong oversight as a check on potential abuse'.⁷ This oversight was to be provided by a Parliamentary Joint Committee which would monitor IBAC and an inspector 'appointed by the Governor to audit the operations of IBAC in order to monitor compliance with the law and to deal with complaints of abuse of power and other forms of misconduct through reports and recommendations'.⁸

In addition, a Joint Standing Parliamentary Committee on Government Integrity was to be established 'to provide oversight of ... [the Auditor-General and the Ombudsman] and guarantee them a permanent voice in Parliament'.⁹

2 The Victorian Liberal Nationals Coalition's Policy and Plans for the 2010 State Election, *The Liberal Nationals Coalition Plan for Integrity of Government*, page 2.

3 *ibid* page 3.

4 *ibid* page 4.

5 *ibid* page 5.

6 *ibid*.

7 *ibid* page 6.

8 *ibid* pages 6-7.

9 *ibid* page 9.

The IBAC implementation

The IBAC implementation has involved the enactment of six Acts of Parliament¹⁰, some of which are not yet operative, with two further Bills which are currently before the Legislative Council. It was not until 14 November 2012, after they were presented to the Legislative Assembly, that I had access to those two Bills. Having examined them, I am concerned that those Bills, in combination with the enacted measures in the IBAC suite, will diminish the integrity scheme in this State in the following areas. In my view the Bills will:

- introduce an ineffective integrity scheme (page 4)
- undermine the Ombudsman's role as an independent officer of the Parliament (page 6)
- include a number of elements that appear to be Constitutionally invalid (page 12)
- limit the scope of Parliamentary references (page 16)
- limit the effectiveness of the Office of the Ombudsman, as impacted by legislatively imposed inadequacies and limitations (page 16).

1. Ineffective integrity system

The scheme as drafted will lead to an ineffective integrity scheme with an IBAC with limited powers (other than its police jurisdiction), and with new arrangements which will hamper the exercise of the investigative and reporting functions of the Office of the Ombudsman.

The development of a modern integrity system is a question of balance. The powers provided to those responsible for investigating the conduct of public officials, including Members of Parliament, should be proportionate to the public interest served by ascertaining the truth regarding that conduct. These Bills shift the balance away from this principle, favouring the protection of public officials and diminishing one of the core values of public service – the willingness to be held to account.

The extent and seriousness of the unnecessary difficulties that will face IBAC have been the subject of widespread public discussion. For example, the former Supreme Court Justice, the Hon Tim Smith, QC has made known the considerable burden that IBAC will face by

the very high threshold (must be “serious corrupt conduct” 41(2)) that has to be satisfied before an investigation can be conducted by IBAC, the exclusions of situations that would constitute the common law offence of misconduct in public office, and the consequential opportunities for legal challenges to investigations.¹¹

¹⁰ *Independent Broad-based Anti-corruption Commission Act 2011, Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Act 2012, Independent Broad-based Anti-corruption Commission Amendment (Examinations) Act 2012, Victorian Inspectorate Act 2011, Victorian Inspectorate Amendment Act 2012, Freedom of Information Amendment (Freedom of Information Commissioner) Act 2012.*

¹¹ The Hon T H Smith QC *The Victorian Independent Broad-based Anti-Corruption Commission (IBAC): A Toothless Tiger?*, Electoral Regulation Research Network/Democratic Audit of Australia Joint Working Paper Series, Working Paper No 1 (August 2012) 3.

I find it particularly puzzling that no attempt was made in the Bills currently before the Parliament to deal with the observations and criticisms made by Mr Smith and others. Amongst the criticisms raised is that ‘serious corrupt conduct’ has not been defined. Yet no definition of ‘serious corrupt conduct’ was introduced. An additional flaw was that the terms of the Bills require that the ‘serious corrupt conduct’ jurisdictional test be met in order for an investigation to be *conducted*. The test applies throughout the investigation. It will leave IBAC open to jurisdictional challenge at any stage that IBAC should not have been reasonably satisfied that the conduct involved was ‘serious corrupt conduct’ (whatever that phrase means). Had the term *commenced* rather than *conducted* been used, the problem would have been avoided. However, no such accommodation was made.

The proposed amendments to the *Ombudsman Act 1973* will also cause Ombudsman investigations to face similar jurisdictional difficulties due to proposed sections 15(1) and 16A(2) of the Ombudsman Act. Under those provisions I ‘must refuse’ to deal with a matter that ‘appears to involve corrupt conduct’. This is a very low threshold, being well below the standard for IBAC’s jurisdiction of being ‘reasonably satisfied’, and is likely to prevent the Office of the Ombudsman from investigating many of the more serious matters received.

I consider that this requirement will prevent this Office investigating, and will present opportunities for jurisdictional challenge, if I consider or should consider during the course of an investigation that the complaint appears to involve corrupt conduct. I note that Department of Premier and Cabinet (DPC) officers have advised that the section 15(1) test only applies on the initial assessment of a complaint. I have serious doubts as to the accuracy of that view and regard section 15(1) as a continuing obligation.

I should also add that there appears to be an inconsistency in the proposed provisions. Proposed section 15(1) prevents the Office investigating or enquiring into a complaint that appears to involve corrupt conduct. But there is no restriction in the proposed provisions which prevents me from conducting an enquiry on my own motion, under section 16A, in relation to corrupt conduct.

The intended scheme will involve IBAC, the Ombudsman and other bodies being subject to the considerable powers of the Victorian Inspectorate which I will discuss later. However, one aspect that is not included in the IBAC suite of legislation is any monitoring of the complaints referred to IBAC. For example, once I form the view that a complaint *appears* to involve corrupt conduct, I will be obliged to cease the investigation and, by proposed section 16E, to notify IBAC of the complaint. IBAC can then either investigate that complaint if it involves serious corrupt conduct, refer the matter back to me or another body for investigation, or dismiss the complaint. However, there is no guarantee that such actions will be taken as there is no reporting obligation, either in IBAC’s annual report, or its reporting obligation to the IBAC Committee (which is where the obligation should be) which requires IBAC to report how notified complaints were handled.¹²

¹² See proposed Part 7 Independent Broad-based Anti-corruption Commission Act 2011. It is, however, possible that these matters may become prescribed information to be included in IBAC’s annual report – see proposed section 165.

