



VICTORIAN COUNCIL FOR CIVIL LIBERTIES

Anti Corruption Watchdogs and Victoria

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Part A

1. Why were anti corruption bodies created in other states?

1.1) QLD: CMC

The CMC began operating in 2002 under the *Crime and Misconduct Act 2001* which merged the Criminal Justice Commission (CJC) and the Queensland Crime Commission (QCC). The CJC was established in response to the Fitzgerald Inquiry which revealed systematic and entrenched corruption within the Queensland police force. The Fitzgerald Inquiry itself was largely triggered by media coverage of public sector corruption, namely an ABC Four Corners documentary titled 'The Moonlight State'.¹

1.2) NSW: ICAC

ICAC came into existence in 1989 under the *Independent Commission Against Corruption Act 1988*. Similarly to the Queensland body, ICAC was created in response to increasing public concern over the integrity of the public sector. Throughout 1988 the media had reported a series of corruption scandals, including allegations of links between organized crime figures and identities such as Lionel Murphy and NSW Attorney-General Paul Landa, and suspected underhand dealings between the then premier Unsworth and former premier Wran.² The spectre of the Fitzgerald Inquiry in Queensland further contributed to public fears that similar levels of corruption might exist in New South Wales.³

1.3) WA: CCC

In Western Australia during the 1980s, a number of government-private business collaborations caused substantial financial losses to both private investors and the State's treasury. A Royal Commission was subsequently appointed and a number of senior public officials and business leaders were prosecuted and imprisoned. The Anti-Corruption Commission was subsequently established but was perceived to be ineffective and in 2004

¹ Peter Grabosky and Peter Larmour, 'Public Sector Corruption and its Control', *Trends and Issues in Crime and Criminal Justice Series*, No. 143, p. 4.

² Michael Bersten, 'Making the ICAC Work', *Current Issues in Criminal Justice*, Vol.1, No.2, p. 70.

³ Mark Findlay, 'ICAC and the Community', *Current Issues in Criminal Justice*, Vol.1, No.2, p. 123.

was replaced with the CCC in response to a recommendation by the Police Corruption Royal Commission.⁴

2. What jurisdiction do these bodies have?

2.1) QLD: CMC

The CMC has jurisdiction over public misconduct, major crime and a witness protection programme. The CMC's misconduct jurisdiction applies to the Queensland public sector only. It can investigate the following bodies:⁵

- state government departments and most statutory bodies
- state-run schools, universities and TAFE institutes
- local government councils
- prisons (state and private)
- the Queensland Police Service
- elected officials (members of the Queensland Parliament and Queensland local government councillors)

2.2) NSW: ICAC

The jurisdiction of the ICAC similarly covers all NSW public sector agencies including government departments, local councils, members of Parliament, ministers, the judiciary and the governor. The key jurisdictional difference from the CMC is that the ICAC cannot investigate the NSW police force; the Police Integrity Commission investigates allegations of police corruption. However, the ICAC can investigate corruption by police officers in circumstances which involves other public officials who are not police or administrative staff employed by the NSW Police.⁶ The ICAC does not have a major crime function.

2.3) WA: CCC

The CCC's jurisdiction extends to all Western Australian public officers. Like the CMC, the CCC was also established to assist Western Australian police combat major crime. Unlike the CMC, the CCC does have jurisdiction over the Western Australian police force.

⁴ Peter Grabosky and Peter Larmour, 'Public Sector Corruption and its Control', *Trends and Issues in Crime and Criminal Justice Series*, No. 143, p. 4.

⁵ www.cmc.qld.gov.au/

⁶ www.icac.nsw.gov.au/

3. What general anti corruption functions do these bodies have?

3.1) QLD: CMC

The *Crime and Misconduct Act 2001* gives the CMC the following three main functions:⁷

- gathering and analysing intelligence
- undertaking research
- helping to prevent crime and misconduct

3.2) NSW: ICAC

The *Independent Commission Against Corruption Act 1988* gives the ICAC similar functions of:⁸

- investigating and exposing corrupt conduct in the public sector
- actively preventing corruption through advice and assistance
- educating the community and public sector about corruption and its effects

3.3) WA: CCC

The *Corruption and Crime Commission Act 2003* also gives the CCC three core functions of:⁹

- corruption prevention
- education to assist in the understanding and awareness of corruption
- ensuring that allegations and information about misconduct are appropriately dealt with

