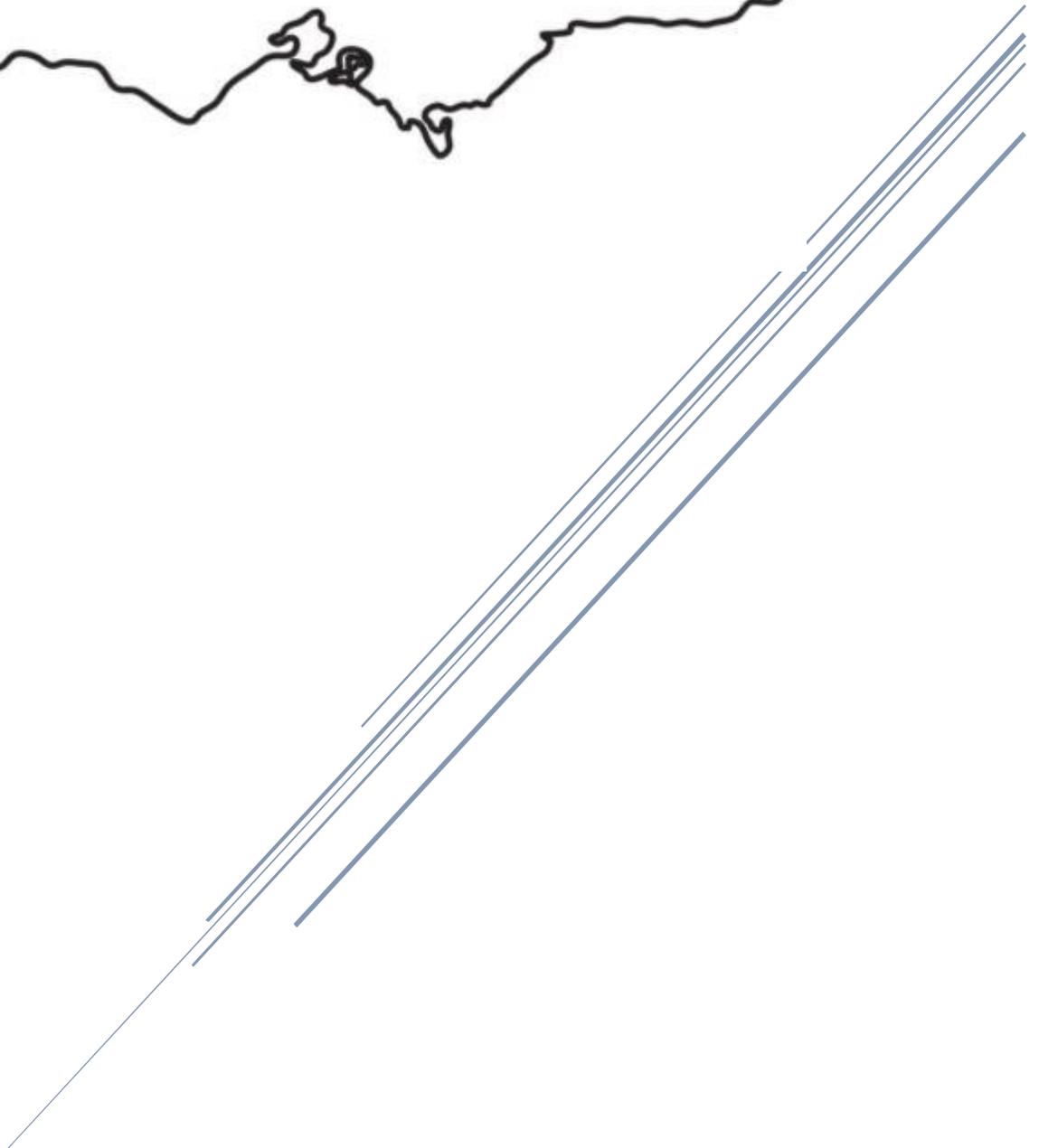




Victoria's Anti-Corruption war



Community Advocacy Alliance
February 2022

-Preface-

Written and published on behalf of the Community Advocacy Alliance Incorporated.

We acknowledge the input to this paper from many members of the CAA and others, indicating the serious concern with which this issue resonates within the community.

The anger on this issue is palpable.

The CAA will continue to advocate on this issue going forward and calls on all community leaders to acknowledge the problem exists and, within their span of control, ensure the issue is understood and addressed, and it is their responsibility.

Some leaders will not embrace the issue; their silence or criticism will indicate to Victorians the leaders and operatives that have a predisposition to, or a tolerance of ***corruption***, exposing the real depth of the problem.

Knowing the enemy is half the battle, essential for our own protection and that of the ethical and honest employees on the State payroll.

As governments have grown and encroach into our lives in an ever-growing spiral, the proportionate flow of ***corruption*** follows and accelerates, hurting us even more.

We face many challenges as a community, and every challenge and its resolution are hindered by ***corruption***; we must therefore tackle this issue with vigour.

We must prevail.

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- - Concept paper- -

EXECUTIVE SUMMARY

Corruption is the bane of good Governance; those of good character despise it, but it is propagated by those who lack that gift.

The CAA proposes a new paradigm where the object is to rein in **corruption** rather than, if you like, pick off a few corrupt people without addressing the problem.

What is required is the establishment of a **Truth and Integrity Commission** Chaired by a Supreme Court Judge equivalent, sourced from an independent jurisdiction charged with reducing **corruption** rather than simply achieving convictions, albeit that will always remain an important function.

This more modern and enlightened approach to an age-old problem is the closest we will ever get to a solution.

Opponents to this approach will be many, with the loudest critics, those who have a personal stake in the status quo and a tendency to, or tolerance of, **corruption**. Ironically, they will inevitably be the same people on the Government payroll who have also failed to deliver effective Government services.

Often overlooked in the **corruption** debate is the facilitation of **corruption** by instruments initially designed to curb **corruption**, providing a shield to corrupt misdeeds. Most galling to the community is the cost of the misuse of

these processes is borne by those the system is supposed to protect, the taxpayer.

Freedom of information, Model Litigant Rules, and Civil Settlements brought against the State are prime examples often misused.

The other impediment to a solution will be the pushback from the minority of Victorians employed by the State, who have salaries more than two hundred thousand dollars and believe they are socially immune from this, and several other social issues, believing their wealth negates any vulnerabilities. This '*it won't hurt me*' value proposition could not be further from the truth.

A plethora of Inspectorial and Commissioner roles exist throughout Government, and they must be brought together to enable work to be prioritised and dealt with more effectively and efficiently.

