

# Operation Watts

Investigation into allegations of misuse of electorate office and ministerial office staff and resources for branch stacking and other party-related activities

**July 2022**

 **ibac** independent broad-based  
anti-corruption commission

Victoria

**VICTORIAN**ombudsman

Authorised and published by the  
Independent Broad-based Anti-corruption Commission,  
Level 1, 459 Collins Street, Melbourne  
and the  
Victorian Ombudsman,  
2/570 Bourke St, Melbourne VIC 3000.

July 2022.

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***Ordered to be published by the Victorian Government  
Printer [PP 357, Session 2018-22]***

ISBN: 978-1-922349-30-9 (print)  
ISBN: 978-1-922349-31-6 (online)

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## Letter of transmittal

To

The Honourable President of the Legislative Council

and

The Honourable Speaker of the Legislative Assembly

### **Investigation into allegations of misuse of electorate office and ministerial office staff and resources for branch stacking and other party-related activities**

In accordance with section 162(1) of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) and section 25(2) of the *Ombudsman Act 1973* (Vic), we present IBAC and the Victorian Ombudsman's joint report on Operation Watts, a coordinated investigation into allegations of misuse of ministerial and Members' staff and other budget entitlements for internal ALP purposes, including branch stacking, and contrary to the provisions of relevant statutes, guides and rules of the Parliament of Victoria.

Our findings and recommendations are contained in the report.

Yours sincerely



**The Hon Robert Redlich AM QC**  
Commissioner



**Deborah Glass OBE**  
Ombudsman

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# Foreword

I always knew I was on the taxpayer dollar. I know that it wasn't right, I know that it's not what we were employed to do. You had to do it because of your job ...

– Former electorate officer, in evidence to investigation

This report sets out the findings of the first joint investigation ever conducted by IBAC and the Victorian Ombudsman. It has two principal sources, which were referrals from the Attorney-General to IBAC, and from the Legislative Council to the Ombudsman, both in June 2020 following allegations of branch stacking aired in media reports.

Our investigation was into how branch stacking resulted in the alleged misuse of public funds for party-political purposes, and subversion of parliamentary standards and processes.

We emphasise, as we did throughout the investigation, that allegations of branch stacking on their own are not matters for integrity agencies. While they have the obvious potential to undermine the public's faith in political parties and processes, that is fundamentally a matter for the parties themselves. We acknowledge that the Australian Labor Party took swift action to deal with allegations raised in the 2020 media reports.

Our investigation had a broader scope. The evidence, which primarily concerned one faction of the ALP, painted a compelling picture of patronage: of jobs on the public purse according to factional loyalty and as a reward for bringing in 'the numbers', and widespread misuse of public resources for political purposes.

It was obvious that some electoral officers, ministerial staff and aspiring MPs were uncomfortable with the factional work they were being asked to do, but they told us they felt powerless to resist. There was nowhere to complain. Others were willing participants in what they described as a longstanding cultural norm, where branch stacking was so embedded that the necessity of the practice, and the misuse that went with it, were simply taken for granted.

This report illustrates a catalogue of unethical and inappropriate behaviour and concerning practices, and the environment in which such behaviour was able to flourish. They range from bullying to the hiring of unqualified people into publicly funded roles, using those roles to undertake factional work, rampant nepotism, forging signatures, and attempts to interfere with government grants to favour factionally aligned community organisations – who, in some cases, failed to use the funds as intended.

Existing parliamentary standards and the absence of accountability permitted those members disposed to engage in such practices to pursue factional objectives with impunity.

The evidence that led to the referrals related to the Moderate Labor faction, but the evidence of branch stacking was not limited to one faction. However, proof of the broader problem was more anecdotal. The prevalence of branch stacking for many decades has been the subject of numerous reviews, most recently the report commissioned by the ALP following the events that led to this investigation, which concluded that it was systemic.

Although the evidence permitted a broad conclusion that the misuse of publicly funded staff for party or factional purposes was spread across the different factions, the specific evidence received during the investigation related to misuse of staff and resources by MPs and staff from the Moderate Labor faction only. Accordingly, the evidence did not lead us to any determination of the extent of misuse by any other faction.

Inadequate record keeping made it difficult to rebut the evidence of those who claimed that they made up for their factional work by performing public duties outside office hours or by carrying out factional work in personal time only. Where branch stacking was prevalent, we did not accept many such claims, but remained unable to quantify the extent of any misuse. Similar evidential difficulties – and reasoning – would probably apply to such claims regardless of the faction of the staff member.

We concluded that two MPs breached one or more elements of the Ministerial Code of Conduct and the MPs' Code of Conduct. Although we saw evidence of disturbing practices engaged in by subordinate staff, most of whom knew that what they were doing was wrong, primary responsibility for these practices rests with the MPs for whom these staff worked, and with their factional leaders.

The unethical culture that was such a feature of this investigation, whether as an explanation or excuse for bad conduct, lies at its heart. Some MPs were perpetrators; others presented themselves as passive victims of that culture. Above all, we criticise a legislative framework that provides few, if any, consequences for abusing public resources and that allows such conduct to continue unchecked.

We have carefully considered whether the identified misconduct constituted criminal offending that should be referred to the Director of Public Prosecutions. Ultimately, the relevant offence calls for a value judgement about whether a breach of public trust is so serious that it merits criminal punishment. Reasonable minds might differ on this. There is also a weak legislative framework around the employment of electorate officers and the use of electoral allowances.

Thus, although we consider the conduct to be egregious, the difficulties in proof are such that we cannot recommend prosecution. Rather, it will now be a matter for the Privileges Committees of each house to decide whether the named MPs have wilfully brought discredit upon parliament.

But the case for meaningful reform is now both compelling and urgent.

The Ombudsman's 'Red Shirts' report highlighted the need for reform in 2018 – both to prevent public funds being used for party-political purposes and to empower an independent agency to investigate when allegations are made. The response was tepid, and this report highlights how little has changed.

Allegations of bad behaviour by our elected representatives still generate a disproportionate number of media headlines. It is discouraging that so little parliamentary time – across parties and houses of parliament – has been devoted to finding a solution to this problem.

Although Victoria had one of the earliest examples of parliamentary integrity legislation in 1978, it has not kept pace with reforms elsewhere. This investigation has exposed the continuing weaknesses of the Victorian parliamentary integrity model, especially the absence of an effective framework to support and enforce standards. Despite the 2019 amendments after the Red Shirts report, Victoria is now a laggard rather than a leader in parliamentary integrity.

Allegations of misconduct by parliamentarians and their staff should not be a matter for IBAC and the Ombudsman, but our resources are taken up with them because there is no framework in which breaches of ethical standards by MPs are investigated in a consistent or credible fashion.

Trust in our politicians is declining and will decline further if real action is not taken.

Such action must include the clearest standards reflected unambiguously in codes of conduct, effective controls, and the cultural alignment to support those standards and controls. We propose a new cross-party Parliamentary Ethics Committee, which could include public appointments, and an independent Parliamentary Integrity Commissioner, who would investigate breaches of parliamentary ethical obligations.

A new framework would include sanctions for breaches of standards, and regular audits of MPs' use of allowances. The committee and Commissioner would work together to ensure that high standards are maintained.

Such a framework draws on the best parliamentary integrity models elsewhere in Australia and around the world, and would give Victoria the chance to lead the country once again.

This is not the first scandal to damage public confidence in our elected representatives, and if the opportunity for reform is not seized and acted upon, it will not be the last. Despite the findings of this report, we believe that the vast majority of members of parliament, whatever their political affiliation, genuinely seek to advance the public interest. We encourage them to demonstrate this by supporting these reforms.



**Deborah Glass OBE**  
Ombudsman



**The Hon Robert Redlich AM QC**  
Commissioner





# Chapter 1. The investigation

1. Operation Watts was a coordinated investigation between the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Ombudsman into allegations of misuse of electorate office and ministerial office staff and resources for branch stacking and other party-related activities.

## What prompted the investigation?

2. IBAC commenced an own-motion investigation under section 60(1)(c) of the *Independent Broad-based Anti-corruption Commission Act 2011* (the IBAC Act) on 10 June 2020 after receiving confidential information in May 2020 regarding the possible misuse of public funds by some Victorian government ministers and members of parliament (MPs). This information was later determined to be a public interest complaint under the *Public Interest Disclosures Act 2012* (Vic), meaning the various protections under the Act applied. These protections include keeping the identity of the person who reported the matter to IBAC confidential, and protecting them from reprisals for reporting the matter.
3. The allegations primarily focused on the possible use of ministerial advisers, MPs' electorate officers and related public resources to pursue factional agendas in the Victorian branch of the Australian Labor Party (ALP). In particular, the information indicated that public funds were being used to support the Moderate Labor (ML) faction of the Victorian branch of the ALP, which was led by Adem Somyurek MP, who was at that time a government minister and member of the Legislative Council in the Victorian Parliament.
4. Shortly after the investigation commenced, the current affairs program *60 Minutes* aired a report on 14 June 2020 titled 'The Faceless Man'. The report alleged that Mr Somyurek and others were involved in 'industrial-scale' branch stacking<sup>1</sup> to increase the power of the ML faction in the ALP. Two other government ministers aside from Mr Somyurek were identified as playing a key role in these activities: Marlene Kairouz and Robin Scott.
5. *The Age* newspaper published companion news articles the following day (15 June 2020) regarding the matters raised in the *60 Minutes* report, which also raised allegations of the awarding of government grants to community organisations with potential links to the factional activity of the ML faction.
6. Mr Somyurek was consequently dismissed from his ministerial positions and resigned from the ALP. Ms Kairouz and Mr Scott also resigned from their respective ministerial positions on 16 June 2020.
7. Following the media reports, IBAC and the Victorian Ombudsman received referrals and notifications to investigate these matters, including:
  - a referral dated 15 June 2020 to IBAC from the then Victorian Attorney-General
  - a 16 June 2020 mandatory notification to IBAC of suspected corrupt conduct from the then Secretary of the Department of Premier and Cabinet
  - a letter dated 17 June 2020 from the Clerk of the Legislative Council to the Victorian Ombudsman and IBAC notifying them of a Legislative Council resolution to refer the matters raised in the *60 Minutes* program and *The Age* articles to the Ombudsman for investigation pursuant to section 16 of the *Ombudsman Act 1973* (Ombudsman Act). The resolution also supported other Victorian authorities, including IBAC, investigating possible corrupt conduct and breaches of other Victorian laws, including the *Crimes Act 1958*.

<sup>1</sup> 'Branch stacking' is a practice used in political parties to enrol people as party members solely to accrue voting power. These members have no genuine interest in participating in the party but can be relied on to vote for factional members standing for election to positions in the party. This practice is discussed in more detail in Chapter 2 of this report.

8. IBAC also received complaints from other sources, including the Victorian Leader of the Opposition.
9. IBAC determined that the matters raised in the complaints, mandatory notification, referral and public interest complaint should be investigated as part of the investigation that it had already commenced on its own motion.
10. The Ombudsman was required to investigate the matters that had been referred to her by the Legislative Council, pursuant to section 16 of the Ombudsman Act.

## Establishing the investigation

11. Given the similarity of subject matter and allegations, IBAC and the Victorian Ombudsman decided to conduct a coordinated investigation. This was in line with section 72 of the IBAC Act, which allows IBAC to conduct an investigation in coordination with any integrity body (such as the Ombudsman) or law enforcement agency.
12. Victorian Ombudsman officers working on Operation Watts were sworn in as IBAC officers for the duration of the investigation. The joint investigation was overseen by the IBAC Commissioner and the Victorian Ombudsman and a steering group consisting of senior staff from both agencies.

## Methodology

13. To investigate the matters raised, Operation Watts:
  - executed search warrants on relevant ministerial and electorate offices, and one private residence
  - conducted voluntary interviews with and obtained statements from a range of witnesses, including MPs, current and former electorate and ministerial staffers, ALP members and other relevant parties
  - analysed data from more than 30 devices seized during the execution of search warrants, including mobile phones, computers, tablet devices and USBs

- analysed telephone calls and text messages lawfully intercepted under warrant
- reviewed lawfully recorded conversations involving Mr Somyurek and relevant people provided to the investigation
- analysed email data of electorate and ministerial officers relevant to the investigation
- reviewed open-source information relating to persons of interest to the investigation
- reviewed relevant legislation and codes of conduct
- reviewed other documentary evidence, including:
  - o physical documents located in relevant ministerial and electorate offices during the execution of search warrants
  - o financial records of relevant parties obtained under summons
  - o employment documents for ministerial and electorate officers, such as employee payslips, timesheets, offer of employment letters and leave data
  - o documents relating to the ALP, including membership lists and forms, the Victorian branch rules, ballots and ballot re-issue request letters, and reports relating to reviews of branch-stacking allegations
  - o documentation relating to the awarding, expenditure and acquittal of government grants awarded to ML-aligned incorporated associations, obtained under summonses to the relevant incorporated associations and agencies who provided the grant funding
  - o documentary evidence provided by witnesses, such as text messages, emails and ALP membership documents
  - o submissions provided by Mr Somyurek to the investigation.
- conducted private examinations of 26 witnesses and public examinations of seven witnesses.<sup>2</sup>

<sup>2</sup> The public examination of an eighth witness, Dr Hussein Haraco, was unable to proceed, due to medical reasons.

14. Decisions about whether the examination of a witness should be in public or in private were made by IBAC in accordance with section 117 of the IBAC Act.
15. Since its establishment in 2013, IBAC has had a more restricted capacity to conduct public examinations than most comparable integrity bodies in other Australian jurisdictions. In particular, IBAC may only examine a witness in public if IBAC is satisfied that there are exceptional circumstances. In 2020, the IBAC Act was amended to further restrict the capacity of IBAC to conduct a public examination.
16. The effect of the restrictions is that IBAC may compel a person to appear as a witness in a public examination only if IBAC considers on reasonable grounds that<sup>3</sup>:
- there are exceptional circumstances
  - it is in the public interest to hold a public examination
  - a public examination can be held without causing unreasonable damage to a person's reputation, safety or wellbeing
  - the conduct that is the subject of the investigation may constitute serious or systemic corrupt conduct.
17. In some cases, IBAC determined that the examination could not be a public one because the evidence did not disclose that the witness had engaged in or had a knowledge of the particular misconduct that was the subject of the investigation, or because their wellbeing, safety or reputation might unreasonably have been damaged. One of those persons was the Premier, Daniel Andrews. Any relevant and important testimony those witnesses gave during their private examination is set out in this public report.
18. The investigation was guided by the civil standard of proof (the balance of probabilities) in determining the facts of the investigation, taking into consideration the nature and seriousness of the matters examined, the quality of the evidence and the gravity of the consequences that may result from any adverse opinion.
19. As required under the IBAC Act<sup>4</sup> and the Ombudsman Act<sup>5</sup>, extracts from the draft report were sent to each person named in the report to provide them with an opportunity to respond. Those responses are addressed in this report or in **Appendix A**.
20. Mr Somyurek declined to provide a response to the draft report, on the grounds that he considered that publication by *The Age* newspaper of information from the confidential draft report made the process unfair.
21. On 28 April 2022, *The Age* newspaper published an article based on what it claimed was a copy of the draft report that had been sighted by the newspaper.<sup>6</sup> Both IBAC and the Ombudsman are under statutory obligations to provide copies of relevant extracts of the draft report to persons referred to in the draft report. IBAC can confirm that the source of the leak to the media outlet was not from IBAC or the Ombudsman. At the time of drafting this report, investigations continue as to the identity of the person who released the material contrary to the law.

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3 IBAC Act, s 117(1).s.

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4 IBAC Act, s 162.

5 Ombudsman Act, s 25A.

6 Nick McKenzie and Sumeyya Ilanbey, 'Anti-corruption watchdog calls out Victorian Labor's rotten culture', *The Age*, 28 April 2022, <https://www.theage.com.au/politics/victoria/anti-corruption-watchdog-calls-out-victorian-labor-s-rotten-culture-20220427-p5agdx.html>

22. Despite having declined to respond to IBAC and the Ombudsman regarding the draft report, on 22 June 2022 Mr Somyurek made a speech in the Legislative Council in which he denied in detail what he anticipated would be the bases upon which IBAC and the Ombudsman would find him in breach of the Members of Parliament Code of Conduct and stated that he had done nothing wrong and that he has always complied with legislation, custom and practice. This report sets out our reasons why those contentions must be rejected.

## Scope

23. Operation Watts focused on the misuse of staff and resources by certain MPs in the ML faction, based on the information that prompted this investigation. The investigation also explored the various underlying factors that may have contributed to the alleged misuse of public resources in this case.

24. The totality of the evidence in Operation Watts, which did not identify specific instances of potential misuse of public resources by other factions of the ALP or by other political parties, did not justify scrutiny of other factions or parties, but the investigation received evidence of broader cultural problems signifying potential widespread conduct of this nature that was not confined to the ML faction.

## Naming of individuals

25. This investigation has examined the conduct of many individuals.

26. We have de-identified many of those individuals because, even though they may have been involved in improper conduct, they were relatively junior staff or were acting at the direction or encouragement of others in a factional culture fostered by more senior figures. This direction typically stemmed from MPs and we have therefore used the names of MPs in the report where appropriate.

27. We have also included the names of a small number of people who, although they are not MPs, were senior figures in the faction and were involved in directing the work of others or were otherwise influential in the activity of the faction.

28. The report includes adverse findings about Adem Somyurek and Marlene Kairouz. The report contains comments that are or could be considered adverse about people who are listed in Appendix A. In accordance with section 162(3) of the IBAC Act and section 25A(2) of the Ombudsman Act, the investigation provided all parties with a reasonable opportunity to respond to the material in the report. The report and Appendix A fairly set out all of their responses.

29. A number of other people are named in the report but are not the subject of any adverse comment or opinion. These people are also listed in Appendix A. They were given the opportunity to comment on relevant extracts of the draft report. In accordance with section 162(7) of the IBAC Act and section 25A(3) of the Ombudsman Act, we are satisfied that it is desirable in the public interest for their names to appear, that it will not cause unreasonable damage to their reputation, safety or wellbeing and that each such person is not the subject, or intended to be the subject, of any adverse comment or opinion.

# Chapter 2. The political context for the investigation

30. The allegations of misuse of public funds and resources by members of the ML group to pursue factional agendas occurred within a complex network of groups, rules and activities in the Victorian branch of the ALP. Only part of the overall picture was of direct interest to IBAC and the Victorian Ombudsman. To examine political or private activities that did not involve the use of public resources was beyond the scope of the investigation.
31. The investigation did cover activities where the boundaries between publicly funded work activities and private political activities were often blurred, with little regard paid by the participants to whether a particular activity was occurring inside or outside work time.
32. To understand the activities that were undertaken by the persons of interest to the investigation, it was necessary to understand the political, legal and administrative frameworks in which they were operating. This chapter deals with the political context in which the ML faction conducted its activities, and focuses on the Victorian branch of the ALP's structures and processes and the nature of factional activities. Chapter 3 deals with the legal and administrative context that framed the ML faction's activities and, in particular, the employment arrangements for electorate officers and ministerial staff.
33. As the allegations that are the subject of the investigations and the focus of this report are ML activities up until June 2020, the information below about structures and processes of the Victorian branch of the ALP is primarily in respect of the period before the start of this investigation in June 2020.
34. In June 2020, following the media revelations about the alleged misuse of staff in the ML faction of the Victorian branch, the ALP National Executive suspended that branch and appointed former Victorian Premier Steve Bracks and former federal minister Jenny Macklin as administrators. The administrators provided their final report (the 'Bracks-Macklin Report')<sup>7</sup> to the National Executive in November 2020. The significant changes resulting from their recommendations are dealt with briefly in this chapter and elsewhere in the report. They are also discussed in Chapter 8, which deals with possible reforms for the future and refers to the changes made as a result of the Bracks-Macklin Report.

## The Australian Labor Party

35. The ALP is a federal unincorporated association which was formed in the 1890s and is composed of a branch in each state and territory. Each state and territory branch is composed of individual members and affiliated trade unions.
36. The National Conference is the party's supreme decision-making body. The National Executive is the chief administrative authority of the party, subject only to the National Conference.
37. The National Executive is elected through a detailed process set out in the National Constitution and includes 20 executive members elected by the National Conference.<sup>8</sup> Half of the Victorian delegates are elected by branch members who have voting rights and half are elected by the affiliated trade union delegates to the Victorian State Conference.<sup>9</sup>

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<sup>7</sup> S Bracks and J Macklin 2020, *The Administrators' Final Report to the National Executive of the Australian Labor Party*, Australian Labor Party, Victorian Branch, Melbourne.

<sup>8</sup> ALP National Constitution 2018, clause 16.

<sup>9</sup> ALP Victorian Branch Rules, 1 February 2021 (ALP Branch Rules), r 7.3. Earlier versions may be specifically identified if a relevant rule differs from the 1 February 2021 version.

38. At the state level, the State Conference is the ‘supreme policy-making and governing body’, with 300 ‘rank-and-file’ delegates elected by and from members of federal electorate assemblies.<sup>10</sup> The State Conference elects the membership of influential committees, including the Administrative Committee<sup>11</sup> and the Public Office Selection Committee.<sup>12</sup> Branch member delegates to State Conference are drawn from each federal electorate, with the number of delegates determined by the size of the constituency and the number of members with accrued voting rights in each electorate.<sup>13</sup> Being able to send more delegates to the State Conference is one of the incentives for factions to expand the size of local branches with members who will vote for the factional candidates.
39. As explained in evidence by a ministerial adviser in Robin Scott’s office, the number of votes required to elect a delegate could be calculated by dividing the number of voting members by the number of positions available for election to, for example, the State Conference. For example, if 1,000 members were voting for 100 State Conference positions, each delegate would require 10 votes to be elected. Recruiting another 10 members would allow the faction to secure another delegate.
40. Local branches are set up by the Administrative Committee in each federal electorate, with members being part of a federal electorate assembly (FEA).<sup>14</sup> One of the changes implemented in response to the Bracks-Macklin Report’s recommendations (discussed further later in this chapter) has been to move to a branch structure based on state electorates. Multiple branches in each state electorate are now consolidated into one branch per electorate. Another reform was to abolish the Central branch. One of the aims of these reforms was to inhibit factional control of individual branches.
41. A state electorate assembly is responsible for establishing a state electorate campaign committee (SECC) in each state electorate to support campaigns in the lead-up to state elections.<sup>15</sup>
42. The work and activities needed to sustain a party are undertaken by employees paid by the ALP at national and state level; by elected MPs, over and above their duties as parliamentarians and ministers; and by members, unionists and other volunteers.
43. Ministers and other MPs perform roles that do not have job descriptions or fixed hours. Legislation does not bar them from engaging in factional or party-political activity, and to a large extent they are masters of their own time, for which they are ultimately accountable at the ballot box. Nevertheless, they are subject to the obligations found in the Ministerial Code of Conduct and the Members of Parliament Code of Conduct and the legislative principles and obligations described in Chapter 3.
44. Party-political activity by publicly funded ministerial staff and electorate officers must be undertaken outside their working hours.

## Factions in the Australian Labor Party

45. Although factionalism is often viewed negatively, it is a natural part of the operating environment for many large political parties. Factions offer the benefits of grouping like-minded members together to discuss policies and negotiate with other groups in the organisation, and can provide an efficient means for agreeing on processes and resolving disputes, especially around selecting candidates for public office or internal positions.

10 ALP Branch Rules, r 6.3.2.

11 ALP Branch Rules, r 7.1.1.

12 ALP Branch Rules, r 7.1.2.

13 ALP Branch Rules, r 6.3.3.

14 ALP Branch Rules, r 9.

15 ALP Branch Rules, r 11.

46. On the other hand, factional activity can result in marginalisation of members who are not part of a faction, an unhealthy focus on internal power dynamics at the expense of policy development and electoral engagement, and an increase in division and dispute inside a party, sometimes descending into tribalism between competing groups. Internal rules and processes might be subverted, and trust and collaboration destroyed in the pursuit of greater power or influence.
47. In some political parties in other jurisdictions, factionalism has been a means of patronage by which individuals, families and social groupings obtained and distributed power and benefits. In Australia, factionalism in mainstream political parties has in the past reflected ideological differences, although groupings based on personalities and personal networks can sometimes take precedence over ideology.<sup>16</sup>
48. Factions usually identify as either left or right, although centre, unaligned or independent groups of members have sometimes operated as a faction.
49. A faction's pursuit of power inside a party takes time, energy and resources. These commitments must usually be generated voluntarily, as factions are rarely able to employ their own staff to pursue their goals. Ministers and MPs must not use members who are publicly funded employees in party-political activities (see Chapter 3).
50. Nevertheless, as this report shows, ambitious factions have relied on members who are employed by a party, a union, a minister or an MP to undertake factional activities during their working hours.
51. Based on the evidence gathered by the investigation, key elements of factional activity may be summarised as including:
- leadership by senior politicians and/or trade union officials
  - organisers who manage the administrative arrangements for the faction
  - recruiters who seek out potential new members through their networks
  - strong representation in party branches, state committees and affiliated unions
  - members with a deep knowledge of party rules and meeting procedures
  - commitment and loyalty, which for some members extends to a willingness to bend or break the law and party rules, such as by misusing public resources.
- ## The Moderate Labor faction
52. The ML faction is a Victorian right-aligned faction that emerged after a split in a faction controlled by the Shop, Distributive and Allied Employees (SDA) union in 2015. Mr Somyurek was the convenor and a leading member of the ML faction. In a submission to IBAC, he claimed that the right-wing 'alliance' that he facilitated, and of which the ML group was a part, controlled 63 per cent of the party. He differentiated between control and party membership, stating that ML membership amounted to only 15-20 per cent of the party's membership, which he later revised down to 10-15 per cent.
53. Other MPs identified as being involved in or aligned with the ML faction during Operation Watts included:
- Marlene Kairouz MP, who is the Member for Kororoit in the Legislative Assembly and was:

<sup>16</sup> See for example I McAllister 1991, 'Party adaptation and factionalism within the Australian party system', *American Journal of Political Science*, vol. 35, no. 1, pp 206-227.



- o Minister for Consumer Affairs, Gaming and Liquor Regulation, June 2016 - June 2020
- o Minister for Local Government, September 2017 - December 2018
- o Minister for Suburban Development, December 2018 - June 2020
- Robin Scott MP, who is the Member for Preston in the Legislative Assembly and was:
  - o Minister for Finance, December 2014 - December 2018
  - o Minister for Multicultural Affairs, December 2014 - December 2018
  - o Assistant Treasurer, December 2018 - June 2020
  - o Minister for Veterans, December 2018 - June 2020
- Anthony Byrne MP, who was the Member for Holt in the Commonwealth House of Representatives
- Sarah Connolly MP, the Legislative Assembly member for Tarneit
- Nazih Elasmr MP, the Legislative Council member for Northern Metropolitan Region
- Katie Hall MP, the Legislative Assembly member for Footscray
- Tien Kieu MP, the Legislative Council member for South Eastern Metropolitan region
- Tim Richardson MP, the Legislative Assembly member for Mordialloc
- Meng Heang Tak MP, the Legislative Assembly member for Clarinda
- Kaushaliya Vaghela MP, the Legislative Council member for Western Metropolitan Region.

54. We note that, by identifying these MPs as being involved or aligned with the ML faction, we do not imply that they are all necessarily the subject of adverse comment or opinion.
55. Rick Garotti was also identified as a senior member of the ML faction, but, unlike the abovementioned individuals, is not a member of state or federal parliament. Mr Garotti has been a councillor for Banyule City Council for about 10 years and served as mayor from November 2020 to October 2021. More details of the ML's key personnel are provided in Chapter 4.
56. The scope of the investigation did not require examination of the role of any ML-associated trade unions, as there were no allegations involving unions that raised issues of misuse of public funds. Any suggestions that factional operatives who worked in Commonwealth-funded roles might have undertaken factional work instead of performing their official roles were also out of scope for purposes of investigation by IBAC and the Ombudsman.

## Branch stacking

57. Branch stacking is used by factions to gain greater power in a party by artificially boosting the number of party members who support the faction. Although precise definitions of the practice vary, the investigation considered that branch stacking involved the recruitment and maintenance of people as members of the ALP who either had no genuine interest in being a member of the party, or who did not pay for their membership (apart from the small category of members who were permitted to be paid for, such as a family member paying for other family members living in the same household).

58. Branch stacking has long been an issue for the ALP (and other political parties), as it distorts decision-making in the party, undermines the efforts and commitment of genuine members, and harms the party's reputation. At various times, the ALP has taken action to prevent branch stacking, although it is clear that the success of these measures has been limited.
59. At examination, Mr Somyurek acknowledged that the two reasons for branch stacking were either to gain influence in the party in order to 'cheat your way into parliament' or, if you were a sitting member, 'to see off people who wanted to branch stack their way into parliament'. He agreed that, as a broad proposition and up to a certain point, the more members a faction controlled, the greater its influence in the party. He said that both the Right and the Left factions had engaged in branch stacking since he joined the ALP in 1995.
60. As part of its response to the conduct revealed by *60 Minutes* and *The Age*, the ALP has adopted a definition of branch stacking that moves away from identifying specific types of conduct to a broader focus on the purpose or outcomes of membership recruitment, renewal or transfer activities.
61. The Bracks-Macklin Report identified nine elements of the 'contemporary branch stacking business model':
1. Stackers pay cash or use another non-traceable payment to fund or refund the membership fee of non-genuine members.
  2. The membership tier claimed does not reflect their financial circumstances, such as claiming a concession rate membership or a low-income tier.
  3. Non-genuine members join on the basis of an address that is not their address associated with Australian Electoral Commission enrolment.
  4. Non-genuine members are moved from one address to another to participate in Party elections, while in reality they have not moved their home address.
  5. Local branch processes are manipulated to assist branch stackers orchestrating the joining of non-genuine members. Examples include moving the location or timing of a branch meeting, or not informing all members of a specific branch meeting.
  6. Bulk renewal processes are used to maintain the non-genuine members within the Party membership.
  7. Non-genuine members are not aware they are joining or have joined the Labor Party, are offered inducements, or put under pressure to join.
  8. Representation on the Membership Administration Committee exists to approve non-genuine members and, in some instances, reject genuine members.
  9. Non-genuine members are enrolled without providing modern means to communicate with them, such as an email address or mobile phone number.
62. Mr Bracks and Ms Macklin made a range of recommendations to address the above 'branch stacking business model', resulting in 'eight revised steps' which 'combine to make the membership process more robust'.<sup>17</sup>
63. Witnesses explained that branches in an FEA were usually identified as belonging to a particular faction and were used as the entry point for new members for that faction. Kaushaliya Vaghela MP said at examination that ethnic and factional divisions between different branches in some areas were so strong that members who were not part of the dominant faction in a branch, even if they were the sitting MP, were not welcome at meetings of that branch.

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<sup>17</sup> Response from the Victorian branch of the ALP to the draft report, 25 May 2022.

64. In an attempt to restrict mass enrolment of stacked members, party rules provided that a maximum of six people could apply for membership at a branch's monthly meeting, but this could be increased to 13 if head office was notified in advance of the number of prospective applications.<sup>18</sup> Notification would allow other factions to send observers to the meeting to ensure compliance with the rules. Any applicants above that number would be held over until the following meeting or meetings and processed in the order in which they had signed the meeting attendance register. For example, if 70 or 80 people applied to join at one meeting, the resulting backlog would block other new applications for many months, including applications from people genuinely interested in joining the party.
65. Some witnesses also described the importance of new applicants arriving early in order to gain priority by signing the attendance book first. Sometimes a faction might attempt to take over control of another faction's branch by swamping it with new members and electing a new branch executive committee. One witness referred to possession of the branch attendance roll being 'coveted' because it would be possible to write in applicants' names, even if a meeting had not occurred. The branch secretary would collect the membership applications and fees and forward them to head office for processing.
66. Restrictions in the ALP Branch Rules on how payments may be made have varied over the years. As part of the interim changes recommended by the administrators of the Victorian branch of the ALP, the rules were changed by the National Executive in September 2020 to require all payments to be made by traceable means.<sup>19</sup> However, the investigation received some evidence that factional recruiters had previously been able to circumvent similar requirements under the old rules by reimbursing members who had paid by credit card (one example of which is detailed later in this chapter). While noting this, Mr Bracks and Ms Macklin asserted in their response to the draft report that 'the decision to ban cash and cash-like payments' had had 'an immediate impact on the Branch', referring to a 20 per cent increase in the use of traceable means to pay for membership renewals within months of the decision, when compared to the same time in the previous year.
67. Recruiters might seek out potential members from their family and friends, work organisations, sport and recreational clubs, community groups, or religious groups. Multicultural communities were attractive targets with the potential to provide a steady stream of new members. The key was to identify influential members of a community who could persuade others to join. Applications for membership would be scrutinised centrally by the Membership Administration Committee (MAC), which was a subcommittee of the Victorian branch's Administrative Committee. Rival factional representatives on the MAC would advocate for new members recruited by their faction, object to other factions' applications on technical grounds, or secure deals by which each faction's applications would be accepted. This vital aspect of factional work is discussed in more detail in Chapter 4.

<sup>18</sup> ALP Branch Rules, r 5.6.4.

<sup>19</sup> ALP Branch Rules, rr 5.9.1 and 5.10.3.

## Branch stacking and multicultural communities

68. A noticeable feature of branch stacking by the ML faction was the focus on recruitment of members from Victoria's multicultural communities. Evidence was also provided that other factions focused strongly on recruitment from those communities.
69. The 2016 Census recorded 28 per cent of Victoria's population as being born overseas and 49 per cent as either being born overseas or having a parent who was born overseas. A language other than English was spoken at home by 26 per cent of the population.<sup>20</sup> However, people who were born or who had a parent who was born overseas are under-represented in Victorian and Australian legislatures, with people of non-European backgrounds being particularly under-represented. The federal Labor MP for the Victorian electorate of Wills, Peter Khalil MP, published a paper in November 2021 in which he reported that Australians of non-European background comprised 21 per cent of the national population but only 4 per cent of federal MPs.<sup>21</sup>
70. Strong kinship and friendship networks in many multicultural groups or sub-groups, the creation of social and cultural organisations, and the concentration of groups in particular local areas create a potentially useful pool of prospective members for party recruiters.
71. Politically active members of multicultural communities can provide a bridge for their communities to be better represented in politics while increasing their own importance in their party by providing a source of new members.

72. Notwithstanding the apparent abuses discussed in Chapters 4 and 5, many persons among the cultural or ethnic groups from which the ML faction recruited paid for their own memberships. Many were interested in joining the ALP because of a belief in the party's principles and objectives, or a desire to see their group's aspirations more clearly recognised in the party's activities and in government policies and programs. Others might have been more motivated by ambition or a sense of personal obligation, support or loyalty to a factional operative or other group members who had already joined.
73. The investigation treated those who paid for their own membership and who had a greater interest in being a member of the party than merely adding to the factional numbers for the benefit of a recruiter or organiser as being genuine members of the party.
74. IBAC and the Ombudsman recognise the many different levels of political engagement by members of Victoria's multicultural communities and their contribution to a healthy Victorian democracy. The blatant and cynical recruiting tactics used by the ML leaders and activists to pursue their faction's ambitions hindered such positive engagement.

## The Moderate Labor faction and branch stacking

75. Many of the ML MPs examined by the investigation, some in the face of irrefutable evidence, acknowledged their lengthy involvement in branch stacking, usually by paying for other people's ALP memberships. Paying for memberships enabled an MP to control the numbers necessary to gain pre-selection and to stave off potential challenges by others who might be adopting the same tactic of buying ALP membership support.

<sup>20</sup> Department of Premier and Cabinet, 2017, *Victoria's Diverse Population: 2016 Census* (brochure).

<sup>21</sup> Peter Khalil, 'How systemic racism holds Australia back: A discussion of the lack of cultural diversity within Australian politics and the law', *Court of Conscience* (University of New South Wales Law Society), no. 15, 2021.