4. What powers do these bodies have?

4.1) QLD: CMC

The CMC has the following powers of investigation to:

- require a person to produce records or other things relevant to a CMC investigation
- enter a public sector agency, inspect any record or other thing in those premises, and seize or take copies of any record or thing that is relevant to a CMC investigation

⁷ www.cmc.qld.gov.au/

⁸ www.icac.nsw.gov.au/

⁹ www.ccc.wa.gov.au/

- apply to a magistrate or judge for a warrant to enter and search other premises
- apply to the Supreme Court for a surveillance device (note: the CMC does not have the power to use telephone interception devices)
- summons a person to attend a hearing to give evidence and produce such records or things as are referred to in the summons

The evidence collected is assessed and, if it is considered to be sufficient, a report is referred to the Director of Public Prosecutions recommending criminal prosecution.

4.2) NSW: ICAC

The ICAC has the following powers of investigation to:

- compel the production of documents or other things
- compel a public authority or public official to provide information
- enter properties occupied by a public authority or public official to inspect and copy documents
- apply to an authorised officer (attached to Local Courts) for warrants to search properties. Section 40(2) of the ICAC Act also gives the ICAC Commissioner the power to issue search warrants; the current Commissioner has not yet used this power
- use surveillance devices upon application to a judge of the Supreme Court and intercept telephone calls upon application to a Member of the Administrative Appeals Tribunal
- compel witnesses to answer questions at compulsory examinations (private hearings) and public inquiries

At the conclusion of an investigation the ICAC may recommend the Director of Public Prosecutions consider prosecution.

4.3) WA: CCC

The CCC has the following powers of investigation to:

- obtain information from a public authority or officer
- obtain documents and other things
- summon witnesses to attend examinations and produce things
- enter and search public premises without a warrant
- apply for a search warrant for other premises to a judge of the Supreme Court
- apply for surveillance device warrants to a judge of the Supreme Court, except for tracking device warrant applications which may be made to a magistrate.
- apply for a telecommunications service interception warrant to members of the Federal Court of Australia, the Family Court of Australia, and the Federal Magistrates Court, or to nominated members of the Administrative Appeal Tribunal.

Unlike the ICAC and the CMC, the decision to investigation and the decision to prosecute can both be made by the CCC.

5. How are hearings conducted?

5.1) QLD: CMC

- Public and private hearings:

The CMC can hold private or public hearings. Generally CMC hearings are not to be open to the public unless holding a public hearing would not be unfair to a person or contrary to the public interest.

- Rights and obligations at CMC hearings include:
 - right to legal representation
 - a person must not refuse to produce a document or thing
 - a person must not refuse to answer questions
- Evidence and procedure:

When conducting a hearing, the presiding officer:

- must act fairly but quickly and with as little formality and technicality as possible
- is not bound by the rules of evidence
- may inform themselves of anything in the way they consider appropriate
- may decide the procedures to be followed for the hearing

5.2) NSW: ICAC

- Public and private hearing:

The ICAC can hold private or public hearings. The ICAC Act directs the Commission to consider whether a public hearing would be in the public interest and specifically to take into account the following factors:

- the benefit of exposing to the public, and making it aware of, corrupt conduct
- the seriousness of the allegation or complaint being investigated
- any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding a public inquiry)
- whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.
- The rights and obligations at ICAC hearings include
 - the Commission may 'authorise' a person giving evidence to be represented by a lawyer.
 - a person must not refuse to produce a document or thing
 - a person must not refuse to answer questions

- Evidence and procedure:

The Commissioner of ICAC:

- must exercise its functions with as little formality and technicality as possible, and hearings shall be conducted with as little emphasis on an adversarial approach as is possible
- is not bound by the rules of evidence
- may inform itself on any matter in such manner as it considers appropriate

5.3) WA: CCC

- Public and private hearings:

The CCC hearings are to be private unless otherwise ordered. The CCC Act provides the hearing may be public if it is in the public interest, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements.

- The rights and obligations at CCC hearings include:
 - the right to legal representation
 - a person must not refuse to produce a document or thing
 - a person must not refuse to answer questions
- Evidence and procedure:

The Commission:

- is not bound by the rules of evidence
- can inform itself on any matter in such manner as it thinks fit

6. Who are the anti corruption bodies accountable to?

6.1) QLD: CMC

The CMC is answerable to the Parliamentary Crime and Misconduct Committee. The Committee has the three main functions of:¹⁰

- monitoring and reviewing the performance of the functions of the CMC
- reporting to Parliament on matters relevant to the CMC
- participating in the selection of Commissioners of the CMC

¹⁰ <http://www.parliament.qld.gov.au/view/committees/PCMC.asp>

6.2) NSW: ICAC

The ICAC is accountable through the NSW Parliament's Committee on the ICAC which has essentially the same function as the abovementioned CMC Committee.