The consequence is the potential for notified complaints to be left unattended, or to be delayed before they are investigated. The investigation of 'corrupt conduct' (under any definition) is a time critical operation where delays do not assist the investigator; they put at risk witnesses and evidence; and jeopardise the integrity of the investigation. Yet the IBAC arrangements allow delays to occur while including no adequate controlling processes. There are only two controlling processes that I have identified in the current IBAC scheme, and I consider both to be unsatisfactory. The first would be complaints from the notifying agency. These are unlikely to occur as, under the IBAC system, there is no obligation for a notifying agency to be informed by IBAC as to how a complaint was handled. The other is the complaint process to the Victorian Inspectorate, which is, of course, dependent on a complainant wishing to engage in such a process. Both rely on individual interest and will. This is not systematic, and therefore is not a reliable control.

There is, of course, a relatively easy solution to these problems. This requires that proposed sections 15(1) and 16A(2) be excluded from the Ombudsman Act. A better and more effective relationship regarding corrupt conduct matters would be to allow the Office of the Ombudsman to continue to investigate matters that appear to involve corrupt conduct until such time as IBAC takes them over, dismisses them, or refers them to another body. Such an arrangement removes any risk of jurisdictional traps, ensures that all matters are appropriately dealt with and provides IBAC with the ultimate control over such matters.

2. Undermine the Ombudsman's role as an independent officer of the Parliament

The Bills currently before the Parliament, the *Integrity and Accountability Amendment Bill 2012* in particular, will operate to undermine the independence of the Ombudsman, an independent officer of the Parliament. Furthermore, legal advice received from Queens Counsel indicates that a number of those provisions may well be contrary to the *Constitution Act 1975* and, on that basis, invalid.

The proposed new provisions will undermine the Ombudsman's role as an independent officer of the Parliament by:

- placing constraints as to what the Ombudsman can report;
- preventing certain matters from being investigated by the actions or inactions of another statutory body; and, most importantly
- subjecting the Office of the Ombudsman to monitoring and investigation by another statutory body with powers of investigation greater than those which the Ombudsman holds.

Investigation and reporting constraints

As mentioned earlier in this report, both proposed sections 15(1) and 16A(2) of the Ombudsman Act will unnecessarily restrict the investigation function of the Office of the Ombudsman to circumstances where the complaint or administrative action does not appear to involve corrupt conduct.

Those provisions are unnecessary and undesirable in that they impede the investigation process and give the opportunity for jurisdictional challenges by those who do not wish to be investigated. This can be avoided by a more straightforward relationship between IBAC and the Office of the Ombudsman.

Reporting restrictions are imposed by proposed section 25A. That section will prevent Ombudsman reports 'under this Act' from including a number of types of information, being:

- Cabinet material
- a finding or opinion that a person is guilty of an offence or has committed, is committing or is about to commit an offence; or
- a recommendation that or opinion that a person be prosecuted.

These restrictions apply both to reports to Parliament under section 25 and also reports to principal officers and Ministers under section 23.

Those restrictions are inconsistent with the independence of an independent officer of the Parliament to report what that officer considers necessary, and impede the Parliament's ability to receive that information. This is particularly the case with proposed section 25A(1)(b) which prevents Cabinet material from being included in reports. As discussed elsewhere in this report, the proposed restrictions on obtaining Cabinet material unnecessarily restrict the ability of the Office of the Ombudsman from obtaining such material. Proposed section 25A(1)(b) takes that restriction one step further. It requires the exclusion of Cabinet material, (which can have only been acquired voluntarily as a result of section 19 from a Minister or Departmental official), from reports to Ministers and principal officers as well as from reports to Parliament. The first type of restriction is illogical and serves no public benefit as Ministers should be aware of Cabinet material while principal officers will either know that material or be aware of their obligations when handling such material. The second restriction impedes the Ombudsman's independence in reporting to the Parliament and inhibits the Parliament's right to know what one of its independent officers considers it should know.

Moreover, those restrictions will cause, if not necessitate the content of reports to be indirect and obscure. For example, the Cabinet exclusion will lead to such report content:

The Minister (or a Departmental official) provided Cabinet material to my investigators concerning a particular subject matter which I am not able to refer to as a result of section 25A(1)(b). That material, however, confirms the evidence provided by witnesses X and Y for reasons that I am also not able to state, also as a result of that section. Nonetheless, as a result of that material and evidence, I have reached the conclusion specified below.

Even if there were some public benefit in restricting what can be included in a report to the Parliament, no public purpose or benefit can be served by either requiring such indirect reporting or preventing a Minister or a relevant principal officer from being informed of a finding that a certain public official has committed an offence or a recommendation that they be prosecuted (proposed section 25A(1)(c) and (d)).

I consider that the Legislative Council should also give this issue close consideration before giving these restrictions legal status.

Subject to non Parliamentary supervision and oversight

The *Integrity and Accountability Legislation Amendment Bill 2012*, if enacted in its current form, will subject the Office of the Ombudsman to a form of oversight that is inconsistent with the independence of an independent officer of the Parliament and has no equal in equivalent jurisdictions.

The functions of the Victorian Inspectorate will be to:

- require the Ombudsman to notify the Victorian Inspectorate of various things:
 - notice of the issue of a witness summons – written notice within three days of the issue of the summons – proposed section 18A Ombudsman Act¹³
 - notice of a direction not to use a particular legal practitioner – written notice within 24 hours of the direction including reasons for the decision – proposed section 18C(6) Ombudsman Act
 - a copy of the audio or video recording and any transcript of a compulsory appearance – as soon as possible after the appearance – proposed section 18F(7) Ombudsman Act
 - a copy of:
 - each confidentiality notice
 - each notice cancelling a confidentiality notice
 - each application under section 26D to extend a confidentiality notice
 - each Supreme Court Order extending a confidentiality notice –
as soon as reasonably practicable – proposed section 26E Ombudsman Act.
- monitor the Office of the Ombudsman's:
 - exercise of coercive powers
 - compliance with procedural fairness, including in making reports – proposed section 9(4)(a) *Victorian Inspectorate Act 2011*
- receive and investigate complaints about 'Ombudsman officers', a phrase that includes the Ombudsman – proposed sections 9(4)(b) and 29(5) *Victorian Inspectorate Act*
- investigate on its own motion the Office of the Ombudsman – proposed sections 9(4)(c) and 31(3) *Victorian Inspectorate Act*.

For the purposes of those investigations, the Victorian Inspectorate has a broad range of compulsory powers and:

¹³ And also see proposed section 28I *Victorian Inspectorate Act*.

- is able to investigate any aspect of the operations of the Ombudsman or any conduct of an Ombudsman officer
- has full and free access to the records of the Ombudsman
- may require an Ombudsman officer to give the Victorian Inspectorate any relevant information
- may require an Ombudsman officer to attend and answer questions
- may conduct an investigation even though the Ombudsman is investigating a related matter – proposed sections 32(1B) and 32(5) (ab) Victorian Inspectorate Act.