## Payment for memberships

76. All of the nominated leaders of the ML faction - Adem Somyurek, Marlene Kairouz and Robin Scott - acknowledged their participation in branch stacking throughout their parliamentary career. As Mr Scott said in evidence:

The Labor Party has had endemic branch stacking since at least the 1970s and any pretence that it was not endemic would be false.

It's a common practice in the Labor Party ... I think there's a widespread - has been historically over - since the 1970s, widespread payment of memberships for others.

77. When asked to detail how long he had been paying for other people's ALP memberships, Mr Scott explained simply:

My career. A long period of time. I couldn't tell you the exact numbers year by year, but it was a long period of time.<sup>22</sup>

78. Not all witnesses were immediately forthcoming with respect to the routine and culturally normalised practice of MPs or associates paying for other people's memberships. Mr Somyurek provided written submissions to the investigation in November 2020 in which he sought to show that he had no involvement in branch stacking, explaining the *60 Minutes* footage aired on 14 June 2020 of him appearing to use his own money in connection with ALP memberships as being a once-off situation caused by Covid:

Covid lockdown put me into the unfortunate position of having to handle money and forms ... It would have been reckless of me (especially being a minister in the government appealing for people to stay home) to direct staff members or branch activists to run around chasing money from members. Instead, I decided to pay myself and seek reimbursement at a later stage.

79. Evidence demonstrating that this was a concocted position was revealed in a lawfully intercepted telephone call on 16 June 2020 following the *60 Minutes* program where Mr Somyurek and an associate strategised the 'best' response for Mr Somyurek to the branch stacking allegations:

ASSOCIATE: I think, the, the, the truth is - isn't it that you didn't have credit card details for them. Um, ordinarily the um money would have sort have been, either collected at the branch meeting and wasn't um, at that time. Or had been, perhaps, and had been spent by, um what's his face? Nick, um and um, and essentially, I was essentially just lending him money to make up for the money that he sort of borrowed, like. There are a number of explanations around that that are quite ok but it boils down to the forms had to be lodged by a certain time and you were lodging them.

MR SOMYUREK: Or the gentleman that received the money could not leave his house because of Corona virus.

ASSOCIATE: Yeah.

MR SOMYUREK: T-That has collected the money off them, yeah, that's probably the better one.

ASSOCIATE: Hmm. Hmm.

MR SOMYUREK: So they had paid.

ASSOCIATE: Well, and they'd paid, well that's right and, you know, to be honest -

MR SOMYUREK: That's probably the best one, isn't it? And um -

ASSOCIATE: And you could have, and you could have gone and visited to collect the cash, but during Corona you've been very paranoid about it and you thought it's much better to go to the ATM. ... Um but you kind of want to make sure, um, all of the facts about that are sort of nailed down.

<sup>22</sup> In response to the draft report, Mr Scott objected to the inclusion of this paragraph, on the ground that the report does not make any finding that he used staff to engage in factional work during office hours. He asserted that his admissions of branch stacking are irrelevant to the joint IBAC/Ombudsman report, because breaches of ALP rules are outside the jurisdiction of IBAC and the Ombudsman. Mr Scott further asserted that the paragraph is irrelevant and not necessary to provide context to other findings or for the performance of any statutory function. A complete copy of his submissions on this issue is set out in full in Appendix A. We disagree, noting that Mr Scott was a leading member of the ML faction and branch stacking was a fundamental motivation behind the misuse of electorate office and ministerial staff by that faction.

80. Mr Somyurek ultimately acknowledged paying for members for about two decades and estimated that it cost approximately \$2,000 per year.
81. One of Mr Somyurek's electorate officers, Electorate Officer Z, who was examined before Mr Somyurek's public examination, also denied the practice of having paid for other people's ALP memberships. However, Electorate Officer Z was shown a complaint document that was found on Mr Somyurek's computer from a person who had been signed up as an ALP member along with their spouse. In the document, the ALP member indicated that Electorate Officer Z had attended his house on an evening in April 2016 and encouraged them and their spouse to become ALP members in support of Ms Vaghela, and had given them \$100 cash to do so while Electorate Officer Z completed an online application form for them and entered their credit card details to indicate that they had paid the ALP membership fee themselves.<sup>23</sup>
82. The investigation also obtained a sworn statement from the ALP member confirming the particulars of the complaint document found on Mr Somyurek's computer. Despite the evidence, Electorate Officer Z continued to claim they had not paid for the complainant's or anyone else's membership. Eventually Electorate Officer Z admitted to paying money to the complainant and their spouse while visiting their house. When doing so, Electorate Officer Z initially attempted to portray this payment as unrelated to the ALP memberships and being for a 'sweet' that had been provided to them during their visit. Electorate Officer Z finally acknowledged that the people they were recruiting as members said something like 'we have to pay money!' when discovering the ALP memberships fee, which prompted Electorate Officer Z to say 'Okay, we'll help you', and then provided the cash to the couple. Electorate Officer Z said that these were the only ALP memberships that they had paid for, apart from two or three family members.
83. Electorate Officer Z was not able to provide any explanation for paying for this particular couple's memberships when Electorate Officer Z had no significant connection to them and why Electorate Officer Z needed it to appear that the couple had paid by using their credit card. The evidence of Electorate Officer Z lacks credibility, and the ALP member's evidence is preferred, noting that Electorate Officer Z's visit appeared entirely routine from the member's perspective, that Electorate Officer Z had asked the member to assist with recruiting further members, and that the member had actually provided some further potential recruits to Electorate Officer Z, who followed exactly the same reimbursement process for these new members.<sup>24</sup>

<sup>23</sup> In response to the draft report, Ms Vaghela said that she had 'nothing to do with what [Electorate Officer Z] was doing in 2016 regarding membership with the subject ALP member mentioned in the complaint document found on Mr Adem Somyurek's computer'. She said that she 'had no idea' about Electorate Officer Z's recruiting activities as she had 'never discussed this with [them]'. Ms Vaghela further said that as she never had any intention to become an MP, she never had any interest in recruiting members in 2016, and also had no association with Mr Somyurek at that time.

<sup>24</sup> Electorate Officer Z's response to the draft report and our comments on that response are set out in Appendix A.

84. Ms Kairouz said she had been involved in branch stacking and paying for memberships since the early 2000s. She said that paying for other people's memberships was widespread across the ALP and that many of the members she paid for were 'inherited' by her after a former MP died in 2015. By 2015, Ms Kairouz was transferring between \$15,000 and \$18,000 each year to the bank account of one of the members of her staff to pay for memberships. She later stated that she expected that some of that money would be repaid; some was for members who were unable to pay; and that some would be used for donations to schools and community groups.
85. Rick Garotti, who gave evidence that he hoped to become an MP, said that he had been paying about \$3,000 per year for the previous five years towards the cost of memberships in the Heidelberg ALP branch. The new members predominantly came from the West Heidelberg area and the Somali community. He said that it was an expectation in the faction that the senior members would contribute to membership fees.
86. Others who admitted to paying for memberships other than their own included federal MP Anthony Byrne and state MP Luke Donnellan. Mr Byrne said he had paid for ALP memberships since about 1999, indicating that he was generally contributing, as were others, around \$2,000 annually towards ALP memberships, until the last few years, when he contributed less.
87. Further MPs and their associates were named by other parties as having done the same. As an example, Mr Garotti thought that Dr Hussein Haraco, who was an electorate officer for Mr Somyurek and was active in the northern suburbs branches, contributed about \$2,000 annually to membership fees.
88. The investigation also received evidence that another aspiring MP regularly made financial contributions that were used to pay for other people's memberships. Mr Nicholas (Nick) McLennan<sup>25</sup>, a factional operative for the ML faction, said he was aware that the aspiring MP had made contributions and that he understood the contributions were effectively the price of entry into the faction with a view to becoming an MP.
89. The aspiring MP conceded in evidence that they made cash contributions of amounts between \$1,000 and \$5,000 occasionally when requested by Mr McLennan, but claimed it was never made clear to them that these funds would be used to pay for ALP memberships.<sup>26</sup> Mr McLennan refuted this, claiming that the aspiring MP was 'very much aware of the fact that it was for membership renewals' and said the aspiring MP had even offered to increase the amount they were contributing in the second year of their participation in the scheme. The investigation accepts Mr McLennan's evidence that he was always acting under directions coming from Mr Somyurek, Mr Byrne or an intermediary when collecting these contributions from the aspiring MP.

25 For a description of Mr McLennan's employment, see paragraph 217 in Chapter 4.

26 In response to the draft report, the aspiring MP denied the allegations against him and submitted that IBAC findings in respect of the cash contributions in the above paragraphs were outside the stated scope and purpose of the investigation. The aspiring MP stated that he 'is not, and was not at any relevant time, a public officer within the meaning of the IBAC Act' and 'whether he engaged in any party political work [...] is irrelevant to the stated scope and purposes of the IBAC's investigation [...]'.  
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## Fundraisers

90. Party fundraisers, which were ostensibly to raise funds for ALP election campaigns, were another method of paying for ALP memberships, which had the added benefit for the MPs of reducing their contribution amounts. A number of witnesses referred to money raised at fundraising events being siphoned off to pay for memberships. Money would be used to pay for the event, to make a contribution to a campaign, and to pay for faction member's membership fees.
91. Mr Byrne said at examination that most attendees at such events would know that some of the money raised might be used to pay for memberships. Mr Somyurek also indicated at examination that he was aware of fundraisers being used for such purposes, although he was unsure how much was actually raised. A businessman spoken to by the investigation acknowledged making contributions to these fundraisers in the knowledge that the money was being used to pay for ALP members, indicating that he did so until a time when he believed the ALP rules had changed.
92. Mr McLennan also confirmed that money from fundraisers was used to fund members' renewal fees. Payment for tickets by cash was preferred, as it could be bundled up and then used to pay for individual membership applications or renewals.
93. An electorate officer said that Mr Somyurek would become annoyed if people or organisations such as unions did not pay in cash. A ministerial office employee said that they were laughed at when they asked for a receipt at one of the south-east Melbourne fundraisers. It was explained to them that the money was to be used for paying party memberships.

94. Witnesses described functions held in 2015, 2016 and 2017 to benefit south-east Melbourne Labor, where money raised had been used to pay for Labor memberships. As membership renewals were due by the end of May, the fundraisers were held in late April of each year.<sup>27</sup>
95. Mr McLennan said that, as a result of increased scrutiny of such functions, Mr Somyurek in about 2018 instructed him that proceeds from fundraisers were not to be used any more for paying for memberships. The funding model for memberships changed to the method described above, in which MPs and aspiring MPs were expected to contribute additional funds.

## Impact on Moderate Labor of branch-stacking activities

96. Although buying ALP memberships allowed senior factional figures to gain power, control and influence in the ALP, the practice also required the performance of many administrative tasks that were often undertaken by electorate and ministerial staff during their working hours.
97. Given that non-genuine ALP members had no interest in paying for their own ALP memberships, the cohort required a significant commitment from the faction by initially recruiting them to the ALP, ensuring that they attended a branch meeting, renewing their membership each year, and ensuring that they voted along factional lines during any internal ALP ballots held during the year.
98. The organisation, administration and overseeing of new and renewed members, the monitoring of any suspected branch-stacking activity by other factions, and the coordination of voting for these non-genuine and other members required significant time and resources to be expended by those working under the instructions of the ML faction leadership. The use of electorate and ministerial staff for these purposes is described in Chapter 4.

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<sup>27</sup> Changes made as a result of the Bracks-Macklin reforms have removed the May cut-off date from membership renewal arrangements.



## Australian Labor Party responses to branch stacking

99. The ALP has consistently formally denounced branch stacking, although the practice has continued, with varying degrees of intensity, for many years. Intermittent reviews and rule changes have marked attempts to curb the practice, but there also appears to have always been an acceptance in the party of some level of branch stacking. Many of the MPs who gave evidence, including Mr Somyurek, talked of how their knowledge of and participation in branch-stacking activities were part of a process of acculturation into the party's norms and values as their political careers progressed.
100. When Sarah Connolly MP discussed the possible content of the *60 Minutes* program in a lawfully intercepted conversation with Mr Somyurek before the program was broadcast, they discussed the ALP's attitude to branch stacking:
- ADEM SOMYUREK: mate, I've got no fucking idea. It might be that I've got ethnics in my office, you know, and, you know, branch stackers in my office and their primary role is to branch stack and, it's a, I don't know. The only allegation he put to me is have you paid for anyone's membership. And I said no. He hasn't come back to me with any allegations at all. So, wouldn't have a clue, right.
- SARAH CONNOLLY: Oh, God. Well, I mean, big fucken, that's not, that's not hardly a story.
- ADEM SOMYUREK: Yeah, exactly, so.
- SARAH CONNOLLY: Like, the party just shrugged its shoulders at that.
101. In evidence, Mr Somyurek said that Ms Connolly's comments were derived from her experience of the party not acting on her complaints of branch stacking in her electorate by other factions, including the use of electorate officers to undertake such activities.
102. In his evidence, the Premier, Mr Daniel Andrews, disputed that Ms Connolly's comments reflected an understanding in the parliamentary party that misuse of electorate officers was not really an issue from the ALP's perspective. He said he found the suggestion 'very troubling' and 'concerning' and that it was not his experience.
103. However, Mr Andrews agreed that he had been aware of widespread recruiting of non-genuine members over the previous few decades and that there had been people who had paid for the memberships of others over a long period. He also agreed that the practice was not limited to one faction and occurred 'across the board'.
104. Mr Andrews denied any personal knowledge of or involvement in such practices. He was aware of such allegations through talk within the party, reviews, rule changes and from the time when he worked at ALP head office. He made the distinction between having suspicions about people who might be engaging in the practice and having actual knowledge of specific people who engaged in such practices.
105. Mr Andrews agreed that branch stacking was a serious problem and that it could amount to a corruption risk in the sense that it could lead to the misuse of taxpayer or public funds in the pursuit of factional activities. He agreed that elimination of branch stacking was necessary to eliminate the risk of corruption.
106. One of the reviews that Mr Andrews referred to was the review conducted by Mark Dreyfus QC in 1998 following a period of intense factional hostilities during the 1990s.<sup>28</sup> Although his report had a wider focus on organisational reform and renewal, Mr Dreyfus said that the most common theme of the more than 200 submissions that he received was concern about factional activities and branch stacking.<sup>29</sup>

28 M Dreyfus 1998, *Panel of Review 1998*, Australian Labor Party, Victorian Branch, Melbourne (the 'Dreyfus Report').

29 Dreyfus Report, p 10.

107. His recommendations had a strong focus on the rules for membership payments and his first recommendations were that the party should adopt the principle that every member should pay for their own membership, and that candidates for internal or public office should pledge that they had not been involved in any organised payment of other members' membership fees. If the changes he recommended were not effective, he recommended consideration of more binding rules.<sup>30</sup>
108. Whether it was or was not related to reforms implemented as a result of the Dreyfus Report, Mr Andrews, Mr Somyurek and other MPs agreed that factional warfare in the south-east Melbourne region eased during 2001-02 and was followed by a period of relative peace. It was nevertheless clear from the MPs' evidence that a large number of non-genuine members remained in the party and that their membership fees continued to be paid by senior figures from the factions with which they were aligned.

### Appointment of Steve Bracks and Jenny Macklin as administrators of the Victorian branch

109. Mr Bracks and Ms Macklin told the investigation that their appointment as administrators amounted to 'the largest Federal intervention into the Branch since 1970'. In a similar vein, the Victorian branch of the ALP described Mr Bracks and Ms Macklin's appointment as administrators as 'unprecedented'.
110. Mr Bracks and Ms Macklin identified branch stacking as a 'scourge', acknowledged that many reports had sought to deal with the practice, and found that:
- ... stacking has continued and those who trade in it have adapted in response to Rule changes made to inhibit the practice. Their methods have become more sophisticated and the scale has brazenly increased.
111. They also said that:
- It is clear the problems of branch stacking go beyond a certain group of people operating in isolation from the rest of the Party. Organisational inertia, poor culture and a level of acceptance of the practices meant requirements under the Rules were not always observed, the administrative process and systems were poor, and the governance and assurance overseeing membership was practically non-existent.
112. Mr Bracks and Ms Macklin made 37 recommendations for reform of the Victorian branch, the underlying rationale of which was to improve integrity, culture and governance and, more specifically, to disrupt branch stacking. In addition to the changes requiring all membership payments to be made by traceable means, Mr Bracks and Ms Macklin recommended an extensive overhaul of:
- membership arrangements, including the rules and systems for recruiting, renewing and transferring members
  - local branch structures
  - the Administrative Committee and other central committees
  - the rules for internal ballots
  - dispute and governance procedures, including the appointment of a new Disputes Panel and a new position of Party Monitor, who would consider complaints initially, report on the party's compliance with its rules, and review the integrity of the party's membership every two years.
113. Mr Bracks and Ms Macklin said that their work and recommendations were 'unlike any other review or reform attempt', some of which were 'geared towards discrete and narrow issues'. They said that, unlike previous reviews, each of their recommendations was followed by a rule change to reflect that recommendation.

<sup>30</sup> Dreyfus Report, p 13.

114. Mr Bracks and Ms Macklin’s role as administrators concluded on 31 January 2021, although the Victorian branch remains under the supervision of the National Executive until a new Administrative Committee is elected at the 2022 State Conference.
115. In addition to overseeing the implementation of their recommendations, they also commissioned an external membership audit to be undertaken by Deloitte Risk Advisory that resulted in the removal of 1,784 members or about 10 per cent of the total Victorian membership. They also revoked the memberships of some members and charged others with internal disciplinary offences, including but not limited to people who were active in the ML faction. Mr Somyurek resigned as a member of the ALP on 15 June 2020, the day after the *60 Minutes* episode aired.
116. The administrators confirmed that the revoked memberships were from across the spectrum of the party’s factions and that, before their appointment, branch stacking was systemic in the Victorian branch. They said:
- branch stacking, although pernicious in its own right, was a symptom of deeper cultural issues that had emerged within the Branch. A “winner takes all” mentality had emerged within some factional groups, a mentality that was exacerbated by a “balkanisation” of two major factions. ... [T]o avoid repeating the issues that led to the Intervention, extensive cultural reform was critical.
117. In response to the draft report for the present investigation, the Victorian branch of the ALP emphasised its view that ‘it has taken these matters extremely seriously’, which it said is demonstrated by ‘the comprehensive steps taken’. It said that the following, among other facts, demonstrate the serious way it dealt with the problems that came to light in June 2020:
- it has spent over a million dollars on matters relating to the Administration, including a forensic audit of the membership, legal assistance and the procurement of a new, soon-to-be implemented, membership database;
  - the Branch’s internal and governance structures have been radically changed including through the creation of larger, single-state electorate local branches;
  - members have been barred from voting for almost two years, including in pre-selections for the federal and state elections;
  - approximately 10 per cent of the members of the Branch were expelled;
  - the rules have been substantially re-written enshrining each of the Administrators’ recommendations;
  - to the best of the Branch’s knowledge, for the first time in its history, a sitting MP was individually charged with branch stacking offences; and
  - the Branch has also defended two legal challenges, one of which was appealed to the High Court of Australia, in order to preserve its measures to improve the Branch.
118. The Victorian branch of the ALP further said:
- These steps have not been universally popular, but they are, and will be, critical to ensure that the Branch’s culture improves and the practice of branch stacking is identified and dealt with. In addition, the measures taken by the Branch include a number of mechanisms for ongoing, regular and comprehensive review of the integrity and probity of Branch operations.

119. Although the changes introduced as a result of the Bracks-Macklin Report and administration appear to be comprehensive and far-reaching, it is too soon to assess whether these changes and actions will eliminate branch stacking and the associated integrity risks. Mr Andrews maintained that significant rule changes were a necessary element of cultural change. On the other hand, previous reform attempts have been thwarted by ambitious factional leaders, and previous experience suggests that rule changes on their own are unlikely to deliver the necessary changes unless the party's organisational and leadership culture also changes.<sup>31</sup>

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31 In response to the draft report, the Victorian branch of the ALP said it was 'not clear' to the branch what was meant by 'leadership'. It said that '[i]n a democratic, membership-based organisation, operating both within Victoria and nationally, the Branch takes a broader view of organisational leadership'. The branch said that '[i]n this case, it points to the actions of the Premier requesting intervention, the work of the Administrators, and the unanimous support of the Administrators' recommendations by members of the National Executive to demonstrate that the ALP has an organisational structure and leadership capable of delivering major changes at the Branch level'. The Branch further said that '[a]cknowledging that achieving cultural change within an organisation as large and diverse as the Victorian Branch is complex, the Branch believes that the rule changes made pursuant to the Administrators' recommendations will improve the leadership and organisational culture'.

# Chapter 3. Legal and regulatory framework

120. This investigation examined allegations that MPs and ministers misused their staff for factional purposes. It also examined whether MPs and ministers improperly gave electorate office or ministerial staff roles to factional allies and operatives.
121. To evaluate those allegations, it is necessary to establish the legal and administrative framework for employing and using such staff.
122. The relevant legislation and administrative provisions changed substantially during the period covered by this investigation. Those changes were largely in response to the Ombudsman's 'Red Shirts' investigation and report, which was published in March 2018.<sup>32</sup>
123. This chapter sets out the relevant framework as it existed before and after those reforms.
125. The MP nominates the people to work as the MP's electorate officers, but the electorate officers are formally employed under section 30(1) of the *Parliamentary Administration Act 2005 (PA Act)* by the presiding officers of parliament (the President of the Legislative Council and the Speaker of the Legislative Assembly) rather than by the MP. In practice, the presiding officers have delegated their power to the Secretary of DPS.
126. DPS rarely participates in the selection process for an electorate officer, although the PA Act requires the Secretary to ensure that employment decisions are based on merit and that equal employment opportunity is provided.<sup>34</sup> In recognition of the need for a high level of trust between an MP and their staff, the *Equal Opportunity Act 2010* creates an exception to the prohibition on political discrimination for employment offers to ministerial and electorate office staff.<sup>35</sup>

## Electorate office staff

124. Each Victorian MP is entitled to:
  - 2.5 full-time equivalent electorate officers, who are paid by the Department of Parliamentary Services (**DPS**) from its budgetary allocation<sup>33</sup>
  - an electorate office and communications budget (**EOC budget**). The MP has some discretion over the use of this budget and can choose to spend it on hiring additional casually employed electorate office staff, up to an annual maximum of 570 hours (75 days) per person. Claims for expenditure are processed by DPS.
127. Section 30(2) of the PA Act requires that the employment of an electorate officer be under an agreement in writing and that it is subject to any terms and conditions that are determined for the time being by the presiding officers, acting jointly.<sup>36</sup> The terms and conditions of employment are subject to an enterprise bargaining agreement, which provides that the duties of the role are those that are set out in the relevant position description. The duties specified in the position description are:
  - general administration
  - constituent service
  - office management
  - communications and information management
  - parliamentary duties
  - other duties as directed by the member.

<sup>32</sup> Victorian Ombudsman 2018, *Investigation of a Matter Referred from the Legislative Council on 25 November 2015*.

<sup>33</sup> The allowance was increased from 2 to 2.5 on 3 July 2017 (see Members Guide, November 2018, p 101).

<sup>34</sup> PA Act, ss 6(a) and 6(c).

<sup>35</sup> *Equal Opportunity Act 2010*, s 27.

<sup>36</sup> These are contained in the electorate officer enterprise agreement and are reflected in the electorate officer position description and the electorate officer grade descriptors.

128. Once employed, an electorate officer is bound by the Electorate Officers Code of Conduct, a code that has been prepared by the presiding officers but which is not publicly available. The code is a modified version of the Code of Conduct for Parliamentary Officers, who are employed to assist the business of the Victorian Parliament, with some minor allowances for the different nature of the job. It does not address the need for electorate officers to refrain from party-specific activities while assisting an MP to perform their public duties.

## Ministerial office staff

129. If an MP is appointed as a minister, in addition to the MP's electorate office staff the MP is entitled to ministerial office staff, the number of whom depends on the nature and complexity of the MP's ministerial portfolios.

130. Under the *Public Administration Act 2004*, all ministerial staff are employed by the Premier.<sup>37</sup>

131. Although there is no express provision for ministers to determine the functions and duties of ministerial officers that is comparable to section 30 of the PA Act (which enables an MP to determine the functions and duties of an electorate officer), in practice it is the relevant minister rather than the Premier who determines those functions and duties.

132. Typical duties of ministerial officers are:<sup>38</sup>

- to advise the minister (supplementing departmental advice)
- to assist the minister to administer his or her portfolio responsibilities
- to assist the minister to formulate government policy

- to assist the minister to disseminate information to the department, stakeholders and the public
- to assist the minister as a member of both the Cabinet and the Executive Council
- to assist the minister in his or her parliamentary role insofar as that role relates to the discharge of the minister's duties as a minister of the Crown.

133. The minister determines how their office functions. Other functions that ministerial officers may undertake include:

- managing the minister's diary
- coordinating media advice
- liaising with other ministerial offices.

134. Ministerial officers are bound by a Ministerial Staff Code of Conduct.<sup>39</sup> The code, which is not a public document, is incorporated into the contracts of ministerial staff. Failure to comply with the code may result in disciplinary action, including termination of employment. The code relevantly provides that ministerial staff:

- must ensure that government and parliamentary resources are used in a proper manner (clause 10) and
- must not make improper use of their position (clause 12(a)).

Interestingly, a provision in earlier versions of the Ministerial Staff Code of Conduct that required staff to take care that their 'private activities' and 'involvement in community or political organisations' did not give rise to any actual or perceived conflicts with their work was removed in the 2019 updated version. The omission is relevant to the potential conflicts of interest that some ministerial advisors had in respect of their membership of factionally-aligned community organisations.

<sup>37</sup> *Public Administration Act 2004*, s 98.

<sup>38</sup> Victorian Public Sector Commission 2019, *Serving Government: A Guide to the Victorian Public Sector for Ministerial Officers*, Victoria State Government, <https://vpssc.vic.gov.au/resources/serving-government/>.

<sup>39</sup> Ministerial Staff Code of Conduct, September 2019.

135. Ministers have their own Ministerial Code of Conduct, which includes a requirement that they should be familiar with the requirements of the Ministerial Staff Code of Conduct and ensure that their staff comply with it.<sup>40</sup>

## The framework before publication of the Red Shirts report

136. Section 30(4) of the PA Act provides that:

Despite subsection (2), the duties and responsibilities of a person employed as an electorate officer are to be determined by the member who nominated that person.

137. To what extent is an MP free to determine the duties and responsibilities of an electorate officer under this provision? This was a crucial question in the Ombudsman's Red Shirts investigation into the use of electorate officers for political campaigning during the 2014 state election, and it is a crucial question for the present investigation.

138. The majority of MPs and former MPs interviewed as part of the Red Shirts investigation considered that the purpose of section 30(4) is to make clear who is responsible for determining the duties and responsibilities of the electorate officer: that is, it is the MP who has that responsibility, rather than the presiding officer, even though the presiding officer is the employer. They did not consider that the purpose of section 30(4) is to expand the range of duties and responsibilities that could be assigned to an electorate officer beyond those set out in the electorate officer position description.

139. Their interpretation of section 30(4) is consistent with the Parliament of Victoria Members' Guide, issued in 2014 by the presiding officers, which provided as follows in relation to electorate officers:<sup>41</sup>

These positions are provided to support the Member in their parliamentary and electorate duties. The Parliament does not fund positions to support the Member's political or party duties.

140. It also instructed MPs that, in relation to their EOC budget:<sup>42</sup>

A member must be able to certify that the usage was within the established guidelines and that the funds have been used for Parliamentary or electorate purposes.

[...]

Members are also reminded that the Electorate Office Budget can not be used to support any party or political activities.

141. A minority of MPs interviewed during the Ombudsman's Red Shirts investigation argued that section 30(4) of the PA Act gives an MP a very broad discretion in setting the duties and responsibilities of an electorate officer, and that broad discretion, conferred by statute, could not be constrained by a policy document such as the 2014 Members' Guide.

142. The Ombudsman's Red Shirts report considered that the narrower interpretation of section 30(4) that had been adopted by most of the MPs interviewed during that investigation was likely to be correct, on the grounds that it promotes the purpose or objectives of the Act. The present investigation has proceeded on the basis that this interpretation of the framework as it then stood is correct.

40 Ministerial Code of Conduct 2018, paragraph [7.1].

41 Parliament of Victoria Members' Guide (2014), clause 9.11.

42 Parliament of Victoria Members' Guide (2014), clause 8.

## Evidence given to the present investigation by Mr Somyurek and Mr Andrews about the Red Shirts scheme

143. Mr Somyurek was one of the 23 MPs who were found in the Red Shirts report to have participated in the scheme to misuse electorate office staff for political campaigning in the state election.
144. During the Red Shirts investigation, Mr Somyurek declined the opportunity to be interviewed or to comment on the Ombudsman's draft report.
145. During the present investigation, Mr Somyurek gave evidence in a public examination that when the scheme had been proposed, he had reservations about it. He stated that he 'kept rebuffing' the architect of the scheme, John Lenders, who was at that time the Labor Leader of the Upper House and a respected figure in the ALP. Mr Somyurek gave evidence that:

[Lenders] came up with the scheme, which was extraordinary ... That's why I resisted. I asked for a letter. He said he'll get one from Parliamentary Services. He never did. I went to the Premier [the then Leader of the Opposition, Daniel Andrews]. I said 'Do you know what John's doing?' He said, 'Yes'. Words to the effect, 'Well, you're either going to - you know, if you want to win an election or not,' basically. And the letter wasn't forthcoming. I took part anyway. Perhaps I shouldn't have. I did.

146. Mr Daniel Andrews was not one of the MPs found by the Red Shirts investigation to have participated in the scheme.
147. In his evidence to the present investigation, Mr Andrews was asked about Mr Somyurek's evidence.

MR ANDREWS: I had a very brief encounter with Mr Somyurek at the end of a caucus meeting. I have detailed this I think not long after or, sorry, at an earlier point when this was a matter of media enquiry. It was a very brief encounter and I referred him to John Lenders.

That is my - that's my recount, my recall of that particular encounter, brief and really only an issue of referral, and I don't believe that he raised anything other than he didn't - he raised - I don't even know that he raised concerns, other than that, you know, he might have gone on to raise concerns with me, but I directed him to Mr Lenders.

COUNSEL: Did you use an expression akin to, 'Do you want to win an election or not'?

MR ANDREWS: I don't believe so. I have a clear recollection, given the brevity of the encounter, and I'm not - that's not language that I use. I think people who know me would not see me speaking in those terms, would not describe me as someone who speaks in those terms.

[...]

COMMISSIONER: Do you at the time feel you had an understanding of the essence of Mr Lenders' scheme?

MR ANDREWS: I probably did. I had no concerns at that time given, you know, I wasn't acting to stop him doing it. But this issue of whether I spoke in those terms or essentially justified or was unconcerned with serious issues of probity and integrity that Mr Somyurek raised with me, that is not my recollection of that conversation and nor is that the evidence that he provided to the privileges committee at the time. A very brief encounter and I referred him to John.

[...]

COUNSEL: Were you aware of what Mr Lenders was proposing in a general sense?

MR ANDREWS: Yes.

COUNSEL: And were you aware that it involved electorate officers doing party-political work?

MR ANDREWS: I'm not sure whether it was - well, I was aware that it was about engaging staff to be involved in campaigning. My recollection is that at no point did I have a sense that what was being proposed was not in accordance with the rules or advice from Parliamentary Services. My memory of it is that it was - pooling arrangements have been part of parliamentary parties for quite some time, our party and others. I expect I viewed it in those terms ...



148. It is clear that: there was a short conversation between Mr Somyurek and Mr Andrews in 2014 after a caucus meeting in which the Red Shirts scheme was discussed; that no particular concerns were raised; and that Mr Andrews referred Mr Somyurek to Mr Lenders. On 9 February 2022 the Legislative Council referred a matter to the Victorian Ombudsman. The matter included: ‘The red shirts scheme, including the role of the then Opposition Leader, the Hon Daniel Andrews MP, in designing, propagating, and facilitating the scheme’. The above conversation will be the subject of consideration in a separate report by the Ombudsman in response the Legislative Council’s referral.

## The framework after the Red Shirts report

149. The Red Shirts report was tabled in parliament in March 2018. The report noted that electorate officer work is inherently political; however, it distinguished ‘political’ work from ‘party-specific’ work. Accordingly, it recommended (Recommendation 1) that the presiding officers revise the Members’ Guide in relation to electorate officers:

- to remove the prohibition on political activity but to emphasise the prohibition on party-specific activity
- to provide guidance and examples about the types of activities that electorate officers may not be directed to perform
- to include a statement about the effect of section 30(4) of the PA Act.

## Amendment of Members’ Guide

150. In November 2018, the presiding officers adopted Recommendation 1 by amending the Members’ Guide to prohibit the use of electorate officers for ‘party-specific’ work, which it defined to mean (emphasis added):<sup>43</sup>

- the *administration, organisation or management of a political party, or equivalent for an independent member, such as managing the party’s membership, communications, funds or property*
- campaigning or electioneering activities specifically directed at encouraging or persuading voters to vote for a particular person or party, or not to vote for a person or party, or aimed at raising funds for a particular person or party.

151. The second limb of this definition covers activity of the sort that was the subject of the Red Shirts investigation.

152. The first limb covers activity of the sort that is the subject of the present investigation.

## Amendment of section 30 of the Parliamentary Administration Act

153. Recommendation 2 of the Red Shirts report was that parliament review section 30(4) of the PA Act to resolve the different views about its effect.

154. A year after the report was tabled, parliament amended section 30 of the PA Act by adding two subsections:

- The first (section 30(5)) prohibits MPs from determining that an electorate officer ‘can, should or must perform a party specific activity’.
- The second (section 30(6)) defines ‘party specific activity’ as ‘any activity for the dominant purpose of directing how a person should vote at an election’.

<sup>43</sup> Parliament of Victoria Members’ Guide (2020), p 101.

155. The latter subsection contains only the second limb of Recommendation 1 (that is, targeting only the activity that was the subject of the Red Shirts report). It does not contain the first limb, which covers activity of the sort that is the subject of the present investigation.

### What is the effect of the amended section 30?

156. Adem Somyurek and Marlene Kairouz argued in their evidence to the investigation that those amendments to section 30 meant that they had 'legislative cover' to direct electorate office staff to engage in factional work during their employment hours because it was not campaigning work within the meaning of section 30(6). We do not agree with this interpretation.

157. The express prohibition in section 30(5) against one form of activity ('party specific activity' as defined in section 30(6)) does not imply that an MP is free under section 30(4) to direct an electorate officer to engage in any other form of activity.

158. For instance, an MP could not argue as follows: Section 30 permits me to encourage or require an electorate officer to paint my house during the officer's employment hours because:

- section 30(4) gives me a very broad discretion to determine the duties of the electorate officer
- sections 30(5) and (6) only prohibit me from directing the electorate officer to engage in 'any activity for the dominant purpose of directing how a person should vote at an election'
- painting my house is not an 'activity for the dominant purpose of directing how a person should vote at an election'.

159. The reason an MP could not do so is because the MP's power under section 30(4) to determine the duties and responsibilities of an electorate officer are not solely limited by sections 30(5) and (6). The legislative regime that further delineates these duties is discussed below.

160. Mr Somyurek argued at examination that MPs were aware that the Members' Guide had been amended in November 2018 to specifically prohibit the two types of 'party-specific activity' and were equally aware that the Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards (VIRTIPS) Bill that was introduced in early 2019 only defined party-specific work as being campaigning work. He said that all parties were in favour of the narrow definition in order to protect their electorate officers from being investigated by IBAC or the Ombudsman and that the different parties ran 'a unity ticket in parliament; MPs protecting themselves'.

161. Robin Scott also thought that the amendments were deliberately focused on campaigning activities. He said at examination that there was a view among some MPs that the amendments were only a limited attempt to fetter MPs' ability to direct their electorate staff and that, apart from campaigning work, MPs were still free to direct their staff using the wide powers in section 30(4).

162. The Premier, Daniel Andrews, agreed at his examination that both elements of the Members Guide definition constituted party-specific activities, but he strongly denied the existence of a 'unity ticket' to only include one element. He said that Mr Somyurek's description of a 'grand coalition' was a 'fantasy and a rather self-serving narrative that everyone's doing it', but he was not able to provide a reason why only one limb of the definition was used in the amendments.