We do not resile from the difficulties faced in establishing this entity. Still, the commitment is well justified, and we are supremely confident of satisfactory results even in the short term.

Let's get it done.



PREAMBLE

Corruption is the antithesis of good Government administration and function and is a direct assault on our democracy.

A recent article **Corruption is a pandemic. The solution is democracy**, published by Devex, an American publication at <https://www.devex.com/>, has an uncanny relevance to Victoria and makes fascinating reading.

The Devex article gives an international perspective of the forces against democracy at play in Victoria. The CAA is in lockstep with the philosophy of the proposition argued. However, the CAA is focused on a solution.

Accepting the proposition that the voters can address these ills, the pressure on voters for the *status quo* is immense, and the need for a circuit breaker is crucial.

Democracy is not a failed or failing model ... democratic elections must be seen for what they are: Our greatest weapon

*against corruption and the ultimate measure of accountability for corrupt actors.*¹

Corruption is akin to a cancerous impediment that eats away at the host, gradually reducing effective functionality and, in this example, good Government. Not only does this create poor governance processes and applications, but it creates toxic work environments. Like cancer, the victim can be afflicted without knowing until it manifests; then, the consequences can be dire.

That is before incidents of crimes against the State, by State employees; theft, obtaining a financial advantage, Misconduct in Public Office, and a raft of other criminal corruption offences are considered.

And if that is not bad enough, the system allows exorbitant legal fees to be funded by the public purse to defend perpetrators who have '*gamed the system*', which is obscene.

Forms of Corruption

*Corruption can include bribery, lobbying, extortion, cronyism, nepotism, parochialism, patronage, influence peddling, graft, and embezzlement.*²

Unfortunately, the perception of **corruption** as clandestine exchanges of brown envelopes stuffed with cash as **corruption**, masks the true depth and breadth of this insidious blight.

Broadly, any person or entity that receives an advantage not based on sound ethical values could be **corrupt**. The test is whether that person or entity would have received that advantage without overt action by

¹ Corruption is a pandemic. The solution is democracy <https://www.devex.com/>

² https://en.wikipedia.org/wiki/Political_corruption

³ Corruption is a pandemic. The solution is democracy <https://www.devex.com/>

themselves or others who could be alleged to be manipulating or ignoring ethical norms, established policy or Legislated rules.

ENDEMIC CORRUPTION

Corruption unchecked can spread throughout an organisation or a sovereign region as it has in Victoria, and therefore the solutions cannot be found in traditional approaches.

There is also a tendency to assume that the problem is overstated, but a review of the case studies we have selected shows the contrary, Victoria is *corrupt*, and the rampant criminality must be addressed.

These Case studies fall well within the definition of Transparency International's definition of *corruption*³.

Case study-1

Local Government Officer allegedly prepares false evidence.

A local government Enforcement Officer prepared a legal process to prosecute a small business and prepared a sworn statement. The document contained the jurat correctly filled out, making the declaration of facts legally binding.

This statement was to be used as evidence in a profoundly serious prosecution.

Within that statement of facts, the Officer detailed several observations, the basis of the case.

Unfortunately for the Officer, the incident was recorded by the internal security system of the locations where these events were alleged to have occurred, as detailed by the Officer.

³ <https://www.transparency.org/en/what-is-corruption>

The CCTV recording of the event clearly showed the evidence presented by the Officer in the declaration of facts was blatantly false, and that is perjury.

The actions of the Officer are *corrupt*, perjury at least, but Police have decided not to prosecute the many *corrupt* actions in this one incident. As far as has been reported, there is no indication Police will pursue others involved in this major criminal conspiracy which will expose multiple levels of alleged *corruption* by not only this Officer but many more officials.

This inaction by authorities to rein in blatant *corruption* and without the benefit of any reasonable explanation to the contrary is *prima facie corruption* of the type identified in the Devex⁴ article.

One working hypothesis is that had the Officer been prosecuted, the risk that the *corrupt* Officer would expose others in the complex matter who also acted unlawfully was too great. It is neither a coincidence nor a surprise that some at-risk are Senior Executives within sectors of Government.

A coverup seems to be the only explanation, and while the actions of the Officer are *corrupt*, the actions or inactions of the officials and organisations who are supposed to deal with *corruption* are of greater culpability.

Establishing the nexus between the decision-makers in this case and their masters is essential.

Case Study -2

A Police executive Officer Defames business proprietor.

A Police executive member publicly named and alleged misconduct by a business proprietor that was clearly false. Designed to effect maximum damage by a merciless attack on the Proprietor in the media in a concerted and blatant effort to inflict maximum damage.

The same Executive headed up a prolonged Police Operation targeting the business over many months, to the exclusion of other like businesses in the immediate vicinity.

The police operation used substantial police resources at a significant cost to the State. This had all the 'earmarks' of a *corrupt* vendetta operation.

After this prolonged weekly operation over many months, the Proprietor was notified that Police had submitted fifty-four breaches of their licence conditions to operate their business to the Governing authority, to have the Proprietor's licence revoked, closing the business.

When these notices were challenged, the responsible authority withdrew all of them. We can assume they saw through, what were obviously questionable practices.

The Proprietor sued the State for this person's misconduct, and a '*Confidential*' settlement was achieved in favour of the Proprietor.

Although the executive Officers employment with VicPol had already ended due to other misconduct, the Officer was never brought to account for this Misconduct in Public Office, and no investigation into who else engaged in this operation was ever undertaken by Police, IBAC or the Licensing Authority. The whole saga was conveniently shelved to avoid embarrassment or protect the guilty; either way, this is gross systemic *corruption* went unchecked.

Additionally, the misuse of Police resources amounting to many hundreds of thousands of dollars when coupled with the cost to the State of defending and settling the civil case at a cost circa two million dollars was borne by the State (our taxes). The senior Executive bore no costs and retired on a very lucrative pension. That does not seem to be justice, and it is not.

He also retained his Australian Police Medal (APM) for meritorious service, something that has many other recipients uncomfortable as this has devalued this prestigious award.

We are aware of the Legal impediments in this process; however, they must be changed. The definition of Vicarious Liability should apply only where the employee of the State is acting reasonably and in good faith.

The current arrangements see us, the citizens of this State, penalised, not the perpetrator. That this Police executive was not charged with criminal offences is of itself *corrupt*.

Case study- 3

A Senior Police Officer uses social media for racist, lurid, and grossly offensive purposes.