Furthermore, an Ombudsman officer, or the Office of the Ombudsman, is not able to claim privilege – proposed sections 33S(7)&(8) Victorian Inspectorate Act.

As a result of investigations the Victorian Inspectorate may

- make recommendations to the Office of the Ombudsman and make a ‘public recommendation’ if the Ombudsman has ‘failed to take appropriate action’ – proposed sections 35C(1) & (4) and 35D(1) and (2) Victorian Inspectorate Act.
- require the Ombudsman to give a report within a reasonable specified time stating whether the recommended action has been taken or will be taken and, if not, why – proposed section 35C(5) Victorian Inspectorate Act.
- make recommendations to State or Federal Police, the DPP or IBAC – proposed section 37(3) Victorian Inspectorate Act
- make a special report to the Parliament – section 36 and proposed section 37(3)(i) Victorian Inspectorate Act.

The Victorian Inspectorate’s investigatory activity is not dependent on and is subject to minimal monitoring requirements by the Parliamentary Committee, as the Committee has no say as to what investigations the Inspectorate undertakes and why it conducts them and the Committee has no entitlement to receive a report on particular investigations. The Victorian Inspectorate’s obligations to the Parliamentary Committee are largely confined to its annual report in which it must provide details of:

- its monitoring of the Office of the Ombudsman
- the comprehensiveness and adequacy of Ombudsman reports to the Victorian Inspectorate
- the extent to which recommended action has been taken by the Ombudsman – proposed sections 38(1)(ed),(ee) and (ef) Victorian Inspectorate Act.

It should be noted that there is no formal complaints process regarding the Victorian Inspectorate and the Parliamentary Committee’s controlling functions over the Inspectorate are limited to:

- monitoring and reviewing the performance of the duties and functions of the Victorian Inspectorate; and

- examining any reports made by the Victorian Inspectorate – section 12A (f) & (h) Parliamentary Committees Act.¹⁴

The logic underlying the application of the Victorian Inspectorate regime to the Office of the Ombudsman seems flawed. Advice received from DPC officers was that the Office of the Ombudsman should be subject to the same regime as was applicable to IBAC. However, the Government's election policy indicated that IBAC should be an exceptional case:

The exceptional powers which will be provided to IBAC demand that there be strong oversight as a check on potential abuse.¹⁵

There was no mention of the Inspectorate having application to the Office of the Ombudsman, and of course, the investigatory powers available to IBAC are considerably greater than those available to the Ombudsman. For example IBAC will have access to firearms and defensive equipment, unlike Ombudsman officers.¹⁶ IBAC will have a contempt power, unlike the Office of the Ombudsman.¹⁷ The privilege against self-incrimination is abrogated in IBAC examinations, unlike Ombudsman interviews.¹⁸ IBAC will be required to go through an adverse comments process in relation to Parliamentary reports, but not in relation to its private or public recommendations, unlike the Office of the Ombudsman.¹⁹

The policy was to be modelled on 'world's best practice in other Australian jurisdictions'²⁰ and 'modelled most closely on New South Wales Independent Commission Against Corruption.'²¹ However, an examination of the practices in other parts of the world and in the other Australian States regarding Ombudsman Offices indicates that this policy objective has not been achieved.

Other Ombudsman jurisdictions

The practices in place in Australian jurisdictions regarding their Ombudsman offices are summarised in the following table:

14 The committee can also report on any matter connected with the Inspectorate's powers and functions 12A(g) Parliamentary Committees Act.

15 The Victorian Liberal Nationals Coalition's Policy and Plans for the 2010 State Election, *The Liberal Nationals Coalition Plan for Integrity of Government*, page 6.

16 Proposed Part 5 Independent Broad-based Anti-corruption Commission Act 2011.

17 Proposed Div 5, Part 6 Independent Broad-based Anti-corruption Commission Act 2011.

18 Proposed sections 144 Independent Broad-based Anti-corruption Commission Act 2011.

19 Proposed sections 162 and 165 Independent Broad-based Anti-corruption Commission Act 2011.

20 The Victorian Liberal Nationals Coalition's Policy and Plans for the 2010 State Election, *The Liberal Nationals Coalition Plan for Integrity of Government*, page 2.

21 *ibid*, page 3.

Table 1 - Comparison of Australian Integrity Jurisdictions

Jurisdiction	Is there a Anti-Corruption/ Integrity Body?		Is there a Parliamentary Committee supervising Ombudsman?		Is there an Inspectorate body supervising?			
	Yes	No	Yes	No	Anti-Corruption/ Integrity Body		Ombudsman	
					Yes	No	Yes	No
Commonwealth ²²	X			X		X		X
ACT		X		X		X		X
NSW	X		X		X			X
QLD	X		X		X			X
WA	X			X	X			X
SA (Current)		X	X			X		X
SA Proposed	X		X		X			X
Tas	X		X			X		X
NT		X		X		X		X

As this table shows, no Australian jurisdiction has Inspectorate oversight of its Ombudsman. This is because the rationale underlying the creation of an Ombudsman's Office is defeated by subjecting it to oversight other than that of the Parliament, whether directly or under its control.

As to other independent officers of Parliament, a survey has been conducted of such officers in the UK, New Zealand and Canada and its provinces to ascertain whether any are subject to the supervision of an external body such as the Victorian inspectorate. See Appendix 1.

As can be seen from table 1 and the data in Appendix 1, no Ombudsman or independent officer of Parliament in Australia, New Zealand, Canada or England is subject to external supervision (other than by Parliament or an Auditor-General) and certainly not the manner of supervision that is proposed for the Victorian Ombudsman in the Bills before the Parliament.

²² The Australian Commission for Law Enforcement Integrity only has jurisdiction in relation to three Commonwealth law enforcement agencies (the Australian Crime Commission, the Australian Customs and Border Protection Service, the Australian Federal Police).

I find it hard to see how the Government's intention, which was clearly expressed in its election policy of following world's best practice for integrity bodies as put in place in other Australian jurisdictions has been followed in relation to the Victorian Office of the Ombudsman.