163. Whatever the reasons for the omission of party administration and membership activities from the definition, it does not lead to a conclusion that they were therefore permitted activities. The scope of an MP's power under section 30(4) to determine the duties and responsibilities of an electorate officer is limited by the MP's obligation to comply with the Statement of Values and the Members of Parliament Code of Conduct in the *Members of Parliament (Standards) Act 1978 (MP(S) Act)*, which are discussed in the next section of this chapter. The legitimacy of an electorate officer's activity must be evaluated against the requirements of an MP's statutory duties.
164. Mr Somyurek also contended that engaging in party administration activities was a necessary part of an MP's job and should be considered as part of their public duties. Party administration and membership activities existed in a 'grey area'. However, 'public duties' do not include such party-specific activities, and are clearly defined by the MP(S) Act to be:
- a) committee business
  - b) electorate business
  - c) ministerial business
  - d) parliamentary business.<sup>44</sup>
165. Mr Somyurek's argument about the legitimacy of party-specific activities is further undermined by the employment arrangements for electorate officers.
166. Section 30(2) provides that the employment must be under an agreement in writing and is subject to any terms and conditions that are determined by the presiding officers. Those officers have delegated their relevant functions to the DPS Secretary<sup>45</sup>, who has formalised a standard electorate officer position description.
167. That position description lists six broad categories of duties, of which the sixth is detailed as 'Other duties as directed by the Member'. However, this broad category is limited by the purpose and key objectives set out in the position description and the fact that the position is funded by public resources for a public purpose.
168. In a section headed 'Relationships', the position description includes party administration as one of seven generic types of bodies (for example, ministers, constituents, community organisations) with which an electorate officer might liaise to support the MP. However, there is no reference to party administration in the position's actual duties, including the communications and information management duties.
169. It is significant that the amendments to section 30 were made as part of a larger package of reforms contained in the VIRTIPS Act. The VIRTIPS Act had originally been introduced into parliament in late 2017 to overhaul the system for fixing parliamentary and other salaries by establishing the Victorian Independent Remuneration Tribunal. The Act was not passed before the November 2018 election. Following the Red Shirts report, the Act was broadened to include the amendments to section 30 referred to above, as well as several other reforms discussed below. After the election, it was re-introduced and passed in February 2019.

<sup>44</sup> MP(S) Act, s 2.

<sup>45</sup> Instrument of Delegation - presiding officers to Secretary - Electorate Officer Employment 21 August 2020.

## Other relevant reforms made by the VIRTIPS Act 2019

### *Members of Parliament (Register of Interests) Act 1978*

170. As its name indicates, the *Members of Parliament (Register of Interests) Act 1978* required MPs to register their personal interests, in order to provide a measure of transparency in respect of the matters on which they might vote as MPs or in relation to which they may make decisions if they were ministers. The Act applies to all MPs, including those who are ministers.
171. The Act also contained a code of conduct, which originally was focused on MPs' duty to avoid conflicts of interest, but also included the following:<sup>46</sup>
- (a) Members shall –
    - (i) accept that their prime responsibility is to the performance of their public duty and therefore ensure that this aim is not endangered or subordinated by involvement in conflicting private interests;
    - (ii) ensure that their conduct as Members must not be such as to bring discredit upon the Parliament.
172. Commencing on 20 March 2019, the *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act* (VIRTIPS Act) changed the name of the *Members of Parliament (Register of Interests) Act 1978* to the *Members of Parliament (Standards) Act 1978*, to highlight that the purpose of the Act was now broader.
173. The VIRTIPS Act also inserted a statement of values into the MP(S) Act. These include serving the public interest; upholding democracy; integrity; and accountability.<sup>47</sup>
174. Further, the VIRTIPS Act expanded the existing Members of Parliament Code of Conduct in the MP(S) Act beyond conflicts of interest to include that:
- an MP must comply with the *Parliamentary Salaries, Allowances and Superannuation Act 1968* (**PSAS Act**) and any other law, rule or guidance regarding the use of public resources<sup>48</sup>
  - an MP must ensure that their conduct does not bring discredit upon the parliament and that they act ethically, reasonably and in good faith when using, and accounting for the use of, public resources in relation to the performance of their public duties.<sup>49</sup>
175. An MP who considers that the Members of Parliament Code of Conduct has been breached may refer the alleged breach to the presiding officer of the House of which the MP is a member. The presiding officer must decide whether to refer the alleged breach to the privileges committee.
176. The privileges committee in each House is responsible for protecting the privileges of the parliament and recommending sanctions to be imposed by the relevant House for those people who breach privilege or who are otherwise in contempt of parliament. It determines its own procedures, but aims to ensure that the principles of natural justice are respected.
177. If the presiding officer decides that an MP's referral may involve conduct that may constitute a criminal offence, the presiding officer must refer the alleged contravention to the appropriate law enforcement agency.

<sup>46</sup> MP(S) Act, s 3(1) (superseded).

<sup>47</sup> *Members of Parliament (Standards) Act 1978*, s 4.

<sup>48</sup> MP(S) Act, s 12.

<sup>49</sup> MP(S) Act, s 13.

178. The VIRTIPS Act set out more clearly the sanctions that may be imposed for a breach of the statutory Members of Parliament Code of Conduct, although the requirement for a wilful contravention of the obligations was retained. In respect of sanctions, the relevant House may:
- require the MP or other person to apologise to the House of parliament
  - require the MP or other person to pay a specified fine (not exceeding 100 penalty units) to the presiding officer
  - suspend the MP from the House for a period determined by the House
  - declare the MP's seat in the House to be vacant.
179. The last two sanctions must be passed by a special majority of three-quarters of all members of the House.
180. The enactment of the Members of Parliament Code of Conduct, and the obligation to comply with it, in legislation, give the code more force than the previous Members' Guide, even though the legislation expressly provides that it does not create in any person a legal right or give right to any civil cause of action or affect in any way the interpretation of any other law.<sup>50</sup>
181. Most of the amendments to the MP(S) Act commenced on 19 March 2019 and became binding on MPs on that date, with one notable exception, discussed in the next section.

### *Parliamentary Salaries, Allowances and Superannuation Act 1968*

182. The PSAS Act provides for the payment of MPs' salaries, allowances and superannuation entitlements. Before its amendment in 2019, the PSAS Act was limited to providing processes for the determination of MPs' salaries and superannuation entitlements and it did not articulate any principles for expenditure. It was extensively amended by the VIRTIPS Act as a result of the creation of the Victorian Independent Remuneration Tribunal (**VIRT**), which was given the role of setting the levels of remuneration and allowances to be paid to MPs and other public office holders. Amendments to the PSAS Act that were relevant to this investigation were as follows:

- A Statement of Principles was inserted that applies in respect of public resources. 'Public resources' were defined to include the EOC budget, which is the budget that each MP receives to run their electorate office. The principles relevant to this investigation were:
  - o public resources are provided to support an MP in performing their public duties<sup>51</sup>
  - o an MP must act ethically, reasonably and in good faith when using and accounting for the use of public resources in relation to the performance of their public duties<sup>52</sup>
  - o an MP must be responsible and accountable for their use of public resources and must be able to publicly justify their use of public resources.<sup>53</sup>

<sup>51</sup> PSAS Act, s 4A.

<sup>52</sup> PSAS Act, s 4B.

<sup>53</sup> PSAS Act, s 4C.

<sup>50</sup> *Members of Parliament (Standards) Act 1978*, s 5A.

- Specific provision was made for the EOC budget, which is to be available to fund operating costs and maintenance of an MP's electoral office, and for them to communicate with their electorate in relation to the performance of their public duties.<sup>54</sup>
  - Monitoring, compliance and enforcement provisions and overarching principles were prescribed in relation to the use of the EOC budget. MPs now are expressly required to:<sup>55</sup>
    - o provide value for money in using their EOC budget
    - o not to use the EOC budget unless for the dominant purpose of performing their public duties
    - o only use the EOC budget for legitimate purposes in connection with their public duties
    - o be aware of and comply with the VIRT guidelines and any terms and conditions imposed by the Secretary of the Department of Parliamentary Services
    - o not breach the VIRT guidelines and relevant terms and conditions.
183. The VIRTIPS amendments also provided for a disputes process in relation to claims from the EOC budget. The process would only have been relevant to this investigation in relation to any disallowed claims for casual employees or the purchase of goods and services that were not supporting the performance of an MP's public duties. Full-time or part-time non-casual employees are paid salaries that do not require a separate claim or justification.<sup>56</sup>
184. A process was also established under which an MP's separation payment, which would ordinarily be payable upon their retirement or loss of their seat, would not be paid if the MP ceased to be an MP because of corrupt conduct or if they had committed a significant and wilful breach of the Members of Parliament Code of Conduct. A separation payment may be recovered if an MP is subsequently convicted of corrupt conduct in connection with their period in office as an MP, or if the clerk of the relevant House determines that a former MP has committed a significant and wilful breach of the code of conduct.<sup>57</sup>
185. The VIRTIPS Act amendments to the PSAS Act that are relevant to the investigation commenced on 16 September 2019, almost six months after the MP(S) Act amendments. Although the MP(S) Act's Members of Parliament Code of Conduct amendments included a new duty to comply with any PSAS Act or other financial obligations, the new PSAS Act obligations outlined in this section did not commence until 16 September 2019.
186. Therefore, while a failure to properly manage or account for the use of public resources before 16 September 2019 might have breached other standards, it would amount to a breach the financial obligations in section 12 of the Members of Parliament Code of Conduct only if there had been a failure to comply with the PSAS Act requirements on or after that date.

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54 PSAS Act, s 7F(2).

55 PSAS Act, ss 9A-9C.

56 PSAS Act, ss 9C-9H.

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57 PSAS Act, ss 7E(1), 7E(7), 7E(8).

## Victorian Independent Remuneration Tribunal

187. The VIRT was established by the VIRTIPS Act in March 2019. It determines the amount of the EOC budget, parliamentary salaries and allowances, and issues guidelines in respect of those matters, along with determinations and guidelines in respect of other public sector offices not relevant to this investigation.
188. VIRT has issued a number of guidelines for MPs, the most recent of which commenced on 1 May 2021.<sup>58</sup> More relevant to the timeframe covered by this investigation were Guidelines 1/2019 and 2/2019, which were identical for purposes of this investigation, with Guideline 1/2019 coming into effect on 16 September 2019. Guideline 4.1 provided that an MP is provided with the EOC budget to:
- a) fund the operating costs and maintenance of his or her electorate office, and
  - b) facilitate the Member communicating with constituents within his or her electorate about specific issues or services affecting them.
189. Guidelines 4.2 and 4.3 provided as follows:
- 4.2 Each Member is individually accountable for the use of his or her EOC Budget. Members are responsible for ensuring that all expenditure is managed within the allocated budget and in accordance with all relevant legislation and guidelines.
  - 4.3 Members must be able to certify that their usage of the EOC Budget complies with the PSAS Act, these guidelines and any terms and conditions imposed by the relevant Officer.
190. The guidelines do not cover the terms and conditions of electorate officers' employment, which are a matter for DPS, but they are relevant to the employment of casual electorate officers, who are paid for from the EOC budget's discretionary allocation rather than from the salary allocation for 2.5 full-time equivalent, non-casual employees. They otherwise cover office and communication expenses. The guidelines stress that the communications budget must not be used for party-political expenses.
191. Claims for expenses under the EOC budget, including casual employee expenses, are initially processed and approved by DPS. If DPS rejects a claim because it decides that the expenses have not been properly incurred, the member may appeal to the Compliance Officer. The Compliance Officer is an independent position created under the VIRTIPS Act to be part of the VIRT framework.
192. The claims dispute-resolution process has significantly strengthened the ability of DPS to reject claims, by ensuring that if there is a dispute it will be independently adjudicated. Previously, the claims process was potentially compromised because DPS and its Secretary are ultimately accountable to the presiding officers, who are open to influence by the parties and unhappy MPs, despite the formal independence of their offices and their best efforts to maintain impartiality.
193. Although DPS is still open to influence as the initial decision maker under the PSAS Act claims procedure, the existence of the Compliance Officer has provided it with the prospect of being able to see its assessments upheld by an independent body if it decides to reject a claim.

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58 Members of Parliament (Victoria) Guidelines 01/21.

## Other relevant roles

### Department of Parliamentary Services

194. Although MPs determine who to recommend for employment as an electorate officer and their day-to-day activities, the Secretary of DPS is the delegated employer of electorate officers, in accordance with a delegation by the presiding officers.
195. DPS is one of three departments of the Victorian Parliament and is responsible for delivering the corporate services necessary to support MPs, both at Parliament House and in their electorates. It arranges accommodation, information technology services, payroll and financial services, and the employment framework for staff, including the conduct of negotiations for enterprise bargaining agreements that are registered with Fair Work Australia.
196. The PA Act provides that the DPS Secretary is a department head who is employed by the presiding officers for a term not exceeding four years, although the contract is renewable.<sup>59</sup> The DPS Secretary is required to ensure that employment decisions are based on merit and that equal employment opportunity is provided.<sup>60</sup>
197. Although DPS documents the duties of electorate officers in a position description, it is rarely involved in the processes for the employment of electorate office staff. The investigation found that such positions are rarely advertised or subject to a competitive selection process.
198. DPS is also responsible for the allocation and monitoring of a member's EOC budget. Although its role has been narrowed since the establishment of the VIRT (see previous section), DPS continues to be responsible for the management of the systems by which such expenditure is incurred and accounted for.
199. DPS advised that it arranges for the Auditor-General to conduct random audits of eight electorate offices each year in addition to its general audit of DPS services. However, such audits usually focus on the existence of appropriate risk management systems that should prevent misuse of public resources, rather than identifying specific instances of misuse (for instance, whether timesheets for casual employees are being correctly completed).
200. DPS also has an internal audit unit that can undertake a more detailed investigation of specific risks.
201. DPS prepares the Members Guide for MPs, which provides hands-on advice about the structure and processes of parliament. It is not publicly available, unlike in Queensland and New South Wales.

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<sup>59</sup> PA Act, s 11.

<sup>60</sup> PA Act, ss 6(a), (c).



## Parliamentary Integrity Adviser

202. The position of Parliamentary Integrity Adviser was created by votes of both Houses of Parliament as part of the suite of reforms passed in 2019. The role is a part-time one, with the functions of providing education, training and confidential advice to MPs, and reporting annually on the role and any other appropriate matters, including the parliamentary standards framework. Similar roles have been created in Queensland and New South Wales, although in Queensland the Integrity Commissioner has a wider range of functions and is established by statute.<sup>61</sup>
203. A former clerk of the Legislative Assembly was appointed to the Victorian role on 29 August 2019. In his 2019-20 annual report he advised that he had provided advice on 16 ethical issues to 14 MPs and conducted training sessions attended by 33 MPs and 13 staff. In all, he had spent 88 hours performing his duties.<sup>62</sup> In 2020-21, he provided advice to 11 MPs on 11 ethical matters, conducted one training session for a new MP and spent 30 hours performing his duties.<sup>63</sup> By way of comparison, the New South Wales Parliamentary Ethics Adviser in 2019-20 met with three MPs and three former ministers and spent 116 hours on his duties.<sup>64</sup>
204. The Integrity Adviser also meets annually with the privileges committees of both Houses.

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61 *Integrity Act 2009* (Qld).

62 Parliamentary Integrity Adviser 2020, *Annual Report 2019–2020*, Parliament of Victoria, Melbourne, [https://www.parliament.vic.gov.au/file/uploads/PIA\\_Annual\\_Report\\_2019-2020\\_7FqT3LT5.pdf](https://www.parliament.vic.gov.au/file/uploads/PIA_Annual_Report_2019-2020_7FqT3LT5.pdf)

63 Parliamentary Integrity Adviser [2021], *Annual Report 2020–2021*, Parliament of Victoria, Melbourne, [https://www.parliament.vic.gov.au/file/uploads/PIA\\_Annual\\_Report\\_2020-2021\\_pX27M8WH.pdf](https://www.parliament.vic.gov.au/file/uploads/PIA_Annual_Report_2020-2021_pX27M8WH.pdf)

64 Parliamentary Ethics Adviser 2020, *Annual Report 2019–2020*, Parliament of New South Wales, Sydney, <https://www.parliament.nsw.gov.au/tp/files/78316/Report%20of%20the%20Parliamentary%20Ethics%20Adviser%20for%20the%20year%20ended%2030%20June%202020.pdf>

# Chapter 4. Misuse of staff for factional work

## Overview

205. This chapter details the evidence of the culture of branch stacking and the alleged misuse of electorate office or ministerial staff by MPs associated with the ML faction.
206. The evidence substantiates the allegations initially received and the referrals to our organisations. It establishes that there was a widespread and coordinated practice of misusing electorate and ministerial office staff to vigorously pursue the ML factional agenda. There was also evidence of a more general nature to the effect that such practices are not confined to one faction.
207. Chapter 3 examined the legal and administrative framework that governs permissible use of such staff. A small number of witnesses argued that there is a blurred line between public duties and factional or party-political work. We do not stay to consider whether any of these claims were genuinely held: the evidence demonstrates that the factional or party-political work undertaken by staff under the direction of ML factional MPs while those staff were paid to undertake public duties was unambiguously on the wrong side of any such line.

## The directors of the Moderate Labor faction

208. In Chapter 2, reference is made to the evidence of factional activity that existed during the 1990s and led to the Dreyfus Report, which attempted to address the culture of branch stacking in the ALP. Evidence was given by Mr Byrne, Mr Somyurek and Mr Andrews of an agreement that had been reached between the Right faction and the Socialist Left faction in the early 2000s that sought to reduce factional conflict in the ALP.

209. Although branch stacking continued thereafter, the evidence showed that factional activity again increased and became intense after the 2018 election. During this latter period Mr Somyurek, and to a lesser extent Marlene Kairouz and Robin Scott, were responsible for organising and directing the ML faction's activities. Mr Scott acknowledged his own seniority in the faction and described Mr Somyurek as the most important leader in the faction. Key factional figures are identified in Chapter 2.
210. Mr Somyurek agreed that he was the factional convenor, but denied that he was the faction's most senior leader, saying that Mr Byrne and his office were the critical hub for the faction. Nevertheless, the investigation was told by numerous witnesses that Mr Somyurek, Ms Kairouz and Mr Scott were the factional leaders, with Mr Somyurek as the key leader. While Mr Byrne's role in fostering the careers of Mr Somyurek and others was acknowledged by Mr Byrne and others, Mr Byrne was not identified by anyone, not even those remaining loyal to Mr Somyurek, as the factional leader or director of factional activities.
211. The central role that Mr Somyurek occupied is reflected in a 24 November 2019 recorded conversation between Mr Somyurek and an electorate officer who gave evidence of their, and others', frustration at constantly being contacted by Mr Somyurek with respect to factional tasks expected of them in and outside working hours:

MR SOMYUREK: Well, we're in - we're in deep shit. Unless we just do something and reallocate everything to this, we're in deep shit. So take it that - you need to recruit in Holt, um, we've lost - we're - we - we're well under in Holt, and we're comfortably getting fucked over in Bruce, big time. So it's war, basically. And everyone's got to be concentrated on it.

ELECTORATE OFFICER: Yep.

MR SOMYUREK: Everyone. Like –

ELECTORATE OFFICER: Yeah.

MR SOMYUREK: –seriously–

ELECTORATE OFFICER: Well, there - I've gotta tell you, there's a bit of a morale problem I don't know if you've picked that up at all.

MR SOMYUREK: Why?

ELECTORATE OFFICER: Are you serious?

MR SOMYUREK: No, because you know what, if you come to our group, everyone is back-slapping because how great we're travelling as a group. That's the whole Moderate Labor group. I don't know why my home base is like this.

212. Mr Somyurek appeared to view the resources he was talking about allocating to the factional war as his own. This is supported by other recorded conversations in which Mr Somyurek saw even fellow MPs such as Meng Heang Tak as someone who 'will just do what I want ... I just point out to him we got you up' [into parliament].
213. The conversation continued to clearly indicate that the direction stemmed from Mr Somyurek rather than from Mr Byrne or anyone else:

MR SOMYUREK: I never have my telephone calls returned by Anthony [Byrne]. ... I protect him. I have to stop articles talking about Anthony Byrne being - going. Right? I said [to the journalists], he's got my protection, he's going nowhere. So, don't write in the article, because it will be full of shit. Right? He doesn't return my call. He's a back bencher. Right? He doesn't return –

ELECTORATE OFFICER: And - and why's that? Why's that?

...

MR SOMYUREK: You're looked after, you won't, you won't even return my call. Like should I get other people to fucking deal with you guys? I can play, I can play that card, p-politics, I can say okay, from now on you guys speak to Byrne's office and tell Byrne's office to do this, this, this.

ELECTORATE OFFICER: Yeah, but you - your - your definition of not returning a call is if someone doesn't answer five calls within six minutes.

MR SOMYUREK: I'm fucking busy mate. I'm a fucking Minister. I'm the most powerful man. I'm keeping alive the socio - NUW, the ah, the industrial left, the other fucking unions, every time anyone has a problem, they go through me, but you can't return my call. I am busy.

ELECTORATE OFFICER: I can't return your call if I'm driving

MR SOMYUREK: Because you - you don't return my call, that means I'll just have to set aside a time to fix this up ... you can just not see an electoral office, you can just ask the what's the name, a fucking constituent to wait for five minutes.

214. Mr Somyurek set the factional strategy and ensured its implementation across Melbourne's different electorates. He also set the tone for the importance of the factional work, as compared to, for example a 'fucking constituent' who could be told to wait. As evidenced in the above conversation, Mr Somyurek's directions were sometimes conveyed directly to staff and at other times were delivered through intermediaries, such as Michael de Bruyn and Nicholas McLennan.

### Other senior faction members

215. As well as being Ms Kairouz's chief of staff, Michael de Bruyn was also the ML faction's secretary (although opinions differed on whether or not this was a formal position), and a factional representative on the Administrative Committee, which was a senior committee in the party. He said that he would be briefed by Mr Somyurek before an Administrative Committee meeting, but that Mr Somyurek 'kept everything very close to himself' until the last minute, which could result in chaotic arrangements. He described Mr Somyurek as demanding and a micro-manager on factional issues.

216. Mr de Bruyn agreed that factional work was something that Ms Kairouz and Mr Somyurek valued and expected, and that it was prioritised at different times in the political cycle, but he disputed that it was the main focus of the office. Given Ms Kairouz's expectation, he did not object to factional work being undertaken in the office, provided that it did not interfere with a person's ability to do their ministerial job. The evidence in following sections from ministerial staffers reveals that factional work did in fact interfere with their ministerial work.
217. Although Mr de Bruyn sought to show that his factional activity did not divert him from his responsibilities as chief of staff, the investigation noted that, in March 2020, Mr Somyurek said in a recorded conversation that the new factional arrangements would stop Ms Kairouz from continuing 'to get pissed off with me having Michael drawn away when he needs to be doing your (Ms Kairouz's) work'. In evidence, Mr Somyurek described the comment as a throwaway line and that Mr de Bruyn would not have prioritised factional business over his ministerial office responsibilities. However, he also said that at the time the ML faction was essentially managed by Mr de Bruyn, Mr McLennan, one of Mr Somyurek's ministerial advisers and 'all those guys.'
218. Ms Kairouz commented that Mr Somyurek and Mr de Bruyn were often in conversation because of the proximity of their offices, but she could not say how much they discussed factional matters, other than assuming that those matters must have been the subject of some their conversations.
219. Nick McLennan started working as an electorate officer for the federal member for Holt, Anthony Byrne MP, in 2010. He was the factional secretary when the ML faction was formed in 2015, but over time he became less interested in playing a leading role in the faction's organisation. Mr McLennan said he had resigned from the position of factional secretary - he believed more than once - while working for Mr Byrne. He started working as a ministerial adviser in Ms Kairouz's ministerial office in respect of her Suburban Development portfolio in January 2019, but he continued to undertake factional activities in the south-east at the direction of Mr Somyurek. Mr McLennan presented as an honest witness who acknowledged that he and Mr de Bruyn were at the direction of Mr Somyurek and Ms Kairouz when it came to undertaking factional or party-political activities or directing other staff to engage in such activities. When indicating that he was hoping that his new position as a ministerial adviser for Ms Kairouz meant that he could do less factional work, Mr McLennan at examination said:
- And shortly after that [starting as an adviser to Ms Kairouz] it became apparent that Mr Somyurek had the ability to walk into my office without anyone being able to stop him and say this is what I need [factional or party-political task] and I need it now.
220. A common theme in the evidence was that people such as Mr McLennan, who were employed in other MPs' offices, were subject to directions from Mr Somyurek to undertake factional activity both in and outside working hours. The investigation heard of staff being moved into electorate and ministerial offices that were aligned with the ML faction but still being subject to direction from Mr Somyurek or others with respect to factional work.

221. Mr McLennan gave evidence as to the negative impact he experienced as a consequence of being compelled to undertake factional work at the direction of Mr Somyurek. Mr McLennan described an environment where you did what was asked of you, but when you bucked the system or asked questions you were met with a hostile reception. Mr McLennan described occasions where Mr Somyurek resorted to bullying and intimidatory tactics to achieve his objectives.

222. In June 2020, Mr Somyurek became aware that media outlets were about to publish a story showing Mr McLennan taking part in factional activity. A lawfully intercepted conversation of 13 June 2020, just before the story was published, between Mr Somyurek and his parliamentary colleague Tim Richardson reveals that they considered that Mr McLennan should be proud to feature in the media as a factional henchman associated with Mr Somyurek and Ms Kairouz:

MR RICHARDSON: I said I think in the ALP circles, mate, you'd wear that [being labelled a henchman for Mr Somyurek and Ms Kairouz] as a badge of honour, so um.

MR SOMYUREK: Yeah, and he's fucking handsomely rewarded for it.

MR RICHARDSON: Yeah, he, well not only that, I mean, that, eh, eh, fr-from a CV standpoint, that's a KPI (laughing).

MR SOMYUREK: Yeah.

MR RICHARDSON: That's a bloody KPI. Sign your—

MR SOMYUREK: Well yeah, I mean, let's face it his other job [ministerial work] is fucken lobbying and—

MR RICHARDSON: Yeah.

MR SOMYUREK: —and that holds him in good stead.

...

MR RICHARDSON: Well, that's right and as I said in ALP circles, I mean y-y-you want to be, y-you want to be known for that if you want to get somewhere, you know, um, through that pathway, um, you know factional involvement, so. That's um, that's really important ...

223. This exchange displays Mr Somyurek's awareness of the control he had over a senior ministerial staffer who was required to direct staff to undertake factional activities during work time. It also reveals the disturbingly common view of the factional pathway that had to be followed in order to progress in the ALP. The conversation also demonstrates Mr Somyurek's prioritisation of factional work over the portfolio work of a ministerial adviser that he regarded as 'fucken lobbying'.

224. Some of the different types of factional or party-political work directed by the ML MPs themselves or through their senior staffers is detailed in the following section.

## Membership recruitment and management

225. Along with securing trade union support, the main engine of factional power was the ability to recruit and maintain large cohorts of voting members. Such work required intensive administrative effort, much of which was undertaken by ministerial and electorate office staff, often during work time.

226. Steps undertaken by the ALP to eliminate branch stacking outlined in Chapter 2 mean that the process for recruiting a member is subject to a range of procedural rules.<sup>65</sup> These include that the prospective member must physically attend a branch meeting and that there is a limit on the number of members who can join at any single meeting.

<sup>65</sup> As noted in Chapter 2, this report primarily focuses on the rules, structures and processes of the Victorian branch of the ALP before June 2020. These rules were subsequently changed after the branch was placed under administration, with a view to mitigating the risk of branch stacking.

227. Although branch meetings are held outside normal office hours, meaning that attendance by ministerial advisers or electorate officers in order to manage a recruitment drive or monitor another faction's activities would not be during their hours of paid employment, the extensive planning and organisation before such meetings and the follow-up activity to process or renew memberships was often undertaken during working hours.
228. Mr Garotti, as a senior member of the faction overseeing part of the operation and reporting to Mr Somyurek, agreed that branch stacking could not occur without the involvement and encouragement of MPs and the use of their staff to give effect to that process.

## Recruitment

229. Some employees were used as recruiters, whose primary tasks were to identify, recruit and retain ALP members from their networks. Culturally and linguistically diverse (CALD) communities in particular were a substantial source of new members for the ML faction.
230. One of the ML faction's primary interests in CALD communities was in the numbers that could be recruited who were prepared to allow the factional operative to sign them on as members of the party and have their membership paid for by the factional operative. The faction devoted considerable resources to such activities and was closely focused on identifying members and allocating responsibilities for their management to individual recruiters or organisers.
231. As described in Chapter 2, the investigation adopted a working definition of branch stacking as being the recruitment or renewal of non-genuine members who did not pay for their membership or who did not have a genuine interest in being a member of the party. Such members were not motivated by a belief in the party's principles and objectives, or a desire to see their community's aspirations more clearly recognised in the party's activities and in government policies and programs, and were recruited by factional operatives for the purpose of branch stacking only.
232. The links between particular CALD groups and the ML faction were a strong element of the investigation. Facilitation by a factional recruiter with links to a person's ethnic community was the common thread running through many of the statements obtained by the investigation. One of Ms Kairouz's electorate officers, Electorate Officer A, said in their evidence that the 'captains' who were responsible for groups of members facilitated memberships from particular ethnic groups.
233. Early in his evidence, Mr Somyurek said that factional stacking took place along ethnic lines, and sub-ethnic lines if a community was divided. He sought to justify branch stacking based on the use of people from ethnic minorities as a form of affirmative action to overcome the inherent bias that he said was still a feature of the ALP.
234. Other material obtained by the investigation casts doubt on Mr Somyurek having altruistic motives when it came to signing up ALP branch members from CALD communities.

235. In a recorded conversation on 22 December 2019 between Mr Somyurek and an electorate officer, Mr Somyurek remarked:

MR SOMYUREK: Look even if we put 'em on, I don't know want too - too many of 'em in Holt - Holt. Because they'll just-

ELECTORATE OFFICER: The Indians?

MR SOMYUREK: Yeah, then they'll get greedy about Holt, right? -It'll be okay, but he'll just - we'll have to just smack 'em down, you know- I'd rather not, yeah, they'll just get excited about it, that's all - Otherwise we could smash 'em in. Like they're really good, they'd pay for it, everything.

ELECTORATE OFFICER: Yep. Yeah. Yeah, they seem like they've - well, they've got, like, endless sort of amounts of people.

MR SOMYUREK: People and money, like - No, I would rather not use 'em at home base, I use 'em everywhere just to give everyone else the shits. ... They're the shock troops. They're our shock troops, shock and awe. They just- They put in about a hundred and eighty in Lalor.

236. If any altruistic motive existed in actively recruiting among CALD communities, it was not Mr Somyurek's primary reason for soliciting their support.

237. In March 2020, Mr Somyurek was recorded discussing the merits of employing an individual whose father was influential in the Somali community. Mr Somyurek wanted to employ him because 'he's gonna be useful with the African Muslims. I just need another African Muslim group.' He then discussed different African groups - Hararis and Oromos - and their distribution across different Melbourne FEAs.

238. A further example is case study 10 in Chapter 5 regarding an electorate officer of Mr Somyurek, Electorate Officer B, who is a member of the Hazara community. Electorate Officer B explained that the members they enrolled in the party did so because they always voted Labor, they wanted to support Electorate Officer B and to support a member of their community. Electorate Officer B explained that they were keen to see greater representation in the ALP of the Hazara community and worked with members from other groups to increase representation from their communities. Electorate Officer B thought that their presence in Mr Somyurek's electorate office gave them a sense of connection to his work.

239. However, Electorate Officer B conceded that while they may have possessed genuine reasons for seeking employment as an electorate officer, these reasons were not relevant to Mr Somyurek's decision to employ them. Electorate Officer B accepted that it was not really necessary to have a Hazara representative employed in the office, given that nobody from that community had ever called them when they were working there, noting that there was often nothing to do. Electorate Officer B further accepted that Mr Somyurek was very interested in the number of people they could bring to the ALP from the Hazara community and that, although they didn't understand at the time, they now appreciated that their 'numbers' were why they obtained the electorate office role from Mr Somyurek.

240. In a lawfully intercepted conversation on 13 June 2020 between Mr Somyurek and Mr Garotti, Mr Somyurek sought to use the discrimination experienced by black people as a tactic for Dr Haraco's response to media questions about the connections between grants issued to an incorporated association (see Chapter 6). Mr Somyurek and Mr Garotti discussed the media response and Mr Somyurek, in dictating how Dr Haraco should respond in diverting attention from the links between the ML faction and grant recipients, said:
- Youse [media] tend not to want, ah, black people to be involved in politics ... yeah. Just go racism on 'em.
241. In another recorded conversation with an electorate officer on 22 March 2020, Mr Somyurek commented that they needed to put more non-Indians into Holt. He also commented on the fact that two individuals involved with the ML faction, Person C and Person D, had paid for 'their' Indians. In response to the draft report, Person C and Person D both denied paying for other people's ALP memberships.
242. In a lawfully intercepted conversation with another MP, Sarah Connolly, on 13 June 2020, Mr Somyurek, in trying to forecast the nature of the upcoming *60 Minutes* program, tellingly said:
- It might be that I've got ethnics in my office, .... and branch stackers in my office and their primary role is to branch stack.
243. The investigation found many examples of spreadsheets that showed that members were allocated to particular organisers or recruiters, often by reference to particular CALD groups.
244. For example, Dr Hussein Haraco created a spreadsheet of 351 Somali members, most of them in Jaga Jaga FEA in Melbourne's northern suburbs, while working as a casual electorate officer for Mr Somyurek, including on 12 and 26 June 2019. In his evidence, Mr Garotti said that Dr Haraco introduced most of the new Somali members into his Heidelberg West branch.
245. Mr Garotti texted Mr Somyurek on 17 December 2017 to say that:
- Jasvinder is supportive of Dr Hussein and I recruiting Somalis into his branch in Tarneit. This will start in February next year.
246. In a letter to Mr Somyurek dated 14 January 2020 recovered from a device at the electorate office of Mr Somyurek, Dr Haraco advised that although he didn't have many potential members in Holt - Mr Byrne's south-east Melbourne federal electorate - there were potential members in the following FEAs:
- Bruce      40 families, 40 to 50 members can join  
Chisholm   10 families up to 30 members can join  
Latrobe    3 Families 10 members can join
247. Other material showing the ways in which CALD communities were targeted by the faction include:
- a spreadsheet on Mr Somyurek's laptop computer, with the name 'Cambodian members South-East' that highlighted Cambodian members by their FEA
  - a spreadsheet on Mr Somyurek's laptop computer, listing of Vietnamese members in the south-east FEAs
  - July 2019 emails involving Mr McLennan, Mr Somyurek and another ALP member, Person C, in which Mr McLennan is reporting to Mr Somyurek on the outcome of a task involving Person C identifying which Indian ALP members are 'his'



- June 2018 text messages between Mr Somyurek and Person C, where Mr Somyurek asks Person C to identify in a spreadsheet which members are 'yours' and note their ethnicity, for instance 'IND' for Indian
  - a spreadsheet recovered from Mr Somyurek's electorate office, detailing Turkish members
  - an August 2018 spreadsheet recovered from electorate office of Ms Kairouz containing more than 2,000 members from Western Metropolitan region, with comments added about factional alignment or ethnicity.
248. Person C said in their response to the draft report that they were not a 'hard core' factional player, as they were helping other factions as well; that they had never involved themselves in branch stacking but certainly had 'educated and motivated our people to join mainstream politics'; and that 'the gateway to mainstream politics' was to become a member of the party.
249. Further examples of recruiters employed in the offices of MPs associated with the ML faction are contained in Chapter 5.