The same executive Officer in Case study 2 for many years had been distributing vile, racist and gross sexual material of the most despicable type on social media. This was aggravated because the posts were often made on Police IT devices and during working hours.

His actions were exposed by the CAA, and he freely admitted his misconduct on public media.

Attempts were made to cover this up as trivial until the media exposed the full depth of the depravity and racist material.

The Officer resigned, and no further action was taken. That no action was taken is a further example of *corruption* at the highest levels.

It is reasonable to assume that given this Officer publicly in the media admitted he was the perpetrator; a conviction would have been inevitable had the matter been brought to court.

Adding to the corrupt dealings in this matter, the Executive had previously been sued successfully for racist comments but was still promoted to the Police Executive. His career tally for incurring civil settlements stands at three that we know of. The costs of defending and settling these cases must run to over a hundred million dollars paid out by us, not him.

Who is the culprit here?

In one of the matters a vile rant against a subordinate, his defence was that it was banter between mates. Who makes pointed and vile racist remarks to their mates in their work environment? Particularly aggravated when the one making the remarks was of a more Senior rank putting the victim at a distinct disadvantage, mate, or no mate.

The questions that we proffer are,

'Just what does a miscreant in the State employ have to do to be held to account?'

'Promotion is not off the table either.'

Case study - 4

The red shirts

Wide media coverage of this artifice where timesheets for Government employees were falsely submitted, often signed off by serving politicians, has faded into the fog of history.

A first-year constable would have no problems preparing a Brief of Evidence against multiple officials engaged in this theft from the public purse. Had the matters gone to court, as they should have, there would have been many convictions.

It is noteworthy that most, if not all, the Politicians involved in this matter have either retired or resigned assumingly to avoid prosecution, but the Law should not work that way.

Case Study - 5

The Gobbo affair

One of the most damaging and insidious matters exposed by a Royal Commission that required pressure from the media to achieve.

The behaviour striking at the heart of our legal system was so obviously illegal it still amazes us how this was allowed to evolve and be sustained for such a prolonged period.

Although not often raised, this artifice occurred under the watch of four Chief Commissioners and any number of other police executives, some still serving.

It also flourished under the gaze of multiple legal practitioners.

There is a Special Prosecutor appointed to examine if there are criminal matters to be pursued. Given recent history, the likelihood that all the perpetrators responsible will be held to account is doubtful.

We would hope to be proven wrong, but our sense is that a number of '*low hanging fruit*' who were doing their job will be fed to the baying mob as the sacrificial lambs to protect the real perpetrators.

Case study - 6

Cardinal Pell case

The High Court corrected an injustice in a unanimous finding dismissing the charges against Cardinal George Pell.

What is very disturbing is that the matter was then closed, and nobody or authority took the time to examine the process that saw an innocent man jailed.

Disturbing aspects never examined,

- Money (millions) sent to Australia clandestinely by a Pell detractor in the Vatican and never adequately explained
- A journalist (Andrew Bolt) was able to reconstruct the alleged crime scene dismissing the evidence of the main witness as implausible, but the conviction still stood.
- Allegations that the main witness was employed inappropriately by a local Government was never examined.
- The role of the Police executive in promoting this case was never examined.

Case study - 7

The quarantine fiasco

This case has attracted sustained and detailed media exposure, but other than a Senior public official resigning (part of a pattern explored later), there appears to be, even with the benefits of the Coate inquiry, notable for the number of witnesses that were responsible for contracting group amnesia, no accountability has been attributed or pursued.

The net result of the fiasco that claimed over eight hundred Victorians, in supposed care, WorkSafe has issued a Legal process against the Health Department.

This outcome assumes that the Health Department made all the relevant bad decisions causing the problem, which is quite astounding when you think of it.

It appears by the WorkSafe rationale that people do not make decisions the Department does, an inert administrative entity. The ramifications of this concept will be astronomical as every time a senior executive instigated failed, flawed, or corrupt activity; the relevant Department will be held accountable, not the corrupt or inept persons responsible.

A very unhealthy precedent.

Case study - 8

Local Government corruption scam or mistake?

As reported,⁵ a local Government parking compliance Officer was filmed issuing a Parking infringement notice to a vehicle in the City of Yarra. The Officer placed the Notice under the windscreen wiper of the vehicle and then photographed the Notice *in situ*.

The Officer left and a short time later returned and removed the infringement notice from the vehicle.

Was this a genuine error by the Officer or a wider scam perpetrated by the City of Yarra? A money-raising strategy (scam) where notices

⁵ <https://www.9news.com.au/national/yarra-council-apologises-after-parking-fine-issued-by-mistake-in-melbourne/9f959acd-0e9e-4b51-a799-543d71148755>

are routinely removed, so victims are forced to pay overdue payment premiums to the fine?

There are some indications drawn from the media reports that would indicate the latter is the case and would certainly bear investigation.

The immediate response apparently from the City was it was a mistake, and the Notice would be withdrawn, and any penalty paid refunded. Rather than offering to investigate to ensure no impropriety, this spin result was less than convincing and suggests again a closer examination/investigation is warranted.

The Officer had a clear sign at the scene, which made the offence incorrect, and the competency of the Officer should now be brought into question.

An independent examination of the facts needs to be instigated to reassure the community in the efficacy of the local Government, and it is a poor reflection on the responsible agencies that this is not done with some haste and vigour.

Case study - 9

Politicians rorts

No government official, whether elected or employed, have the right to make false claims of entitlements, as was the case with two Politicians who claimed false living away from home expenses. The false claims by any interpretation were criminal and related to metropolitan politicians claiming they lived in the country. Their actions attracted generous concessions for travel and expenses that did not incur. A more blatant criminal offence there has never been.

Quietly they have both left Politics, but as far as can be determined, no investigation or brief of evidence was ever presented to the courts as a prosecution. Again, no penalty or accountability, but more fuel to the fire of *corruption*.

Case study - 10

The case of the missing millions

One day, when honesty and ethics are returned to our Government, a Royal Commission will be held into the Community Chef fiasco.

In short, an independent company fully funded (\$28m) from the public purse was established to compete against private enterprise and for nine years operated at a loss with countless millions disappearing. The failed entity was then quietly absorbed into a Government Department along with nine million dollars in debts instead of liquidation or sale, to avoid scrutiny and no attempt to recoup any of the State millions lost to this farcical enterprise.