Victorian Inspectorate – concerns and risks

It is of concern that the Victorian Inspectorate, if the legislation is enacted in its current terms, will be an extremely powerful body, with access to a far greater range of information than any single integrity body – collected from IBAC, the Office of the Ombudsman and the Chief Examiner. Its objective is not to scrutinise those who undermine the integrity of Victoria but those whose role is to combat them. It will not be subject to any effective means of control or scrutiny. It seems clear that, if there is one body in the proposed legislative scheme that should be subject to external scrutiny, it is the Inspectorate, due to its considerable powers and access to information. It is of great concern that the proposed scheme has not paid sufficient attention to monitoring and controlling this body. I consider that this is a clear failure of the scheme currently before the Parliament and a clear risk to the security of the information held. If officers of the Inspectorate engaged in improper or corrupt conduct or jeopardised investigations by IBAC, the Ombudsman or the Chief Examiner, there would be no mechanism to police this other than by the Parliamentary Committee.

3. Constitutional invalidity of certain parts of IBAC legislation

It appears that certain provisions in the IBAC suite of Bills and Acts, including those concerning the intended role of the Victorian Inspectorate in relation to the Office of the Ombudsman, are inconsistent with the Ombudsman's constitutionally entrenched role as 'an independent officer of the Parliament'. Moreover, such provisions may be constitutionally invalid. To appreciate this concern requires an understanding of the role and function of an independent officer of the Parliament as well as its constitutional significance.

What is an independent officer of the Parliament?

The first such officer in Australia, or at least the first who received statutory recognition as such, was the Commonwealth Auditor-General who was made an independent officer by the *Auditor-General Act 1997* (Cth). The Minister, the Hon Mr Fahey, in his second reading speech on 12 December 1996, observed that the foremost purpose of the legislation was:

the re-establishment of the Office of the Auditor-General of the Commonwealth of Australia, but in a way that both symbolically and practically strengthens the functional independence of the office beyond that available under current laws. The bill declares the Auditor-General to be an 'independent officer of the parliament', as an expression of the primary and unique relationship which the office has with the parliament. In keeping with the government's publicly stated commitment to confer genuine functional independence on

the Auditor-General, a range of statutory safeguards are included in the bill to prevent inappropriate influence being exerted on the Auditor-General by either the executive or the parliament.

This recognition was adopted as a result of recommendations made by the Joint Committee of Public Accounts. That Committee, as early as 1989, in a very pointedly named report, *The Auditor-General: Ally of the People and the Parliament*, called for the Auditor-General to be referred to as an independent officer of Parliament to emphasise its relationship with Parliament.²³

The Commonwealth course was promptly followed in Victoria by the Audit (Amendment) Act 1997. Premier Kennett was unequivocal in his second reading speech as to the independence of the Auditor-General (30 October 1997)

The independence of the Auditor-General will be maintained and enhanced under this bill. ... This government recognises that one of the basic elements of the Westminster system is to maintain a strong and independent system of audit of the government in office and to maintain an independent Auditor-General whose primary reporting responsibility is to the Parliament and the people that Parliament represents.

Legislation initiated by the Bracks government enhanced that independence when the provisions concerning the Auditor-General's establishment and independence were removed from the Audit Act and inserted into the *Constitution Act 1975* in 1999. In 2003 sections 94E and 94F were also inserted into the Constitution Act regarding the Ombudsman and the Electoral Commissioner declaring those offices to be independent officers of Parliament. Those provisions and the provisions concerning the Auditor-General, were also 'entrenched', so that the passage of a referendum is required before they can be altered or repealed (section 18(1B)(n) and (o) Constitution Act).

Since that time, legislation has been passed in Victoria to declare other offices to be independent officers of Parliament: the Director, Police Integrity; the IBAC Commissioner; and the Victorian Inspector. However, the provisions which made those declarations were not included in the Constitution Act and, moreover, they were not entrenched.

As to what are the essential elements of an independent officer of the Parliament, there has been no legislative explanation. However, examinations of the meaning of the term in Australia and other countries gives some indication of what that term encompasses. Reviews of the concept of an independent officer of Parliament in a number of jurisdictions are discussed in Appendix 2.

From those analyses, it seems accepted that the oversight of independent officers of Parliament is a matter for Parliament to undertake, that oversight should not be intrusive and that for other scrutiny to be consistent with the essential requirements of being an independent officer of the Parliament, it must be confined to regular independent financial audit and periodic performance audits.

²³ Joint Committee of Public Accounts, Report 296: *The Auditor-General: Ally of the People and the Parliament* (AGPS, Canberra 1989) and see Joint Committee of Public Accounts, Report 346: *Guarding the Independence of the Auditor-General* (AGPS, Canberra 1989).

Victorian practice to date is consistent with these views in that constitutionally entrenched independent officers of Parliament have been excluded from external scrutiny other than financial and performance audit. This can be seen from section 4 *Whistleblowers Protection Act 2001* and section 13(3) Ombudsman Act. As to the non entrenched independent officers of Parliament, each is currently excluded from the operation of the Whistleblowers Protection Act while only the Director, Police Integrity is subject to the Ombudsman Act.

The Commonwealth practice is also consistent in that the only Commonwealth statutorily defined independent officer of Parliament, the Auditor-General, is excluded from the general scrutiny regime of the Commonwealth Ombudsman, in that it is specified in the Ombudsman Regulations 1977 (Cth) as not being a prescribed authority.²⁴

Under the proposed Victorian scheme, however, the Ombudsman and the Auditor-General will be both subject to the IBAC and the Victorian Inspectorate.

The analyses support the following propositions as the essential elements of an independent officer of the parliament:

- an independent officer of Parliament is independent in the performance of their statutory roles and duties;
- an independent officer of Parliament is only accountable and responsible to the Parliament, either directly or via parliamentary committees.

Accordingly, an independent officer of Parliament:

- cannot be directed as to what to find or recommend
- cannot be directed not to report to the Parliament what it finds or recommends (within jurisdiction)
- cannot be directed not to report the reasons why it has reached its findings or recommendations (within jurisdiction)
- must be only accountable and responsible to the Parliament
- cannot be scrutinised or monitored if that scrutiny or monitoring:
 - hampers the ability of an independent officer of Parliament to perform his or her duties and functions in relation to Parliament
 - is inconsistent with the independent officer of Parliament's ability to manage and conduct his or her office and his or her reporting responsibilities to Parliament as he or she sees fit
- cannot be penalised for actions taken as an independent officer, other than by the Parliament.

Provisions in the *Integrity Accountability Legislation Amendment Bill 2012* are inconsistent with many of these propositions in relation to the Office of the Ombudsman, namely:

²⁴ Regulation 6.

- The scrutiny regime of the Victorian Inspectorate operates without any direction or control of the Parliament or its Committees.
- The regime includes making 'public recommendations' critical of the Ombudsman should he not comply with the Inspectorate's recommendations. The Parliamentary Committee's function is limited to receiving any report that the Inspectorate may choose to submit and monitoring the Inspectorate's actions once exercised.
- The proposed section 25A Ombudsman Act limits what the Ombudsman can include in his reports under that Act.