### Management of membership renewals

250. For a faction to continue to benefit from recruiting non-genuine members, it was necessary for the faction to ensure that those memberships did not lapse. To remain current, ALP memberships needed to be renewed by May each year. Members received a renewal form, which they were required to sign and return to the ALP with the applicable annual renewal fee. As a result of the Bracks-Macklin Report of November 2020, the renewal system was changed to a system of automatic annual renewals supported by direct debits. It is no longer based on an annual membership year that expires in May each year.
251. Part of the factional renewal process was to seek a list from head office of members who had not renewed their membership. Many non-genuine members would throw away or lose their renewal notices. Factional operatives would need to ask head office to re-send the renewal notices to the local MP's office or other nominated person for further follow-up.
252. The membership renewal season in the months preceding the deadline for renewals at the end of May each year generated intense activity for recruiters and organisers. As one ALP member said:
- That is how the renewal would work each year, it would be brought by a person, to our door. It was a case of them chasing us, rather than us chasing them each year to continue being an ALP member.
253. A key activity was the management of membership databases. Computers seized from Mr Somyurek's and Ms Kairouz's ministerial and electorate offices contained numerous spreadsheets that had been generated to record and track ALP members and their affiliations. The spreadsheets were not limited to members in Mr Somyurek's or Ms Kairouz's own electorates, and were unlikely to have been used by their employees for legitimate, publicly funded electoral work. Witnesses also produced spreadsheets still in their possession.
254. Many of the spreadsheets appear to have been generated or updated during working hours, according to the documents' metadata.

255. Just a few examples of the large volume of spreadsheets that were produced showed:

- lists of members by electorate\*
- lists of branches by electorate and factional affiliation, especially in relation to the federal electorate redistribution in 2018
- lists of members by ethnic or religious groupings\*
- lists of members from particular ethnic groups, in particular electorates linked to particular recruiters or organisers\*
- ML candidates for the 2018 National Conference delegate ballot
- members who had voted in the 2018 National Conference delegate ballot and those who had asked for new ballot papers to be re-issued.

*(\*asterisks indicate documents that were apparently produced during the author's working hours. Multiple employees have acknowledged working on the National Conference ballot during working hours.)*

256. The personal details of members in the spreadsheets were comprehensive, listing names, preferred names, addresses, phone numbers and email addresses. While many spreadsheets had fewer than a hundred names, some ran to hundreds or thousands of names and included identification of factional, religious and ethnic affiliations where they were known to the author.

257. A spreadsheet from 2016 that was found on a computer in Ms Kairouz's electorate office allocated ALP members in the Gorton FEA to 12 factional operatives, including two of Ms Kairouz's electorate officers: Electorate Officer E and Electorate Officer A. The existence of many such spreadsheets demonstrated the detailed level of organisation undertaken by the faction.

258. Electorate Officer A initially worked as an electorate officer for the member for Keilor, and then for Ms Kairouz after the then member for Keilor's retirement in 2010. Electorate Officer A agreed that it was standard practice to do factional work during work hours as well as outside work hours, and that sometimes very significant amounts of factional work were done under their auspices as the office manager in Ms Kairouz's office and with Ms Kairouz's knowledge. Electorate Officer A said that the factional work was often done at the MP's request, because the MP was concerned to keep their pre-selection. Mr Byrne also testified that activity by staff to renew memberships was often undertaken during working hours.

259. Mr McLennan said that extensive work was required in the south-east region during the renewal season to calculate member lists, assess who had paid their dues and who had not, obtain forms from head office, print them out, break down lists into ethnic groups, and task other factional members to follow up the members. Mr McLennan was tasked by Mr Byrne and Mr Somyurek directly, and on occasion indirectly via an intermediary with a coordinating role in this process, particularly in the years 2014 to 2017.

260. Electorate Officer F, who worked as an electorate officer for Mr Somyurek between July 2016 and May 2018, said that the work they undertook for Mr Somyurek, and also for Mr Byrne, included membership management and that it was something 'we all did'.

261. Electorate Officer F described their work in Mr Somyurek's office as being focused on the Turkish community, particularly the members whom their father had managed before he passed away. Electorate Officer F said that they were responsible for about 150 members. This involved ensuring that their memberships were renewed, that their membership forms were delivered back to head office, that their memberships were paid for when necessary, and that they voted in internal ballots when necessary.

262. Electorate Officer F estimated that they would need to spend 45 minutes on average with each person they visited to renew their ALP membership. This was necessary as they were essentially asking them as a favour each year to allow the ML faction to renew and pay for their membership and in turn to have control of their vote in internal ALP ballots. Electorate Officer F made these visits both during and outside their working hours.
263. Electorate Officer F said they would ask those MPs and others who were contributing to memberships fees for more money when it was required for renewals, and would often drop the money into head office during work hours as they lived on that side of the city.
264. Electorate Officer F kept track of their members by obtaining, from ALP head office, spreadsheets of members for particular branches and electorates and identifying those who they were responsible for. For members outside their own branch, they would liaise with other factional figures and arrange for them to obtain the relevant lists from head office.



## Case study 1: Membership management by Electorate Officer E

The focus on membership management by ML factional leadership is illustrated through one electorate officer's evidence, demonstrating that not only did they perform such work during work time but that they understood such liaison with ALP members as being the core part of their role.

Electorate Officer E, a part-time electorate officer in Ms Kairouz's electorate office, provided a sworn statement in which they advised:

My job is to principally translate into the languages of Cambodian, Chinese and Vietnamese for all the people who need help with their ALP memberships and things like this. I also do this for other enquiries if they (people who can't speak English) have problems in other areas that our office can help with. We have a number of people at the office who speak different languages, and this is a very important part of the role ... The busiest time for memberships is between December and May. Vietnamese is probably my main area, 20 Vietnamese families, 10 Chinese families and 15 Cambodian families ... Marlene is not involved in the membership work that I do for the community. She has left it to me, she is aware of me doing it but is too busy to be involved in that sort of work.

Ms Kairouz said that Electorate Officer E was recommended to her by other MPs because of their multilingual skills and contacts with the Vietnamese community. She denied that Electorate Officer E's principal role was to help people with their memberships. Although she was aware that Electorate Officer E undertook membership renewal work, she described them as being more of a 'social worker for the Vietnamese community'. Ms Kairouz's evidence does not align with a recorded meeting of factional operatives on 11 March 2020 where Ms Kairouz spoke of membership renewals as a routine part of her office's work.

Electorate Officer E also worked for Mr Scott, who said that he only employed Electorate Officer E to be a contact point for members of particular CALD communities because they spoke several languages and was a Level 2 translator / interpreter. He said that Electorate Officer E wasn't involved during their working hours in any ALP activities, such as recruitment.

## Service on the Membership Administration Committee and other internal ALP committees

265. An important step in the processing of memberships during the period examined by Operation Watts was the approval, rejection or deferral of applications by the Membership Administration Committee (**MAC**), which was an internal ALP committee. The committee has more recently been abolished as part of the Bracks-Macklin reforms, with a reformed membership subcommittee introduced in its place.
266. Mr Bracks and Ms Macklin commented in their report:
- ... the supposed governance over the membership process, the Membership Administration Committee or 'MAC', has often operated like a swap meet, exchanging the approval of one group of non-genuine members for the approval of another group's non-genuine members. In addition, many new member applications have been stalled, sometimes for more than a year, due to minor technicalities, or because they are not known to members on the MAC.<sup>66</sup>
267. Operatives from inside the ML faction, entrusted by ML factional leaders, were appointed to the MAC, and were expected to challenge or delay membership applications from rival factions and to support ML-linked applications. Objections and arguments required detailed knowledge of the rules, an understanding of any deals that might have been agreed between the factions, and the checking of each application for errors or points of argument, such as whether the person's address aligned with their electoral roll address, the manner of payment, whether they had signed, whether the branch executive member had signed, and whether all the other required details on the form had been provided.
268. Mr Garotti agreed that someone in each region had to be aware of what was going on in the branches in their region and that he was the liaison point for the northern suburbs. For example, he would be advised if there were issues at the MAC in respect of applications from one of the ML's northern suburbs branches, and would contact the relevant ML person at the particular branch to discuss the problem and provide feedback to the ML representative on the MAC.
269. Membership of the MAC was ostensibly a volunteer role; however, Electorate Officer X, who worked for a number of MPs including Mr Somyurek and Ms Kairouz, testified that it was not sought after because of the nature of the activity. Electorate Officer X agreed that people wouldn't do it unless they were being paid for it as part of their employment as an electorate officer, stating:
- ... it's not on paper that you would - this would be a part of your job. But if you didn't do it you wouldn't have a job, essentially. And that's not to say that the MP would fire you or something, but you need to have - if you are going to be a member of parliament that by virtue of having stacked branches you're in parliament, you're going to need to have someone from your office to engage in this sort of activity, otherwise you're not going to be in parliament for much longer, and your electorate officers won't be employed by you because, like I said, you won't be a member of parliament.
270. When attending head office before the meeting, an operative would also check that the papers submitted by the branch that accompanied the membership applications were in order.

<sup>66</sup> S Bracks and J Macklin 2020, *The Administrators' Final Report to the National Executive of the Australian Labor Party*, Australian Labor Party, Victorian Branch, Melbourne, p 25.

271. An example of the detailed nature of such work occurred on 31 January 2020 at 12:36 pm, when Mr McLennan sent an email to one of Mr Somyurek's ministerial advisers, asking the ministerial adviser to send the following email to head office and saying that Mr Somyurek had asked him to go to head office to view the documents if required:

Hi ....

I have a query in relation to 3 members currently in the Hoppers Crossing Branch.

[ALP membership number and name]

[ALP membership number and name]

[ALP membership number and name]

I have gone through previous memberships lists and can see that the above members were all previously members of the Werribee Branch or the Tarneit Branch as recently as late October.

I am wondering when these members transferred into the Hoppers Crossing Branch and what documentation was submitted with any request to transfer branches. If a copy of this documentation can be forwarded to me it would be greatly appreciated, if not I am happy to come to Head Office and view it in person.

272. Significantly, Mr Somyurek's instruction to his own adviser was communicated via the factional hierarchy, that is, via Mr McLennan, even though Mr McLennan worked in another office. Further, Mr Somyurek assumed that his own adviser would be able to visit ALP head office, which was open during office hours only, to perform this factional task.

273. A typical text message exchange that also demonstrates the day-to-day nature of such administrative work occurred on Monday 10 May 2017 between 3:46 pm and 4:03 pm, during work hours, between Mr Somyurek and a ministerial adviser to Ms Kairouz, Ministerial Staffer G:

MINISTERIAL STAFFER G: Hey! Have you had a chance to speak to ... [a leading member of the Left faction] about the Cranbourne/Hampton Branch? Does it need to be held over again at admin?

MR SOMYUREK: Can u please speak to nick about that and then ... [another leading Left factional member] - make this the first deal u r brokering.

274. Although minor and one of many such similar conversations, the exchange illustrates the roles of Mr Somyurek, Mr McLennan ('Nick') and Ministerial Staffer G, the induction of Ministerial Staffer G into higher-level factional work, the deal-making that went on between factions, and the role of the MAC in processing applications from monthly branch meetings.

275. Mr Somyurek's executive assistant, Ministerial Staffer AB, attended some MAC meetings and said that three days were needed for the preparatory work for such meetings. One of Mr Somyurek's ministerial advisers said that the requirement was much less, usually 1.5 to 2 hours, although it could sometimes be a day. The ministerial adviser further advised that Mr Somyurek knew and approved of the factional work that they were doing and that they operated from the perspective that unless it was campaigning work, factional duties were okay. This was work that was undertaken by ministerial advisers during work time on ministerial computers.



## Case study 2: Factional work by Ministerial Staffer AB – Membership Administration Committee

Ministerial Staffer AB provided forthright and complete evidence about undertaking factional work, while being employed as a public resource, under the direction of Mr Somyurek or other staff acting at his direction, such as Nick McLennan and Michael de Bruyn. In substance, the investigation rejects criticism levelled at Ministerial Staffer AB's testimony by Mr Somyurek in his evidence. Ministerial Staffer AB's story illustrates how someone new was brought into the fold and into the factional work relating to the MAC.

Ministerial Staffer AB described how they were initially seconded from their public service role to help set up Mr Somyurek's ministerial office when he was appointed as a minister. Ministerial Staffer AB became more interested in politics and the work in the office and, as a result, joined the ALP. Although Ministerial Staffer AB then signed a contract as an executive assistant in Mr Somurek's office, they were allocated other duties – including factional work. Ministerial Staffer AB would arrange meetings between Mr Somyurek and factionally aligned stakeholders and participated in MAC meetings. Factionally aligned stakeholders could include union officials, federal MPs, businessmen or community organisers. Ministerial Staffer AB said that Electorate Officer X and one of Mr Somyurek's ministerial advisers worked longer hours on factional business than Ministerial Staffer AB did.

With respect to the MAC's membership work, Ministerial Staffer AB, who was identified by Mr Somyurek as someone who could be trained up in these tasks, referred to the need to check whether the local branch executive had notified head office that the meeting was going to be held; that the time, date and venue were accurately described; that the right number of people were expected; and whether the attendance register had been signed by the new members.

Ministerial Staffer AB said that they were responsible for going through membership applications from the western region 'with a fine-toothed comb', and other staff were responsible for scrutinising other areas. Ministerial Staffer AB was allocated this work by Mr Somyurek. It might also involve talking to the MPs from the relevant regions to check on the applications. An email chain was tabled during Ministerial Staffer AB's examination referring to the work that Ministerial Staffer AB and others were undertaking to check irregularities and seeking the names of regional organisers with whom to liaise. Ministerial Staffer AB also saw or heard Mr Somyurek provide instructions on a daily basis to Mr McLennan about factional matters.

Ministerial Staffer AB said that a MAC meeting usually started at 5:30 or 6:30 pm, and that she and other ML operatives would leave their office at about 3:30 pm, or 2:30 pm if it was a big meeting. If the meeting ran late, to 8 pm or 9 pm, Ministerial Staffer AB would not be expected to arrive at work the following day until later in the morning, around 10 am or 10:30 am. Ministerial Staffer AB stated that others followed the same practice, and that others also attended many branch meetings in the evenings, which Ministerial Staffer AB was not required to do.

## Case study 2: Factional work by Ministerial Staffer AB – Membership Administration Committee

The investigation heard of many instances in which employees who attended MAC meetings were berated for perceived errors in the way they managed their participation – for example, if they had adjourned applications that were meant to have been considered at the meeting or had made errors in filling out application forms for new ML-aligned members. Ministerial Staffer AB was asked how Mr Somyurek responded to an incident at a MAC meeting at which Ministerial Staffer AB had held over some applications contrary to what Mr Somyurek had intended. Ministerial Staffer AB said that ‘he was just hitting the roof, screaming down the phone’.

Ministerial Staffer AB said that although the amount of factional work was variable, they could spend 80 per cent of their time on some days doing membership work. Ministerial Staffer AB referred to an example where they were asked to prepare a spreadsheet during work hours prior to an upcoming State Conference, before sending it to Ms Kairouz’s office, and then making corrections the following day after receiving feedback.

Ministerial Staffer AB also referred to contacting factional organisers such as an electorate officer in Ms Vaghela’s office, Electorate Officer H, and an electorate officer in Sarah Connolly MP’s office, or Ms Connolly herself, during office hours to discuss membership issues. Ministerial Staffer AB said they would ask these individuals about upcoming branch meetings, how many memberships she should be expecting for a MAC meeting, and if there were likely to be any issues. Electorate Officer H did not dispute this, but noted that they have no control over the incoming calls or the nature of those enquiries, they also described the contact from Ministerial Staffer AB as being ‘very minimal’ and stated that they had worked many extra hours to more than compensate for any time spent receiving calls, noting Ms Vaghela’s office as one of the busiest they had worked in.<sup>67</sup>

Ministerial Staffer AB was categorical that they had never been told to make sure factional or party-political work was undertaken outside work hours, and that in fact it had been specifically required and expected that they would do factional work during work hours:

In fact I was given – there were multiple times where numbers – it was approaching State Conference and there was a spreadsheet and Adem gave me the spreadsheet during work hours and I had to get it done by the end of the day and then send it through to Michael from Marlene’s office and then he would come back to me and I would have to fix it the next day. So it was during work hours.

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<sup>67</sup> Ms Vaghela also said in response to the draft report that there was no reason for Ministerial Staffer AB to contact Electorate Officer H in her office, as they were not the secretariat of the relevant branch, and that all the branch meeting information was held by the electorate officer in Ms Connolly’s office.



## Factional disputes and power struggles

276. Other factional or party-political tasks would arise, depending on what was happening in the general party and politics at any time. News reports, internal party reviews and Mr Somyurek himself in his submission to IBAC indicate that relations between ALP factions ebbed and flowed as old groups and alliances dissolved and new groups formed. Relations could be relatively peaceful, with different factional interests and ambitions able to be accommodated in the party's structures and processes, while at other times factional rivalry could burst into aggressive hostility between the groups. During such episodes, factions might use branch stacking tactics to take over branches that were traditionally controlled by another faction, with consequences for the composition of national and state conferences and powerful internal committees.
277. During such periods, work might be allocated to employed factional members without apparent regard for any official duties they might have or tasks that the minister or MP for whom they worked might need them to undertake.
278. Mr Scott described never-ending factional activity:

MR SCOTT: ... it's a lot of the same sort of things happening over and over again, but there are sort of struggles for power, manoeuvring, positioning that takes place and decisions that are made, and certainly Mr Somyurek and Ms Kairouz were part of, you know, an ongoing process and a leading part of an ongoing process of responding to those events and helping to shape—

COUNSEL: So is it correct to say that there were factional struggles from time to time, and perhaps more recently, in around 2019, early 2020, things were getting particularly heated, as far as you're aware?

MR SCOTT: There are ongoing factional struggles. Like, it never ends. It's a sort of - it's an endless process. So there's never a resolution. That's one thing. There's never a point where it ends.

## Activity relating to attempted takeover of Hoppers Crossing branch and associated disciplinary proceedings

279. In January 2020 there was a violent incident at a planned meeting of the Hoppers Crossing branch. The meeting was to be held at the home of an ALP member, Person AA, who was at that time aligned with the Socialist Left faction. Witnesses alleged that Person AA had been transferring members from the Tarneit branch to the Hoppers Crossing branch for their faction to gain control of that branch<sup>68</sup> and that, in retaliation, the ML faction brought a large number of people to the planned Hoppers Crossing branch meeting at Person AA's house to disrupt the meeting.<sup>69</sup>
280. Ms Vaghela, who attended the meeting, confirmed that ML factional organisers, including some of her electorate officers and her husband, worked on preparing and conducting their activities, although she denied that this work was done during their work hours that she or her staff prioritised factional work over constituent work. The incident was part of a broader outbreak of factional rivalry between branches in western Melbourne in 2019 and early 2020.<sup>70</sup>

<sup>68</sup> In response to the draft report, Person AA stated that there was no transfer not tied to the branch of any members between the Tarneit branch and the Hoppers Crossing branch and that 'this allegation is without foundation'. We note that the allegation is founded on the evidence of other witnesses.

<sup>69</sup> In their response to the draft report, Person AA stated that the rationale for the branch meeting being held at their home was for an ordinary branch meeting followed by an Australia Day barbeque. About 100 people attended Person AA's home on the day of the planned branch meeting, most of whom were not members of the Hoppers Crossing branch, and many were not even members of the ALP. The attendees included various ML factional operatives aligned with Mr Somyurek. Person AA claimed that, immediately before the scheduled start of the branch meeting, the executive cancelled it because many of the attendees were becoming increasingly agitated, and it was decided that it was unsafe to proceed. Person AA subsequently asked attendees to leave his house. Person AA submits that the video footage of this incident shows attendees engaging in incendiary and hostile behaviour and that 'two acts of violence were committed' against Person AA.

<sup>70</sup> In her response to the draft report, Ms Vaghela stated that factional leaders and staffers of the SL faction, including Sarah Connolly, also attended the meeting.

281. During the attempt to disrupt the Hoppers Crossing branch meeting, Person AA was allegedly punched by someone who had been brought by one of Mr Somyurek's employees.<sup>71</sup> Following that incident, Person AA was covertly recorded making allegedly racist remarks about people who had disrupted the meeting. Person AA's recorded remarks were reported in the media.
282. The ALP subsequently commenced disciplinary proceedings against Person AA in respect of branch-stacking allegations and their purportedly racist comments.<sup>72</sup>
283. Mr Somyurek resolved to seek Person AA's expulsion from the ALP and to use staff associated with the ML faction to pursue that aim. As there was a lull in branch membership work due to Covid-19 restrictions, in April 2020 Mr Somyurek assigned two electorate officers, Electorate Officer I and Electorate Officer J, to work on collecting material for the ALP's investigation into Person AA.
284. Mr Somyurek agreed that the numerous messages and conversations during this period showed that he expected Electorate Officer I and Electorate Officer J to be working on factional matters during work time and that Mr de Bruyn was directing these electorate officers on tasks to support the charges against Person AA. In a conversation between Mr de Bruyn and Mr McLennan, also in April 2020, they discuss an upcoming Zoom meeting that would focus on the case involving Person AA. Electorate Officer J, Electorate Officer I and Mr McLennan all acknowledged spending significant time working on this factional pursuit of Person AA under the direction of Mr Somyurek while being paid as public resources.
285. Mr Somyurek acknowledged that communications between himself and others demonstrated that he had directed one of his ministerial advisers to arrange for the covert recording of Person AA's remarks, which Mr Somyurek had obtained, to be transcribed and that this work had also involved Mr de Bruyn. Mr Somyurek accepted that two ALP members involved in the ML faction, Person C and Person D, funded the transcription of the recording that was the basis for the eventual charges issued against Person AA. Mr Somyurek indicated that Person C and Person D had their own motivations for doing so, remarking that they 'were leading the field battling it out [bringing new members] with [Person AA] in attempting to keep Sarah Connolly in her seat'. In their responses to the draft report, Person C and Person D denied paying for the transcript. They were not aware of why Mr Somyurek said that they had paid for the transcript and denied assisting or attempting to assist Ms Connolly.
286. Mr Somyurek claimed that people connected to him were independently engaging in a branch-stacking competition against Person AA. However, that is incompatible with a recording that occurred on 24 May 2020 in which Mr Somyurek was discussing with an electorate officer interest from the media in Mr Somyurek's involvement in branch stacking, including in connection with the meeting held at Person AA's house. It provides further context for the work done by those electorate officers and Mr McLennan:

MR SOMYUREK: Just branch stacking. Well he [media] would've written it in the email.

ELECTORATE OFFICER: Yeah, yeah.

MR SOMYUREK: So there's nothing, I mean, they can't do a program with nothing!

ELECTORATE OFFICER: No that's right um-

<sup>71</sup> Further responses of Person AA to this general incident and the related events can be located in the Appendix A.

<sup>72</sup> Person AA's response to the draft report on this issue, and our comments on that response, are set out in Appendix A.

MR SOMYUREK: But he'll [media] play up that meeting [at Person AA's house] and say well 'all these people' [belong to Mr Somyurek]

ELECTORATE OFFICER: Yeah,

MR SOMYUREK: And I'll just say half of them were [Person AA]'s - it's not true but I'll say it.

ELECTORATE OFFICER: (laughs) Oh the, the [people], that went there [Person AA's house].

MR SOMYUREK: Yeah, no one knows.

ELECTORATE OFFICER: No (laughs).

MR SOMYUREK: That meeting's not gonna be ah put through now so it's not - like it never happened so no one knows-

ELECTORATE OFFICER: No, no.

MR SOMYUREK: -whose is who so I'll just say well you know, you're assuming everyone's fucking people are associated with me.

287. Mr Somyurek goes on to say that he'll advise the media 'well there were a lot of Sikhs there', intending to represent that Person AA was responsible for the large group of members at the meeting. This conversation, in addition to revealing the ease with which Mr Somyurek displays a willingness to be untruthful for factional advantage, also clearly demonstrates his centrality to the events that occurred before, during and after the meeting.
288. The investigation notes that the parties tasked in connection with events leading up to, during and after Person AA's branch meeting, while also possibly having their own motivations, observed Mr Somyurek as the leader to whom they ultimately reported on the plan and outcomes of the attendance at Person AA's branch meeting and the aftermath. Mr Somyurek's direction of the electorate and ministerial staff who attended the branch meeting and their follow-up work during their work time demonstrates his prioritisation of factional or party-political matters at the expense of legitimate constituent work.

## Derrimut branch

289. Such activity was not confined to what Mr Somyurek described as the branch-stacking war in late 2019 and early 2020. For example, the Derrimut branch executive positions were spilled at a meeting on the evening of 10 April 2019, when ML faction members used their numbers to install members from their own faction. Before the meeting, Electorate Officer X confirmed with head office that the meeting was still on, and obtained a list of new members and members whose details contained some irregularities. Emails with other faction members to prepare the takeover occurred both during and outside office hours. A spreadsheet was prepared, allocating members to the newly redistributed FEAs of Gorton and Fraser. Between 1:02 pm and 4:56 pm on Wednesday 10 April 2019, Nick McLennan, at the direction of Ms Kairouz and using one of Ms Kairouz's ministerial office computers, prepared a list of motions to be put to the meeting.
290. The meeting was attended by members of the ML faction who were also employed in either Ms Kairouz's electorate or ministerial office, including Mr McLennan, Electorate Officer A and two others. Faction members exchanged messages leading up to and during the meeting. Ms Kairouz's chief of staff, Michael de Bruyn, texted the group:
- Good luck to ... [one of Ms Kairouz's ministerial staffers] and Nick in their work duties in Derrimut tonight. RIP.
291. In response to a later question from Mr de Bruyn about the numbers at the meeting, Mr McLennan advised: 'it's about 50 vs 4', to which Mr de Bruyn texted: 'Holy fuck', 'RIP' and 'At least you'll get your 13 through'.
292. Mr McLennan also provided Ms Kairouz with real-time text message updates as the meeting progressed. Ms Kairouz gave instructions to Mr McLennan, from the car park outside the meeting, such as 'keep the book', 'vote for interim chair' and 'move the motions'.



### Case study 3: Pre-selection of Kaushaliya Vaghela, Legislative Council Member for Western Metropolitan

One of the greatest rewards for factional operatives was to be pre-selected as the ALP candidate in a winnable seat. At Ms Kairouz's electorate office, a large amount of material was located evidencing work dedicated to the support of Ms Vaghela as a candidate for the Western Metropolitan region. This included material evidencing that one of Ms Kairouz's electorate officers, Electorate Officer A, worked on this matter while she was meant to be working as an electorate officer. Electorate Officer A acknowledged generally that they and others did indeed perform factional or party-political work during their time as an electorate officer.

Ms Vaghela thought that considerations of factional power and numbers of members in a person's control were the primary considerations in pre-selection decisions, rather than the skills, capabilities and values of a member who wanted to nominate.

Ms Vaghela explained that seats were divided between the factions and that the factional leaders decided who would be pre-selected for the seats that they controlled.

Ms Vaghela said that her associates, including Electorate Officer Z and another ALP member, Person C, became concerned when it became apparent that the ML faction was seeking to install another woman of Indian descent on the Western Metropolitan ticket. After discussions between Ms Vaghela's colleagues and Mr Somyurek, Person C asked Ms Vaghela if she would be a candidate instead. Ms Vaghela said she initially declined, explaining that she hadn't asked anyone to 'give her the ticket' (pre-selection) and that she hadn't 'done any of those things which she saw the aspiring politicians who wanted to become an MP' do, noting that aspiring members all 'had to put the members [in] to become an MP'.

Ms Kairouz confirmed that after she and Robin Scott met with Ms Vaghela, they concluded that she would be a better candidate than the person they were previously considering. They decided to support Ms Vaghela's candidacy if her group transferred its allegiance to the ML faction. Ms Kairouz's office was used as a base to support Ms Vaghela's candidacy.

Electorate Officer Z said that they were able to persuade Mr Somyurek to put Ms Vaghela on the Western Metropolitan ticket in return for their group's support through their community. Electorate Officer Z also said that Ms Vaghela had worked harder for Labor than had the person who was proposed to go on the ticket and was also a woman of Indian descent.

Ms Vaghela said that Electorate Officer Z was upset that the Socialist Left faction had not supported them in the nomination for a Legislative Assembly seat and was also willing to change their factional loyalty to the ML faction. She attended a meeting between her husband, Electorate Officer Z and one of the Socialist Left faction leaders, at which Electorate Officer Z sought the faction leader's support to nominate for the seat of Cranbourne. Ms Vaghela said that the faction leader said that they would not support Electorate Officer Z because they did not have sufficient numbers of members.

Ms Vaghela thought that Mr Somyurek was interested in the number of members that her group could bring to the ML faction in the future, even if Electorate Officer Z did not have a large number of members to bring at the time when they joined the ML faction. She also expressed scepticism about the willingness of the factions to deliver positions in return for members, given that she thought that the Socialist Left faction had failed to deliver pre-selection for Person AA, who had recruited large numbers of people of Indian descent to the ALP for a number of years.<sup>73</sup>

Ms Vaghela accepted that, once she took her seat in Parliament, there was an expectation that she would continue to ensure that new members were recruited to the ALP and were loyal to her faction.<sup>74</sup>

Mr Somyurek accepted how the pre-selection of Ms Vaghela transpired, saying:

Our priority at that point was Ms Connolly in Tarneit because she was being constantly harassed by [Person AA] and recruiting Indians. We thought if we had an Indian candidate who could sort of offset the prestige [they] had gathered ... that would keep ... [the member] safe.

Ms Vaghela was pre-selected to contest the Legislative Council seat for the Western Metropolitan region. Electorate Officer Z ran for another Legislative Assembly seat after they and their supporters switched their allegiance to the ML faction. Although Ms Vaghela was supported by the ML faction, numerous witnesses said that the faction did not expect that the Western Metropolitan region seat was one that would ultimately result in Ms Vaghela becoming an MP.

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73 In response to the draft report, Ms Vaghela clarified that Mr Somyurek had not asked her group to join the ML faction, but rather that it was 'the other way around'. She acknowledged that by recruiting her group to his faction, 'maybe he [Mr Somyurek] did see the possibility to increase his future party membership base from [her] group', but this was 'just based on assumptions'. Ms Vaghela noted that at the time she and her associate, Electorate Officer Z, did not have a large number of ALP members in their group, nor did the other woman who was originally proposed for the Western Metropolitan ticket, which she thought cast doubt on membership being the 'criteria' for pre-selection.

74 In her response to the draft report, Ms Vaghela said that the requirement or expectation that MPs recruit ALP members originated from the ALP, not from Mr Somyurek. She said that the requirement is on the ALP state election candidate nomination form.

## Internal ballots

293. Along with trade union influence, the votes of rank-and-file ALP members largely determined the results of internal elections for candidate pre-selection, national or state conference delegates, or party administrative positions. Such internal ALP ballots could trigger intense activity by a faction to promote its candidates.
294. In the lead-up to internal ballots, new spreadsheets would be generated, how-to-vote cards produced, and renewed efforts made to contact members. Some nomination forms required a significant number of members to nominate a candidate. Electorate Officer A verified that signatures were collected on blank nomination forms for use once candidates for election had been decided by the factional leaders. The signatories would not have known who they were actually nominating in this unethical practice.
295. Voting papers would be collected from members who agreed to allow operatives to complete the ballot on their behalf. The faction would arrange for a new ballot paper to be sent to an electorate office if it had been lost or thrown away. Mr Garotti confirmed in his evidence that there was a centralised process involving the collection of ballot papers from factional members in order to maximise the effectiveness of their votes.
296. Some positions were elected by the State Conference. It was common for factional groups to collect voting papers from delegates at the conference and then complete them as a group, despite rules that required such ballots to be secret ballots. Numerous witnesses advised the investigation that bloc voting, involving the collection and completion of voting ballots from rank-and-file members by operatives often employed as ministerial or electorate officers was an open secret and the norm in the party. Witnesses even described dedicated rooms where each faction could complete these ballots en masse. A longstanding elderly ALP member gave evidence to the investigation that, when he attempted to enter one of these factional rooms at a State Conference to confirm his suspicions of what was going on, the factional leaders set security upon him, resulting in him sustaining a serious injury.
297. The investigation further notes that individual ALP members complained of this common bloc voting practice to the Bracks-Macklin review, but were disappointed to feel that the topic had ultimately been ignored by the review. It is noted that the topic did not feature in the subsequent reforms recommended by the Bracks-Macklin review, despite appearing in an initial summary of feedback themes provided to ALP members to update them on review progress.<sup>75</sup>

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<sup>75</sup> In response to the draft report, the Victorian branch of the ALP said that this matter was considered by the administrators and dealt with by 'strengthening photo identification for all members voting at in-person ballots'. The Victorian branch of the ALP further said that '[i]n so far as postal ballots are concerned, the Branch is currently investigating how the probity of postal ballots can be improved using IT systems, including the implementation of two-factor identity authentication'.

298. A member also provided the investigation with concerns they had raised with the ALP State Secretary and relevant returning officers from 2014 onwards regarding the corrupted conduct of internal ALP elections, outlining the member's observations, over decades, of:

- piles of ballot papers that had not been filled in, but had been signed by the returning officer, waiting to be filled in by person(s) other than the eligible voter(s)
- piles of (now) filled-in ballot papers, waiting to be checked and corrected by various person(s) other than the eligible voter(s)
- piles of (now) filled-in and (now) checked ballot papers, being stuffed into the ballot boxes by person(s) other than the eligible voter(s)
- private voting booths being used only by the very few delegates who were not aligned to a faction - these being the only eligible voters who were not required by their faction to provide their ballot papers (filled-in or not filled-in) to other person(s)
- very few, mostly non-aligned, delegates placing their own ballot papers into the ballot boxes - these being the only eligible voters who were not required by a faction to provide their ballot papers (filled-in or not filled-in) to other person(s).

299. The member received the following response from a relevant returning officer:

The processes followed at this Conference were identical to those that have operated at Conferences for many years.

300. The member received responses from the ALP indicating that the ALP would not be taking the concerns any further, and the member ultimately received an extremely dismissive response after raising the complaint again in a subsequent year. The member expressed concerns for the young ALP members who are required to organise and complete the bloc voting - young people who were often employed as electorate or ministerial staffers:

I have long just shaken my head at what goes on. Branch stacking is for a purpose and it is linked to these ballots. These young people are getting used. People getting onto different positions through these factional heavies. Anything from 2019 conference is potentially corrupted and thus should be null and void. Start again. The Rules are there but not being followed. AEC or VEC should be conducting the ballots.

301. The examination of this practice exposed another example of the serious misuse of public resources. The evidence showed that considerable work involved in the collection and completion of ballots spilled over into electorate and ministerial staffers being required to perform such activities while being paid as a public resource. Multiple witnesses referred to seeing such practices occurring at ministerial and electorate offices under the direction of either Mr Somyurek or Ms Kairouz. Electorate Officer X, who worked for a number of MPs including Mr Somyurek and Ms Kairouz, described ballot completion as a fairly routine task that would be required of him and others when employed by Mr Somyurek.

302. Electorate Officer X detailed an example of themselves and others having also undertaken this time-consuming activity in Ms Kairouz's personal office inside her ministerial office and under her supervision:

I remember doing that in Marlene's ministerial office as well when I was employed ... in that instance there was I believe myself, Michael de Bruyn, Marlene's Chief of Staff. Another person from another faction was also in there because we were trying to coordinate our efforts, but that was actually in Marlene's internal office, inside her own ministerial office there. She was actually in the room as well and we had the ballot papers laid out on the conference table ... we would have them lined up there and we would go through the process [of completing the ballots involving preferences] and that would take a number of hours easily, I imagine.

303. As a further example of an internal ballot that involved misuse of public resources through staff spending a significant amount of their work time on such activities, a case study of the 2018 National Conference delegate ballot follows in the next section. The coordinated activities of ML operatives employed throughout various electorate and ministerial offices ultimately resulted in Mr Somyurek winning a seat on the ALP National Executive.

### Case study: National Conference

304. The ALP's National Conference is its supreme decision-making body, and elects all but one of the voting members of the National Executive.<sup>76</sup> The investigation received evidence that by early 2018 Mr Somyurek had become very interested in becoming a member of the National Executive in order to gain more power over the Victorian branch. A number of witnesses said that the ML faction wanted to remove the leader of another Right sub-faction from the National Executive and replace them with Mr Somyurek.