How a Board of Directors and Senior Executives of the enterprise could fail so miserably when the business premises fully equipped and designed by an international expert recruited and bought to Vic. for this purpose, was gifted to the Board along with five hundred thousand dollars as start-up capital and no obligations to repay a twenty-eight-million-dollar gift. Further, over this nine-year period, substantial injections of State and Local Government cash was provided to keep this basket case Company alive.

Adding to the degree of incompetence and or *corruption* was that the local government customer base was exempt from the tendering requirements when using this company's services, so in effect, the company had a *carte blanche* access to the market without equal or scrutiny, and they still failed.

Rumour abounds that the demise of this company was so spectacular because large amounts of money were syphoned off, causing its failure.

Where that money went will expose the *underbelly* of the *corruption* of this State.

At the very least, the Directors of the Board must be held to account for their failures, but there appears to be no appetite to investigate this matter by any of the agencies charged with dealing with *corruption*.

Is that Political interference?

Of very great concern, the Auditor General was aware of this fiasco and allegedly allowed this business to continue to trade while insolvent on the basis that a '*letter of comfort*' of one million dollars was provided by the Government.

It seems that the Government giving a '*Letter of comfort*' allegedly on the advice of the Auditor-General needs explaining because, without a proper explanation, that action by the AG could be ***corruption***.

CASE STUDIES TAKE OUT

The CAA is non-partisan; however, there are clear patterns that evolve from these case studies.

- i. Perpetrators are regularly allowed to resign or retire to avoid prosecution.
- ii. Responsible authorities are guilty of bias in choosing whether to prosecute or not.
- iii. The actions of some bureaucrats usurp our justice system with impunity in deciding whether the parties have committed a criminal offence or not, even when there appears there is *prime facia* evidence of a crime. These decisions are administrative, not judicial, as they should be.
- iv. Strategies adopted by the bureaucracy ensure that our taxes are vigorously applied to the inept or dishonest behaviour of Officials, and in our view, which is also ***corruption***.
- v. Authorities within the Government responsible for managing ***corruption*** do not self-motivate when there are obvious and good reasons to suspect that criminal activity has taken or is taking place.
- vi. Behind most corrupt acts, there is always the money, and the Auditor General is conspicuously quiet in this area.
- vii. The AG should be playing a leading role in fighting ***corruption***, and where there has been a fiscal impact on the public purse to

the advantage of the perpetrator, every effort should be made to recover the loss to the State.

- viii. It would appear that we, the taxpayer cannot rely on the Auditor General to look after our best interests to ensure the Government is properly acquitting our taxes; surely that is his role and to not take decisive action in relation to Community Chef over the nine years of its failed operations brings into question the efficacy and ethics of the person charged with oversight of the use of our taxes.
- ix. Another example is where the primary perpetrators are, in effect, joined by their executive peers as perpetrators in the coverup. These coverups are arguably more serious in some cases than the original alleged crime, and until some of these executives are prosecuted and convicted, *corruption* will continue to flourish.

A significant impediment to tackling *corruption* is if the Police and the IBAC fail or are misled by their own, to whom can anybody defer?

Corruption depletes productivity and, in turn, the service that the Government and its functionary entities are supposed to provide.

Tackling *corruption* is not popular amongst many executives because the cost to deal with *corruption* is extraordinarily high and may expose them to scrutiny. Still, serendipitously an effective attack on this blight will reap substantial fiscal and performance rewards.

Improving the work culture will lead to greater job satisfaction and security for the employees on the public payroll and, in turn, their outcomes; it will improve the lot for the whole State, making Victoria a better place to be and in which to do business.

FREEDOM OF INFORMATION

The abuse of the Freedom of Information Legislation has morphed into a mechanism, including specialist legal practitioners avoiding compliance hiding *corruption* and misconduct, instead of it being an instrument to expose it. This instrument's misuse and abuse is rife and

protects perpetrators; we would suggest far more often than it satisfies the applicants seeking the truth.

A popular approach of, '*the Government has deep pockets*,' is a disgraceful strategy employed by Government entities to quash the citizenry, to access the truth and is, without doubt, blatant *corruption* of itself.

Remember, the deep pockets are filled with our money, not theirs.

MODEL LITIGANT RULES

The Model Litigant Rules, another misused instrument, treated with disdain, is trotted out when it suits entities where compliance is nothing more than an aberration. While they remain a Rule and are not legislated with penalties for breaches, they will remain of little consequence.

It is one of those rules obeyed by those in Government who are not corrupt but exploited to the n'th degree by the corrupted.

LITIGATION OF GOVERNMENT

Additionally, the whole area of litigation against the Government must be reviewed for two reasons.

The first is the inordinate amount of legal and other costs incurred in litigation by the Government entities often defending the indefensible. Secondly, the archaic settlement process adopted by the Government entities that direct their legal representatives to settle confidentially, and who are prepared to use our money to '*up the ante*', to secure the confidentiality—known as the confidentiality premium.

To harness *corruption*, the ability to know why we (The State) were sued and who was responsible; what can be done to avoid a repetition and is there a case for restitution to the State from any parties involved who were operating on behalf of the State. This is essential

and our right. In our view, basic information on the reason for the need for a settlement should be made public as it is the public that bears the cost of successful litigation against the State.

We have no difficulty in the dollar value of any settlement being confidential for obvious reasons; however, the case's facts, circumstances, and findings should be on the public record and not withheld.

That change will have a profound impact on executive accountability.

We are also not confident that any *corruption* exposed during these legal processes is pursued. That must be rectified as perpetrators are '*gaming the system*' to hide their sins.

Abuse of these processes will continue unless proper oversight with penalties for misdeeds are applied.

A role for a **Truth and Integrity Commission** with appropriate powers.

Bit of pain for a lot of gain.

THE COST

The fiscal impact on budgets of *corruption* is not well accounted for and therefore difficult, if near impossible, to accurately quantify; however, it is not at all unreasonable to consider that the cost to the public purse in direct and indirect costs would not leave much change from a Billion Dollars per annum. A reduction in *corruption* by twenty-five per cent per annum would comfortably fund the new function with change. And that is in addition to creating more efficient and trustworthy functional Public and Political sectors.

THE CULTURE

It is reasonable to find that many of the issues identified as *corruption* are due to the culture of the organisations. That culture is in the purview of management. Generally, even if the adverse culture is recognised by management, many do not have the capacity, see the need, or can effect change.

Even in a Petri dish, a culture can go rogue if not properly managed.

Ironically, there is a model that managers can refer to assist them in their roles.