The ICAC is also accountable through the Inspector of the ICAC who monitors ICAC's use of its powers and investigates complaints against ICAC including:¹¹

- abuse of power
- impropriety
- misconduct
- delay in the conduct of investigations
- unreasonable invasion of privacy
- maladministration of a serious nature that is illegal, or unreasonable, unjust, oppressive or improperly discriminatory, or based on improper motives.

6.3) WA: CCC

A Parliamentary Inspector and a Parliamentary Committee oversee the Commission. The Parliamentary Inspector audits the Commission's operations and investigates misconduct allegations against Commission staff. Both the Parliamentary Inspector and the Commission report to a Parliamentary Committee.¹²

7. What positive results have the anti corruption watchdogs achieved?

The question of how to assess the achievements of anti corruption watchdogs is vexed. The most obvious way to measure success is to examine prosecution and conviction rates. However, this has been criticized as a narrow and crude assessment criterion which overlooks less tangible achievements of prevention, education and raising confidence in the integrity of the public sector. Nevertheless, this method can provide a basic overview of the results watchdogs are attaining.

7.1) QLD: CMC

In its 2008-2009 annual report the CMC records having assessed 3922 misconduct matters. 80 of these became 'finalised investigations' meaning they were fully investigated by the CMC and the CMC's involvement with the matter is now completed. Out of these 80 finalised matters, the CMC recommended a total of 70 charges against 36 people. The annual report notes that many of these matters are still proceeding through the court system and therefore does not provide conviction rates.¹³

¹¹ www.oiiac.nsw.gov.au/

¹² www.ccc.wa.gov.au/Pages/Inspector.aspx

¹³ Crime and Misconduct Commission, *Annual Report 2008 -2009*, p. 23.

7.2) NSW: ICAC

The ICAC 2008-2009 annual report simply provides that 2,714 allegations of misconduct were assessed and the number of persons subject to prosecution arising from investigations was 21.¹⁴

7.3) WA: CCC

The CCC 2008-2009 annual report provided the most detailed statistical breakdown of investigation outcomes. The CCC assessed 2,838 complaints containing 3,205 allegations.¹⁵ 38% of these were referred back to the 'home agency' for investigation (for example, a low level police misconduct complaint might be referred back to the police for an internal investigation) and no action was taken in 18% of cases.¹⁶ Of the matters which were investigated by the CCC, a total of 14 persons were charged with 81 criminal offences. A conviction rate of 80% (by persons charged) and 81% (by individual charges) was achieved.¹⁷

¹⁴ Independent Commission Against Corruption, *Annual Report 2008- 2009*, p. 11.

¹⁵ Corruption and Crime Commission, *Annual Report 2008-2009*, p. 5.

¹⁶ *Ibid.* p. 29.

¹⁷ *Ibid.* p. 5.

PART B: What is proposed for Victoria?

1. The Macro Structure

Premier Brumby announced in early June that the Government will adopt the Proust Model for public sector integrity, which includes the creation of a Victorian Integrity and Anti Corruption Commission (VIACC). The key recommendations under the Proust Model are as follows:

a) The Legislature

- Existing Bodies
 - The Privileges Committees will retain their current functions, with the addition of overseeing the new Parliamentary Integrity Commissioner (see below).
- Proposed Bodies
 - A Parliamentary Integrity Commissioner will be introduced to monitor the conduct of Members of Parliament and their publicly funded staff. The Commissioner will provide advice, investigate complaints and refer serious allegations to VIACC or Victoria Police. The Commissioner will report to the Privileges Committees.

b) The Executive

- Existing Bodies
 - The Public Accounts and Estimates Committee will retain its current function.
 - The Auditor General will retain its current function.
 - The Ombudsman will no longer be responsible for whistleblower complaints or the most serious complaints of misconduct and corruption.
 - The Public Sector Standards Commissioner will retain its current function.
- Proposed Bodies
 - The Victorian Integrity and Anti Corruption Commission (VIACC) will investigate allegations of serious misconduct and corruption in the public sector and local government, including whistleblower complaints. VIACC will be comprised of:
 - 1) The Public Sector Integrity Commissioner (the inaugural chair of VIACC).
 - 2) The Director, Police Integrity: the functions of the OPI will transition to here, and the Director's jurisdiction will be expanded to cover both sworn and unsworn employees of Victoria Police.
 - 3) The Chief Municipal Inspector who is responsible for investigating misconduct involving local government councillors and employees.