305. The Victorian branch rules provide for branch and trade union delegates to each make up half of the Victorian delegation.<sup>77</sup> Delegates are elected by a system of proportional representation in a single ballot.<sup>78</sup> Votes are not allocated to candidates on the basis of the federal electorate area (FEA) of the voting members. This means that, unlike elections for FEA delegates to State Conference, a faction that can control the votes of a surplus of members in a particular FEA does not 'waste' any of those votes.
306. The ALP's National Conference is held every three years.<sup>79</sup> The 2018 National Conference was originally scheduled for 28 July 2018. It was later deferred to December 2018 due to the 'Super Saturday' federal by-elections scheduled for July 2018. The deferral caused a significant time gap between National Conference delegate election ballots being sent out (and re-issues requested) in April and May 2018 and the National Conference taking place.
307. A number of witnesses said that the 2018 ballot was unique insofar as the National Conference members had never before been elected by the entire party membership. It required an intensive effort by the ML faction to manage its members' votes.
308. The faction was ultimately successful in securing enough Victorian delegates and agreements with other groups in Victoria and interstate to elect Mr Somyurek to the National Executive.

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<sup>76</sup> ALP National Constitution as adopted 18 December 2018, rr 15(a), 16(a).

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<sup>77</sup> ALP National Constitution as adopted 18 December 2018, r 15(a), Victorian Branch Rules, r 7.3.

<sup>78</sup> ALP National Constitution as adopted 18 December 2018, rr 15(e) and 19.

<sup>79</sup> ALP National Constitution as adopted 18 December 2018, r 15(h).



309. Mr McLennan outlined the process in the south-east electorates at the time of the 2018 National Conference as follows:

- The ballots were packaged in a similar way to a state or federal election postal vote. The ballot paper, a declaration envelope and a return envelope were included in the package posted to the member. The declaration envelope had a detachable slip which the member could sign and enter their membership details. The completed ballot paper should be placed in the declaration envelope which was then included in the return envelope to be sent back to head office. Upon receipt, head office removed the detachable slip without opening the declaration envelope. The member was recorded on the voting register as having voted, and the ballot was separately counted.
- Mr Somyurek and other factional leaders would settle on a candidate list and the different how-to-vote cards to maximise the effectiveness of the votes. The ballot papers were long, with 163 candidates nominating, and were printed on A3 paper.
- Organisers would allocate recruiters to members.
- Recruiters would contact the members in their community and arrange to collect their ballot papers.
- Ballot papers would be completed by factional operatives rather than by the individual voters (in a process described by some witnesses as ‘ballot harvesting’), often at an MP’s electorate office, inside and outside business hours. It was an exhausting process, as the preferences had to be carefully marked. With thousands of ballots to be submitted, each operative had about 220 ballot papers to complete. The process was ‘incredibly time consuming’ and took many hours over many weeks for the individuals to fill out the ballot papers.

- The completed ballot papers were cross-checked by other operatives to ensure their accuracy, as a small error could invalidate the vote.
- Daily lists of those who had voted would be circulated by head office, along with the number of votes required for a delegate quota, which changed from day to day as the total number of votes increased.

310. Mr Byrne, Electorate Officer A (one of Ms Kairouz’s electorate officers) and Electorate Officer X (who worked for both Mr Somyurek and Ms Kairouz in 2018), also confirmed the main features of the process, in particular the collection of unmarked ballots and their completion by factional operatives. Electorate Officer A gave evidence showing how they used the how-to-vote cards to fill out blank ballot papers provided by members and member ‘captains’. In total, Electorate Officer A was responsible for managing the ballot arrangements for approximately 440 members.

311. Electorate Officer X said that ballot harvesting was a much more efficient way than allowing individual members to cast their vote:

if you rely on members to fill out their own ballots, they might make mistakes here or there, they might not follow the ticketing system and then you’re really in the dark a little bit about what the outcome in the ballot count might be.

312. Electorate Officer X said that, given the importance of the National Conference Ballot, Mr Somyurek would have expected them to work in the most efficient manner, which meant working from a well-organised office like Mr Byrne’s office. Electorate Officer X also said that the campaign was ‘organised chaos’, in which as many people as possible were asked to assist with the process.

313. Mr McLennan was aware of Mr Somyurek's and Ms Kairouz's offices being used for ballot harvesting purposes during the 2018 National Conference. Electorate Officer A identified seven people, including Electorate Officer A, who were involved in filling out the ballot papers in Ms Kairouz's electorate office. This is consistent with a recorded meeting of 11 March 2020 where Ms Kairouz, in preparation for the 2020 National Conference, recalled the enormous amount of work involved for her staff in 2018, when she had all her staff 'just working on that' (National Conference voting). Mr Somyurek also came by to check how the process was going, and stayed for most of an afternoon.
314. A ministerial adviser to Mr Robin Scott, Ministerial Staffer K, said that they contacted ALP members in their local area to ensure that members had received their ballots, to collect completed ballots, and to arrange for re-issued ballots if they had been lost or thrown away. Because of the complexity of the ballot papers, factional activists would also fill in collected ballots. Ministerial Staffer K agreed that an enormous amount of time and energy were devoted to the ballot, but was one of the few to say that they solely undertook the work over two or three weekends and not in office hours.
315. In contrast, Ms Kairouz and numerous other witnesses agreed with the contention that this National Conference ballot effort required 'all hands on deck', meaning all available resources, including publicly resourced staff, who were required for significant periods during working hours.
316. The documents seized from Ms Kairouz's electorate office showed a well-organised and detailed strategy to collect ALP members' ballots for this election. Many people were involved, including electorate officers, former local council candidates and known ML factional operatives.
317. A red manila folder titled 'Marlene Kairouz' included annotated spreadsheet lists of ALP members in Gorton, Maribyrnong, Wills, Batman and Calwell FEAs eligible to receive 2018 National Conference ballots. These lists of members had been assigned to specific people for action - including numerous electorate or ministerial staffers.
318. The folder contained sub-folders allocated to particular individuals for action. Spreadsheets followed for other ML factional operatives, each titled with their name and the words 'NATIONAL CONFERENCE BALLOTS', and including the number of members for which they were responsible, for example, '[Electorate Officer E] - 92'.
319. Another manila folder labelled with the surname of Electorate Officer A was obtained from Ms Kairouz's electorate office. This included a spreadsheet of 96 members. It contained 13 different how-to-vote cards for Electorate Officer A. These are considered in more detail below, as the contents show highly coordinated ballot and preference allocations.
320. A further folder, titled 'WORKSHEET', contained more lists of ballots. These lists were titled with the candidate's name and the number of members in the sheet, as well as the words 'NATIONAL CONFERENCE BALLOTS'. The sheet for Ms Kairouz, which included 104 members, included a column 'Status', which indicated that the relevant members' ballots were mailed after being completed with the relevant candidate's how-to-vote card preference order. Further sheets appeared to be annotated lists of members to be contacted for their ballots. Several had been heavily marked up to record collection and sending of ballots.
321. The collection and completion of ballots required a vast amount of work, as factional recruiters would need to visit and re-visit members, as well as collect and deliver ballots from head office. Mr Byrne said that factional operatives were expected to undertake such work during and outside office hours.

322. Mr Byrne sent a text message to Mr Somyurek at the time of the 2018 National Conference ballot in which he asked Mr Somyurek to authorise Electorate Officer X to attend Mr Byrne's office to help with the completion of 210 blank ballot papers. In evidence, Mr Byrne acknowledged that such a task would have taken a couple of people more than a day to complete, given the number of candidates and complexity of the ML faction how-to vote cards. He also acknowledged that Electorate Officer X was at the time employed in Mr Somyurek's office and that his request was for a publicly funded employee to be directed by Mr Somyurek to engage in factional activities. He said that Mr Somyurek was happy for employees in his office to engage in factional activities during work hours.
323. It appears that the harvesting of ballots is a longstanding practice for this and other internal party elections. Ballot harvesting does not conform with the notion that the member has voted for the persons of their choosing. The implication of a member signing and dating the detachable slip on the envelope in which the ballot is enclosed is that the member has personally cast their vote for the selected candidates at the time the ballot paper was completed and it was then enclosed by the member in confidence. Ballot harvesting is another longstanding unethical practice that has been condoned and that permitted outcomes to be achieved which did not necessarily reflect the genuine will of a majority of members.
- Requests to re-issue ballots*
324. Requests by the ML faction to re-issue ballots that were said to be lost or missing were a significant element of the National Conference 2018 campaign. Mr McLennan advised that, although there were no prescribed rules for seeking ballot re-issues, head office required requests to be in writing. A factional operative might need to attend the member's address with a letter for the member to sign requesting the re-issue of their ballot paper.
325. The request could authorise the new ballot to be sent to a nominated person, such as an electorate officer. Once the new ballot was received or collected at head office by the authorised person, if it was intended to ballot harvest, they would need to visit the member to obtain their signature on the declaration envelope's detachable slip, before taking it away for completion of the ballot in accordance with the relevant how-to-vote card.
326. Mr Byrne stated that some members who received ballots completed and returned them on their own initiative and were then asked by factional operatives to ring up head office to say that they had made a mistake or fouled their ballot paper and to ask for a re-issued ballot. Mr Byrne agreed that there was a large number of ballot re-issue requests and that head office must have been 'wilfully blind' to the reasons for such large numbers, given the implication that the relevant members weren't interested in the ballot when it arrived in the mail but later became so motivated as to make a written request for a re-issued ballot. He agreed that such blindness would have the effect of encouraging the practice to continue.
327. Mr Byrne also said that he was concerned that some re-issue requests to head office used forged signatures, although he did not know of any particular person who had committed such acts. He was also concerned that some of the signatures on the envelopes containing the completed ballot might have been forged (the issue of forgery of members' signatures is considered in more detail later in this chapter).
328. Electorate Officer X agreed that the ballot re-issue request process might require two visits to a member's home, and that for some operatives it might have been tempting to take shortcuts, such as forging the member's signature on a request letter or declaration slip. Electorate Officer X said they did not forge any signatures but, like Mr Byrne and others, had a concern about other electorate officers doing so.

329. These concerns of Mr Byrne and Electorate Officer X are accepted and unsurprising given the evidence described later in this chapter dealing with the forgery of signatures.
330. A file titled 'national ballots 2018' located in Ms Kairouz's electorate office contained letters from various ALP members requesting the re-issue of their 2018 National Conference ballot papers. Most of these requests authorised specific electorate and ministerial officers to collect re-issued ballots on their behalf, including three of Ms Kairouz's electorate officers and her ministerial chief of staff, Michael de Bruyn. Many appear to have been sent from Ms Kairouz's electorate office by fax during ordinary office hours.
331. One of Ms Kairouz's electorate officers, Electorate Officer A, said that they thought that the ballot paper re-issue letter template was used and that either they or another electorate officer, Electorate Officer H, would then fill in the names of the members requesting a ballot to be re-issued. In response to the draft report, Electorate Officer H acknowledged assisting branch members when asked, but noted that this was not the extent of their role and that they further assisted constituents and community groups.
332. Two letters in the name of one ALP member were signed in different ways, neither of which was the member's actual signature, but Electorate Officer A denied either signing them or having any knowledge that such practices were occurring in respect of the management of the ballot papers that they were coordinating.
333. Electorate Officer A said that a 'captain', who also often worked as an electorate officer, would take a re-issued ballot paper and envelope to the member for the member to sign the envelope's declaration slip, and then return it with the uncompleted ballot for a factional operative to number the ballot. Electorate Officer A denied that there was a practice of forging signatures on the letters of request and the declaration slips. The investigation noted that other evidence showed that it was a much simpler process to forge signatures than to visit the member, and that the voters were often non-genuine members who did not pay for their memberships and appeared to have no interest in either casting their votes or how their votes were cast.
334. Electorate Officer A also initially said that the possibility of forged signatures had not crossed their mind, although they had faced party disciplinary charges in 2005 for forging signatures that were ultimately dismissed. Electorate Officer A later agreed that they had occasionally wondered if any of the signatures might have been forged, although they did not know who might have engaged in such activity.
335. Electorate Officer A agreed that aspects of the voting process were unethical, that ministers and ministerial and electorate staffers had been involved, and that the practice had been going on for a very long time, so that it was difficult to grapple with its unethical nature.

336. While executing a search warrant at Mr Somyurek's electorate office, IBAC investigators found a stack of undated single-page letters requesting the re-issue of National Conference delegate ballots. The text of these letters was very similar to the other templates used by Ms Kairouz's staff. Another document located on a computer from Mr Somyurek's electorate office was drafted to request that Electorate Officer F collect the member's re-issued ballot on their behalf. Another electorate officer also provided a stack of 10 letters purporting to be from members requesting the re-issue of ballots, to be collected by Electorate Officer F.
337. Investigators obtained statements from ALP members in relation to the 2018 ALP National Conference ballot process. These members were shown 2018 National Conference ballot re-issue letters purporting to be from them. Each of them told investigators that the signature on the letter was not their own. Documents seized from Ms Kairouz's electorate office show that all but one of these members were assigned to one of Ms Kairouz's electorate officers for follow-up concerning National Conference ballots.
338. Further members were shown 2018 National Conference ballot re-issue letters purporting to be from them and requesting that their re-issued ballot be collected by Electorate Officer F. Each of them told investigators that the signature on the letter was not their own.
339. A further person was shown a letter purportedly signed by his brother and advised that his brother had been in Turkey since 2017. This was a letter also requesting ballots be re-issued to Electorate Officer F. A former ALP member was purported to have requested a re-issue of a ballot for collection by Electorate Officer F, but this former ALP member was in fact deceased at the date the letter was purportedly signed (refer to case study 5 later in this chapter).
340. While a number of the ballot re-issue letters were found to contain forged signatures, other electorate officers were required to chase ALP members and obtain signatures. Electorate Officer L, an electorate officer for Mr Somyurek at the time, initially denied that Mr Somyurek had asked them to mobilise ALP members to vote in the National Conference, then indicated that they could not recall participating in the collection of ballots. When confronted with text message exchanges between them and Mr Somyurek, Electorate Officer L acknowledged that the messages showed their involvement with the collection, completion and posting of ballots, including during work hours, and that Mr Somyurek was managing their involvement and that of others.
341. The volumes of re-issued ballots were significant. For example, on Tuesday 24 April 2018 at 2 pm, Mr McLennan texted Mr Somyurek:
- 60 ballots have been requested for reissue by the Turks.
342. The investigation undertook an analysis of ballot re-issue requests by reference to the branches where high numbers of members requested ballot re-issues. While there was an average of 4.4 requests from all Victorian branches, in nine ML-controlled branches an average of 34 requests were sent from each branch. The nine branches accounted for 306, or 34 per cent, of the re-issued ballots. In the Coolaroo branch, 71 members, or 45 per cent of the membership, requested new ballots. Ministerial Staffer K, who was the president of the Coolaroo branch, said that they would have needed to visit all 71 members twice to obtain their re-issue request and then deliver the re-issued ballot. They maintained that they did not make such visits during office hours and that they delivered requests or ballots to the ALP head office in Docklands during their lunch breaks, travelling from their workplace at Robin Scott's ministerial office in the CBD.

343. A 13 June 2018 email from the ALP Chief Returning Officer noted his concerns about members seeking to 'game' internal elections by requesting a re-issue of a ballot. Up until that time, the ALP's position had been that the last-received ballot from a member would be considered their valid ballot. That is, if two votes had been received from the same member, the second, re-issued ballot would be counted instead of the initial ballot. From this point forward, however, the Chief Returning Officer proposed to reverse that position for the Public Office Selection Committee ballot and all future ballots.
344. This directive was sent almost immediately after the 2018 National Conference delegate elections. It is reasonable to infer that the directive was in part a response to the large volume of requests for re-issue of ballots for that election.

## Methods adopted while doing factional work

345. Even in the overall environment of branch stacking and factional work undertaken on the public purse, some other practices, inappropriate in and of themselves, were adopted by ML factional operatives.

### Forgery of signatures

346. As outlined in the preceding section, the investigation received evidence from a range of sources indicating that a number of staff and members of the ML faction forged ALP members' signatures on various ALP documents, such as membership forms and ballot papers. The evidence did not suggest that such forgery was confined to an isolated incident or individual - on the contrary, it suggested that forging signatures was an accepted, or at least tolerated, practice in parts of the faction when it was necessary to achieve a desired factional result.

347. Forging of signatures is obviously serious misconduct. It is illustrative of the point made above that participation in an accepted unethical culture can affect individual moral standards and lead to further forms of misconduct and poor judgment that are justified by the individual as achieving a desired result.

### *Signatures forged by staff in Mr Somyurek's electorate office*

348. It is convenient to first examine Mr Somyurek's general attitude towards the forgery of signatures. In a recorded conversation on 11 March 2020, an electorate officer alerts Mr Somyurek to signatures that appear to have been forged:

ELECTORATE OFFICER: Yep. The other thing is there's a handful that the signatures don't match. Like the signatures match - they don't match the signature on the attendance, so I think they're ones where the person didn't come back, maybe the second time [to a branch meeting which was originally held on wrong date], but their form was put in and then someone must have filled out the thing.

MR SOMYUREK: Fuck.

ELECTORATE OFFICER: Like there's some with quite different signatures. So I don't know-

MR SOMYUREK: Do people check that much?

349. The conversation and that which followed demonstrated Mr Somyurek's concern as being whether the apparent forgery would be discovered rather than how anyone's signature came to be on the attendance register for a meeting they did not (re)-attend.
350. Further evidence of Mr Somyurek's disregard for the integrity of signatures was captured in a recorded conversation of 24 December 2019 with an electorate officer who alerted Mr Somyurek that another electorate officer had not signed the attendance register, and therefore the meeting was in danger of being considered as not having a quorum and therefore not enabling a group of ML-stacked members to be accepted into the ALP:

ELECTORATE OFFICER: Yep. The other thing is, it could - otherwise the other - the other thing is just to wipe the meeting.

MR SOMYUREK: No. No. We've gotta say she signed it.

ELECTORATE OFFICER: Alright.

MR SOMYUREK: No, we've gotta say she signed it. Like-

ELECTORATE OFFICER: All right, well they - they just took it too early-

MR SOMYUREK: They took it too early. Get her to fuckin' come back now please?

ELECTORATE OFFICER: Yep.

MR SOMYUREK: Like now. It just makes us feel better too. And her, if she's asked, yeah I signed it that night.

...

MR SOMYUREK: It will be - it's a big psychological thing in the future, 'cause you say yeah, I signed it that night,

ELECTORATE OFFICER: Yeah

MR SOMYUREK: And you don't feel as bad.

351. At examination, Mr Somyurek accepted the dishonesty he was displaying in this exchange. With the overall leader modelling this behaviour to his and other electorate officers in the ML faction, it is unsurprising, as the evidence below demonstrates, that the methods adopted by Mr Somyurek's subordinates included the forging of signatures.
352. Evidence obtained by the investigation showed that at least two electorate officers employed in Mr Somyurek's electorate office, Electorate Officer F and Electorate Officer M, had forged other ALP members' signatures.

353. Electorate Officer F was examined in private as part of the investigation and admitted that they had forged ALP members' signatures, stating:

[Y]es, things were done. It doesn't necessarily mean everyone's signature was frauded.

...

It would have been done, yes, because it had to be. There's a deadline. It just has to be done, especially when you're picking up extra ballots. You've only got obviously a few days to get things done. So, yes, we would have done that.

354. Electorate Officer F clarified that they did in fact forge signatures (as opposed to talking in hypotheticals), saying 'Yes I did it' and 'I'm ashamed of it'. Electorate Officer F said they spoke directly to Mr Somyurek about forging members' signatures and that it was Mr Somyurek who had told them '[t]o just basically do it':

'If you can't get a hold of the member, sign it'. The renewal form, ballots, yeah, if you couldn't get hold of the member, just to sign - just signing it.

355. Electorate Officer F claimed that signatures were forged on ballots primarily, due to the intensive work and time pressures associated with collecting and submitting a high volume of ballots for the faction, which was particularly the case for the 2018 National Conference. They said:

Yes, because that has to be done in a very limited time, and when we're requesting obviously the ones that didn't have their ballot papers or hadn't received it or coming up as, you know, submitted, they're the ones that we'd be sort of getting on the crunch and just getting it done, because they just have to go in so quickly.

356. Electorate Officer F claimed that signatures on membership renewal forms were not systematically forged in the same way that ballot papers were forged, stating:
- There will only be - there won't be many that will be frauded when it comes to renewals. When it comes to things where we have very limited time, they were just told, 'Just do it'.
357. Mr Somyurek said at examination that concerns had been raised with him by others in the faction about Electorate Officer F forging members' signatures - with them saying to him 'we don't know if this person actually goes door to door or takes the quick route'. Mr Somyurek added that the others who told him this were 'speculating rather than knowing'. Mr Somyurek accepted that his reference to taking 'the quick route' was a euphemism for 'we don't bother to actually get the member's signature'. However, Mr Somyurek strongly denied that he told Electorate Officer F to forge members' signatures, simply stating '[t]hat's not true' without providing any further comment. When confronted with evidence from another electorate officer, Electorate Officer Y, as to Mr Somyurek being present when Electorate Officer M was forging signatures by copying previous membership renewals, Mr Somyurek asserted that Electorate Officer Y was attempting to project their own behaviour of forging signatures onto him.
358. The evidence of Mr Somyurek on this point is not credible. Coupled with other evidence, discussed below, which shows Mr Somyurek's complicity in the forging of signatures, the evidence of Electorate Officer F and Electorate Officer Y, with respect to Mr Somyurek's awareness and comfort with forging signatures is preferred.
359. In a speech to the Legislative Council on 25 May 2022 Mr Somyurek read out what he said was part of a complaint made by an anonymous witness called to give evidence at a private hearing in Operation Watts, that her mental health was not properly managed and that she was forced to give false evidence incriminating Mr Somyurek. In all likelihood that was Electorate Officer F whose relevant evidence is set out above. Electorate Officer F came to give evidence in a private examination because their mental health issues were well understood, and managed with sensitivity and support. In accepting those aspects of the account of Electorate Officer F set out above, we had regard not only to that testimony but other evidence that corroborated part of their account and remain of the view that Electorate Officer F gave a frank account.
360. The practice of forging ALP members' signatures was further evidenced by a number of statements obtained during the investigation from members themselves who indicated that ALP documents purportedly bearing their signatures had not been signed by them. One example is outlined in case study 4.





## Case study 4: Forgery of signatures

Two members of the same family provided statements to the investigation indicating that signatures on two ALP documents purportedly containing their signatures had not been signed by them. The documents were a 2018 membership renewal form for one family member, and a 2018 ballot re-issue request letter purportedly signed by all four family members.

One of the family members said in a statement to the investigation that she was not sure how long she had been an ALP member, and that she 'got into it because [her] dad asked her [to]'. She said that Electorate Officer F, who was a 'family friend', 'used to handle ALP forms for [her] family'. The family member further said:

I can't really remember too much as I have not really been heavily involved in the ALP. I haven't seen [Electorate Officer F] in over three years, since I have been residing at my current address. The IBAC officers showed me a letter dated 28 April 2018 which is addressed to Australian Labor Party – Victorian Branch. The letter is supposedly from four members of my family including myself and is asking for ballot papers to be re-issued and collected on our behalf. As soon as I looked at the letter, I could see that the signature of my mother ... is not her signature. I have never seen a letter like this, and I have never asked for ballot papers to be re-issued for any reason. I didn't sign this letter, while noting the signature appearing on the letter is somewhat similar to my own signature. I have never spoken to [Electorate Officer F] about ballot papers before. The only time I signed any forms for the ALP was when [Electorate Officer F] provided them to me. The IBAC officers showed me a 2018 ALP membership renewal form and I do not believe the signature on that form to be mine.

A second family member provided a statement to the investigation in which they said that they had been an ALP member for about 20 years and had joined 'just in connection with some family friends and being part of the Turkish community'. They said that the signature on the ballot re-issue request letter was 'absolutely not mine', adding that they had 'never seen this letter and did not sign it or authorise anyone else to sign it'. Like the first family member, they said that they 'never had any conversation about ballot papers being re-issued with [Electorate Officer F]' and said that they had not seen Electorate Officer F for three years, nor signed anything from them in that time.

361. Reference has already been made above to the brother of an ALP member who stated that his brother had been living overseas since 2017, hence it would not have been possible for him to have signed two ALP documents obtained by the investigation purportedly signed by him in 2018 and 2019.

#### **Example 1**

I was approached by IBAC officers and asked about my brother ... specifically an ALP renewal membership form from 2018 and a letter dated 29 April 2019 supposedly from [my brother] to the ALP (Australian Labor Party) [requesting his ballot paper be re-issued to Electorate Officer F]. My brother used my own address, the address listed on both the 2018 ALP renewal form and the supposed letter from [my brother] to the ALP in 2019, as a bit of a mailbox for himself. My brother lived in Australia from approximately 1974 up until 5 years ago when he went back to Turkey. He has been back to Australia but not since about 2017. My brother has never lived at my address (the address on ... [my brother's] renewal form from 2018). It was only a convenient postal address for him. I usually throw mail out if its not important or if I've asked him. He has received letters from the ALP and I've thrown them out before.

362. A further example of a statement provided to the investigation is outlined below, in which an ALP member stated that documents purportedly containing their signature had not been signed by them.

#### **Example 2**

I have not been an ALP member for about 5 years. I used to be an ALP member; my dad got me involved. I was an ALP member for a few years, and I used to get renewal forms in the mail, and I would sign.

The IBAC officers showed me a letter dated 27 April 2018 which was addressed to the ALP - Victorian Branch [requesting ballot paper re-issue to Electorate Officer F] and which has supposedly been signed by me. The letter was not signed by me and I did not give anyone permission to sign the letter on my behalf. I am positive it is not my signature. I have never given anyone permission to ask for ballot papers to be reissued on my behalf.

I was also shown, by the IBAC officers, a 2018 ALP membership renewal form with my name on it. Again, I can confirm that the signature on this 2018 membership renewal form was not written by me. It is not my signature and I haven't renewed my ALP membership for approximately 5 years.'

363. In one of the more egregious examples identified by the investigation, the signature of a deceased ALP member was forged on a ballot re-issue request letter.



## Case study 5: Signature of deceased ALP member forged

The investigation obtained a copy of a National Conference ballot re-issue request letter dated 29 April 2018 and purportedly signed by an ALP member, authorising Electorate Officer F to pick up their re-issued ballot. However, this member had died about six months earlier, in October 2017, meaning it was not possible for them to have signed the letter.

The investigation also identified evidence regarding concerns that this member's ALP membership had been renewed some months after they died. In a May 2018 text message exchange between Mr Somyurek and Electorate Officer X, Electorate Officer X asked Mr Somyurek if he knew what 'the situation' was with this member, expressing that they thought this member 'might be deceased'. Mr Somyurek responded to Electorate Officer X 'don't renew' – suggesting an awareness that some members were being renewed without their knowledge and/or without them signing renewal documents.

It is noted that Mr Somyurek did not enquire as to how such an incident may have occurred and did not follow up the matter any further, other than instructing that the membership ought not be renewed. When asked if his response suggested a concern not to be caught forging signatures, he said that it sprang from a concern that Electorate Officer F might have been forging signatures.

When asked about this matter at examination, Electorate Officer F confirmed that this member was one of '[their] members' but claimed '[t]his was one that [Electorate Officer M] was chasing up'. Electorate Officer F acknowledged there were 'ones' that they had signed on behalf of members, but this one 'was actually [Electorate Officer M]'. Electorate Officer F said that this 'became a big matter, issue':

Just internally that it should have been sort of checked properly. But I guess under all that pressure when you're just literally being told to just get it done, I can't speak for everyone else but, you know, people just want to get it done, just done with the headache.

...

I spoke to [Electorate Officer I] directly. I said, 'Who has renewed', you know ... [this member] in this instance. I said, 'I was at the funeral'. Like, because the ones that – it would have been one of the ones that are left ... in the pile that they couldn't get a hold of.

Electorate Officer F said that they recalled also speaking with Mr Somyurek about the matter because:

[T]here's other family members and it makes us look incompetent, and it's again – it comes down to the values, respect ... and that's the last thing you want to see when you – you know, a family member's passed away.

In response to the draft report, Electorate Officer M denied their involvement in this matter, stating: 'I have never forged signatures in my life this is a total fabrication'. Electorate Officer M further said: '[w]e all suspected that [Electorate Officer F] may have been forging signatures' and that another electorate officer, Electorate Officer Y, was 'in charge of all membership matters including renewals, [so] ... [Electorate Officer Y] had the ability to check and provide proof from previous years members renewal forms'.

364. Text messages from Mr Somyurek's mobile phone further supported his awareness of and complicity in the forgery of ALP members' signatures by his staff, as well as indicating Electorate Officer M's involvement in this conduct. In one deleted message, Mr Somyurek said to Electorate Officer M:

I told ... [two electorate officers] that u have been collecting signatures for letters - so when we leave letters in the office for [one of the electorate officers] to pick up they don't think sahte imza [Turkish, translated as 'it's a forged signature'].

365. Mr Somyurek accepted at examination that this message probably related to ballot re-issue request letters for the 2018 National Conference. He also accepted that this message suggested that he was a party to the forgery of signatures with Electorate Officer M and that he was seeking to prevent this from becoming obvious to other staff handling the documents in question - stating 'I think you can probably draw that conclusion'.

366. In response to the draft report, Electorate Officer M asserted that Mr Somyurek 'could not have accepted that I forged the signatures since I did not and never have forged signatures, I have never forged signatures in my life'. Electorate Officer M suggested that this message related to the forgery of signatures by Electorate Officer F, not by Electorate Officer M:

I recall calling [Electorate Officer F] for background information on some of the members before I went to visit them. [Electorate Officer F] insisted that the members were hers and [they] would collect them. I know that [Electorate Officer F's] family were very protective and secretive over their members, so I let Electorate Officer F collect them [themselves]. Mr Somyurek was not happy at that and told me not to tell ... [two electorate officers]. [Electorate Officer F] returned with the signatures fairly quickly although it wasn't impossible to get it done in that timeframe, we were still concerned given that [an electorate officer] ... [was] telling everyone that [Electorate Officer F] may have been forging signatures. Mr Somyurek was keen for me not to tell the others that I trusted [Electorate Officer F] to collect the signatures of members.

367. In another August 2019 text message exchange, Mr Somyurek and Electorate Officer M discussed the collection of ballots from a particular family of ALP members, in which Electorate Officer M told Mr Somyurek in Turkish that 'a fake was going to be sent'.

368. In response to the draft report, Electorate Officer M said that they had 'no idea what this is about' and that they appeared to be 'passing on information to Mr Somyurek from [Electorate Officer F] or ... [Electorate Officer Y]' who were both 'friendly' with the particular family of ALP members. Electorate Officer M said that they did not recall ever meeting the ALP member in question, and that:

Turkish members were [Electorate Officer F's] family's responsibility. [Electorate Officer F's father] made sure I got that message many times over the years. Since [Electorate Officer F] worked in Mr Byrne's office [for the] majority of the time I was in Mr Somyurek's office I was happy to accept that the Turkish members were their responsibility and I would be called in occasionally to help.

369. As Mr Somyurek himself acknowledged towards the end of his examination with respect to the topic of signatures:

I think you've [counsel assisting] made a good case for the signatories, absolutely. I think you've done a very good job there. But, in terms of diverting taxpayer money for factional purposes, I don't think you've made that case at all.

#### *Signatures forged by staff in Ms Kairouz's electorate office*

370. Evidence obtained by the investigation indicated that forging ALP members' signatures was not a practice confined to Mr Somyurek's electorate office, but was also occurring in Ms Kairouz's electorate office. Below are four examples of statements obtained during the investigation from ALP members who verified that documents located in Ms Kairouz's electorate office purportedly bearing their signatures had not been signed by them.

### Example 1

When I first joined the ALP, I believe I paid a membership fee, but I have not paid for my membership since I first joined. Each year my renewal is posted to me and I sign it and return it, but I do not pay. I think I last signed a renewal 2-3 years ago. I have been shown a letter dated 2 May 2018 addressed to the ALP Victoria Branch which appears to have been written by me. I have never seen this letter before, and the signature on the letter is not my signature, although it is similar to my signature. I have never heard of ... [Ms Kairouz's electorate officer] and I did not authorise [them] to pick up any ballot papers on my behalf.

### Example 2

I have been a member of the ALP for about six years and I think I am a member currently. I was first asked to be involved in the ALP by a friend ... I think [this person] works for Marlene, who is in charge of Labor in this area. I have never had to pay any money for my ALP membership, nothing at the start and nothing since. I have never attended any ALP meetings ... [this person] would just bring the form ... each year and I would sign, and she would take away ...

The IBAC officers showed me a letter dated 22 April 2018. The letter is addressed to [an employee] at the ALP Victorian Branch and asks for ballot papers to be re-issued to me. The signature on the letter is not my doing. I have never seen the letter before. No-one has asked for my permission to write or sign this letter. I don't recall receiving any ballot papers from the ALP ever.

### Example 3

I have been a member of the Labor Party since 1974 or 1975. I have never paid any money for my Labor Party membership. Each year someone from the Labor Party comes to my house and I sign a form. The person who used to bring the form was ... [the Member for Keilor], but now it comes by post.

Today the IBAC officers showed me a letter dated 1 May 2018. The letter is addressed to the Australian Labor Party Victorian Branch and had my name at the bottom. I have never seen this letter before and the signature on the letter is not my signature.

### Example 4

I was shown a 2019 ALP membership renewal form, a letter dated 3 May 2018 addressed to the ALP Victoria Branch purporting to be written and signed by me and a letter dated 22 April 2018 addressed to [an employee] at the ALP Victorian Branch. I can say that the signatures on all three of the documents I have been shown are not my signature. I did not sign the documents and have not seen those documents previously.

#### *Attitudes and knowledge of Ms Kairouz about forgery of members' signatures in her discussions with Mr Somyurek*

371. A lawfully intercepted telephone call two days before the *60 Minutes* program aired in June 2020 provided further evidence suggesting Mr Somyurek's and Ms Kairouz's awareness of the practice of forgery in the faction, and their somewhat flippant attitude towards such behaviour. During this conversation, Mr Somyurek and Ms Kairouz speculated about the focus of the *60 Minutes* story, noting that the promotional advertisements had 'said there's corruption', 'explosive new evidence of serious misconduct'. Mr Somyurek and Ms Kairouz conversed:

Mr Somyurek: What is it?

Ms Kairouz: Fucked if I know.

Mr Somyurek: Forms?

Ms Kairouz: Don't know.

Mr Somyurek: Differe- forms? Signatures?

Ms Kairouz: Don't know. That's so what, li- you can change your signature every week.

372. Ms Kairouz then went on to question whether it might have related to Electorate Officer F: 'I was going to say it might be that fucken what's her name', to which Mr Somyurek responded that he had just spoken to Electorate Officer F and that they were 'fine'.

## Misuse of confidential information

373. Another inappropriate practice approved or condoned by the leading ML MPs was the receipt and further dissemination of confidential information about ALP members held by the ALP head office.

### *ALP head office - Victorian branch*

374. Part of the factional renewal process was to seek a list from head office of members who had not renewed their membership. It was important for the faction to have a sympathetic person in head office who could provide such lists. Many non-genuine members would throw away or lose their renewal notices, and so factional operatives would need to ask head office to re-send the renewal notices to the local member's office or other nominated person for follow-up.

375. Mr Garotti, after being shown a text message chain from December 2019 in which a head office employee with database management responsibilities sent him the pre-filled membership renewal forms for 10 Melbourne federal electorates, agreed that he would then have distributed the forms to the relevant branches and organisers to arrange the renewals of both genuine and non-genuine members.