Sporting bodies have effectively addressed major cultural changes over recent times to correct a myriad of social and or professional imbalances. Although the social issues gain the most publicity, the holistic approach in sport has been to the absolute benefit of the various sports administrations and those who benefit from the sport professionally or as a supporter. These efforts have permeated down to local levels to benefit the games and the participants.

Although the change has been rapid and effective, it has faced a number of setbacks that should have been avoided. The overreaction to woke populist issues has been detrimental and has been a distraction from the other excellent work that should have shone through.

Undoubtedly, the culture and the persona of entitlement that can exist and permeates throughout an organisation can be altered.

The most effective way to achieve change is to pay for performance and promote the capacity to perform at a higher grade, not just as a reward for doing the current job well at the current level.

LEADERSHIP/ACCOUNTABILITY

Two functions, *Leadership* and *Accountability*, are intrinsically linked and seemingly never considered in *corruption* matters. It is apparent and no coincidence that these two words never seem to appear in the same context as *corruption*, and that is telling.

Corruption will never survive where good management and proper supervisory practices are applied.

Every allegation of *corruption* by state employees must be investigated thoroughly and dispassionately. Still, the action or inaction of the supervisory management chain applicable to that person must be exposed to the same rigour. And that is both administratively and functionally.

Just two examples of the failure of management contributing but not ameliorating the *corrupt* actions can be found in the IBAC Annual Report.

The first was the conviction, as they should have been, of those involved in rorting contracts in the Education Department, but those rorts had occurred over considerable time. There must have been somebody responsible for monitoring these functions above the perpetrators.

The masters of the perpetrators, those accountable; in this case, would be quite a few highly paid officers who administer these Departments, but as is now the norm, they avoid all accountabilities.

Their guilt is as culpable as the principal offenders.

The second example in the annual Report refers to a number of Police who participated in an incident in Preston with a psychiatric patient. Some of the actions of the Police were unsatisfactory, and accountabilities for those members ensued. Still, a closer look at this scenario highlights the failings of others who avoided accountability, and if they had performed their functions properly, the incident would probably have never occurred.

Answering these questions might gain an insight,

- Why were six Police (typically two) sent to pick up a psychiatric patient?
- Why was there no ambulance despatched? The man was a patient, not a perpetrator.
- What advice was provided to Police to get them to attend in such numbers?

- Where were the Police supervisor/s, given the incident must have been presumed serious by the sending of six members?

The Police Supervisors and the Psychiatric Service personnel requesting the Police intervention should have been held to account at the same level as the Police members who undertook this task.

Leadership and accountability of leaders must be demanded and encouraged, and leaders who call out corruption or seek assistance to manage it must be rewarded, not pilloried.

SALARIES AND CORRUPTION

For most of the community, the salaries received by our State bureaucrats in even moderate leadership management functions are obscenely high and in no way commensurate with their span of control or responsibilities or the expertise they bring to the roles. Equally and more damning in the failure of the bureaucratic system is a lack of accountability, and this accountability or lack thereof is not marginal but endemic.

Added to obscene salaries are the perks exercised by management that have morphed into rights. Bonuses are just one example.

It is difficult to fathom that an employee who is well remunerated receives a bonus as a right for doing the job they are already paid to do without any exceptional inputs from that employee that would warrant additional financial rewards.

The higher the grade, the more the perks. You do not have to be Einstein to work out the psychological impact on subordinates and the organisation's culture and how that feeds the proliferation of **corruption**, a culture of entitlement.

Additionally, the security of tenure of employees of the State leads to complacency and knowing the State will defend any actions caused by their mistakes or misdeeds breeds **corruption**.

Wide use of performance-based contracts with Key Performance Indicators (KPI's) mandated would be an effective weapon. The higher the salary, the shorter the contract duration, allowing poor performers to be more quickly removed.

For example, performance-based contracts for salaries commencing at two hundred thousand dollars, including all perks, could be four years. In contrast, salaries over three hundred thousand would be for no more than two years.

All perks must attract a dollar value and be included in the packaged salary to not be perceived as graft. Perks also have tax obligations and to not include them in a salary package is again, of itself, **corruption**.

WHY NEW STRATEGIES

The Community Advocacy Alliance Inc (CAA) has amongst its membership⁶ a number of former executives who have spent many years in Government employment and anecdotally fear that **corruption** is far more widespread relative to the size of the bureaucracy than it ever was. Partly due to the dramatic increase in the size of the Government payroll and the growth in the value of employee's remuneration, making promotion at all costs an acceptable strategy. **Corruption** is normalised and entrenched in this process.

The risks of **corruption** to enable staff to access the very lucrative salaried positions added to the historical attraction of Public Service promotions to gain prestige or additional *power* over subordinates and the public they are supposed to service is self-evident.

Power is the most corruptible of emotions.

"Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men, even when they exercise influence and not authority, still more when you

*superadd the tendency or the certainty of corruption by authority."*⁷

That explains the corrupted, but what of the subordinates who, on many occasions, are not sure if their actions are corrupt or who are blissfully ignorant of their unlawful conduct. This is caused by the inappropriate exercise of power by those with authority and poor leadership.

Translated into the mindset of subordinates, *power* is feelings that fuel **corruption** by the emotions of;

Liking, admiration, and trust.

*When people feel deep admiration for a leader, they are inclined to do what the leader wants, independent of consequences based on fear and desire.*⁸

Herein lies the failure of the current strategies in addressing **corruption** as the emphasis is toward bringing the many subordinates to account, ignoring the executives. The subordinates are usually the manifestation, but the executives are the cause. Whether because of management failures or deliberate actions, it matters little, and the outcome is the same, **corruption**.

This is partly achieved by Executive's having the ability to build protective screens to their misdeeds. The other impediment is officials responsible for dealing with **corruption**, failing to raise their gaze.

Not to be overlooked is the group effect in dealing with the problem. Whether that group is partisan politics or perpetrators of the upper social levels, there is a tendency in **corruption** enforcement to believe that they could not be **corrupt**, they are one of us or 'vice versa', so they are overlooked.

It is always assumed by the self-ordained upper class who generally fill the executive positions in agencies that it must always be the lower or subordinate class who spawn **corruption**.

⁷ John Emerich Edward Dalberg-Acton;

⁸ *Power and Emotion, Psychology Today 2016*

There is the odd high-ranking individual bought down, but even with these, there is always an apparent more powerful leader above them who has failed and is rarely, if ever, held to account. The system is biased to plucking low hanging fruit, easy picking.

Ironically if the '*low hanging fruit*' were less corruptible, the executives would be less likely to risk *corrupt* behaviour if their power base was threatened.