Constitutional invalidity

These inconsistencies raise the issue of constitutional invalidity.

Section 94E(1) of the *Constitution Act 1975* provides that the Ombudsman is an 'independent officer of Parliament'. That provision is 'entrenched' by section 18(1)(o) of the Constitution Act so that section 94E cannot be repealed, altered or varied without approval at a referendum. Accordingly, any ordinarily passed legislative provision which seeks to alter section 94E(1) is invalid to the extent of the inconsistency between that provision and section 94E.

Any provisions in the IBAC legislation which seek to require the Ombudsman to act in a manner inconsistent with the essential elements of being an 'independent officer of the Parliament' will be seeking to alter or vary section 94E(1) and, to that extent, will be invalid or inoperative unless approved at a referendum.

This is the effect of legal advice recently provided by Queen's Counsel, an experienced State constitutional law expert. Counsel considers that there are provisions in the Integrity Accountability Legislation Amendment Bill that could, if enacted, require the Ombudsman, an entrenched independent officer of the Parliament, to act in manner that is inconsistent with the status and role of an independent officer of the Parliament. Counsel also considers that those provisions may be constitutionally invalid if enacted without approval by a referendum. However, because of the limited time available to undertake a full analysis and the complexity of the various Bills, Acts and provisions involved, the extent of that invalidity is not clear at this time.

Given the importance and ramifications of this advice, it would be unwise to finalise the Parliament's consideration of the Bills until this issue is clarified.

Until these matters are properly considered and resolved, I am obliged to regard elements of the Bills before the House as constitutionally invalid. It is therefore in the public interest to defer consideration of the two IBAC Bills until February 2013, by which time the constitutional validity of those Bills and its extent will have been further considered and clarified.

4. Limiting the scope of Parliamentary references

Section 16 of the Ombudsman Act allows a House of Parliament or a Parliamentary Committee to refer to the Ombudsman for investigation and report ‘any matter, other than a matter concerning a judicial proceeding’.²⁵ In the course of my investigation into The Hotel Windsor Development in 2011²⁶, the former Solicitor-General provided an advice to the former Attorney-General that my jurisdiction under section 16 of the Ombudsman Act is qualified by section 13 of that Act. In her opinion:

The text and structure of the Ombudsman Act reveal an intention to limit the jurisdiction of the Ombudsman to those matters for which section 13 provides and is not to extend the Ombudsman’s jurisdiction by section 16.

One limiting aspect of section 13 that the then Solicitor-General referred to, although it was not immediately relevant to the circumstances in The Hotel Windsor investigation, was section 13(3). That section provides that:

Nothing in this Act shall authorize the Ombudsman to enquire into or investigate any administrative action taken –

by certain office holders.

I considered the Solicitor-General’s opinion and, as The Hotel Windsor report made clear, did not consider it conclusive. I concluded that section 13 did not limit my jurisdiction to investigate a matter referred to me pursuant to section 16; I regarded the only limitation being the specific limitation contained in that section – ‘other than a matter concerning a judicial proceeding’.

In the amendments intended to be made to the Ombudsman Act by the Integrity and Accountability Legislation Amendment Bill 2012, section 13(3), is to be repealed and replaced by proposed section 13AA(3). Proposed section 13AA(3) reads:

For the avoidance of doubt, nothing in this Act authorises or requires the Ombudsman to enquire into or investigate anything done or omitted to be done by or in an exempt person or body.

In my view this provision is inconsistent with section 16 and, being a later provision than section 16 and including the words ‘For the avoidance of doubt’, it must override section 16. Its effect will be to limit my ability to investigate matters referred by a House of Parliament or a Parliamentary Committee to me. I also note that this limitation on the power of the Houses and Committees of Parliament has not been drawn to the attention of the Parliament to date by the Minister.

5. Limiting the effectiveness of the Office of the Ombudsman

Ombudsman investigations

The purpose of Ombudsman investigations is, putting it simply, to ascertain what happened. For that reason, compulsory powers are provided to the Office

²⁵ Section 16(1) *Ombudsman Act 1973*.

²⁶ *Ombudsman investigation into the probity of The Hotel Windsor redevelopment*, February 2011, session 2010-11, PP No 10.

of the Ombudsman so as to allow that question to be answered. However, as those powers are extensive, the evidence gathered cannot be used in legal or disciplinary proceedings, other than for very limited purposes. This is made clear by the current section 20(3) and the proposed section 29B of the Ombudsman Act.

Accordingly, provisions that limit the Ombudsman's access to information, such as provisions entitling people to claim privilege, hamper an investigation. Those limitations do not serve the primary purpose of those privileges, being to protect people with those privileges from having the protected items used in legal proceedings against them. As a result, I have for many years proposed that the Ombudsman Act be amended to allow privileges to be overridden.

These Bills, however, do not take that approach and this will constitute a continuing impediment to investigations. Furthermore, the Ombudsman Act is to be amended to add section 19D which reads:

Nothing in this Act entitles a person to disclose information that is the subject of legal professional privilege or client legal privilege in an investigation on a relevant protected disclosure complaint.

This provision is inconsistent with and, in my view, alters the meaning of section 18(3), the only provision in the Ombudsman Act which limits privileges. That section reads:

No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the service of the Crown or an authority or a protected disclosure entity, where imposed by any enactment or any rule of law, shall apply to the disclosure of information for the purposes of an investigation under this Act.

The effect of reading these two provisions together is that the Crown will be able to claim legal professional privilege in protected disclosure investigations.

The justification for proposed section 19D that has been given to my officers is that there is a similar provision contained in the Whistleblowers Protection Act (WPA). While there is a provision in that Act with some similarities to proposed section 19D (s10(2) WPA), it is in Part 2 of the WPA, which deals with the making of protected disclosures. Accordingly, it has been read, in my view correctly, as limited to that context. However, proposed section 19D has a much broader operation in that it expressly refers to 'in an investigation on a relevant disclosed complaint' (words that are not in s10(2)). This does much more than s10(2) WPA.

It is apparent that the inclusion of section 19D was based on a misunderstanding of the operation and meaning of section 10(2) WPA, and has a broader operation than s10(2). It should therefore be omitted from the Bill. This is necessary to avoiding allowing the Crown to claim legal professional privilege, something which it has not been able to do under the WPA.

I also consider that the Ombudsman's lack of ability to require the production of Cabinet material is unnecessary and hampers the ability to investigate matters properly. I note that the Auditor-General is not subject to such restrictions; nor is the Ombudsman from the Commonwealth, the ACT, the Northern Territory or Tasmania.