376. Mr Byrne thought that some employees of the ALP at its head office would be factionally aligned, while other witnesses thought that they all would be aligned to a faction. In any event, the head office employees would have known that many of the applications, renewals and fees being submitted in the months leading up to the end of May (when annual ALP memberships expired) would have been 'stacked' members. Mr Byrne thought that, rather than turning a blind eye, they probably felt powerless to do anything to change the situation. That explanation, if correct, reflects not only how deeply embedded in the party these unethical practices were but also a perception that they could not turn to the most senior and influential members of the party to bring such practices to an end.

377. Despite a lack of leadership on this issue, the ALP head office staff had a responsibility to protect members' personal and private information. The personal details of members in the spreadsheets, outlined earlier in this chapter, were comprehensive, listing names, preferred names, addresses, phone numbers and email addresses. While many spreadsheets had fewer than a hundred names, some ran to hundreds or thousands of names and also included factional, religious and ethnic affiliations where they were known to the author. It appears to have been extremely easy to obtain and use head office records of members for factional purposes, despite the confidential nature of the information.

378. The investigation uncovered numerous examples of ALP members simply emailing the Manager of Information, Communications and Technology at ALP head office to request complete membership lists including personal and confidential information. One example of such a request from February 2019 made by Dr Haraco via email shows the simplicity with which the requests could be made:

Good afternoon [manager's name] Can you please send me the latest State wide membership list.

379. Although Dr Haraco rarely sent an email (see Chapter 5), it proved an effective medium, as within five minutes Dr Haraco had the entire ALP database in his email inbox, and within another two minutes he had circulated the confidential list to other factional operatives. Further documentation recovered from devices at the electorate office of Mr Somyurek included thousands of pages of pre-filled 'Jagajaga FEA 2020 Membership Renewal Forms', which the metadata revealed to have come from the same head office source and which had been modified by Dr Haraco during work hours when he was being paid to undertake electorate office work.

380. In response to the draft report, the ALP highlighted that Dr Haraco was, at the time, a member of the Administrative Committee, which entitled him to have access to the current list of members, in order to oversee membership processes. However, the ALP said that this 'should not be interpreted as a defence of Dr Haraco, who evidently misused his position and ability to obtain the membership list'.
381. A separate example of a request to head office for a complete membership database list, dating from May 2019, around membership renewal time, reveals the underlying purpose of such requests for the confidential membership lists. After one of Ms Kairouz's ministerial advisers, Ministerial Staffer G, received the ALP membership list from head office, due to their position on an internal ALP committee, it was forwarded to Nick McLennan, who forwarded it to Electorate Officer X, who asked, 'Can you please forward around to everyone necessary for the purpose of renewals.' Ministerial Staffer G explained that they would make these requests of head office at the request of either Marlene Kairouz, Michael de Bruyn or Nick McLennan. Ministerial Staffer G explained at examination that, while they could see why the provision of such confidential information from head office was a cause for concern, 'it's part of the culture and part of the expectation of my role'.
382. Evidence revealed that Mr Somyurek also directed, approved and involved himself in the dissemination and storage of confidential ALP database information. The metadata of a July 2019 spreadsheet saved on Mr Somyurek's desktop that contained membership lists and private personal information showed that Mr Somyurek was the author of the document. The document contained lists of members received from head office and compared them with a list of another ALP member involved in the ML faction, Person C. This documentation is consistent with head office membership lists containing personal information of ALP members that Mr Somyurek provided to Person C. Nick McLennan also provided such documents to Person C at the instruction of Mr Somyurek for them to identify the members who were currently in the 'irregularities' category.

### Systems access

383. At other times, the factional operatives did not even need to make a request to head office. Mr McLennan gave evidence that he was directed by Mr Somyurek to gain access to certain federal electorate data by accessing information systems, and to provide such access to other staff in order for them to undertake factional work. This is consistent with the evidence of one of Mr Somyurek's ministerial employees, Ministerial Staffer AB, who recounted being directed by Mr Somyurek to use Mr McLennan's login for the relevant database. Mr McLennan detailed how he obtained access to more regions than he would otherwise have been authorised to, due to Mr Somyurek's approval of such arrangements. He described having access not only to the electorate he was working in but at different times to the south-east metropolitan region, Ivanhoe, La Trobe, northern metropolitan, western metropolitan and at one point the whole state of Victoria.

384. Mr McLennan stated that his access to confidential personal information of ALP members in areas that he should not technically have been able to access was attributable to someone higher than himself. For example, he explained that he obtained access to the Western Metropolitan region data through the electorate office of an MP in the broader Right faction of the ALP, which would have been requested by 'most likely Mr Somyurek, but it could have been Ms Kairouz'.
385. Mr McLennan accepted that this access was for factional purposes based on the ML faction's interest in a particular area, and explained that the access could be granted directly without needing to go through ALP head office. As a further example, Mr McLennan detailed obtaining access to the whole state from a staff member of another MP's office after it had been approved by Mr Somyurek.<sup>80</sup> He stated that, although he did not often use the login, he enabled others in ML to do so:
- ... there was I think three representatives on MAC at that point who could access [through me] that [statewide] database to cross-reference membership lists and whether prospective members had completed their forms properly, both ones that were being submitted by the ML group and others.
386. An example in relation to another MP is revealed in a recorded conversation of 11 March 2020 between Mr Somyurek and Ms Kairouz. In that conversation, they discuss, when considering how their new young factional employees will be able to undertake their activities, that they should have 'most areas covered' in terms of access to relevant membership lists, due to having Western, Northern and South Eastern Metropolitan data and being able to 'go to ... [another MP's] office'.
387. This conversation, in front of new and existing members of the faction who worked in ministerial and electorate offices, again showed how senior faction members set the standard of behaviour expected of their subordinates. A further case study involving one of the ML faction leaders is provided below.

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<sup>80</sup> Mr McLennan referred to that other MP also having approved it. That MP stated that they had no recollection of this taking place and denied providing such access. Even if it is true that that MP was not aware of it, we accept Mr McLennan's evidence that access was obtained.





## Case study 6: Dissemination of confidential membership information in connection with factional pursuit of Person AA by Moderate Labor

An example of the inappropriate dissemination of information from the ALP head office occurred in connection with the situation involving Person AA described earlier in this chapter. Nick McLennan detailed how confidential information was provided to him as a consequence of directions given by Mr Somyurek to a head office employee with connections to the ML faction.

The employee, who was appointed as Assistant State Secretary, who was able to access internal documents, did so and shared them with me directly ... he managed to get his role in head office, and I'm aware that it [employee's original employment] had to be approved by Somyurek. ... and in respect to sharing these documents [about members and information connected to Person AA] I know [the employee] was uncomfortable in doing so, but was directed to do so, whether it be – and I would be of the assumption that it was at the direct request of Mr Somyurek. ... [The employee] was assisting in providing documents to a number of branches ... and those documents at the request of Adem Somyurek were being distributed to assist in trying to make sure the maximum penalty was passed down to [Person AA] ... Mr Somyurek was seeking to have [Person AA] expelled from the party permanently.

Mr McLennan went on to detail that both he and the employee had deleted the sending and receipt of the information and that it had not been further distributed so as to ensure the dissemination was not discovered. McLennan further explained:

... I mean it was articulated to me I think by [the employee] and by [Mr] Somyurek that this [dissemination] is something that shouldn't normally occur. I know that [the employee] was particularly worried as a new employee that perhaps he was stepping outside his remit, and he was certainly worried about the optics of what would happen if someone found out that I had access to information that I probably shouldn't have.

## Example of staffer involved in the full spectrum of factional work across several offices

388. The following case study provides an example of someone who was required to do all of the above factional or party-political tasks while working across several electorate and ministerial offices. It demonstrates how a person with a genuine interest, capability and aspiration to serve constituents and improve the community was indoctrinated by the faction's leaders and the prevailing culture into serving the factional or party-political ambitions of the leaders at the expense of their publicly funded duties.



### Case study 7: Factional work by electorate and ministerial officer, Electorate Officer X

#### *Employment in Anthony Byrne's Electorate Office*

After being involved in Young Labor while at university, Electorate Officer X commenced work in 2015 as an electorate officer for the federal MP for Holt, Anthony Byrne MP. Electorate Officer X said that his duties included answering phone calls from constituents who were looking for the MP's assistance on a wide variety of issues, and drafting letters of support for the MP.

Electorate Officer X also observed factional activities being undertaken in the office, such as payment of branch memberships and renewals by people other than the applicants or members themselves, filling out of ballots, and the allocation of funds for membership renewals into a general fund in Mr Byrne's office. At that stage, Electorate Officer X was not directly involved in such transactions, because:

you don't get thrown into the deep end with this sort of thing. You go through I suppose a bit of an initiation. They're not going to hand you that sort of task on your first day at work.

#### *Move to Mr Somyurek's electorate office*

In August 2017, Electorate Officer X was asked by Mr Somyurek to work as one of his electorate officers. Electorate Officer X accepted the offer, although they were initially hesitant because they were aware that the electorate office had a reputation for being dysfunctional and that working with Mr Somyurek could be taxing. Electorate Officer X eventually accepted the offer, because they were ambitious and also recognised that their 'use value' to the party might decline if they refused. Electorate Officer X said:

if you're not prepared to be used, to put it simply, in these situations, if someone asks you, a member of – you know, Adem, the titular head of Moderate Labor, were to ask you to do something and you were to say 'no', well, then you are – your use value declines and you become useless and useless things have a way of disappearing.

Elsewhere in his evidence, Electorate Officer X explained that to progress, one had to acquire a certain set of attributes that allowed one to work discreetly and engage in the sorts of activities that the factional organisers deemed necessary. One acquired these attitudes through a type of cultural osmosis, and if a person was not able to accept the culture of the ends justifying the means, they would be cast aside.

Electorate Officer X's work with Mr Somyurek involved a combination of electorate and factional work, although they said that the electorate work was minimal, with very few constituents or letters that needed responses.

Electorate Officer X said that they were aware that it would be improper for electorate officers to be engaged in party-political activity rather than in the tasks that an electorate officer is required to perform. Electorate Officer X was aware of the Red Shirts inquiry, but thought that it had had a negligible impact on some senior members of the ALP, and that it was regarded as a very specific set of circumstances that did not affect the wider activities of the party.

Electorate Officer X thought that the Red Shirts investigation had occurred as a result of the actions of a whistleblower who was not established in the party and who had no significant influence in it. For most active party members, to go public with similar information would be a form of ‘mutually assured destruction’:

the calculation was that there was – everybody had skeletons in the closet. ...The only issue would be if someone were to blow a whistle or go to the authorities, something to that effect. No-one was going to do that because if someone did there would be so many other skeletons in that person’s closet that someone else on the receiving end of that blow-back could blow them out of the water.

#### ***Budget misuse in Mr Somyurek’s electorate office***

One of the tasks that Electorate Officer X undertook in early 2018 when they were employed in Mr Somyurek’s office was to purchase stamps for use in other MPs’ re-election campaigns, paid for from Mr Somyurek’s electorate office budget. The electorate office budget was not meant to be used for partisan-political purposes. The stamps were nominally to be used for constituent letters and mailouts. Mr McLennan, an adviser in Ms Kairouz’s ministerial office, asked Electorate Officer X to make the purchases. Electorate Officer X said that Mr McLennan advised that he had discussed the arrangement with Mr Somyurek, who had endorsed it. Although Mr Somyurek denied any such endorsement, the evidence of Electorate Officer X was confirmed by Mr McLennan during examination, who advised:

Mr Somyurek asked me to reach out to [Electorate Officer X] to give [them] that directive.

Electorate Officer X testified that the purchases were made in increments of between 1,000 and 2,000 stamps each fortnight so as not to arouse suspicion. Electorate Officer X estimated that he spent between \$11,000 and \$14,000 on this activity.

Mr McLennan further indicated that Mr Somyurek had also advised of a time when Mr Somyurek had provided stamps out of his electorate office budget to a Dandenong councillor.

Electorate Officer X confirmed in evidence that electorate office expenditure was meant to be signed off by the MP or office manager. Electorate Officer X also said that they had never seen an audit of such expenditure by the Department of Parliamentary Services.

#### ***Move to Ms Kairouz’s ministerial office***

At Mr Somyurek’s request, Electorate Officer X then moved in April 2018 to Marlene Kairouz’s office as a ministerial adviser undertaking liaison duties with the parliamentary caucus. Electorate Officer X told the investigation that they were reluctant to move but felt that they had no choice. Ms Kairouz was a leading member of the ML faction and did not mind Electorate Officer X doing factional work so long as they were still able to perform their ministerial adviser’s role. One of the chief organisers of the ML faction, Michael de Bruyn, was Ms Kairouz’s chief of staff.

## **Case study 7: Factional work by electorate and ministerial officer, Electorate Officer X**

Electorate Officer X continued to undertake a mix of official advisory and factional duties, but said that it was more difficult to undertake factional duties than when they were working in the electorate office. Mr Somyurek continued to give Electorate Officer X instructions on factional tasks, although Electorate Officer X was no longer working for him. At times Electorate Officer X would spend 90 to 100 per cent of their time on factional business, while at other times when factional business was not so pressing they would be able to prioritise their ministerial adviser role. Ms Kairouz said that, apart from the effort required for the 2018 National Conference, she was not aware that Electorate Officer X had been doing so much factional work and that they had not sought permission from her to do so.

### ***Heightened factional work during 2018***

Work in the ALP during 2018 was particularly busy because of planned national and state conferences, elections for party positions, and the state election at the end of the year, which had associated pre-selection decisions. Electorate Officer X undertook a wide range of factional activities inside and outside his work hours.

A significant area of Electorate Officer X's work was membership renewals. This might involve taking renewal forms received from head office to a member for signature, then calculating the fee and obtaining the necessary payment from whomever was paying for the membership. The local MP would sometimes provide the membership fee in cash. Renewals needed to be finalised by the end of May each year, for which significant work was required in the immediately preceding period. Electorate Officer X recalled an occasion before April 2018 when Mr Somyurek handed them a bundle of cash of between \$2,000 and \$3,000 in his ministerial office to apply towards memberships. Electorate Officer X also remembered other occasions when Mr Byrne, Mr Donnellan and an aspiring MP provided cash for the same purpose. Electorate Officer X normally received the money in wads of cash in an envelope or folder. Once the money was paired with the signed membership renewals, Electorate Officer X would take the package during office hours to head office for processing.

Another significant area of Electorate Officer X's work was attending MAC meetings, which are described in detail earlier in this chapter.

Electorate Officer X was also involved in Mr Somyurek's campaign to be elected to the ALP National Executive at the 2018 National Conference. Detail of the work involved in that campaign is set out earlier in this chapter.

### ***Move to Tien Kieu's electorate office***

Mr Somyurek then moved Electorate Officer X out of Ms Kairouz's ministerial office after the November 2018 election, and Electorate Officer X started work as an electorate officer for Tien Kieu, the new member for Clarinda in the Legislative Assembly. Electorate Officer X said that they continued to receive instructions on factional matters from Mr Somyurek, whom Electorate Officer X regarded as their 'de facto boss'. The investigation did not receive any evidence indicating that Dr Kieu also directed Electorate Officer X to do factional work while employed in his office.

Electorate Officer X said that Mr Somyurek believed that Dr Kieu obtained his candidacy with ML backing and therefore would be part of the ML faction.<sup>81</sup> He was also concerned that, unless the ML faction had an operative in Dr Kieu's office, other factions might seek to influence him by seeking employment for their operatives. Electorate Officer X said that the balance of factional and electorate work was much more manageable in Dr Kieu's office, and that the factional work was directed by Mr Somyurek rather than by Dr Kieu.<sup>82</sup>

### ***Branch-stacking 'war' in late 2019 and early 2020***

In late 2019 and early 2020, a factional branch-stacking 'war' broke out in the south-east Melbourne electorates between the ML and Socialist Left (SL) factions of the ALP. Electorate Officer X described their role in these activities as being to notify people of upcoming branch meetings, to make sure attendance sheets were prepared and to make sure ML attendees arrived first so that they could sign the attendance register, as only 13 new membership applications per monthly meeting would be considered. Sometimes new members would be ushered in the back door before the front door was unlocked.

### ***Electorate Officer X's resignation***

Electorate Officer X stated that they became tired of being a 'factional whipping boy' and of the difficult personalities they had to deal with, as a result of which they resigned in February 2020. Electorate Officer X said that they would not have joined the ALP seven years earlier if they had known that they would be asked to do so much factional work. Electorate Officer X was disappointed with the choices they made in carrying out their work and in the nature of the organisation they had joined:

... it's not as if we didn't know that this was improper or inappropriate. We did, and we chose to do it anyway ... the testimonies of the people before me, the testimonies of people who come after me, we chose repeatedly to do the wrong thing again, and again, and again, and again. And ultimately the choice was that we put our own interests and our own loyalty to a factional machine and a system of patronage above the interests of the public and, speaking as a former public servant, there can be no greater failure.

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81 In response to the draft report, Dr Kieu noted that being involved in or aligned with the ML faction 'is of no materiality as to whether [he] has engaged in the misuse of electorate office resources'.

82 In response to the draft report, Dr Kieu noted that Electorate Officer X had not stated that Dr Kieu was aware that Electorate Officer X was carrying out factional work during his electorate hours or that Dr Kieu was involved in or directing the misuse of electorate office resources. The investigation does not refute this.

## Extent of misuse of staff

389. A number of witnesses said that, to the extent that they performed factional work during office hours, they made up for that work by doing their public duties outside office hours. This was a common explanation proffered by those interviewed during the Red Shirts investigation. Electorate officers can often be required to perform their public duties outside standard office hours: for example, if they are required to attend a community function with their MP. Such explanations can easily be advanced without fear of contradiction if there is no transparency and accountability for such claims.
390. Many electorate officers and ministerial staff already had a longstanding involvement with the ALP when they were first employed. Their commitment may have given them an intrinsic motivation to perform factional work outside the hours of their employment and, to the extent that they performed factional work during their employment hours, to make up for that time.
391. However, this was not universally the case. For example, Ministerial Staffer AB was employed as Mr Somyurek's executive assistant in his ministerial office. Ministerial Staffer AB testified that, at the time they were employed, they had no interest in the party and were not initially a member. Despite this, at peak periods Ministerial Staffer AB estimated that they spent up to 80 per cent of their workday on factional duties. Ministerial Staffer AB further testified that when they were obliged to do factional work outside their hours of employment, such as attending a MAC meeting in the evening, they were allowed to arrive at the office late the following morning and that they were not the only staff member permitted to do so. In effect, they were given time off their public duties in lieu of doing factional work outside their employment hours.
392. Electorate officers employed on a full-time or ongoing basis are not required to complete detailed time sheets. The investigation found an absence of formal systems for recording time taken during office hours in lieu of time worked outside office hours.
393. Electorate officers who are employed on a casual basis are required to complete time sheets for the hours they have worked. However, the investigation found these to be an unreliable record of work done by casual staff, because of a lack of rigour in completing and verifying them, making it difficult or impossible to determine the actual hours during which public duties were performed.
394. The Red Shirts report criticised a practice of MPs pre-signing uncompleted timesheets for casual staff. Marlene Kairouz testified that she was aware of that criticism. She acknowledged that before the Red Shirts report she had pre-signed time sheets but claimed that she ceased doing so after that report. However, the investigation discovered an uncompleted timesheet that had been signed by Ms Kairouz. When questioned about this, she was unable to give a reason why it was legitimate to do so. She stated that she relied on staff in her office, whom she trusted, to fill in the hours, but accepted that that was not a justification for the practice.
395. Mr Somyurek admitted that on at least one occasion he had signed a timesheet for a casual employee, falsely claiming that the employee was at work in his electorate office when the employee was at another MP's office correcting member discrepancies.

396. Mr Somyurek also acknowledged that timesheets were completed formulaically. Many of the timesheets signed by Mr Somyurek stated the reason for engaging the casual staff member as 'Working on a project'. Mr Somyurek acknowledged that the phrase was not meaningful and was used pro forma.
397. Many ministerial officers also perform their public duties outside standard office hours. As with electorate officers, the absence of accurate documentation of hours worked makes it impracticable to verify in detail claims that factional work during office hours was made up for by public duties performed outside those hours. For example, Mr de Bruyn, Ms Kairouz's chief of staff, testified that in Ms Kairouz's office there was no formal process for keeping track of hours worked by staff or for managing time in lieu.
398. In their testimony, many staff were concerned to stress that they did significant amounts of legitimate work for constituents (in the case of electorate officers) or their ministers (in the case of ministerial staff). This is not in dispute. However, the totality of evidence gathered by this investigation demonstrates that very significant amounts of time for which staff were employed to do public duties were spent on factional work that was unrelated to, and in some situations was in conflict with, those public duties.
399. Given the incentives and motivations for MPs to use their staff for party-political and factional purposes, the statutory regime governing the duties of electorate and ministerial officers must make unmistakably clear that it does not permit party-political work, including factional work, and that, during office hours, staff may only perform work relating to their duties.

## Culture

400. The ALP's unethical culture with respect to factional activity arose constantly during this investigation, whether as an explanation or excuse for such conduct. Many MPs examined by the investigation, including Mr Andrews, acknowledged that significant cultural reform is required in the ALP. This section looks at this problem from the perspective of whether the ministerial and electorate employees who were ultimately required to do the factional or party-political work during their paid employment could have raised concerns.
401. Employees who were members of the ML faction described feeling unable to question the directions they received because the expectation that they would do such work was so entrenched in the party. That perception provided factional leaders with the opportunity to misuse staff by requiring them to do factional work while on duty.
402. Directions to staff sometimes included deciding who an employee would work for. Electorate Officer X felt that they had no choice but to transfer to Ms Kairouz's office in 2018 when asked. Ministerial Staffer AB, who worked as Mr Somyurek's executive assistant and then for Mr Byrne, was repeatedly asked to apply for a job at an associated union in September 2018. When Ministerial Staffer AB eventually declined, they said that Mr Somyurek was 'mad like a cut snake' and called them a 'fucking idiot', after which they found themselves excluded from further interaction with him. Ministerial Staffer AB thought that their name had been removed from the faction's how-to-vote cards at the subsequent State Conference ballot because of their refusal. Ministerial Staffer AB left the ALP shortly afterwards.

403. Mr Byrne in his evidence stated that he had observed Mr Somyurek and Ms Kairouz coercing staff to do things that they did not want to do - in particular, activities connected with factional politics. He described it as a relentless focus to 'just get this done' to the exclusion of just about anything else.

404. Ministerial Staffer G said that, although they did not like doing factional work, it was expected that they should do it along with their usual work, even during work hours. Ministerial Staffer G also took instructions from Ms Kairouz, Mr Somyurek or Mr Scott, although neither Mr Somyurek nor Mr Scott was Ministerial Staffer G's employer or manager.

405. Mr McLennan's relationship with Mr Somyurek became difficult after he indicated he did not want to do so much factional work and started working in Ms Kairouz's office. Other employees referred to him as having been 'put in the freezer', a description with which Mr Somyurek agreed in evidence.

406. In November 2019, Mr McLennan noted a conversation with Ms Kairouz in which she advised that:

If I go nobody else will employ you. You're not here because of your brilliance, you're here because of your work (or knowledge) in the faction.

407. Ms Kairouz strongly denied making such a comment and said that her only concerns were when Mr McLennan re-engaged with south-east factional politics at the expense of his adviser role or when his commitment seemed sporadic. She said that, apart from a few instances, she did not task him with any factional work, but conceded that he might have received instructions from Mr de Bruyn. The evidence overwhelmingly supports the evidence of Mr McLennan that he was at the direction of both Ms Kairouz and Mr Somyurek as a factional resource whenever it suited them. Indeed, Mr Somyurek was recorded making a similar remark about Mr McLennan:

Nick's problem is, mate, he gets paid a hundred and something thousand dollars to fucking play footy. Everyone knows what he's doing. He has a really light ministerial portfolio. He has nothing in it. Suburban development is nothing. He can't write for shit. He's not - he's not up to the standard of being a ministerial adviser, then he's got to do some fucking factional stuff.

408. Mr McLennan said that he felt uncomfortable about the way in which he was asked to handle cash transactions for the faction during the period 2015-17, but when asked whether he could have refused to carry out his instructions, he said:

You don't say 'no' to Adem Somyurek, and often you have to pick your battles with Adem. And you don't win them anyway. But you don't say 'no' to Adem, and certainly at the time when I was working for Mr Byrne I would have been doing things at the direction of Mr Byrne as well, and there was an expectation that I and others would have - would have done certain tasks ... Mr Somyurek used to make it very clear that we were all employed at his behest and that no-one had a job without him. He used to make that very clear. And this is one of the things that you would have to do at his behest, and if you didn't you wouldn't work, you wouldn't be in a job, you'd be out on your arse.

409. Mr McLennan's appreciation of his position is consistent with a recorded conversation on 24 February 2020, in which Mr Somyurek expressed great frustration with Mr McLennan's handling of a branch meeting where a number of membership applications were to be received and signed off. He said:

Can you just remind him [Nick] - can you just say, please tell him ... that I was really furious if - if this - he won't be able to keep his job. Expect to be sacked soon. You fucked this up.

410. In evidence, Mr Somyurek said that he was venting and had lost all perspective at that time. He denied that he equated Mr McLennan's handling of factional matters with conduct for which he could be sacked from his public employment as a ministerial adviser for another minister, Ms Kairouz.



411. Ministerial Staffer AB said that, although they thought it was inappropriate that they were being asked to do factional work while working in Mr Somyurek's office, they did not think that they could raise those concerns with anyone, because they would lose their job. Ministerial Staffer AB said that when they first joined the ministerial office they attended a clear and concise briefing from one of the Premier's advisers about their role and its 'dos and don'ts'. However, there was no further engagement or follow-up, and Ministerial Staffer AB did not feel able to approach the office if they needed further assistance. Ministerial Staffer AB also said that while they had confidence in Mr Somyurek's chief of staff, if Ministerial Staffer AB had raised the issue with them, Ministerial Staffer AB felt that they still would have lost their job.

412. Ministerial Staffer G said that, technically, it might have been possible to raise objections to undertaking factional work with the Premier's office, but they would not have done so because they were not confident that it would have been dealt with on the merits and feared losing their job. When discussing the requirement to do factional work as part of their job, Ministerial Adviser G explained during examination:

It was unpleasant and I didn't want to do it [factional work], but I had to do it in order to keep my job.

[...]

... I do love that kind of policy role [my ministerial work]. So I would always prioritise and try to finish that part of my work because that was what fulfilled me in work ... there was no way that you could get promoted or there was no way like - like I think Marlene never saw you as anything more than your capacity to do factional work so that really, that was really upsetting in that that - yeah, it was like, 'You need to do this', when I'm like I think we could have done a lot more as a ministerial office if she had been involved and engaged in the policy work we were doing ... I felt often your policy work was pushed aside because the factional stuff was more important.

[...]

... like I always knew I was on the taxpayer dollar. I know that it wasn't right, I know that it's not what we were employed to do. You had to do it because of your job or she would not hire you or have you in there, so it was, it was not what my job was and it wasn't why I wanted to be there. I didn't enjoy it and Adem, dealing with Adem was not pleasant.

413. Another option for ministerial or electorate officers to raise concerns about the use of public resources to perform factional or party-political work may have been to report the matter to an authority such as IBAC. One electorate officer described their consideration of raising such concerns about Mr Somyurek:

I don't know how many times I looked at the IBAC website, I've got to say, and I watched the videos of, you know, the lady with the blond hair and, you know, it would talk about how people could, you know, make complaints, but then it always came down to - I mean, I went through the legislation, it always came down to the fact that - to if it was about a member of parliament it had to be made to the Speaker of the Lower House or the President.

414. In this manner, the electorate officer struck what they considered to be an insurmountable stumbling block in reporting the conduct, due to such a disclosure being required by law to be reported to the President of the Legislative Council, whom the electorate officer viewed as being in alignment with Mr Somyurek and Ms Kairouz. When Nazih Elasmr MP then became the President, the electorate officer became even more concerned about confidentiality because they knew that Mr Elasmr was strongly aligned with Mr Somyurek, Ms Kairouz and Mr Scott, to the extent that Ms Kairouz had employed Mr Elasmr's relative.

415. In this environment and culture, the use of public resources to perform factional or party-political work was able to continue unabated. A telling lawfully intercepted conversation between Mr Somyurek and Ms Kairouz on 12 June 2020 when discussing the pending *60 Minutes* story reveals their lack of insight into the nature of their conduct. Ms Kairouz remarked to Mr Somyurek:

there's been no fucking personal gain or wealth [for us]. I said we're just fucken doing the dirty work.

416. The comment highlights the environment the ministerial and electorate officers were working in and explains why they could not rely on a leadership group who seemed so unconcerned about directing their staff to undertake 'dirty work'.

### Attitudes towards and reflections on factional work

417. The acknowledgment of wrongdoing expressed by Electorate Officer X described earlier in this chapter was similar to the responses of other electorate and ministerial staffers who were carrying out these factional activities under the direction of MPs.

418. The majority of electorate and ministerial staff acknowledged that factional or party-political work was against the rules. The credible electorate and ministerial staff witnesses who acknowledged the true operations of the faction, including the performance of factional or party-political activities during work hours by themselves and others, reflected on their feelings of regret at the time that they were not able to concentrate solely on their actual role of contributing to their community or to public policy while being tasked to undertake factional or party-political work.

419. The investigation notes that a number of witnesses, even those who had been out of the political system for years, were significantly affected and became upset when recalling what they had been required to do in terms of factional or party-political work, and also the manner in which Mr Somyurek in particular tasked them with such work.

420. The investigation noted genuine reflection from these ML factional operatives as to their conduct, even though they were acting under instruction. The same cannot be said for some of the ML factional parliamentary leaders. There were exceptions, such as Ms Kaushaliya Vaghela who accepted the inappropriateness of the appointment of publicly funded staff for factional purposes,<sup>83</sup> Mr Byrne who at least led the way in publicly acknowledging his own branch-stacking activities, and Mr Scott who displayed a strong appetite to contribute to reform of the practices that had been exposed.

421. Other leading ML MPs, such as Mr Somyurek and Ms Kairouz, did not adopt such a path and instead laid responsibility on many occasions at the feet of their subordinates or on the culture of the ALP, seeking to minimise, deflect or evade responsibility for any factional or party-political work that was conducted during work hours. Mr Somyurek conceded that, because branch stacking was the norm and so embedded in the party's culture, he had never really questioned whether it was inconsistent with his public duties.

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83 In response to the draft report, Ms Vaghela confirmed her view that 'publicly funded staff are meant to be for public services only' and that it was 'not appropriate to employ staff for factional purposes', but said 'unfortunately it happens throughout the Labor party and is not restricted to just [the] ML faction'.

422. Contrastingly, one of the youngest and newest electorate officers to experience the culture was able to offer the following observations at examination:

I think that it's a long, perverted system of people for years and years and years within the Labor Party garnering for major influence of the party rather than, you know, influence over the people, if that makes sense. I think that the system, yeah, is - the system is - incredibly hard to access for a normal person who isn't factionalised; and then the factionalised system perverts the democracy.

423. As has already been noted, effective reform of these unethical practices depends on leaders demonstrating a willingness to create an environment of expectation among their subordinates that their task is to discharge their public duties, that undertaking factional and party-political work in their role is prohibited, and that unethical practices will be exposed and eradicated.

# Chapter 5. Jobs given to factional allies and operatives

424. Chapter 4 documented the extensive factional work that ministerial and electorate staff were improperly required to perform during working hours. This chapter details the related practice of appointing factional allies and operatives, or their relatives, to taxpayer-funded jobs in MPs' and ministers' offices for factional reasons.
425. Some of these allies, operatives and relatives were employed when there was no work for them to perform, or no expectation that they would have to attend or perform any of their public duties. Some were not equipped to meet the basic requirements of their role. Various witnesses described these jobs as a form of 'currency' that the faction used to 'reward' factional operatives or maintain their allegiance to the faction.

## How electorate and ministerial staff are employed

426. As described in Chapter 3, the Victorian Parliament provides each MP with the equivalent of 2.5 full-time equivalent electorate officers to assist them in serving people living in the MP's electorate. MPs may also employ additional electorate officers using their electorate office and communications budget. Electorate officers may be employed on a full-time, part-time or casual basis, and the MPs themselves nominate people for these roles.
427. Significantly, and as distinct from the competitive recruitment processes applicable to most ordinary public sector roles, employment is largely at the discretion of the relevant MP, although the staff are formally employed by the Secretary of the Department of Parliamentary Services as the delegate of parliament's presiding officers.
428. MPs who also hold ministerial positions are allocated ministerial officers, who are formally employed by the Premier or his delegate. Like electorate officers, ministerial officers may be employed on a full-time, part-time or casual basis, and selection of these staff is usually undertaken by the relevant minister and their chief of staff.
429. It is therefore unsurprising that factional alignment or willingness to support factional activity is commonly a prerequisite for employment as ministerial and electorate staff.

## Factional considerations take precedence over merit-based appointments

430. Section 27 of the *Equal Opportunity Act 2010* (Vic) allows an employer to 'discriminate on the basis of political belief or activity in the offering of employment to another person as a ministerial adviser, member of staff of a political party, member of the electorate staff of any person or any similar employment'.
431. In relation to electorate officers, this is supplemented by the position description for permanent, ongoing electorate officers, which states:
- Electorate Officers have a main role in supporting the Member, which requires a high degree of loyalty and ability to maintain confidentiality on behalf of the Member and those who contact the office.
432. Mr Scott noted that:
- Employing persons who are politically aligned is important for obvious reasons. A person not politically affiliated with the Member of Parliament could easily lead to the Member being undermined as a result of information that the electorate officer might receive in the course of his or her duties ... It is accepted across the ALP, and likely to be the case across all political parties, that this is a necessary part of recruitment to one's electorate office ...

433. This was echoed by other witnesses. For example, Ms Vaghela said, 'I don't know much about ministerial offices, but electorate offices, all the staff there, they are all factionally aligned.' Ms Vaghela said that this practice was not limited to the ML faction, but was the norm throughout the ALP.
434. Mr Somyurek acknowledged at his examination that employing recruiters as electorate officers had 'been a constant practice all the way through'. Mr Scott said:
- [T]he culture of appointing political allies is one that's existed for about - as far as I'm aware, since the 1970s. So ... it's an existing culture that's existed for a very long period of time. So [employing factional allies was] ... not something that I would have questioned because it's something that existed for a very, very long period of time in politics.
435. Mr Scott further observed that the effect of needing to employ only those who are politically aligned to you means that the pool of candidates is necessarily confined.
436. Although an MP is permitted to choose to employ a person because that person is politically aligned, and the desirability of choosing a person who is politically aligned may limit the number of potential employees, this does not negate the fact that the person is employed to perform public duties, and that the MP must assess the person's suitability and ability to carry out the role for which they are employed.
437. The investigation found that, in many cases, ML factional considerations took precedence over a staff member's ability to perform their public duties, particularly in the case of electorate officers. Merit-based recruitment processes were largely absent, and the investigation found little to no evidence that prospective staff were assessed for their competence to carry out the public duties for which they were being ostensibly employed.
438. The investigation identified numerous examples of factional allies and operatives receiving paid employment as 'reward' for factional work that they or a relative of theirs had done, and to 'keep them onside'. These examples were supported by other evidence, including from witnesses who described a culture of factional patronage in the party.
439. One such witness was Rick Garotti, a senior member of the ML faction, who testified that 'the way that positions were filled in the party always surprised [him] a little bit and there did seem to be a big culture of factional patronage underpinning a lot of positions in electorate office staff and ministerial staff'.
440. Mr Byrne also testified that electorate officer positions were used to reward people who assisted with factional work and to keep people onside if they had control of 'numbers' - accepting that, in effect, electorate officer positions were 'currency' to be deployed at the will of the faction.
441. One example of a factional staff appointment identified by the investigation was Dr Hussein Haraco, a longstanding ALP member and recruiter in the Somali community of Melbourne. The evidence established that Mr Somyurek employed Dr Haraco based on the number of ALP members he could bring to the faction and that, once employed, Dr Haraco carried out very little (if any) legitimate electorate officer work. Dr Haraco was paid more than \$110,000 for his casual and part-time work between 2017 and 2020.