A more significant deterrent than jail for *corrupt* practices.

Approaching the executives with a stick and the others with carrot would achieve startling results.

When this concept paper is read and absorbed, it will become obvious that we are recommending moving responsibility to managers to be responsible for *corruption* in their span of control, and a failure will mean they face sanctions. The current approach is *corruption* is left generally to the responsible agencies set up specifically to address *corruption*.

With all managers and elected officials within the Government, understanding they can be held to account for *corruption* under their watch will see a marked decline in *corruption*.

The principle of this paper is to shift accountability to where it should be.

EFFICIENCIES OF PURPOSE

The evolution of *corruption* enforcement agencies within Government Departments has meant that a proliferation of like tasked groups exists, each with their administration and management structure, many we never hear of and their effectiveness in controlling *corruption* is problematic. Within these groups, there is expertise; however, they are generally well under-resourced. Whether that resourcing void is deliberate, or accidental is unclear, but an under-resourced group is sure to be ineffective; perhaps that is the intention.

Bringing all those various incidental authorities or groups with a common purpose together under one umbrella would ensure substantially more effective use of resources to curb *corruption*. The pushback from those protecting their fiefdom will need management.

A recent example is the Victorian Information Commissioner, of whom we had never heard. The Commission is ineffective by the number of Freedom of Information (FOI) cases before VCAT where individuals are challenging decisions not to release Government information at an alarming rate, seemingly exponentially growing year on year.

We note that this resistance to release information mostly flies against the principles of the Model Litigant Rules, which seem to be ignored with gay abandon.

PUNITIVE FAILURES

The current and historical approach to *corruption* has been solely vested in the punitive legal system. Although that system will always necessarily be required for the more heinous offences, or where perpetrators may not wish to avail themselves of an alternate stream, it has generally failed to rein in rampant *corruption*.

CORRUPTION FIGHTING AND PTSD

In our view, unconscionable behaviour in the processing of persons suspected or identified as *corrupt* must cease.

Irrespective of the alleged *corruption* perpetrated, the consequence of bad management practices often leads to the destruction of the alleged perpetrator to a degree far in excess of any Legal penalty imposed. However, most prominent in Policing, it is sure to exist elsewhere.

A common thread is that a person suspected or identified as corrupt is penalised in an unconscionable way by the process with a disregard for conscionable respect for the perpetrator and lawful process.

A strong suspicion exists that where the evidence does not exist to gain a conviction, the '*system*' is used to punish the suspect. Punitive administration can be ruthless.

We strongly believe that any corrupt action identified must have consequences; however, a lifetime of suffering PTSI for those treated unfairly is not an acceptable outcome.

Although focusing on Police, there is no doubt this phenomenon extends throughout Government.

The CAA membership believes that perhaps over eighty per cent of Police PTSI sufferers were processed by the disciplinary system. The impact of that process was the primary contributor to their affliction rather than the high-stress levels of Policing *per se*.

We have been surprised at the apparent lack, particularly in the public space, of action from the Police Association and even other entities supposedly guarding the interests of workers. Workers are damaged by **corruption** and can have their lives destroyed by punitive administration strategies, but there is little push back against it. It makes one wonder whose interests they serve.

Although not an empirical measure, the assessment by the CAA should not be dismissed as most Police veteran members of the CAA are assisting other former colleagues who are suffering PTSI, and the CAA has input from CAA members who are from the medical professions who deal directly with affected veterans.

Although altruistic goals would be welcome to address this problem, the fiscal impact on the State cannot be overlooked. Dealing with the process will reduce government costs and the industry size that has grown to service PTSI sufferers, predominantly funded by the public purse.

Whether that is direct funding through health or legal services or loadings on Insurance premiums, at the end, the public pays.

PROTECTED NON-PROSECUTION AGREEMENT (PNPA)

A Protected Non-Prosecution Agreement (PNPA) can secure better insights into the cause of *corruption*, whether that is blatant dishonesty by individuals within an organisation or failures of the organisation, which has created the opportunity for *corruption* by culture or other incentives.

The PNPA should not be interpreted as a free pass because it can come with variable sanctions that can be adjusted according to the level of *corruption* the perpetrator has undertaken.

The PNPA, in appropriate circumstances, can benefit the State allowing perpetrators to be subjected, by consent, to this administrative process rather than engaging in protracted Legal processes saving considerable costs to the State.

Central to the value of the PNPA system is that the offender must consent to this process, making it exceedingly difficult to appeal. With only the ability to appeal to the Supreme Court, it will further minimise the States exposure to costly legal processes.

There are not too many people who have gone through their careers without making an error of judgement, and nobody wants to destroy that life for a mistake in a civilised society.

If the evidence does not exist relative to the allegations; in our Legal system, the suspect is innocent. Using the allegations of *corruption* as a foil to terminate employment is *corruption*. Detecting other unrelated minor infractions and acting on these reflects poorly and smacks of retribution by the investigators and is a tool also used to encourage retirement.

This approach uses up resources that would have been better allocated to more serious matters.

There are proper employment mechanisms to remove an incompetent employee, and the *corruption* management process is not one. The Integrity of the system must be maintained.

The PNPA could be used in these circumstances and other infractions, not on the extreme level but a subjective assessment by the Commissioner. This would speed up justice for complainants, be less disruptive to Government Service delivery and have far greater effectiveness than drawn-out legal proceedings in each case. Perpetrators would retain the right to have the matter determined by a Court.

Two examples of how the PNPA might work.

PNPA Example 1

A manager involved in corrupt practices has used their staff to facilitate the corruption.

The manager would no doubt face prosecution; however, depending on the culpability of the staff member, a PNPA notice may serve a useful purpose, particularly if the staff cooperate with the Commission.

PNPA Example 2

Corruption is identified in a workplace and involves a number of staff with varying degrees of culpability.

*The PNPA would be appropriate for those on the fringe who cooperate with the Commission. Key perpetrators would be charged criminally, and line supervisors who failed in their duty to allow the *corruption* to occur could also attract a PNPA notice if their behaviour that breached ethical standards but fell short of serious criminality.*

The application of a PNPA would only be restricted by the lack of vision of the Officer recommending its use. Treating *corruption* in a holistic manner with appropriate tools is the only way that this blight may be controlled.

Current practises have failed; this '*carrot and stick*' approach will work.