The Bills before the House do not take that position, but further limit the Ombudsman's ability to have access to Cabinet material. Under the Whistleblowers Protection Act, people were not required or authorised to furnish information or answer questions relating to 'any deliberation or decision of the Cabinet'.²⁷ However under proposed section 19A of the Ombudsman Act, this exclusion is extended to 'Cabinet information', a term defined to mean a document or information that would fall within the freedom of information exemption in section 28 of the *Freedom of Information Act 1982*. That exemption goes well beyond the phrase 'deliberations or decisions of Cabinet' and includes:

- a document that has been prepared by a Minister or on his or her behalf or by an agency for the purpose of submission for consideration by the Cabinet; and
- a document prepared for the purposes of briefing a Minister in relation to issues to be considered by the Cabinet.²⁸

No reason for the expansion of this exemption is apparent.

²⁷ Section 57(1) (a) WPA.

²⁸ Sections 28(1)(b) & (ba) *Freedom of Information Act 1982*.

The role of the Ombudsman

The role of Ombudsman developed because individual citizens did not have the resources or capacity to prevent executive government from misusing the extensive powers and privileges afforded it in a Parliamentary democracy.

Together with the introduction of Freedom of Information legislation and the establishment of administrative tribunals, the *Ombudsman Act 1973* empowered Victorian citizens to hold the Executive subject to scrutiny. These reforms provided citizens with a right to Government information, to challenge decisions which adversely affected their lives and to complain when public officials misused their positions. Due to its success, the Ombudsman institution spread to a number of jurisdictions across the world²⁹ and has been adapted by the private sector to provide accessible dispute resolution. Victoria was one of the earliest Westminster democracies to adopt the Ombudsman model.

Since 1973 the Victorian Ombudsman has dealt with more than 200,000 complaints, 107,000 investigations and enquiries, tabled 103 reports in Parliament and made more than 7,000 reports to agencies.

Since the introduction of the *Whistleblowers Protection Act 2001*, the Ombudsman has had a wider range of tools available to him to hold public officials accountable. In the last five years the Ombudsman has substantiated 125 allegations made under the WPA including:

Allegation	
Corrupt Conduct	99
Substantial Risk to Public Health and Safety	12
Substantial Mismanagement of Resources	10
Detrimental Action	3
Substantial Risk to Environment	1
Total	125

During the same period more than 3,000 complaints were received under the Ombudsman Act alleging misconduct or conflict of interest on the part of public officers. Many of these matters were resolved directly with the agency concerned including more than 300 allegations that were investigated and found not to be substantiated.

Since my appointment, where I have considered it to be in the public interest, I have reported to the Parliament regarding my investigations. The number of reports delivered according to the different types are:

²⁹ The International Ombudsman Institute website states that it now has over 150 institutional members. See <http://www.ombudsassociation.org>.

Report type	
Ombudsman Act - section 14 investigation	39
Whistleblowers Protection Act investigation	25
Ombudsman Act - Parliamentary referral - section 16 investigation	2
Ombudsman Act - implementation of recommendations	3
Total	69

Few, if any, of these investigations have involved matters that would have met IBAC's threshold for investigation. However if the IBAC arrangements had been in effect, I consider that I would not have been able to investigate many, if not most of the complaints that led to those reports without IBAC having referred them to me. As an example I consider the following investigations are unlikely to have been undertaken without a reference from IBAC:

- *Own motion investigation into Greyhound Racing Victoria, June 2012*
- *Investigation regarding the Department of Human Services Child Protection program (Loddon Mallee Region), October 2011*
- *Investigation into an allegation about Victoria Police crime statistics, June 2011*
- *Ombudsman investigation - Assault of a Disability Services client by Department of Human Services staff, March 2011*
- *Own motion investigation into the tendering and contracting of information and technology services within Victoria Police, November 2009*
- *Whistleblowers Protection Act 2001 Conflict of interest and abuse of power by a building inspector at Brimbank City Council, June 2009*
- *Whistleblowers Protection Act 2001 Investigation into the alleged improper conduct of councillors at Brimbank City Council, May 2009*
- *Probity controls in public hospitals for the procurement of non-clinical goods and services, August 2008*
- *Investigation into the disclosure of electronic communications addressed to the Member for Evelyn, November 2007*
- *Investigation into the use of excessive force at the Melbourne Custody Centre, November 2007.*

As pointed out earlier, there is no mechanism to automatically monitor complaints or matters referred to IBAC. As a result, there is no guarantee that such matters will be investigated. In addition, there is no effective means to overcome any damage to the investigation process caused by the legislatively imposed delay in the investigation process.

Conclusion

The purpose of this report is to bring to the attention of the Parliament the salient factors that I consider relevant to a consideration of an effective integrity system and the independence of the Ombudsman. I consider that the integrity regime in Victoria will be worse off if the Bills before the Legislative Council are passed in their current form. I also reiterate that if the Bills are passed in their current form, it will be necessary to repeal section 94E of the Constitution Act as I do not consider that the Ombudsman will be independent nor can properly be described as an independent officer of the Parliament. I note that this provision is entrenched, which indicates an intention that it not be altered and that the meaning of the words in the provision not be rendered meaningless by other legislation.

I am concerned that the IBAC scheme which the Bills before the Legislative Council will largely complete is flawed and will not assist the management and control of integrity in this State. Major issues of concern that I have referred to and addressed in this report are that:

1. Parts of the Bills before the Legislative Council, appear to be invalid.
2. The ability of the Ombudsman to accept referrals from Parliament has been narrowed and no Parliamentary explanation has been provided.
3. The IBAC scheme is likely to be ineffective as it includes:
 - a. an excessively high, and ill-defined jurisdictional test for IBAC
 - b. unnecessary 'jurisdictional traps' for both IBAC and the Office of the Ombudsman
 - c. no accountability for referred complaints to IBAC
 - d. unnecessary hampering of investigations and reporting by the Office of the Ombudsman.
4. The Victorian Inspectorate is not subject to adequate control and monitoring.
5. The scope of the exemption of Cabinet documents has been unnecessarily expanded.
6. The Crown will be allowed, for the first time, to claim legal professional privilege in protected disclosure investigations.

As an officer of Parliament, I welcome the introduction of a Parliamentary Committee, as this is entirely consistent with the proper oversight of an independent officer of Parliament.

Recommendation

I recommend that the Legislative Council give close attention to the matters in this report so as to ensure the integrity system in this State is not diminished.

