



VICTORIAN COUNCIL FOR CIVIL LIBERTIES

Reg No: A0026497L
Phone: (03) 9670 6422
Fax: (03) 9670 6433

GPO BOX 3161
Melbourne Victoria 3001
email: info@libertyvictoria.org.au
website: www.libertyvictoria.org.au

24 September 2010

POSITION PAPER ON THE PROPOSED VICTORIAN INTEGRITY AND ANTI-CORRUPTION COMMISSION

Liberty Victoria is not persuaded by the “Review of Victoria’s integrity and anti-corruption system” by the State Services Authority that Victoria needs a general anti-corruption body similar to the bodies which exist in New South Wales, Queensland and Western Australia, with their wide powers to abrogate civil liberties. Liberty Victoria will await the legislation to create such a body before commenting in detail on the proposal, but in the interim makes the following observations on the State Services Authority review.

The review contains scant evidence of the need for a general anti-corruption body in Victoria. In many places the review observes that there is “an opportunity” to create such a body because of gaps in existing anti-corruption laws. However, the only material it puts forward of a **need** for such a body appears at p 10 of the report. There, in a single paragraph, it instances what it calls “a steady stream of integrity and anti-corruption issues” which have arisen in the media.

However, taking the review’s own definition of corruption as “misuse of power for personal gain” (see para 2.1.3 on p 4), none of the small number of illustrations provided falls within this definition. Indeed some illustrations can barely be taken seriously such as the reference to salary cap cheating by the Melbourne Storm Rugby League Club. Another illustration – of the fraud committed by staff at Victoria University – demonstrates the effectiveness of existing law enforcement mechanisms as the perpetrators of that fraud were all convicted by those mechanisms.

This is the central failure of the review, that it does not anywhere explain why the normal law enforcement mechanisms in this State are inadequate to deal with corruption. Its implicit conclusion that those mechanisms are inadequate is unsupported by any analysis of those mechanisms and their shortcomings. It merely assumes those shortcomings because it assumes – without evidence - that corruption is widespread in the State.

The report's explanation for the lack of evidence of corruption is the "essentially invisible nature of corruption": see p 9. But in New South Wales, Queensland and Western Australia corruption was not invisible. It was so visible that royal commissions were established to investigate it. Those commissions received mountains of evidence of corruption and demonstrated beyond argument that the normal law enforcement mechanisms of those States were inadequate to deal with corruption. Nothing like that has happened in Victoria.

There is an exception the case of police, and the compelling evidence of police corruption over many years certainly justifies the Office of Police Integrity (OPI). But this is not an argument for a general anti-corruption body. Nor do alleged shortcomings in the operation of the OPI justify a general anti-corruption body. Those shortcomings should simply be fixed.

The public opinion poll, commissioned as part of the review and which found that a third of Victorians think that State politicians are "involved in corruption" (table 1, p 18), does not provide any justification for the report's conclusions. One third of the public may simply be wrong. This is a flimsy basis for a momentous development in law enforcement in the State.

On three occasions the report recommends that the proposed general anti-corruption body be invested with wide-ranging powers, including the power to compel witnesses to answer questions and the power to abrogate the privilege against self-incrimination: see pp xvi, xix and 29. Nowhere does it seek to justify the conferring of such powers on the general anti-corruption body. Nowhere does it explain that normal law enforcement agencies are denied these powers because of their potential for abuse. Nowhere does it explain that the civil liberties these powers abrogate were hard won over many centuries. It merely assumes that since anti-corruption

bodies in other States have them, so should Victoria's. Even then it does not acknowledge the abuses of these powers that have emerged in other States, even where there is a clear need for them.

Legislation investing the anti-corruption body with these powers may well be inconsistent with some of the human rights contained in the Charter of Human Rights and Responsibilities, in particular those is s 25(2)(k) (right not to be compelled to testify against oneself), s 24 (right to a fair hearing), s 13 (right to privacy and reputation) and s 8(3) (right to equal protection of the law).

None of this is to suggest that we should not be vigilant against corruption in this State. But until credible evidence emerges that corruption is widespread in the State and that the normal law enforcement mechanisms are inadequate to deal with it, we should not create a general anti-corruption body with powers to abrogate civil liberties.