## Case study 8: Employment of ALP member and recruiter Hussein Haraco

Hussein Haraco was first employed as a casual electorate officer for Mr Somyurek in December 2016, before being given a part-time position in March 2018, generally working one to two days per week. Dr Haraco was also employed in the office of another ML-aligned MP, Anthony Carbines, from May 2017 onwards, interchangeably on a casual and part-time basis, also usually working one to two days per week.

Dr Haraco's close relative was also employed part-time in Mr Somyurek's ministerial office from February 2019 to June 2020, as well as holding a casual electorate officer position in another ML-aligned MP's electorate office from May 2019 to October 2020 (see case study 19 for further details of this person's employment).

Mr Somyurek primarily employed Dr Haraco because of:

- the number of ALP members he could bring to the faction
- his ability to recruit more members from the Somali community in Melbourne, noting his position as a prominent leader in this community.

Evidence of this purpose included text messages from Mr Somyurek's phone between him and Mr Garotti regarding Dr Haraco's employment in Mr Somyurek's electorate office. In one of these message exchanges from December 2018, Mr Garotti asked Mr Somyurek whether Dr Haraco 'still ha[d] 2 days with [Mr Somyurek] in the EO', or whether that was 'gone now b/c ... [Dr Haraco's relative] [was] looked after'. Mr Somyurek responded '[h]e is fine', to which Mr Garotti said he was 'really comfortable that [his] team [was] well looked after', referring to his team as 'Dr' (Dr Haraco) and another individual. Mr Garotti further said '[t]hank you for this; can't do it without you' and that they could 'now focus on getting things underway in the North'.

Mr Garotti conceded at examination that his comments about Dr Haraco being 'well looked after' related to the factional work Dr Haraco was doing for Mr Garotti and Mr Somyurek. Mr Garotti also accepted that the way in which Dr Haraco was 'well looked after' was by him and his relative being given electorate officer jobs as appreciation for Dr Haraco's factional work.

In a separate earlier text message in March 2018, Mr Garotti reminded Mr Somyurek that they had discussed 'another half-Day / one day job for Dr Hussein or his [relative] some time back' and asked whether there had been '[a]ny movement on this'. Mr Garotti sent four further follow-up messages to Mr Somyurek in April 2018, and emphasised that Dr Haraco was 'doing a lot of work', so they 'need[ed] to keep him supported'. When asked about this message exchange at examination, Mr Garotti accepted that the picture these messages portrayed was that it did not matter who was on the books, whether it was Dr Haraco or his relative, they just needed to give them a bit more taxpayer money.

Mr Somyurek said at his examination that he 'didn't put him [Dr Haraco] on to recruit', while noting that Dr Haraco 'had an established operation but not in my area'.

In addition to evidence showing that Dr Haraco was employed as reward for factional support, the evidence suggested that Dr Haraco performed very little (if any) electorate officer work during his employment in Mr Somyurek's office. This evidence included:

- quantitative email data showing zero outgoing emails from Dr Haraco's email account for months at a time
- computer login data, showing numerous occasions on which Dr Haraco was paid for working in Mr Somyurek's electorate office but did not log in – for example, in 2017 login data corresponded to only one-third of the days that he worked
- a lawfully intercepted telephone call between Mr Somyurek and Mr Garotti after the *60 Minutes* program aired, in which Mr Somyurek said, 'Hussein's just gotta be careful of everything, you know, um, I'm sure he is, but I just need him really careful'. Mr Somyurek further said, 'Make sure he logs in. I know he comes to work all the time. He just needs to log in.'
- a September 2019 office review of Mr Somyurek's electorate office by the new office manager, who noted that Dr Haraco 'does his own work from the office' but answered the phone 'when required'.

In response to the draft report, Dr Haraco denied engaging in any wrongdoing, but did not provide any explanation or evidence to refute the evidence above.

442. Another example of a factional appointment was Mr Somyurek's employment of a casual electorate officer, Electorate Officer N, solely as a favour to a factional ally and ALP recruiter in the Vietnamese community in Melbourne, Person U, who was also a local councillor.



### Case study 9: Employment of Electorate Officer N as a 'favour' to ALP member and recruiter

Mr Somyurek employed a casual electorate officer, Electorate Officer N, from April 2019 to February 2020. A number of lawfully intercepted telephone conversations involving Mr Somyurek in the days before the airing of the *60 Minutes* story 'The Faceless Man' indicated that Mr Somyurek had employed Electorate Officer N solely as a favour to a factional ally and ALP recruiter, Person U.

In one conversation on 14 June 2020, Mr Somyurek told Mr Scott that he had 'anxiety' about the possibility that the media had spoken to 'some fucken loose Vietnamese person ... who I fucken ... put on for [Person U]' (later confirmed as Electorate Officer N). Mr Somyurek further said, 'I put on some Vietnamese person for [Person U] ... I wonder what the fuck they did, like [they were] fucken mad'. Mr Somyurek speculated about what Electorate Officer N might have said or done, and asked Mr Scott: 'what do you even say ... when you haven't even met the staff, what do you say to that?'

In a subsequent conversation with Person U on the same day, Mr Somyurek attempted to seek information from Person U about '[t]hat [person], the Vietnamese [person] that you put in', stating, 'I don't know much about [them] ... [are they] a problem?'. Person U reassured Mr Somyurek that he was still friends with the person and that he did not need to worry, as the person was 'loyal with us, 100 per cent'.

When asked at examination about these conversations, Mr Somyurek accepted that the only reason Electorate Officer N had been employed was 'for [Person U]' and that Person U had been allowed to choose someone to be employed in his office. Mr Somyurek asserted that Electorate Officer N 'was meant to be turning up [to work]' and that he 'got told [they were] turning up'. Mr Somyurek claimed that his concern expressed in these conversations related to the possibility that Electorate Officer N had 'gone and made some complaints that weren't true about [him]'.



443. Another example of a factional staff appointment was Mr Somyurek's employment of Electorate Officer B, a Young Labor member from the Hazara<sup>84</sup> community, as a casual electorate officer, based primarily on the number of ALP members this person could bring to the faction. Mr Somyurek was recorded in a conversation saying that he wouldn't 'give a fuck' if this person didn't have 'numbers'.



## Case study 10: Employment of Young Labor activist, Electorate Officer B

Mr Somyurek employed a casual electorate officer, Electorate Officer B, in January 2020. Electorate Officer B had been involved in student politics and Young Labor while completing their university studies, before becoming part of the SDA faction<sup>85</sup> of the ALP in 2018.

The evidence showed that Mr Somyurek employed Electorate Officer B predominantly because of the number of ALP members they could bring to the faction. In one conversation in October 2019, Mr Somyurek was recorded saying '[w]e've just gotta find something for [Electorate Officer B]', after being told that they were 'looking for work', because Mr Somyurek considered them to be 'fucking valuable'. Mr Somyurek noted that Electorate Officer B had 'serious numbers in Holt', and said if Electorate Officer B didn't have 'numbers' he wouldn't 'give a fuck'. Mr Somyurek also expressed concern about another faction 'pick[ing] [Electorate Officer B] up for a couple of days', noting that their 'numbers' equated to 'a delegate's worth'. In this manner, Mr Somyurek was directly equating the number of ALP members Electorate Officer B could bring to his faction to the resultant ability to obtain an extra voting delegate on internal party matters, thereby increasing the faction's power and control.

In a later conversation in March 2020, Mr Somyurek was recorded discussing Electorate Officer B's interest in increasing the number of days they worked in his electorate office. Upon being made aware of this, Mr Somyurek asked '[h]ow many has [Electorate Officer B] brought in so far?', to which the other participant in the conversation said that Electorate Officer B had 'brought people in in Bruce and Holt' and had 'been pretty consistent'. Mr Somyurek subsequently said '[y]eah let me do the sums, we can probably lift [Electorate Officer B] up another day'. After further discussion about the number of members Electorate Officer B had brought into the party, Mr Somyurek said '[y]eah I'll give [Electorate Officer B] another day, fuck.'

In another recorded conversation in June 2020, around the time when journalists were doorknocking ALP members, Mr Somyurek appeared to show some awareness of the impropriety in giving Electorate Officer B employment based on their recruitment efforts. Mr Somyurek said 'if [Electorate Officer B] starts saying that [they] got a job because of this dah, dah, dah that's when it ... that's when it gets really messy.' Mr Somyurek was also recorded in another conversation on the same day saying that he had told Electorate Officer B that they did not 'have to recruit anymore' if they were stressed about journalists contacting the ALP members whom they had signed up or had relationships with. Mr Somyurek said he told Electorate Officer B 'I like you, you stay on. Alright? ... you don't have to recruit, but it's good for your community.'

When asked at examination about these conversations, Mr Somyurek acknowledged that Electorate Officer B was recruiting, and said: '[they] came across my radar because [they] had already recruited, let's be frank, which is entirely consistent with the culture that I had grown up in the party with.' However, Mr Somyurek asserted that recruiting 'wasn't the job, the job was to work in the office'. Mr Somyurek also claimed that 'we had stopped recruiting' by the time this conversation took place. Based on the evidence of Mr Somyurek's conversations and the minimal amount of work undertaken in his electorate office, the investigation does not accept his contention that the reason for Electorate Officer B's employment was for them to undertake work in the office.

84 The Hazaras are an ethnic group originating in Afghanistan.

85 Faction relating to the Shop, Distributive and Allied Employees Association.

444. In a further example, in his electorate office Mr Somyurek employed Electorate Officer Z, an ALP member and recruiter in the Indian community in Melbourne. A lawfully intercepted telephone call between Mr Somyurek and Electorate Officer Z before the *60 Minutes* program aired showed that Mr Somyurek wanted to conceal Electorate Officer Z's involvement in bringing members to the ML faction.



## Case study 11: Employment of factional operative, Electorate Officer Z

Electorate Officer Z was employed as a casual electorate officer for Mr Somyurek in July 2019. Electorate Officer Z was subsequently given part-time employment, working two-and-a-half days per week from February 2020, after they reached the yearly cap of maximum allowable hours of work for casual staff.

Evidence obtained by the investigation indicated that Mr Somyurek employed Electorate Officer Z in his electorate office primarily for factional reasons, including Electorate Officer Z's involvement in recruiting ALP members from the Indian community in Melbourne. Electorate Officer Z was previously aligned with the Socialist Left faction when they unsuccessfully ran for a seat in the 2018 state election. Text messages from Mr Somyurek's mobile phone show that Electorate Officer Z's associate, Person C, asked Mr Somyurek whether it was 'possible [to] get [Electorate Officer Z] a full time job somewhere', because they had resigned from their job to contest the election. Electorate Officer Z subsequently moved across to the ML faction and was employed in Mr Somyurek's electorate office.

Person C claimed that they had advocated for Electorate Officer Z's employment 'purely based on [their] talent and educational background'. Mr Somyurek claimed that he employed Electorate Officer Z due to 'altruism' because they were out of a job. He acknowledged that Electorate Officer Z 'did have numbers' (referring to ALP members that they were able to bring to the ML faction from the SL faction), but denied that this was the reason he employed Electorate Officer Z. Electorate Officer Z questioned the relevance of membership numbers, noting that Mr Somyurek was 'already [a] powerful person' and was 'in charge of Labor Right'.

A lawfully intercepted telephone call between Mr Somyurek and Electorate Officer Z the day before the *60 Minutes* program aired showed an awareness that Electorate Officer Z's role as a recruiter was an issue. During this call, Mr Somyurek asked Electorate Officer Z whether anyone had contacted them, 'because they're looking at my staff now because I've got people, Indians and all that on my staff'. Mr Somyurek instructed Electorate Officer Z that, if they were contacted by a journalist, 'don't say you've brought in people for us or anything like that', to say 'my work is my work' and joked that Electorate Officer Z should say 'the Left wanted me to branch stack, not [...] the Right, not Adem'.

Electorate Officer Z claimed that they performed a range of other electorate officer duties, such as collecting mail, attending to visitors, typing draft letters for visitors, receiving telephone calls, speaking with small business owners and assisting with the electorate office relocation.<sup>86</sup> However, we note that data from Electorate Officer Z's electorate officer email account shows entire months where they sent only one to three emails. We further note that computers connected to Mr Somyurek or his electorate office contained numerous spreadsheets indicative of Electorate Officer Z's involvement in recruitment – including, for example, a spreadsheet entitled '[Electorate Officer Z's first name] Numbers, Aston, Chisholm and Holt'. We consider it likely that Electorate Officer Z was employed for factional considerations and that those considerations were greater than the expectation that this person would fulfil the requirements of the role.

<sup>86</sup> Electorate Officer Z's response to the draft report and our comments on that response are set out in Appendix A.

445. The investigation found instances of factional staffing appointments occurring not only in Mr Somyurek's electorate office, but also in his ministerial office, one of which is detailed in case study 12. In this case, a longstanding ALP member and recruiter was employed in Mr Somyurek's office to 'maintain his allegiance' to the faction.



## Case study 12: Employment of longstanding ALP member and recruiter

Ministerial Staffer K was a longstanding ALP member and recruiter from the Turkish community in Melbourne. They had worked as an electorate officer for all three leaders of the ML faction (Mr Somyurek, Ms Kairouz and Mr Scott) and had served as a councillor on a local council. In 2014 they unsuccessfully ran for election to the Victorian Parliament. Following the election, Mr Somyurek became a minister and, in January 2015, employed Ministerial Staffer K in his office.

Ministerial Staffer K claimed at examination that Mr Somyurek offered them employment because they 'needed a job' and 'could actually do the job, [they] had something to contribute'. Ministerial Staffer K said they had a direct conversation with Mr Somyurek about the job:

He [Mr Somyurek] phoned me up after the election, because I had been asking as well. Because you talk anyways just to see how he's going, which portfolio he got after the election. Me having lost out [at the election] I was still hurting. So we'd talk, say something like, 'I wouldn't mind moving from my current position, if there's something open that you know of that I can do, let me know'. And he said, 'Do you want to come and work for me?'. And that's basically what happened.

Ministerial Staffer K said that they were employed as a small business adviser, because Mr Somyurek 'knew that [they would] be okay to do Small Business', and Ministerial Staffer K 'certainly wasn't going to be interested' in the other components of Mr Somyurek's portfolio – Innovation and Trade. Ministerial Staffer K described Small Business as a 'relatively small portfolio and something that I could get my mind around', which was 'not rocket science'. Ministerial Staffer K further added that 'it was perfect for me, because I didn't have any experience' – 'I couldn't screw it up, in other words.'

A former employee in Mr Somyurek's ministerial office gave evidence at examination that Mr Somyurek employed Ministerial Staffer K to 'maintain [their] allegiance', because Ministerial Staffer K was frustrated by not being elected into parliament and had 'threatened to leave the Minister's [Mr Somyurek's] factional group if [they were] not employed at a certain wage'. The former employee said that Mr Somyurek told them directly that Ministerial Staffer K had 'insisted that [they] got a job at \$80,000 or more and if not [they] would walk from his faction'.

The former employee described problems with Ministerial Staffer K's performance during their employment in the ministerial office, stating that they 'had the capacity to do work but not at a level that I would deem acceptable for the role'.<sup>87</sup>

<sup>87</sup> In response to the draft report, Ministerial Staffer K made allegations about the conduct and behaviour of other persons de-identified in this report suggesting their information was wrong and that such persons had ulterior motives such as attempting to drive a wedge between Ministerial Staffer K and the Minister and initially wanting Ministerial Staffer K's position to go to someone else.

## Case study 12: Employment of longstanding ALP member and recruiter

Ministerial Staffer K denied that they had ‘threatened’ to leave Mr Somyurek’s group. They confirmed that they negotiated their salary with Mr Somyurek and that Mr Somyurek offered them \$80,000, but denied that this related to their involvement in the faction. Ministerial Staffer K also claimed that their employment was ‘never discussed’ as being a ‘reward’ for their contribution to the faction, but acknowledged that Mr Somyurek would have been aware of the number of members with whom they were affiliated.

We consider, based on Ministerial Staffer K’s evidence and the evidence of the former staffer, that Ministerial Staffer K’s employment by Mr Somyurek was primarily because of Ministerial Staffer K’s importance to the ML faction.

When Mr Somyurek lost his ministry in mid-2015, Ministerial Staffer K was reallocated to Robin Scott’s ministerial office (without any allocation from Mr Scott’s staffing allocation), initially as an administrative assistant, before being promoted to a ministerial adviser position in December 2015, and then to a senior ministerial adviser position in January 2019.<sup>88</sup> Mr Scott stated that that Ministerial Staffer K was a good worker who was capable in many respects and who was retained on merit. He considered that there was every reason to believe that Ministerial Staffer K was able to perform the duties allocated. Mr Scott stated that Ministerial Staffer K did not perform factional work while in Mr Scott’s office.

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<sup>88</sup> In response to the draft report, Ministerial Staffer K stated that the promotions were a reflection of their hard work and abilities, and that their strong performance in the various roles, including never having their ministerial advice criticised, was indicative of how they were able to obtain and perform the various roles. Ministerial Staffer K also stated that they have ‘an awareness of politics that would be considered an asset by those who practice politics’ and that they ‘do not take orders from anyone’.

446. Factional staffing appointments were not confined to Mr Somyurek's offices. Case study 13 provides an example of a staffer being employed in Ms Kairouz's ministerial office for factional reasons. In this case, a Young Labor activist was employed as a part-time administrative assistant, but evidence to the investigation suggested that they were hired primarily for factional reasons.



### Case study 13: Employment of Young Labor activist, Ministerial Staffer O

Ministerial Staffer O was employed as a part-time administrative assistant in Ms Kairouz's ministerial office in February 2020, where they remained employed until Ms Kairouz ceased to be a minister in June 2020.

Ms Kairouz's chief of staff, Michael de Bruyn, said at examination that he was not present for the meeting where Ministerial Staffer O was hired, but said he 'was aware that [they] had been suggested I think by some other Young Labor people or potentially by Adem [Somyurek] or Marlene [Kairouz] in discussions'. Mr de Bruyn said that Ministerial Staffer O was employed to provide 'administrative assistance' but 'there wasn't much work to be done' and he thought they were 'sort of involved in party or factional activity'. He highlighted that Ministerial Staffer O was employed just before the first 2020 lockdown during the COVID-19 pandemic, so said they 'never found a niche because [their] time in the physical office was so small and once we went to remote there wasn't really that much that could be done'.

Mr de Bruyn further said:

I think it's accurate to say that [Ministerial Staffer O] for the brief period that [they were] hired I think that would – yes, there was an expectation from the Ministers [Mr Somyurek and Ms Kairouz] that [they] would be assisting in factional work.

Ministerial Staffer O's role in the ML faction was detailed in a document found on Mr Somyurek's laptop, which outlined the responsibilities of a few different factional operatives. Ministerial Staffer O was listed as an 'Assistant Organiser', whose role was to 'provide support' to the other factional operatives 'as required' and 'Young Labor/Student Politics membership development'.

Neither Ms Kairouz nor Mr de Bruyn could identify at their examinations any tasks given to Ministerial Staffer O, aside from factional work. Ms Kairouz accepted that she expected Ministerial Staffer O to do factional work when they were hired, although claimed that this related mostly to branch meetings. Ms Kairouz also accepted that 'if he [Mr de Bruyn] didn't give [Ministerial Staffer O] anything else to do, well, that's all [they] did then' (referring to factional work).

## Staff employed despite absence of work

447. In the case of Mr Somyurek's electorate office, the investigation found that staff were employed for factional reasons despite a clear absence of work, thereby suggesting that such employment was neither justifiable nor necessary from a value-for-money perspective, and involved a misuse of resources. This included evidence that the electorate office was left unattended for days or weeks at a time. Witnesses variously told the investigation that:
- 'People didn't even really notice' when Mr Somyurek moved his electorate office out of the electorate and into the Melbourne central business district.
  - '[T]here was a period of time where I recall trying to get a hold of his office and the phone would ring out for a number of weeks, suggesting that there was no-one there and the door was shut'.
  - '[W]ith his office particularly there was, like, over years and years there's been a lot of just no one being there or just people rocking up whenever they liked and those sort of things'.
  - '[T]here wasn't much of a brief in that electorate office. As I said, there was very little foot traffic there. There was very little to occupy oneself with in that environment [...] It was somewhat shambolic when I first entered it [the office]'.
448. The lack of work in Mr Somyurek's electorate office was further evidenced by:
- telephone data showing few incoming calls, for example, an average of 26 calls received per month in 2019, or just over one per working day
  - a 2019 office review by a new office manager, which noted that constituent enquiries were 'low' - '[n]o walk ins in the last week and I'm told by staff they are very infrequent'
  - staff email data showing a low volume of outgoing emails, with zero outgoing emails recorded for some staff for entire months at a time.
449. Despite this, Mr Somyurek employed 30 different people as electorate officers at varying times from 2017 to 2020. All but two were employed as casual employees, demonstrating Mr Somyurek's preference for such arrangements, which were much more flexible than employing ongoing permanent or part-time staff.
450. Mr Somyurek testified that he was rarely in the office and that there was not a lot of electorate work to be done: 'there's a lot of down time'. He agreed that his mindset was that he took advantage of his entitlement to employ staff, irrespective of whether there was work for them to do. Mr Somyurek added, 'I don't think you'll find any MP that hasn't used their full entitlements in terms of positions', describing this as 'just unheard of'.
451. In the absence of legitimate electorate office work, the evidence pointed to some staff being employed purely for factional reasons and to do factional work. This evidence included a February 2020 conversation in which Mr Somyurek was recorded discussing the employment of two factional operatives, Electorate Officer I and Electorate Officer J. At the time of this conversation, Electorate Officer J was working as a casual electorate officer for Mr Somyurek, and Electorate Officer I was working as a casual electorate officer for Mr Scott.

452. During this conversation, Mr Somyurek said:

I mean these guys are gonna be in a fucking office, not much to do. They need to be doing grunt work but I want them to sort of report to ... so these guys - I've done a breakdown of who does what. So these guys will be the chief ... the central point for all things Centre Unity from databases to whatever ... Emails, communication, everything. Just a secretariat service ... Because they're sitting in an office with not much work.

453. When asked about this conversation at examination, Mr Somyurek asserted that electorate officers such as Electorate Officer J and Electorate Officer I 'have to also do electorate office work', stating 'that's their first work they have to do'. Mr Somyurek further said '[i]n my mind it's important that they are doing electorate office work ... and in their down time they'll do that' (referring to factional work). Mr Somyurek claimed that electorate officers could not spend 'the bulk of [their] day' doing factional work, because 'the volume of factional work [was] just not there', aside from some 'intense periods of activity'. Mr Somyurek subsequently conceded:

The purpose of these [individuals] needing a job is that they got sacked for crossing over to our faction. That's the foremost - first and foremost reason why we were trying to get them a job. Then the benefit, I guess their additional benefit, you know, other things that they want to do, they're activists, is that they will do part of the organisational work [for the faction], yeah.

...

These people are going to be electorate officers and during their downtime and because they are activists they will also have things to do as activists. I concede some of that might be done during office hours. But my position is or my contention is there's not going to be much work to do factionally.

454. Mr Scott said that when Electorate Officer I was working for him, they were not asked to perform factional work, and that he had asked Electorate Officer I to ensure that they complied with the rules of parliament.

455. Nevertheless, the investigation considers Mr Somyurek's description of the two officers' priorities to be a convenient fiction that is not borne out by the reasons for their employment or the availability of any meaningful electorate office work for them to undertake.

456. At the more egregious end of the spectrum, the investigation also received evidence that, in some cases, factional allies or operatives were given jobs without any requirement or expectation that they attend or perform any work associated with the role for which they were employed.

457. One such example is outlined in case study 14, where Mr Somyurek pressured Mr Byrne to employ a longstanding ALP member and recruiter in his electorate office, seemingly without any expectation that he should attend or perform any work. Mr Byrne said at examination that such requests from Mr Somyurek for him to 'put people on' were a fairly regular occurrence. Mr Byrne asserted that he was reluctant to comply with such requests, but did so in this instance '[b]ecause the consequences of not doing it would be that I probably wouldn't be sitting here before you today as a Member of Parliament', referring to the factional support needed to regain pre-selection.



## Case study 14: Employment of longstanding ALP member and recruiter

Person V is a longstanding ALP member and prominent recruiter in the Turkish community in Melbourne. He is also the relative of a state MP.

The investigation received evidence indicating that Mr Somyurek attempted to facilitate employment for Person V for factional reasons, despite previous adverse integrity-related findings against them. Person V had not been successful in seeking employment with the Victorian Parliament as an electorate officer, so Mr Somyurek asked Mr Byrne to employ Person V, noting that Mr Byrne was the only federal MP in the ML faction. Mr Byrne told the investigation that he believed Mr Somyurek wanted him to employ Person V as 'part of [them] accruing numbers', stating:

[A]s part of getting ... the group connected with [Person V] and [their family] on board ... he [Mr Somyurek] just needed some help in terms of having [Person V] come work for me.

Mr Byrne said that Mr Somyurek 'put to him' that he should give Person V a job without any requirement to attend the office or perform any duties. Mr Byrne said he ultimately submitted to Mr Somyurek's request and employed Person V from June to September 2018 because he 'felt like [he] had no alternative', stating that denying the request 'would not have been healthy for [his] long-term future'. Mr Byrne asserted that he tried to ensure that Person V attended work; however, this never occurred during the period of his employment.

Mr Byrne's evidence was supported by text messages identified on Mr Somyurek's mobile phone, in which Mr Somyurek said to Mr Byrne:

Mate I need this [Person V] thing done u need to move on someone if u don't have room it's a core issue very important u r the only fed MP we have.

...

It's fucking insulting that I have to beg to get this done

...

I need those two days for [Person V].



A separate message from Mr Somyurek to two members of Person V's family further supported this, with Mr Somyurek saying:

I am actually furious with our conversation – u cannot put your [relative's] unjust employment circumstances solely on my shoulders. I have been working overtime to assist [them].

We found employment for [them] in the state system unfortunately [others] knocked [them] off – I ended up having a brawl with the president of the upper house in support of your [relative].

I have now said to you that I will put my 20 year relationship with my friend Anthony Byrne on the line and put it on him to give two days a week for your [relative] at his office yet that is not good enough.

I tell you that we can get [them] back into the state system and u say that my sister's name will be compromised.

Yet u ask that your [relative] work in Anthony's office without having to turn up – what about Anthony's name?

During his examination, Mr Somyurek accepted that this arrangement was 'completely factional' but denied that he 'pressured' Mr Byrne to employ Person V, instead categorising it as 'calling in a favour'. Mr Somyurek also denied that he asked Mr Byrne to employ Person V without them having to turn up to work. The investigation rejects Mr Somyurek's evidence on this point as being inconsistent with the weight of other evidence contained in Mr Byrne's examination and related text messages.

458. In another example (case study 15), a factional ally was employed as an administrative assistant in Ms Kairouz's ministerial office, purportedly to do social media work, but did not always attend the ministerial office.



## Case study 15: Employment of Ministerial Staffer P

Ministerial Staffer P was first employed as a part-time electorate officer for Ms Kairouz in October 2016, before also gaining a part-time administrative assistant position in Ms Kairouz's ministerial office in February 2017. Ministerial Staffer P was a relative of an ALP member and recruiter from the Macedonian community in Melbourne with whom Ms Kairouz had an association. Ministerial Staffer P's relative was also employed as an electorate officer in Ms Kairouz's electorate office from April 2019.

Ms Kairouz's chief of staff, Michael de Bruyn, gave evidence at his examination that it was a 'joke' in the ministerial office that Ministerial Staffer P neither turned up nor did any work, stating:

[Ministerial Staffer P] was not a great employee. I had raised concerns ... I think initially I wasn't particularly supportive of [their] employment, but the Minister [Ms Kairouz] was keen to have [them].

Mr de Bruyn said there were issues around Ministerial Staffer P's 'poor attendance or [they] would be late and stuff', so Ms Kairouz 'came up with the solution' that [Ministerial Staffer P] would work from her electorate office 'because, for whatever reason, [they were] struggling to do the commute'. Mr de Bruyn said he believed Ministerial Staffer P was responsible for work for Ms Kairouz's social media, which they carried out from Ms Kairouz's electorate office – notwithstanding being employed as an administrative assistant in her ministerial office three days a week. Despite his role as Ms Kairouz's chief of staff, Mr de Bruyn said he did not ever see any work produced by Ministerial Staffer P:

[B]ecause I did not have any direct interactions with [them] in that capacity in terms of [them] doing website and social media. ...

[I]n terms of [Ministerial Staffer P], Marlene sort of took it on herself that [they were] more I guess something – I mean, Marlene had more – the traditional Minister/Chief of Staff relationship was a bit different in our case. I think Marlene preferred to exert more control and influence over staff than perhaps other Ministers do, at least to my experience. So when she recommended [Ministerial Staffer P] or suggested [them] or wanted [them] and said, 'we should hire them', and then said, 'I'd like [them] to work out of the electorate office on XY days', or whatever days they were, I sort of I guess would have almost yielded responsibility because [they were] doing work for her that didn't come across my desk ...

Mr de Bruyn said he raised concerns with Ms Kairouz about Ministerial Staffer P's attendance:

I think I raised concerns about the fact that I didn't like that [they were] late, and obviously it's a bad look because other people in the office would come in, and because [they were] someone that she had urged me to appoint I guess indirectly I felt that she ... had some more – had a greater responsibility to [them] in the sense that say I had – you know, I hired someone who I thought would do a good job and, you know, they were doing their work or there was a problem, I would have a conversation with them.

Mr de Bruyn gave evidence that other staff in Ms Kairouz's ministerial office effectively had to 'chip in' on social media work because Ministerial Staffer P could not be relied upon to do it.

At her examination, Ms Kairouz claimed that the issues that arose did not relate to Ministerial Staffer P's attendance or performance, but rather were due to them not 'fit[ting] into the office', which led to them never being given any tasks. Ms Kairouz said that she took over managing them as a result and had made special arrangements for them to work out of her electorate office, instead of her ministerial office, where they were employed three days a week. The investigation considers that Mr de Bruyn's evidence in relation to Ministerial Staffer P's employment in Ms Kairouz's ministerial office was more cogent and is preferred.

459. Another example (detailed in Chapter 4) is Electorate Officer J, who gave evidence that they were 'told not to go into the electorate office' while employed in Mr Somyurek's electorate office. Mr Somyurek denied that this occurred, but the investigation does not accept Mr Somyurek's denial, given the minimal amount of work actually performed at his electorate office and the use made of factionally aligned employees like Electorate Officer J on tasks such as the investigation involving Person AA (also detailed in Chapter 4).

## Staff employed despite poor performance

460. The investigation also identified instances where staff were given jobs for factional reasons<sup>89</sup> despite having difficulties performing the basic requirements of the role for which they were employed.

461. One example was the husband of Kaushaliya Vaghela MP, who was at various stages employed in the electorate offices of all three leaders of the ML faction - Mr Somyurek, Mr Scott and Ms Kairouz - after he, Ms Vaghela and their associates swapped factions and joined the ML faction. Ms Vaghela's husband, Electorate Officer Q, was employed despite performance shortcomings during his initial employment in Mr Scott's office.

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<sup>89</sup> In her response to the draft report, Ms Vaghela disputed this, stating that 'Mr Somyurek didn't know either of them [the electorate officers in case studies 16 and 17] before and were not hired to do factional work or party specific work'. We note that factional reasons referred to above are broader than this. We also note that her statement is not consistent with other evidence. In particular, it is not consistent with Electorate Officer Q's acceptance that his utility to the relevant MPs was his perceived ability to recruit (as set out in case study 16) and it is not consistent with some of her own evidence as set out in case study 17.



## Case study 16: Employment of Kaushaliya Vaghela MP's husband

Electorate Officer Q told the investigation that he was first introduced to the work of an electorate officer through the Socialist Left faction, and believed that their interest in employing him was due to his links to the Indian community and perceived ability to bring members into the ALP. Electorate Officer Q indicated that his lack of capacity to do the work of an electorate officer was known to his initial employers. He described being provided with an extensive list of names on his first day at the office and being required to identify, for ALP-related purposes, the names and possible languages of people on the list who were of Indian ethnicity.

Electorate Officer Q denied playing an active recruiting role himself, but acknowledged assisting some people who displayed an interest in joining the ALP. He accepted that other electorate officers were responsible for managing a group of ALP members and that his utility to the relevant MPs was his perceived ability to recruit.

He lost his job as an electorate officer when he and his wife, Ms Vaghela, and their associates left the SL faction to join the ML faction.

On joining the ML faction, he was initially employed casually in Mr Scott's electorate office for a short period in September 2018. He then moved to Mr Somyurek's office in February 2019, and moved again to Ms Kairouz's office in August 2019.

Mr Scott testified that he employed Electorate Officer Q in his electorate office at the suggestion of Mr Somyurek, stating that 'there was a mention of financial difficulties that the family had' after Electorate Officer Q lost his job. Mr Scott accepted that it was 'possible' that Mr Somyurek's suggestion that he should employ Electorate Officer Q was related to Ms Vaghela, her husband (Electorate Officer Q) and their associates' defection to ML, but said '[t]hat was not how it was framed'. Mr Scott also said he did not believe that Ms Vaghela was someone who brought factional support, and stated that he had no knowledge of branch-stacking activity by Electorate Officer Q in the SL faction.

Mr Scott said that he employed Electorate Officer Q with the knowledge that he had previously worked as an electorate officer and therefore assumed that he would be 'able to undertake the duties in a way that was satisfactory'. Electorate Officer Q had some relevant qualifications and experience.

Nevertheless, Mr Scott said he subsequently ceased Electorate Officer Q's employment in his office after only 11 days of work because he 'was not satisfied with his employment', explaining:

He turned up late. It was hard – he did not perform – you know, there was not particular value added by his work, and he was – he had a very – a fairly diffident sort of attitude. I'm trying to find the right adjective, but sort of he was not particularly proactive and it was hard to – he was not producing work that was of benefit to the office or the community.

Mr Scott further said that it was 'hard to ascertain his aptitude because of the behaviour – the attitude that was undertaken', noting that Electorate Officer Q 'didn't turn up on time' and 'only turned up a few hours a day'.

Despite these problems, Electorate Officer Q went on to be employed in both Mr Somyurek's and Ms Kairouz's electorate offices.<sup>90</sup> There is no evidence that Mr Scott recommended Electorate Officer Q or that he recommended Electorate Officer Q to them. Mr Scott said that he could not 'remember specifically' whether he mentioned his concerns about Electorate Officer Q to Mr Somyurek.

Data relating to Electorate Officer Q's computer login was consistent with Mr Scott's evidence about his performance. It suggests that he undertook little (if any) work during his employment across the three electorate offices. The data showed that Electorate Officer Q logged in on:

- only three days for the entire year of 2020, despite being paid for 35 days of work in Ms Kairouz's electorate office
- only three days during the year of 2019, despite being paid for 20 days of work in Ms Kairouz's electorate office, 30 days in Mr Somyurek's electorate office and 11 days in Mr Scott's electorate office.

Data regarding Electorate Officer Q's email account showed that he sent only one email during his entire period of employment. Electorate Officer Q acknowledged to the investigation that he was never required to send or receive emails or log in to any systems to perform his role. He said that no performance problems were ever raised with him and that tasks were not assigned appropriately.<sup>91</sup>

He said that his role involved identifying people of Indian descent on lists, and general office cleaning.<sup>92</sup> Although he said this in reference to his work in the offices of Mr Scott, Mr Somyurek and Ms Kairouz, Mr Scott stated that Electorate Officer Q was not employed to, and did not, perform factional work while employed in his office. We make no finding in relation to Mr Scott's office but otherwise accept Electorate Officer Q's evidence on his role.

Electorate Officer Q described Ms Kairouz's office as being stricter on how many hours they had to attend work and that Mr Somyurek's office did not have much work at all.

Electorate Officer Q was paid just under \$30,000 during his casual employment across the three electorate offices.

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90 In Ms Vaghela's response to the draft report, she also asserted that it was 'not true' that her husband was employed in other MPs' offices despite his performance shortcomings in Mr Scott's office. She said it was her understanding that 'it was not a performance issue' but rather a miscommunication between her husband and the office manager. Ms Vaghela also said that if her husband's performance was 'bad', Mr Scott would not have hired her other relative later on in the same year.