- A Parliamentary Committee which will oversee the Ombudsman and VIACC.
- An Investigations Inspector will monitor VIACC's use of coercive powers, investigate complaints and report to the Parliamentary Committee. This will absorb the current role of the Special Investigations Monitor.
- An Integrity Coordination Board will be responsible for coordination and cooperation systems between the various integrity bodies. The Board will be comprised of:
 - 1) Auditor -General
 - 2) Ombudsman
 - 3) Public Sector Integrity Commissioner (VIACC)
 - 4) Director, Police Integrity (VIACC)
 - 5) Chief Municipal Officer (VIACC)
 - 6) Parliamentary Integrity Commissioner
 - 7) Public Sector Standards Commissioner

c) The Judiciary

The Proust review coincides with the Brumby Government's plans to create a Judicial Commission of Victoria which will investigate misconduct by judges, magistrates and VCAT members.

2. VIACC

• Proposed Functions

- Investigation of serious misconduct (deliberate breach of rules)¹⁸ and corruption (deliberate breach of rules for personal gain)¹⁹
- Education
- Prevention
- Research

¹⁸ Elizabeth Proust and Peter Allen, 'Review of Victoria's Integrity and Anti Corruption System', p. 3

¹⁹ Ibid.

- **Proposed Jurisdiction**

VIACC would oversee the following persons:²⁰

- police: VIACC would retain the functions of the OPI as well as extending jurisdiction to unsworn employees of Victoria Police.
- local government.
- public sector officials (including public servants, public sector directors and employees)
- members of parliament and their staff when referred by the Parliamentary Integrity Commissioner.
- whistleblowers: VIACC would have the primary responsibility for the administration of the *Whistleblowers Protection Act 2000*.

- **Proposed Powers**

The Proust review recommends that each member of VIACC should have the power 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)

The Director, Police Integrity would retain additional powers to investigate Victoria Police that may not be independently exercised by the other two members of VIACC. These include the power 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 (restricted to operations involving sworn officers)
- to hold public hearings in exceptional circumstances, defined by a public interest test.

- **Proposed limitations on the exercise of VIACC powers**

The Proust review recommends that use of stronger powers, including covert powers, should be “restricted to extraordinary situations that justify the abrogation of individual liberties.”²¹

²⁰ Ibid. p. 27

²¹ Ibid. p. 29.

It contemplates that in rare circumstances the Public Sector Integrity Commissioner or the Chief Municipal Inspector may require the powers otherwise restricted to the Director, Police Integrity. In these circumstances they should have three options:

- 1) refer the relevant investigation to the Director, Police Integrity
- 2) conduct a joint investigation with the Director, Police Integrity
- 3) continue to lead an investigation and draw on the expertise of the Director, Police Integrity's investigators (to be limited by legislation).²²

In order to use stronger powers (in investigations that do not involve Victoria Police) certain thresholds must be met. These thresholds would include requirements 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
- an Investigations Inspector is advised of these applications
- the Public Sector Integrity Commissioner or the Chief Municipal Inspector must not lead an investigation involving controlled operations. The Director, Police Integrity must lead controlled operations investigation or conduct the investigation jointly with one or both of the other members of VIACC.

- **Conduct of Hearings**

The Proust review advises that VIACC should not, in general, hold public hearings due to the potential for damaging the reputations of witnesses.²³ However, the Director of Police Integrity can hold public hearings in exceptional circumstances, defined by a public interest test.

- **Procedure and Evidence**

The Proust review recommends that VIACC should be subject to principles of procedural fairness that “could be abrogated only insofar as necessary and appropriate for VIACC’s effective functioning.”²⁴

- **Governance**

The review proposes collective governance of VIACC by the Public Sector Integrity Commissioner, the Director (VIACC inaugural Chair), Police Integrity and the Chief Municipal Inspector. The Chair of the Commission would have the power, in consultation with the other Commissioners, to appoint Deputy or Assistant Commissioners as required.²⁵

- **Oversight**

The review suggests a ‘dual oversight arrangement’, similar to the New South Wales ICAC model, which will be comprised of a general oversight body (the Parliamentary Committee) and a monitoring and complaints body (the Investigations Inspector).²⁶

²² Ibid. p. 30.