Appendix 1

Other independent officers of Parliament

Jurisdiction and independent officer of Parliament	Subject to supervisory body	
	Yes	No
British Columbia Auditor General Chief Electoral Officer Conflict of Interest Commissioner Representative for Children and Youth Information and Privacy Commissioner Ombudsman Police Complaint Commissioner		X X X X X X X
New Zealand Ombudsman Controller and Auditor General		X X
England Controller and Auditor General Parliamentary Commissioner for Administration Parliamentary Commissioner for Standards		X X X
Alberta Auditor General Chief Electoral Officer The Ethics Commissioner Information and Privacy Commissioner Ombudsman		X X X X X
Ontario Information and Privacy Commissioner Ombudsman Auditor General Advocate for Children and Youth Integrity Commissioner Environmental Commissioner		X X X X X X
Prince Edward Island Information and Privacy Commissioner Indemnity and Allowances Commissioner Auditor General Conflict of Interest Commissioner Chief Electoral Officer		X X X X X
Manitoba Chief Electoral Officer Ombudsman Auditor General Conflict of Interest Commissioner Children's Advocate		X X X X X
Nova Scotia Ombudsman		X

Newfoundland and Labrador		
Auditor General		X
Child and Youth Advocate		X
Citizen's representative		X
Commissioner for legislative standards		X
Information and Privacy Commissioner		X
Chief Electoral Officer		X
Nunavut		
Integrity Commissioner		X
Chief Elections Officer		X
Information and Privacy Commissioner		X
Languages Commissioner		X
Yukon		
Ombudsman		X
Conflict of Interest Commissioner		X
New Brunswick		
Auditor General		X
Chief Elections Officer		X
Conflict of Interest Commissioner		X
Consumer Advocate for Insurance		X
Commissioner of Official Languages		X
Ombudsman		X
Saskatchewan		
Chief Electoral Officer		X
Children's Advocate		X
Conflict of Interest Commissioner		X
Information and Privacy Commissioner		X
Ombudsman		X
Provincial Auditor		X
Canada		
Chief Electoral Officer		X
Official Languages Commissioner		X
Lobbying Commissioner		X
Conflict of Interest and Ethics Commissioner		X
Public Sector Integrity Commissioner		X

Appendix 2

Reviews of independent officers of Parliament

Western Australia. The Commissioner for Public Sector Standards, in his November 2006 report, reviewing the concept of an independent officer of Parliament, based his criteria on the accountability of those officers to Parliament. In his view, four elements support the accountability of accountability officers are:

- Reporting on their performance and use of resources;
- Bipartisan Parliamentary scrutiny of activities;
- Checks and balances on each others' operations; and
- Periodic independent reviews of their role and functions.

He also considered that the accountability of these officers is enhanced where:

- a) accountability officers are the accountable officer for their agency but are administratively responsible to the Parliament, not to a Minister;
- b) accountability officers' Annual Reports on their functions and operations are submitted directly to the Parliament where they receive active consideration by a Committee with mandated responsibility to do so;
- c) a Parliamentary Committee has legislatively mandated responsibility to hold accountability officers accountable for their activities, including the active monitoring of their operational performance and resource requirements;
- d) accountability officers are audited by the Auditor General, but the Auditor General is in turn audited by an independent auditor appointed by and reporting to the Parliament or a Parliamentary Committee. All auditors should be empowered to undertake performance auditing of the accountability officers;
- e) statutory performance reviews of each accountability officer's functions, effectiveness and efficiency are conducted at regular intervals by independent reviewers appointed by and reporting to the Parliamentary Committee.

The WA Commissioner placed considerable emphasis on the independence of 'accountable officers' from the executive³⁰, but, as seen from paragraph (c) above, not from operational involvement by the Parliamentary Committee in the activities of the officers.

New Zealand. In 1989, the Finance and Expenditure Committee of its Parliament drew up five guiding principles for new independent officers.³¹ This analysis looked more to the needs for the use of the office, rather than the key elements of the office. The principles are:

- an officer of Parliament must only be created to provide a check on the use of power by the Executive;

³⁰ WA Commissioner for Public Standards, *Accountability Officers of the Western Australian Parliament* (2006) 7-13.

³¹ Finance and Expenditure Committee (NZ) *Report on the Inquiry into officers of Parliament* (1989) referred to in Public Accounts and Estimates Committee (Vic), Sixty Seventh Report to the Parliament, *Report on a Legislative Framework for Independent Officer of Parliament* (February 2006) No 130 Session 2003-06.

- an officer of Parliament must only be discharging functions which the House of Representatives itself, if it so wished, might carry out;
- Parliament should consider creating an officer of the Parliament only rarely;
- the House of Representatives should from time to time review the appropriateness of each officer of Parliament's status; and
- each officer of Parliament should be created in separate legislation principally devoted to that position.

Victoria. The Public Accounts and Estimates Committee considered the issue of independent officers in 2006 and has, in effect, endorsed the first four of the New Zealand recommendations³². The fifth, presumably was rejected, as at the date of the delivery of the report (2006) the three Victorian independent Officers were entrenched in the Constitution Act, which provides a better protection to the officers than establishment in separate legislation.

The PAEC also went on to make recommendations relating to the key elements of the office. Its recommendations included that:

- Parliamentary Committees be responsible for ensuring the accountability and independence of the office.³³
- The legislation governing the operations of independent officers explicitly state that the Parliament and its committees cannot direct the officers on operational matters, but can request them to undertake specific investigations.³⁴
- That independent officers be subject to independent performance audits every four years.³⁵

United Kingdom. The House of Commons Research Paper surveyed independent officers from Britain, Canada, New Zealand and Australia to determine the key characteristics of an independent body. It largely relied, however, for its key characteristics on the British Comptroller and Auditor-General which, it considered, 'sets the standard for other constitutional watchdogs in terms of accountability and independence'.

In its view, the essential characteristics of an independent officer of Parliament can be described as:

- Parliamentary involvement in appointment and dismissal
- a statutory committee which is responsible for budget approval and oversight
- a specific select committee to which the officer is bound to report
- staffing independent of the civil service.³⁶

³² Public Accounts and Estimates Committee (Vic), Sixty Seventh Report to the Parliament, *Report on a Legislative Framework for Independent Officer of Parliament* (February 2006) No 130 Session 2003-06 85 (Recommendation 17).

³³ Recommendation 7.

³⁴ Recommendation 8.

³⁵ Recommendations 9 & 10.

³⁶ *Officers of Parliament – A Comparative Perspective*, Research Paper 03/77 (20 October 2003) 12.