THE FUNCTIONS OF AN INTEGRITY COMMISSION,

- **To identify corrupt practices** within Government Departments, the Government, and their entities. Rather than wait for formal complaints, this body must be proactive where it reasonably suspects *corruption* may be at play. As much to expose the guilty and protect the innocent from unwarranted allegations. An often-used excuse by enforcement agencies to complainants who contact them in good faith is to advise the complainant to obtain more evidence - that is unacceptable on a multitude of levels, not least the agency not performing its investigative function. How will the upper hand against *corruption* ever be achieved if complainants are dismissed, and complainants are required to do what the agency is employed to do? It would be interesting to find just how many complainants have been dismissed when some basic investigation would have revealed substantial high-end *corruption*.
- **Oversee all Government *corruption* services**, IBAC, Police *corruption* investigations and all Inspectorial functions established within Government. There is no fail-safe in the current systems where relationships between frontline operative organisations and their oversight nominee are too cosy because the oversight role is too narrow. Thus, the overseer may be loath to expose failures should they reflect on them, therefore creating an opening for *corruption*: a role or the Integrity Commission.
- **Provide confidential consultative advice** to government employees and Elected Officials, both State and Local Government, on *corruption* matters. Until in the unlikely event a vaccine to protect against *corruption* is developed, people throughout the Government should be able to seek advice to

minimise their risk of exposure to *corruption* in their work environment. This would form part of the proactive role of the Commission.

- **Direct other agencies** to undertake actions commensurate with the Commission's function. The Commissioner must have the power to direct other agencies to perform or not perform tasks that the Commissioner may identify from time to time that could or is impacting *corruption*. The Commissioner may require support resources to facilitate the Commission function, which should be at the Commissioner's discretion.
- **Exercise the Powers of a Royal Commission** where the Commissioner believes the justification exists. This power needs no further explanation but would enable matters of community concern to be addressed by the Commission without the need for a stand-alone Royal Commission achieving the same outcome but at a dramatically reduced cost. Moreover, the Commission can undertake an investigation at short Notice without the extensive lead time to establish a Royal Commission with all the advantages that would bring
- **Refer matters** to the DPP, Chief Commissioner of Police for Investigation and direct presentment. The Commissioner must be able to direct Victoria Police should the need arise to achieve the best outcomes for applying resources in the fight against *corruption*.
- **Require Victoria Police** to maintain a progress reporting function to the Commission. The independence of the Commissioner would essentially ensure that the work being undertaken by Victoria Police was done in a timely, effective and professional manner.
- **Issue *Protected non-prosecution Agreements (PNPA)*** to individuals (issued at a much lower bar than a criminal prosecution), with appropriate financial penalty and restitution

order and such good behaviour period as the Commissioner directs.

- **Levy penalties** as part of any PNPA. The PNPA is not a get off free option as the Commissioner would have the power to levy such fines as thought appropriate and determine restitution to the State where the circumstances warrant. The Commissioner can apply such suspensions, redeployments, demotions, or other sanctions as deemed appropriate. The perpetrators cannot be allowed or be perceived to have benefitted from the infraction - this is essential in curbing *corruption* by others.
- **Powers of the Commissioner**
The Commissioner must have the ability to prosecute perpetrators and, if necessary, bring in outside resources, State or Commonwealth to achieve the Commission's function. The Commissioner should be able to swear in persons as required that are subject to the Commission's internal disciplines and may extend to other professions like Lawyers, Forensic Accountants, IT expertise, and specialists State and Federal police.
- **Determine restitution** as a part of a PNPA or any other legal process and, if defaulted, the ability to seek a court order concerning the perpetrator's assets, including superannuation, property, or any other tangible assets.
- **Legal costs.** The legal costs incurred by the State expended to defend a perpetrator alleged to have committed a crime against the State is an absurdity. If a matter fails to go before a court where the costs can be considered, then the Commissioner can determine on a case-by-case basis whether the State should contribute or cover Legal costs incurred. The default position should be, if an allegation related to their work function, then Legal costs should be carried by the alleged perpetrator named in any action, including matters in the Civil jurisdiction against the State and the Commissioner can decide whether taking into count all the circumstances, including the outcome, whether the State should cover or contribute to the Legal costs for the

suspect. This does not relate to any costs in Legal representation in defence of the State, which would have a different objective to legal service provided to officers of the Government.

- **Automatic referral if PNPA declined.** If a perpetrator declines to proceed to an agreement at any stage in this administrative process, to automatically refer the matter for prosecution.
- **The Commission oversight and** or absorption of all other entities in Government with a similar function is to allow for effective and efficient coordination and prioritising of effort. There is a plethora of like functioning quangos throughout Government, usually but not exclusively referred to as inspectorial functions. These should all be amalgamated or absorbed or oversighted by the Integrity Commission. The Inspectorial function should also be about Integrity, so duplication of this function makes little economic or efficient practical sense.
- **Oversighting Civil litigation against the State.** The current approach where *corrupt* practices are rarely acted upon if exposed in civil trial or litigation must be reviewed. This process hides *corruption* and incompetence and must be identified, exposed, and addressed. Essentially, the Commission should develop a mechanism so that any matters raised either incidentally or centrally to any civil case involving the State should be reviewed to establish whether action by the Commission is warranted.

THE COMMISSION WOULD REQUIRE,

❖ **Legal services.**

A Legal service independent of legal, commercial pressure or Government influence but accountable to the Commission to

provide legal guidance without fear or favour and draft PNPA's and action compliance orders.

❖ **Parliamentary services expertise**

Intimate knowledge of the Parliamentary rules and application of those rules require a skilled specialist.

❖ **Forensic Accountancy Services.**

Crucial to the success of the Integrity function is the resource to Forensic Accountants. Their efficiency and expertise will also assist in defraying some of the fiscal imposts of the Commission.

❖ **Industrial relations expertise.**

As most of the perpetrators the Commission is confronted with are employees of the State or Local Government, it is essential that the Commission has access to sound independent advice on Industrial issues. Inevitably the prospect of termination will arise, and that needs to be done correctly to avoid litigation.

❖ **Communications services.**

The Commission will only be as effective as the communications it delivers. Community support is imperative to success, and the key is competent communication to take the community with the Commission rather than the Commission operating to the exclusion of the community. Effective communication will derive the information that the Commission must rely on to identify Integrity breaches.

❖ **Investigative ability, covert and overt.**

Competent Investigators need to be attracted to the Commission, and contrary to the norm, these investigators should be trained and experienced Police or former experienced Police. The myth that Police or former Police would not be suitable to undertake this work must be debunked as the vast majority of Police honour their oath of office and despise *corruption*, perhaps more than most.