²³ Elizabeth Proust and Peter Allen, *Review of Victoria’s Integrity and Anti Corruption System*, p. 29

²⁴ Ibid. p. xvii

²⁵ Ibid. p. 28

²⁶ Ibid. p.30

3. Merits and possible disadvantages of the proposed VIACC

One of the arguments against creating a new anti corruption system is that Victoria does not have a pressing need for any major reforms. The Proust review acknowledges that current integrity bodies are generally well resourced and functioning comparatively well.²⁷ However, it also exposed a number of gaps in the system including lack of scrutiny of the judiciary and of members of parliament and their staff. The report also noted a need for greater efficiency and cooperation between the existing bodies to avoid duplication and confusion.²⁸ Because Victoria's anti corruption system developed in an ad hoc manner the review recommends that more clearly defined roles are needed to avoid situations where different bodies have investigated the same matter yet come to different conclusions.²⁹

In terms of Victoria's need for a watchdog, the review also notes that international corruption rankings regularly list Australian jurisdictions as not being particularly susceptible to corruption.³⁰ However, Peter Grabosky and Peter Larmour have argued that because corruption is an essentially invisible phenomenon it "does not lend itself to objective measurement".³¹ Thus, the argument that Victoria does not need a watchdog because it has comparatively low levels of corruption seems self affirming; without an effective watchdog it is difficult to assess the extent of any problems that may exist. Jerrold Cripps QC, the former head of ICAC, noted that "Unless Victoria is satisfied that it has less corruption in that state than anywhere else in Australia, then it should establish an [independent commission against corruption]."³² Given the difficulties in gauging the true rate of corruption, it is doubtful that Victoria could proceed with certainty that it has markedly lower levels of corruption than other jurisdictions.

Regardless of the true extent of corruption in Victoria, reasonably high level of public concern over corruption were noted,³³ perhaps as a result of recent incidents including alleged corruption at Brimbank Council, the approval process for the Windsor Hotel redevelopment and the collapse of the case against former drug squad detective Paul Dale. These events do not seem to be of the magnitude which prompted the creation of anti corruption watchdogs in other states, but Michael Brett Young suggests that Victoria should not wait until a major scandal breaks before introducing a watchdog. The relative calm that exists in the absence of such a scandal provides the right climate to implement a carefully thought through system.³⁴ Furthermore, a corruption watchdog can help restore public confidence in the integrity of

²⁷ Ibid. p. 9

²⁸ Elizabeth Proust and Peter Allen, *Review of Victoria's Integrity and Anti Corruption System*, p. ix

²⁹ Ibid.

³⁰ See, for example, Transparency International 2009, *Corruptions perceptions index 2009*, http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table, cited in the Proust review.

³¹ Peter Grabosky and Peter Larmour, 'Public Sector Corruption and its Control', *Trends and Issues in Crime and Criminal Justice Series*, No. 143, p. 2.

³² Jerrold Cripps QC cited in Farrah Tomazin, 'Is a New Watchdog Needed?', *The Age*, May 29th 2010.

³³ Elizabeth Proust and Peter Allen, *Review of Victoria's Integrity and Anti Corruption System*, p. viii

³⁴ Michael Brett Young cited in Farrah Tomazin, 'Is a New Watchdog Needed?', *The Age*, May 29th 2010.

Victoria's public sector which is consistent with the maxim that justice must not only be done but be seen to be done.

Another argument often made against anti corruption watchdogs is their ability to adversely affect civil liberties. In particular, the way hearings are conducted is contentious. When public hearings are utilised there is potential for an individual's reputation to be tarnished by allegations which are later proven to be unsubstantiated in a court of law. The ICAC's accusations against former New South Wales premier Nick Greiner, who was later exonerated by the Supreme Court, is one of the most notorious examples of this danger. Recently in Western Australia charges related to a CCC investigation against Brian Burke, his lobbyist business partner Julian Grill and ministerial staffer Nathan Hondros were dismissed in court. In Victoria, charges arising from the 2007 OPI hearings against Noel Ashby and Paul Mullet collapsed, yet both men's reputation and careers were in ruins. These incidents lead to the criticism that watchdog hearings can amount to a trial by media where individuals are publically vilified despite a lack of cogent evidence against them.