British Columbia. In 1998, its seven independent officers (or 'statutory officers of the Legislature') produced a Parliamentary report as to the fundamental operating principles of independent officers.³⁷

Those fundamental principles include:

- *Accountability*
 - Officers of the Legislature should be accountable directly to the Legislature for carrying out their legislated responsibilities and for the administration of their offices.
 - Officers of the Legislature should be subject to independent audits of their offices.
- *Independence: Personal and Managerial*
 - It is important that the authority of independent officers be provided in a manner that is as unfettered from government influence or control as possible.
 - Independent officers should have:
 - assured tenure in office to protect them from government influence and
 - the protection by legislation from legal action for exercising their duties in good faith.
 - sufficient independence from government administrative controls to ensure that they can organize, staff and manage their offices, and engage outside expertise, as they see fit, within their budgets and within the provisions of legislation designed to protect the rights of public servants.
- *Reporting*
 - Independent officers should:
 - report to the Legislative Assembly at least annually on anything that they consider should be brought to the attention of the Assembly resulting from work undertaken in the performance of their duties.
 - submit their reports directly to the Legislative Assembly through the Speaker, since they are officers of the Legislature.
 - issue reports to the Legislative Assembly as frequently as is deemed appropriate by the officers to ensure that the Legislature receives information from its officers on a timely basis.
- *Access to Information*
 - Independent officers should have access to all records, information and explanations needed to carry out their mandated responsibilities.
 - Independent officers should have legislated authority to examine persons under oath.

³⁷ *Statutory Officers of the British Columbia Legislature, Special Report No 21, May 1998.*

Ombudsman's Reports 2004-12

2012

Whistleblowers Protection Act 2001 Investigation into allegations concerning rail safety in the Melbourne Underground Rail Loop
October 2012

Whistleblowers Protection Act 2001 Investigation into allegations of improper conduct by CenITex officers
October 2012

Whistleblowers Protection Act 2001 Investigation into allegations of improper conduct involving Victoria Police
October 2012

Whistleblowers Protection Act 2001 Investigation into allegations against Mr Geoff Shaw MP
October 2012

Investigation into the temporary closure of Alfred Health adult lung transplant program
October 2012

Investigation into an alleged corrupt association
October 2012

Whistleblowers Protection Act 2001 Investigation into allegations of detrimental action involving Victoria Police
June 2012

Own motion investigation into Greyhound Racing Victoria
June 2012

The death of Mr Carl Williams at HM Barwon Prison - investigation into Corrections Victoria
April 2012

Whistleblowers Protection Act 2001 Conflict of interest, poor governance and bullying at the City of Glen Eira Council
March 2012

Investigation into the storage and management of ward records by the Department of Human Services
March 2012

2011

Investigation into the Foodbowl Modernisation Project and related matters
November 2011

Investigation into ICT-enabled projects
November 2011

Investigation into how universities deal with international students
October 2011

Investigation regarding the Department of Human Services Child Protection program (Loddon Mallee Region)
October 2011

Investigation into the Office of Police Integrity's handling of a complaint
October 2011

SafeStreets Documents - Investigations into Victoria Police's Handling of Freedom of Information request
September 2011

Investigation into prisoner access to health care
August 2011

Investigation into an allegation about Victoria Police crime statistics
June 2011

Corrupt conduct by public officers in procurement
June 2011

Investigation into record keeping failures by WorkSafe agents
May 2011

Whistleblowers Protection Act 2001 Investigation into the improper release of autopsy information by a Victorian Institute of Forensic Medicine employee
May 2011

Ombudsman investigation - Assault of a Disability Services client by Department of Human Services staff
March 2011

The Brotherhood - Risks associated with secretive organisations
March 2011

Ombudsman investigation into the probity of The Hotel Windsor redevelopment
February 2011

Whistleblowers Protection Act 2001 Investigation into the failure of agencies to manage registered sex offenders
February 2011

Whistleblowers Protection Act 2001 Investigation into allegations of improper conduct by a councillor at the Hume City Council
February 2011

2010

Investigation into the issuing of infringement notices to public transport users and related matters
December 2010

Ombudsman's recommendations second report on their implementation
October 2010

Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct
October 2010

Whistleblowers Protection Act 2001 Investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) - Aerospace
July 2010

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments
June 2010

Own motion investigation into Child Protection - out of home care
May 2010

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat
April 2010

Whistleblowers Protection Act 2001 Investigation into the disclosure of information by a councillor of the City of Casey
March 2010

Ombudsman's recommendations – Report on their implementation
February 2010

2009

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre
December 2009

Own motion investigation into the Department of Human Services – Child Protection Program
November 2009

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police
November 2009

Brookland Greens Estate – Investigation into methane gas leaks
October 2009

A report of investigations into the City of Port Phillip
August 2009

An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing
July 2009

Whistleblowers Protection Act 2001 Conflict of interest and abuse of power by a building inspector at Brimbank City Council
June 2009

Whistleblowers Protection Act 2001 Investigation into the alleged improper conduct of councillors at Brimbank City Council
May 2009

Investigation into corporate governance at Moorabool Shire Council
April 2009

Crime statistics and police numbers
March 2009

2008

Whistleblowers Protection Act 2001 Report of an investigation into issues at Bayside Health
October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services
August 2008

Investigation into contraband entering a prison and related issues
June 2008

Conflict of interest in local government
March 2008

Conflict of interest in the public sector
March 2008

2007

Investigation into VicRoads' driver licensing arrangements
December 2007

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters
November 2007

Investigation into the use of excessive force at the Melbourne Custody Centre
November 2007

Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract – CNG 2007
October 2007

Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint
April 2007

Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong
February 2007

2006

Conditions for persons in custody
July 2006

Review of the Freedom of Information Act 1982
June 2006

Investigation into parking infringement notices issued by Melbourne City Council
April 2006

Improving responses to allegations involving sexual assault
March 2006

2005

Investigation into the handling, storage and transfer of prisoner property in Victorian prisons
December 2005

Whistleblowers Protection Act 2001 Ombudsman's guidelines
October 2005

Own motion investigation into VicRoads registration practices
June 2005

Complaint handling guide for the Victorian Public Sector 2005
May 2005

Review of the Freedom of Information Act 1982 Discussion paper
May 2005

Review of complaint handling in Victorian universities
May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton
March 2005

Discussion paper on improving responses to sexual abuse allegations
February 2005

2004

Essendon Rental Housing Co-operative (ERHC)
December 2004

Complaint about the Medical Practitioners Board of Victoria
December 2004

Ceja task force drug related corruption – second interim report of Ombudsman Victoria
June 2004