The issues of any professional conflict can be addressed by competent management.

It seems illogical not to use the most competent and experienced investigators available to fight *corruption*, and it is highly probable that failures of the various entities in practical and efficient investigations are directly caused by a lack of skilled investigators. Having high-quality investigators will also have a substantial deterrent effect.

A suspect confronted with a competent Police trained investigator as opposed to an investigator recruited from Births, Deaths and Marriages needs no further expansion.

❖ **Financial Services.**

The financial service function of the Commission would be extensive, requiring a specialised unit responsible for ensuring budget and other financial functions remain above reproach.

❖ **Administrative support.**

Administrative support to achieve maximum efficiency for the operatives within the Commission is essential.

❖ **Marketing budgets.**

Marketing is a crucial component and requires a budget to keep the public informed of the TIC, which will act as a strong deterrent and open pathways for information to flow to the Commission. Marketing is a necessary function within the Commission and not just for the production of Annual reports but applying the marketing mix to the Integrity function.

❖ **Independent Accommodation**

As the Commission will be dealing with Government employees broadly and the public, it is essential that access to the Commission is not compromised by its location and must be housed at a location well removed from other Government facilities.

❖ **Education services.**

Arguably part of the marketing mix, but in our view, a stand-alone function within the Commission is the education function where the issue of truth, Integrity and the functions of the Commission can be integrated into training within the Government and Local Government bureaucracy.

INDEPENDENCE OF COMMISSION.

The Commission essentially must be independent of Government and report its findings on an annual basis to the Parliament or at some other time if the Commissioner determines that the Parliament should be advised in urgent matters.

RECOMMENDATIONS

The CAA recommends the Government

1. Create the Office of the **Victorian Truth and Integrity Commission** chaired by an eminent jurist, the equivalent of a Supreme Court Judge from another jurisdiction, to give Victorian's confidence their *corruption* Integrity Commissioner is independent.
2. Gain the services of an independent Operations Deputy Commissioner from another jurisdiction with expertise in Policing

We would consider a jurisdiction like the UK would be the most suitable for both appointments.

3. Provide Legislative power for the Commission to undertake prosecutions at the discretion of the Commissioner.

4. Legislate to empower the Commission to prosecute Legal practitioners and Public Officers who deliberately circumvent Model litigant Rules and Freedom of Information Legislation and who must be held to account for professional misconduct. A defence for a Legal practitioner would be obtaining a disclaimer from their client advising the client was notified of their legal duty from their instructing legal representative. The disclaimer must be produced at any hearing relevant to the matter instructed.
5. Legislate to empower the Commissioner to absorb all functional units, including resources, within Government enforcing Governance standards or Anti-Corruption measures where appropriate.
6. Create within the Commission a role that provides advice to the Commissioner on new and innovative methods to curb *corruption*, including identifying ways for systems that foster *corruption* to be modified. Authorising the Commissioner to direct changes if required.
7. The Commissioner be required to examine administration processes and evaluate management practices associated with any *corruption* and immediate changes that will prevent reoccurrences.
8. Ensure the lead investigator is truly independent and of the highest integrity and has the appropriate profile in the Victorian Community and knowledge of Victorian agencies and players.
9. Create overarching legislation to facilitate the Commission.

DENOUEMENT

Over recent years we have seen a litany of corrupt practices, just the more serious or sensational, are paraded through the media and the Courts. The sheer quantity and with the odd exception of triviality, the overall seriousness is concerning for every Victorian, as are the eye-watering costs involved in processing these matters to a conclusion.

How the community can tolerate paying horrendous legal fees to defend the indefensible is beyond belief.

Conclusions seem very few and far between and take inordinate lengths to resolve, allowing bad practices to continue and probably escalate due to the time delays.

The Integrity Commission PNPA approach would also be cheaper than the current prosecution strategy. Normal criminal proceedings must ensue if perpetrators are not prepared to accept a PNPA. Serious matters would not attract the PNPA option.

This approach will be no free pass for corrupt practices with the Commissioner, the arbiter as to whether the PNPA is an option to the usual legal processes of accountability and may refer matters directly to the Director of Public Prosecutions (DPP) or other agency for investigation or undertake the investigation and prosecution by the Commission.

Why do we need to stop corruption?

The impacts of corruption disproportionately affect the most vulnerable people in society. Widespread corruption also deters

*investment, weakens economic growth and undermines the Rule of Law.*⁹

It will take courage for an approach, which although having legal safeguards available to any perpetrator, can resolve an event without necessarily a criminal conviction. This will enable suitable persons to continue to be employed by the Government, saving on training replacements, because the PNPA can manage them. A suite of sanctions would follow if a PNPA were breached.

Although indirect, a very desirable outcome will stop government employers from using threats of criminal sanctions to divest themselves of so-called unsuitable employees. They will be forced to use proper Industrial Relations methodologies if they wish to terminate the services of an employee.

How can corruption be stopped?

*Expose corrupt activities and risks that may otherwise remain hidden. Keep the public sector honest, transparent and accountable. Helps stop dishonest practices.*¹⁰

There seems to be an executive-level within Victoria that either does not understand what **corruption** is or chooses to ignore the rules believing they are above reproach.

What is active corruption?

*Active corruption is defined as the deliberate action of whoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or to refrain from acting in accordance with his duty or the exercise of his functions.*¹¹

9

Independent Commission Against Corruption

¹⁰ IBAC

¹¹ Lawinsider.com

No longer will Government employees believe they are beyond accountability which is the cause of the current *corruption* pandemic.

Creativity will be an effective tool in tackling *corruption*.

The criminal demise of Al Capone in the 1920s was not for the many murders he was suspected of committing but for Tax irregularities for which he received eleven years jail, dying not long after his release.

The current entities and functionaries in the corruption space are not as effective as they should be. There is no diminishment of the *corruption* rot, but an apparent increase, leading to an acceptance by some of the community that *corruption* is a norm.

The Commission must absorb many of the existing like tasked groups from throughout Government to ensure consistency of purpose, effective use of talent, coordination of activities and efficient tasking of resources. Having multiple administrations operating these groups is inefficient.

Accommodation, administration, IT and Legal Services are just some areas where cost-cutting and improved outputs would be achieved.

The cycle that has normalised *corruption* must be addressed, and a **Truth and Integrity Commission** is the mechanism to achieve change for the good of all Victorians.

We may even shake off the tag, '*Victoria the corrupt State*'.

Truth and Integrity Commission

Organisation example