The Proust review recommends that VIACC should not, in general, hold public hearings due to the potential for damaging the reputations of witnesses.³⁵ The Director of Police Integrity will, however, retain the power to hold public hearings in exceptional circumstances as defined by a public interest test. Thus, the risk of tarnishing reputations with allegations that cannot be sustained in court has not been entirely removed in relation to investigations of police misconduct. However, incidents like the Nick Greiner affair which demonstrate how watchdogs on occasion make mistakes do not necessarily make a strong argument against establishing one. They may instead indicate that appropriate checks and balances should be created to minimize the risks of such errors occurring.³⁶ The fact that the Director of Police Integrity will now be subject to greater oversight under the Proust model might provide such a process.

The notion of conducting most of the VIACC hearings in private has also been criticised. There are important policy reasons why public hearings can be desirable. They can assist in promoting the accountability of those conducting the commission through public scrutiny of their actions. Transparency can also help ensure high levels of public confidence in the justice system as the effort to combat corruption is clearly visible.³⁷ There is also a deterrence factor in knowing that corruption is being detected and actively investigated. Furthermore, there is a community education function in public hearings as awareness and knowledge of corruption is heightened by public hearings.

Civil liberty arguments are also made in relation to the powers which VIACC would exercise. For example, the Proust review contemplates that VIACC will be vested with a number of entry, search and seizure powers. Michael Bersten argues these types of powers are justified because of the special nature of the behaviour being investigated and the special nature of the body conducting the investigation.³⁸ He notes that anti corruption commissions are highly

³⁵ Elizabeth Proust and Peter Allen, *Review of Victoria's Integrity and Anti Corruption System*, p. 29

³⁶ Brian Toohey, 'ICAC: Living in an Imperfect World', *Current Issues in Criminal Justice*, Vol. 2, No. 3, p. 35.

³⁷ Gail Furness, 'Whistle Blowers', *Medico-Legal Society of New South Wales Publications*, June 2006.

³⁸ Michael Bersten, 'Making the ICAC Work', *Current Issues in Criminal Justice*, Vol.1, No.2, p. 90

specialized organizations that can be expected to approach their work with good faith. Moreover, they have a particular need for extraordinary powers to detect conduct that is so insidious and secretive.³⁹ In essence, the argument is that strong powers will only have a negative impact on civil liberties when they are misused and that proper checks and balances, perhaps like the new level of oversight which the Proust model provides, can prevent such misuse. Focusing on the rights of the individuals being investigated also may not give enough weight to the interests of the general public in not having their rights violated by corrupt practices. There is also a more cynical suggestion that rights arguments are made whenever powerful interests are threatened by a body that would have substantial investigative powers.⁴⁰

There are also a number of arguments against the particular model which Proust has proposed. One key concern relates to the overall structure of the new system. It has been criticised as being too complex and bureaucratic where a simpler model like the Queensland CMC might have sufficed.⁴¹ There is also a perception that the government has merely added a number of oversight bodies and merged some of the pre existing bodies under the umbrella of VIACC, thereby missing an opportunity to rebuilt Victoria's anti corruption system from the ground up.⁴²

The second key concern relates to VIACC being relatively restricted in its ability to scrutinise politicians and their staff. It appears VIACC can only investigate members of parliament after a referral from the new Parliamentary Integrity Commissioner or in the form of a whistleblower complaint. This is narrower than ICAC's powers, for example, which can be used to inquire into parliamentarians without a referral.⁴³ Furthermore, the Parliamentary Integrity Commissioner reports to the Parliamentary Privileges Committee, an arrangement which has been criticised as lacking independence.⁴⁴ However, Proust has defended these measures as maintaining the separation of powers between the executive, legislature and judiciary.⁴⁵

³⁹ Ibid. p. 89

⁴⁰ Brian Toohey, 'ICAC: Living in an Imperfect World', *Current Issues in Criminal Justice*, Vol. 2, No. 3, p. 30.

⁴¹ Colleen Lewis, Associate Professor of Criminology at Monash University, cited in Samantha Donovan, 'Brumby announces anti corruption', *ABC News*, June 2nd 2010. www.abc.net.au/news/stories/2010/06/02/2916270.htm

⁴² Cameron Stewart, 'Brumby's Cosy Corruption Buster', *The Australian*, June 4th 2010.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Elizabeth Proust cited in Editorial, 'At long last, Victoria has a new corruption watchdog', *The Age*, June 6th 2010.