91 In response to the draft report, Electorate Officer Q advised they undertook various tasks for Mr Scott's Office Manager who, in their view, was not an adequate Office Manager, didn't communicate properly and assigned inappropriate tasks. Electorate Officer Q further advised Mr Scott had limited contact with Electorate Officer Q and that any suggestion of performance issues likely arose because of a misunderstanding communicated to Mr Scott by the Office Manager.

92 In response to the draft report, Electorate Officer Q advised their role as an electorate officer was more focused on community work. Despite the reference to identifying people of Indian descent on lists, in response to the draft report Electorate Officer Q advised they had never 'never been asked by any Moderate Labor MP to do any factional work, party related work or membership renewals during my working hours in the office' and that any party or factional related work was done on a volunteer basis in their spare time. Further response of Electorate Officer Q is contained in Appendix A.

462. Electorate Officer R was another staff member who was ill-equipped to perform the public duties of their role. They were initially employed as an electorate officer by Mr Somyurek, before moving to Ms Vaghela's electorate office at Mr Somyurek's request. Ms Vaghela gave evidence that, despite having worked previously as an electorate officer, Electorate Officer R initially 'struggled' when starting at her office although she argued that with some training they performed their duties well.



## Case study 17: Employment of Young Labor activist and recruiter

Electorate Officer R was employed as a casual electorate officer for Mr Somyurek in April 2019, before moving to Ms Vaghela's electorate office in August 2019, also on a casual basis. Electorate Officer R's employment in Ms Vaghela's office became part-time (ongoing) in January 2020, generally working one day per week.

At examination, Ms Vaghela said that Electorate Officer R 'came to my office through Adem Somyurek's office'. She said that Mr Somyurek had asked her to give them a job, but added that he did not put pressure on her. Ms Vaghela said that she is 'always in need for more staff', noting her office is 'the busiest office in [the] western suburbs as far as the electorate work is concerned'.

Ms Vaghela said that she 'would just take for granted they'll be good' if a new prospective employee had previously worked in another MP's electorate office. However, in Electorate Officer R's case, this did not prove true.

Ms Vaghela said that, although Electorate Officer R had worked in Mr Somyurek's electorate office, 'initially [they] struggled in my office because [they weren't] quite sure how to do the work and what sort of work is required'. She added 'I think [the] first day [they] came late, and [they were] told that, "You have to come on time" ...'. Ms Vaghela noted that every electorate office is different and that her expectations of staff were high, stating: 'As I work very hard for long hours, and my expectations are very high from my staff, at times it is not unusual for people to struggle to work in my office.'

Ms Vaghela conceded that it was unlikely Electorate Officer R would have been employed in the role if a merit-based recruitment process had occurred, although she claimed that once Electorate Officer R was trained in her office, they learned to fulfil their duties for constituent work and, as they were performing their public duties well, she decided to keep Electorate Officer R in her office and offered them a part-time role.

Ms Vaghela accepted that Electorate Officer R was 'quite active' in their community and had the ability to 'bring members', and that this would have been a strong reason why Mr Somyurek wanted them retained in employment.<sup>93</sup> Ms Vaghela also said she believed Electorate Officer R's employment with Mr Somyurek had been facilitated through her ALP associates in the Indian community (Electorate Officer Z and Person C).

<sup>93</sup> Diverging somewhat from her evidence at examination, Ms Vaghela said in her response to the draft report that she did not believe that the ability of Electorate Officer R to 'bring members' was a 'strong reason' why Mr Somyurek wanted Electorate Officer R retained in employment. She did however acknowledge in her response to the draft report that Mr Somyurek 'may have seen the possibility of that happening in [the] future', but said that this was 'just an assumption'. She disagreed with the way her views about Electorate Officer R had been presented.

Ms Vaghela said she believed it was one of them 'who had put [Electorate Officer R] in Adem's office', stating:

So it wasn't Adem who approached [Electorate Officer R]. It was – because when [Electorate Officer R] ran the campaign for [Electorate Officer Z] they said, '[Electorate Officer R] is good in running of campaign'. So that's how – they had a chat and they say to [Electorate Officer Z], 'Can you give [Electorate Officer R] a job?'. So that's how [Electorate Officer R] had ended up in Adem's office.

Person C acknowledged that they did ask for Electorate Officer R to be employed, but said that this was 'purely based on [their] talent and educational background'.

Mr Somyurek said at his examination that he could not recall why he employed Electorate Officer R, but asserted that it 'wasn't to do with any of the student politics stuff', adding that Electorate Officer R 'didn't have any numbers', meaning people who could be recruited as ALP members and who would support the ML faction. However, Mr Somyurek also acknowledged that 'after the war in Holt [Electorate Officer R] obviously was a part of the Indian group and ... I think [Electorate Officer R] was around recruiting at that point', but claimed that 'the last thing on [his] mind was recruiting members' at the time he employed Electorate Officer R.

Based on the totality of the evidence, the investigation concluded that the substantive reasons that Electorate Officer R was initially employed were their potential usefulness to the ML faction as a member of the Indian community and their experience in student politics.

## Movement of staff between offices of different ML-aligned MPs

463. In addition to employing staff in their own offices for factional reasons, Mr Somyurek, and to a lesser extent Ms Kairouz, influenced or in some cases directed other ML-aligned MPs to employ certain factional operatives or allies in their offices.
464. Witnesses variously described the power that Mr Somyurek and Ms Kairouz held in this regard as the leaders of the faction. Mr Garotti said at examination that Mr Somyurek 'had the power or had the authority to be able to - whether you use the word "ask", but certainly request members of parliament to, you know, make their staff resources available to who he may have preferred.'
465. In a similar vein, Ms Vaghela accepted during her testimony that MPs had limited control if another member of the faction told or asked them to employ someone. Ms Vaghela also described the 'fluidity' with which staff moved between offices, so much so that 'you don't know at what time who is working for whom'. Nick McLennan gave similar evidence, stating that there was a period when 'people changed jobs more than the wind changed directions' - to the extent that Mr McLennan said he 'certainly didn't make a habit of paying attention to who was where'.
466. Consistent with witness evidence, there were a considerable number of common electorate officers and ministerial staff employed at various times across the offices of ML-aligned MPs.
467. An example of the way in which ML faction leaders influenced the employment of staff in other ML-aligned MPs' offices is outlined in case study 18. This relates to Mr Somyurek influencing the employment of factional operatives in the office of Tien Kieu MP.





## Case study 18: Mr Somyurek's involvement in getting jobs for factional operatives in Tien Kieu's electorate office

Mr Somyurek influenced the employment of staff in the electorate office of Dr Tien Kieu, the Legislative Council Member for the South Eastern Metropolitan region, who was also a member of a sub-faction aligned with ML.

The evidence obtained during the investigation included January 2020 text messages between Electorate Officer X and Mr Somyurek regarding vacant positions in Dr Kieu's electorate office, where Electorate Officer X had been working since January 2019. Electorate Officer X sent Mr Somyurek a message to tell him that two existing staff had left the office, so there were two casual positions vacant. Mr Somyurek responded saying 'Wow what happened' and 'I guess we now have kids to put in there now.' Mr Somyurek sent a further message to Electorate Officer X saying '[t]ell him [Dr Kieu] u have people to put in'. Mr Somyurek's reference to 'kids' appears to relate to factional operatives Electorate Officer I and Electorate Officer J – the latter of whom was ultimately employed as a full-time electorate officer for Dr Kieu in March 2020.<sup>94</sup>

Mr Somyurek also had a role in Electorate Officer X's own employment in Dr Kieu's office a year earlier. Electorate Officer X said that it was Mr Somyurek who 'suggested' he would like Electorate Officer X to move to Dr Kieu's office, from Ms Kairouz's ministerial office where they were working in 2018. Electorate Officer X said that, although it was Mr Somyurek who spoke to them about moving to Dr Kieu's office, they were asked to provide a copy of his resumé to another MP who was a 'factional figurehead' in another sub-faction that Dr Kieu was associated with.<sup>95</sup> Electorate Officer X said:

I think it was more of – the arrangement had already been made, but it was a matter of course that at least Adem [Somyurek] needed to make a show of at least sending [the other MP] my resumé. But I think it was more of a process thing than anything else.

Mr McLennan also said at examination that he knew Dr Kieu was 'asked, probably told, to employ people who in addition to their office-based work would do factional type jobs, and that would have been done by Mr Somyurek'.<sup>96</sup>

In a February 2020 recorded conversation, Mr Somyurek complained he was 'sick of ... feeling like a fucking ATM' when talking about Electorate Officer X not doing factional work in line with Mr Somyurek's expectations, despite being given a job in Dr Kieu's office for this specific purpose. This suggests that it was at least Mr Somyurek's attitude at this time that jobs in other MPs' offices were his to be 'handing out'.

94 In response to the draft report, Dr Kieu noted that he was not a party to these text messages and that no statements about this matter are attributed directly to him.

95 In response to the draft report, Dr Kieu highlighted that Electorate Officer X had been required to provide a copy of their curriculum vitae, as well as undertaking an induction in relation to what duties could be carried out at his office and responsibilities. Dr Kieu's response also highlighted Electorate Officer X's evidence that the factional work was directed by Mr Somyurek rather than by him. The investigation notes earlier in this report that there was no evidence that Dr Kieu was directing Electorate Officer X to do factional work, but rather that these directions were coming from Mr Somyurek. The investigation also makes no findings about Electorate Officer X's suitability for the electorate officer role, but considers that the evidence supports the view that Electorate Officer X's employment in Dr Kieu's office was based primarily on factional considerations.

96 In response to the draft report, Dr Kieu said that, '[f]or a multitude of patent reasons', Mr McLennan's statements are of no evidentiary value whatsoever in relation to whether Dr Kieu misused electorate office resources. This report makes no finding about any misuse of public resources by Dr Kieu.

468. In a similar vein, Ms Kairouz in a lawfully intercepted telephone call in June 2020 articulated her attitude that she and Mr Somyurek had the power to 'hand out' jobs to factional operatives (whether in their own or other MPs' offices) and, similarly, to take away such jobs as they pleased. In this instance, the conversation related to the employment of Electorate Officer H, who had worked as an electorate officer for Mr Somyurek, Ms Kairouz, Ms Vaghela and another MP in the broader Right faction of the ALP. Electorate Officer H was affiliated with the Australia Light Foundation, an incorporated association with close links to the ALP, particularly the ML faction. Electorate Officer H and other officeholders of the Australia Light Foundation were given employment in the offices of various ML-aligned MPs.

469. In discussing Electorate Officer H's response to the looming *60 Minutes* story and possible media attention that the Australia Light Foundation was facing, Ms Kairouz stated to Mr Somyurek that '[Electorate Officer H] doesn't have to be a part of our group, and they don't have to have all of those jobs'. Electorate Officer H was employed in Ms Vaghela's electorate office at the time this conversation took place. Ms Vaghela said at examination that Electorate Officer H came to her office through Ms Kairouz, although she also highlighted that they had been recommended due to their extensive electorate office experience.<sup>97</sup>

470. Other examples of staff who were employed in other MPs' offices as a result of influence by ML leaders include:

- Electorate Officer Q, husband of Kaushaliya Vaghela, who Mr Somyurek asked Mr Scott to employ (see case study 16)
- Electorate Officer R, who Mr Somyurek asked Ms Vaghela to employ (see case study 17)
- Person V, who Mr Somyurek pressured Mr Byrne to employ (see case study 14).

## Employment of factional allies' family members

471. In addition to identifying the employment of factional allies and operatives, the investigation identified several instances of relatives of such individuals being provided employment by ML-aligned MPs, in some cases as a 'reward' for the factional operative's work for the faction.

472. Mr Somyurek employed a close relative of Hussein Haraco in his ministerial office, after Rick Garotti conveyed to him that Dr Haraco was doing a lot of factional work, so they needed to 'keep him supported'. This was in addition to Dr Haraco already being employed in Mr Somyurek's electorate office for factional reasons, as described above in case study 8. Case study 19 also shows the role of ML leaders in influencing staff appointments in other MPs' offices, when Mr Garotti initially asked Mr Somyurek whether he could arrange for Dr Haraco's relative to be employed in the offices of Ms Kairouz or Mr Byrne.

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<sup>97</sup> In response to the draft report, Electorate Officer H noted that the reason they obtained employment in electorate offices, notwithstanding their factional involvement and the discussion between Ms Kairouz and Mr Somyurek (to which they were not a party), was their many years of experience as an electorate officer and as an office manager, as acknowledged by Ms Vaghela.



## Case study 19: Employment of relative of recruiter Hussein Haraco

Dr Hussein Haraco's close relative, Ministerial Staffer S, was employed as a part-time administrative assistant in Mr Somyurek's ministerial office in February 2019, working three days per week. Ministerial Staffer S also gained employment as a casual electorate officer for Nazih Elasmr in May 2019, another MP aligned to the ML faction.

Evidence obtained by the investigation showed that Ministerial Staffer S's employment was facilitated by Rick Garotti as a reward for Dr Haraco's factional work. Text messages from Mr Somyurek's mobile phone show that Mr Garotti sent 13 messages to Mr Somyurek over the course of 2018 regarding employment for Dr Haraco's relative, Ministerial Staffer S. The first message originated in January 2018 and said:

Hi Adem, do you think we can get a day a week somewhere for Dr Hussein's [relative]? Maybe Marlene's EO?

[They are] starting uni this year. The idea is that [they] would move into the Broadmeadows branch as a regular, active member and help support our recruitment activities there.

Mr Garotti followed this with a further message, stating 'Longer term [they will] come to work for me if/when I become an MP'.

Mr Garotti subsequently sent Mr Somyurek a message in March 2018, in which he noted that they had 'discussed another half-Day / one day job for Dr Hussein or his [relative] some time back' and asked whether there had been '[a]ny movement on this'.

In further messages throughout 2018, Mr Garotti:

- said that Dr Haraco's [relative] was 'studying @ Monash so could certainly work out of your [Mr Somyurek's] Office half a day per week' and it would '[b]e really good to accommodate [Dr Haraco's relative] in some way'
- asked whether 'AB' (Anthony Byrne) would 'be able to offer [Dr Haraco's relative] 0.5 days per week'
- asked how Mr Somyurek was 'going with the job for Dr Hussein's [relative]', noting that he was 'doing a lot of work' and they needed 'to keep him supported'
- told Mr Somyurek that Dr Haraco's relative could 'work up to three days per week' and that 'anything ... [they could] do to accommodate [them] would really [be] appreciated'
- said that Dr Haraco's relative was yet to hear back from Mr Somyurek's office 'about the 3 day per week job' and asked whether Mr Somyurek's office could 'look into this'.

At examination, Mr Garotti accepted that this was 'just another instance of factional patronage' which was going to be supported out of taxpayer funds – responding 'yeah, crystal clear that that's the case'.

Mr Somyurek claimed at examination that the reason he was interested in employing Dr Haraco's relative was because they were 'a young Somali [person] ... with a head covering' and described this as 'a great story'. However, Mr Somyurek later said he was 'happy to accept' that the genesis of how they got the job was 'factional patronage, looking after Dr Haraco because he's doing good factional work'.

473. The leaders of the ML faction also facilitated the employment of a close relative of Ms Vaghela in Robin Scott's electorate office. This was the second relative of Ms Vaghela who was employed in an ML-aligned MP's office, with her husband having been employed in the offices of all three ML leaders (as detailed in case study 16).



## Case study 20: Employment of Kaushaliya Vaghela's relative

A close relative of Kaushaliya Vaghela was employed as a casual electorate officer for Robin Scott<sup>98</sup> in September 2019. Ms Vaghela explained at examination that she facilitated employment for her relative through her factional allies:

I had spoken to, I don't know whether it was Robin [Scott] or Adem [Somyurek]. I was looking for a job for my [relative]. Of course I wanted [them] to learn, and I can't keep [them] in my office; you can't put [them] in Liberal Party's office. Moderate is your faction. So you speak to whoever the boss is. And I said that, 'I want a job for my [relative]. I want [them] to learn,' and that's how it happened in Robin Scott's office.

There is no evidence that Ms Vaghela's relative was not qualified to be employed as an electorate officer; that they were employed to do factional work; that they did such work during the time they were employed to do their public duties; or that they did not perform those public duties well.

What this case study does demonstrate is the employment of a close relative of a factional ally. Although her relative was not involved in factional work after gaining employment, Ms Vaghela categorised the way in which publicly funded roles were filled for factional reasons as 'not appropriate' and said that this type of conduct was rife in the ML faction, as well as in other factions of the ALP.

<sup>98</sup> In his response to the draft report, Mr Scott noted that he had not been questioned about the qualifications or capacity of, or the reasons for employing the second relative of Ms Vaghela.

474. In another case, Mr Scott employed two children of a longstanding ALP member and recruiter who was a close factional associate of his.



## Case study 21: Employment of ALP recruiter's children

Two children of a longstanding ALP member and recruiter, Person T, were employed in Robin Scott's offices: one in his ministerial office as an administrative assistant from 2015 to 2020, and the other in his electorate office as a part-time electorate officer from July 2017.

The evidence obtained suggests that Mr Somyurek may have influenced an increase in working days for one of the children in 2017, after their father expressed to Mr Somyurek that he expected him to do his child 'this favour'. In a text message written in Turkish (translated below), Person T said to Mr Somyurek:

[Person T's child] currently works at Robin's office on a casual basis for 2 days. As a group leader, I am asking you to give this new part-time position in Robin's office to [Person T's child]. Otherwise, they will give it to someone else. I'm expecting you to do [Person T's child] this favour.

Mr Scott said at examination that he did not recall a conversation with Mr Somyurek about this, but acknowledged 'it may have occurred'. Mr Scott also said that he employed Person T's child to 'help [them] in [their] life' and said Person T had approached him directly about this. Mr Scott added that Person T's child's circumstances were 'complex', noting that they had a mental illness and Mr Scott wanted to 'give [them] an opportunity to build [their] life and to live independently'.<sup>99</sup>

Mr Scott acknowledged that Person T's family 'certainly were close factional associates of [his]', but said Person T's child 'had essentially no factional role'.

Again, there is no evidence that Person T's child was unqualified for the role, that they did not adequately fulfil the public duties of the role, or that they improperly performed factional work in that role. However, the case study demonstrates another example of employment in a public role being given to a relative of a factional ally as a favour. It highlights the highly discretionary manner in which electorate officers can be employed, in contrast to the open and competitive merit-based recruitment processes applicable to most other public sector roles.

<sup>99</sup> He further stated that Person's T child and the relative of Ms Vaghela referred to in case study 20 performed favourably in their roles, engaged in professional development training and were retained, which was in contrast to the performance of Electorate Officer Q referred in case study 16.

475. Other examples of the employment of relatives included:

- the sister and nephew of one of Mr Somyurek's longstanding electorate officers and factional operatives, Electorate Officer M, who were employed in Mr Somyurek's electorate office
- Mr Somyurek's three close relatives employed as, respectively: an electorate officer in his office; a cleaner in his office; and an electorate officer in Mr Byrne's electorate office - the latter of which was facilitated by Mr Somyurek
- two relatives of Nazih Elasmr: one employed in the ministerial offices of Mr Somyurek and Ms Kairouz; the other employed in Ms Kairouz's ministerial office
- a relative of longstanding member and recruiter Person W, employed in the electorate offices of Mr Somyurek and another ML-aligned MP, Meng Heang Tak
- two relatives of Ms Kairouz: one employed in the electorate offices of Ms Kairouz and Mr Somyurek; the other employed in the electorate offices of Ms Kairouz and an MP
- the relative of an MP in the broader Right faction of the ALP, employed in Ms Vaghela's electorate office.<sup>100</sup>

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<sup>100</sup> In response to the draft report, this MP in the broader Right faction of the ALP stated that the recruitment of their relative was via prescribed parliamentary policies and procedures, that their relative conducted regular electorate officer work, and at no time did they conduct factional work or perform improper activities. This MP disputed any inference that their relative could not have been employed on merit or that they were not a suitable candidate for the position that they were employed.

# Chapter 6. Government grants provided to factionally aligned community organisations

## Overview

476. The preceding chapters examined the ML faction's misuse of public resources, predominantly in the form of electorate office or ministerial staff, to facilitate branch stacking.
477. This chapter examines allegations that senior figures in the ML faction misused their positions to award, or to influence the awarding of, government grants to community organisations that were linked to the ML faction.
478. It details connections between the ML faction and three community organisations that received substantial grants from government departments or agencies for which ministers in the ML faction were responsible.
479. The investigation did not establish that ministers in the ML faction awarded any grants improperly. There is no evidence that grants were used to facilitate branch stacking.
480. However, evidence shows that members of the ML faction - including Mr Somyurek, one of the dominant figures in the faction - improperly sought to influence the grant process.
481. The investigation also highlights deficiencies in record keeping by the organisations and in their acquittal of funds that were granted to them.

## Links between the ML faction and organisations that received government grants

482. In June 2020, shortly after the broadcast of the *60 Minutes* program that formed part of the genesis of Operation Watts, a media report alleged that Robin Scott, as Minister for Multicultural Affairs, signed off 'nearly \$1 million worth of grants' to three community organisations 'linked to alleged branch stackers and ALP staffers'.<sup>101</sup>

The three named organisations were:

- the Australia Light Foundation
- the Cambodian Association of Victoria
- the Somali Australian Council of Victoria.

### The Australia Light Foundation (ALF)

The ALF was established by members of the immigrant Turkish community as a cultural and religious association. It is based in Melbourne's western suburbs and has evolved into a multi-faith community centre. It provides practical support to local community members, as well as remitting money to representatives overseas to assist with medical services and religious observances such as Eid al-Adha.

### The Cambodian Association of Victoria (CAV)

The CAV was established in 1985 by Cambodian refugees and immigrants. It is active in Melbourne's south-eastern suburbs and headquartered in Springvale. The CAV provides welfare and support services to the Victorian Cambodian community, including assistance with resettlement. These services are provided by a combination of paid staff and volunteers.

### The Somali Australian Council of Victoria (SACOV)

SACOV is based in Heidelberg West and describes itself as an 'umbrella body' for Somali organisations. SACOV provides advocacy, referral and practical support services to the Somali community in Victoria. Dr Hussein Haraco is a founding member of SACOV.

<sup>101</sup> S Danckert and N McKenzie, 'Fallen minister Robin Scott signed off on grants to factional allies', *The Age*, 17 June 2020, <https://www.theage.com.au/politics/victoria/fallen-minister-robin-scott-signed-off-on-grants-to-factional-allies-20200616-p55381.html>

483. Of course, the mere existence of any links between such community organisations and MPs or their staff is not a concern. Very many MPs and their staff have a history of active involvement with community groups, and maintain connections with such groups. Moreover, the existence of such links does not mean that the community organisation is affiliated with a political party or a faction in a political party.
484. However, the existence of such links may present concerns if actual or potential conflicts of interest are not managed appropriately to make sure that community organisations do not gain an improper advantage in obtaining government grants, and that any such grants are not misused for political or factional purposes.
485. The evidence gathered during the investigation confirmed the existence of links between these organisations and the ML faction, arising from:
- the employment of several executive members of these organisations as electorate and ministerial staff in the offices of ML-aligned MPs
  - these executive members' involvement in recruiting and undertaking other work for the faction (refer to Chapter 4 for details)
  - the use of one organisation's premises for factional meetings
  - Mr Somyurek's involvement in coordinating and preparing media responses on behalf of two organisations before the airing of the June 2020 *60 Minutes* story
  - Mr Scott's service as a board member of the CAV in the early 2000s and his previous employment as an electorate officer for a former MP who was the president of the CAV.

## Employment of executive members as electorate and ministerial staff

486. Several executive members of the ALF, the CAV and SACOV, as well as individuals related to them, had been employed in the electorate and ministerial offices of ML-aligned MPs. These individuals were also all members of the ALP and included:
- at least three current or former executive members of the ALF employed across the offices of Mr Somyurek, Ms Kairouz, Ms Vaghela and another ML-aligned MP, Katie Hall, with two members - Electorate Officer H and Electorate Officer L - having been employed by more than one MP<sup>102</sup>
  - the president of the CAV, Person W, employed by Mr Somyurek and a former ML-aligned MP; and Person W's relative, employed by Mr Somyurek and another ML-aligned MP, Meng Heang Tak
  - three individuals related to SACOV employed by Mr Somyurek: the secretary and founding member of SACOV, Dr Hussein Haraco; Dr Haraco's relative; and the relative of SACOV's vice-president.

## Use of ALF premises for factional activities

487. In addition to employing executive members of the ALF, the ML faction used ALF premises for factional meetings. Evidence of this included a November 2019 email that faction organiser Nick McLennan was directed to send to the group, advising of a meeting at ALF's premises 'this coming Sunday to discuss a number of matters including the upcoming ALP State Conference'.

<sup>102</sup> In response to the draft report, the ALF stated that it was 'not affiliated with any political parties', and that it was 'untrue' to insinuate that this was the case due to the employment of three members of the ALF in ALP MPs' offices. The ALF said that the three members' employment in MPs' offices 'had no effect on their role at the ALF'. Although the ALF may not have any formal affiliation with the ALP or the ML faction, the investigation is satisfied, based on the evidence in this report, that links existed between the ALF and the ML faction, which could lead to, at a minimum, perceptions of conflict of interest and preferential treatment in government grant processes.



488. Mr McLennan gave evidence that Ms Kairouz had also directed him to transfer a meeting of the ALP's Tottenham branch to the ALF's premises.
489. A lawfully intercepted telephone conversation the day before the *60 Minutes* program aired revealed that Mr Somyurek was concerned about perceptions of the close links between the ALF and the ML faction, with Mr Somyurek telling another ML-aligned MP, Tim Richardson, not to tell journalists that they had attended the ALF's premises for an ML event. Mr Somyurek added: 'Just say you don't know, you don't know what it is, yeah' (referring to the ALF).<sup>103</sup>

### Preparation of media responses on behalf of community organisations

490. Several other lawfully intercepted telephone conversations in the lead-up to the *60 Minutes* story airing showed Mr Somyurek liaising with individuals associated with the ALF and SACOV about grants that their organisations had received. Mr Somyurek asked them to gather information to report back to him, because he was preparing responses on behalf of these individuals and their organisations that would be provided to the media. These conversations included the following:

- Mr Somyurek asked Electorate Officer L, a member of the ALF, to compile information on grants the ALF had received. Mr Somyurek said, 'we just need all the money you guys have got' and asked 'are you getting all that together?' concerning information on grants to the ALF.

- Electorate Officer L told Mr Somyurek that they had only been able to 'go back to 2015' in terms of the ALF grants information Mr Somyurek had requested, to which Mr Somyurek responded, 'that's bad, because that's just, ah, what Robin's given you'.
- Mr Somyurek asked Rick Garotti to prepare a response to questions from a journalist sent to Dr Haraco about grants that SACOV had received. Mr Somyurek told Mr Garotti not to send the response to the journalist, but said, 'send it to me first and then we'll sort of workshop it'.
- Mr Somyurek told Mr Garotti what the response should say about SACOV and Dr Haraco, including that '[h]e's got no contact with Robin Scott', and '[d]on't talk about our group Moderate Labor'.
- Mr Somyurek discussed with Electorate Officer H - an ALF member and electorate officer for Ms Vaghela at that time - a media response that Mr Somyurek was preparing on Electorate Officer H's behalf.<sup>104</sup>

491. At examination, Mr Somyurek claimed that he was investigating grants funding in order to help the ALF respond to the journalists' questions. He denied that he was preparing responses for others for the purpose of reducing the risk of any impropriety coming to light. These conversations reveal the close relationships between the ML faction and these organisations.

<sup>103</sup> In response to the draft report, the ALF said that its premises are 'used by numerous individuals and groups for a variety of activities and events'. The ALF highlighted that the Liberal Party had hosted 'multiple events' at the ALF's premises and said 'Accordingly, if IBAC's accusations of ALF's affiliation with the Moderate Labor Faction were true, ALF would not have permitted the Liberal Party of Victoria to host such functions at its Premises'. While the ML faction's use of the ALF's premises does not in and of itself indicate a link between the ALF and the ML faction, the investigation considers that this link is established when the totality of the evidence is considered.

<sup>104</sup> In response to the draft report, the ALF said that it 'reached out to Mr Somyurek for assistance with the preparation of a media response as it has limited experience and expertise in responding to media enquiries'. The ALF further asserted: 'At no stage did the ALF play a role for Moderate Labor in any alleged branch stacking'. This report does not suggest that the ALF as an organisation engaged in branch stacking for the ML faction; however, there is evidence, outlined in this report, of some individual members of the ALF supporting ML's factional activity.

## Grants by Robin Scott as Minister for Multicultural Affairs to the ALF, CAV and SACOV

492. Robin Scott was the only minister in the ML faction who was directly responsible for approving grants to any of the three organisations with links to the faction.
493. He was Minister for Multicultural Affairs from December 2014 until December 2018. In that capacity, he oversaw the provision and administration of grants in the multicultural area by the Department of Premier and Cabinet (DPC).<sup>105</sup>
494. For his period as the relevant minister, grants provided by the DPC to each of the three organisations were as follows:
- ALF – 17 grants totalling \$677,500
  - CAV – 5 grants totalling \$228,593
  - SACOV— 8 grants totalling \$98,725.

### The process followed in Mr Scott's portfolio

495. Mr Scott stated that the grants process was administered by his department, rather than through the office of the Minister for Multicultural Affairs. Mr Scott's evidence was that he implemented 'a three-step process' for grant applications before they reached the minister for final sign-off:
- The first stage was a departmental review of the grant application.
  - If the application met the relevant criteria, it would typically be considered by a panel composed of a subject matter expert, a representative from the Victorian Multicultural Commission (VMC), and a departmental officer. Mr Scott said that he tried not to be involved in selecting the panel.

- The third step involved the VMC determining whether to approve the panel's recommendations, which Mr Scott described as giving VMC 'the power to say no'. If the VMC approved a brief, it would go to Mr Scott for sign-off.

496. Mr Scott also said that he had required a specific addendum for grants to SACOV. This addendum required more stringent receipting processes for grant funds allocated to and spent by SACOV. He acknowledged that the purpose of this addendum was to defend against any perception of impropriety, as 'there had been allegations and I wanted to make sure that there was no - it was beyond reproach how the money was spent'.

497. Ministerial Staffer K, a ministerial adviser for Mr Scott between 2015 and 2020, gave evidence that SACOV applied for grants administered through Mr Scott's ministerial office, but that to his knowledge these were for smaller amounts. Ministerial Staffer K said that the biggest complaint he would receive from Dr Haraco was that SACOV was receiving less grant money from the Victorian Labor government after 2014 than it had from the preceding Coalition government. Ministerial Staffer K's evidence was that the relevant departments generated ministerial briefs advising whether to approve particular grant applications, and that the minister would sign off on the brief as it was received. He said that, to his knowledge, Minister Scott had 'never changed a brief'.

### Lobbying for grants in favour of SACOV

498. The only evidence that showed an attempt to manipulate any grant processes in Mr Scott's portfolio was in respect of applications by SACOV. There was evidence of two attempts, in 2015 and 2017. Rick Garotti was a key player in both attempts.

<sup>105</sup> Some of the information about these grants was provided by the Department of Families, Fairness and Housing (DFFH), because under machinery-of-government changes effective on 1 February 2021, the minister's portfolio, including the Victorian Multicultural Commission, was transferred to DFFH.

*Factional lobbying for SACOV in 2015*

499. Text messages from Mr Somyurek's mobile phone show that Mr Garotti contacted Mr Somyurek in October 2015 to ask about 'VMC funding issues with SACOV', which the two had apparently discussed in the preceding days. Mr Garotti asked Mr Somyurek if he could 'look into this' with the Minister for Multicultural Affairs, Mr Scott. In response, Mr Somyurek told Mr Garotti that Mr Scott was not in parliament on that day. Mr Garotti asked again two days later. Mr Somyurek replied that he would speak with Mr Scott when he was in parliament later that day.
500. At examination, Mr Garotti could not remember what these messages related to. He speculated that they may have been sent after SACOV missed out on a grant that it had previously been receiving, and that Dr Haraco may have asked him to make enquiries. Mr Garotti agreed that Dr Haraco would have asked him to follow up because of Mr Garotti's connections with Mr Somyurek and Mr Scott. When asked why he approached Mr Somyurek when the grants were in Mr Scott's ministerial portfolio, Mr Garotti replied that Mr Somyurek might have been able to get that information from Mr Scott more quickly or directly.
501. Mr Garotti's doubtful claim was that his enquiries to Mr Somyurek in October 2015 were not about influencing funding or grant decisions. From Mr Garotti's perspective, the messages were directed towards obtaining information that he could then provide to Dr Haraco. However, Mr Garotti agreed that Dr Haraco could simply have sought the information himself, through the VMC.
502. At his examination, Mr Somyurek claimed that he could not recall speaking with Mr Scott about this matter. He considered Mr Garotti's approach to be an example of the typical kind of lobbying to which MPs were exposed on a regular basis. In his view, the determining factors would be what an MP did in response to such an approach, and whether they tried to pressure or influence a decision maker on behalf of the party making that approach.
503. He acknowledged that it would be 'beyond patronage' if a community association did not meet objective criteria for obtaining a grant but nonetheless received some unfair advantage through its factional connections. His evidence strongly suggests that he recognised that his and Mr Scott's relationship with SACOV and Dr Haraco was such that it would not have been appropriate for him to seek to influence Minister Scott to make a grant to SACOV. (Messages between Mr Somyurek and Mr Garotti some two years later, set out below, suggest that Mr Somyurek disregarded these principles.)
504. Mr Scott did not have a specific memory of the resolution of the relevant matter. He acknowledged that Mr Somyurek had on one occasion mentioned something 'in passing' to him relating to a SACOV grant application, but said that that instance was the exception rather than the rule, as Mr Somyurek was typically dismissive of the idea of people using political influence in connection with grants. Mr Scott acknowledged there may have been other occasions when Mr Somyurek spoke to him, but he could recall only a single instance. Mr Scott asserted that, regardless of any conversation, grants were never influenced or actioned on the basis of political association, and that he adopted a very cautious system so as to remove the possibility.

505. If Mr Somyurek did speak to Mr Scott as requested by Mr Garotti on this occasion, there is no evidence that Mr Scott inappropriately intervened in relation to any grant.

*Factional lobbying for SACOV in 2017*

506. Further issues regarding SACOV were identified in relation to the Himilo project. This is a community assistance project focused on the Australian-Somali community, particularly in and around Heidelberg. The Himilo project provides assistance in connection with education, skills development, health, social cohesion and employment.

507. The Himilo project is funded by a number of Victorian government grants. Mr Scott informed the investigation that decisions regarding grants to the project were made by a ministerial subcommittee. Mr Scott was one of around six ministers who comprised that subcommittee. He was not the chair of the subcommittee and said that Cabinet confidentiality constrained his ability to comment on this matter.<sup>106</sup>

508. The investigation obtained two text messages from November 2017 between members of the ML faction Rick Garotti, Mr Somyurek and one of Mr Scott's ministerial advisers, Ministerial Staffer AC, relating to SACOV's desire to receive assistance with grant processes in connection with the Himilo project. The text messages demonstrate an intention to subvert a grant process for SACOV's benefit with Mr Somyurek's assistance.

509. In the first text message, dated 29 November 2017 to Mr Somyurek, Mr Garotti wrote:

Hi Adem,

Thanks for our chat. Here's a recap on the key details of our discussion.

1. The Himilo Project in Heidelberg West is to be extended with another \$1m in funding.
2. The funding currently goes to [another community organisation]. [The other organisation] has been successfully working in partnership with SACOV (Dr Hussein's organisation) to deliver the Himilo project.
3. If [the other community organisation] receives the growth funding they will set-up another Somali group in competition to SACOV as they are becoming concerned about the increasing power/influence of SACOV.
4. The CEO of [the other organisation] is connected very closely with [former Federal ALP Minister] Jenny Macklin.
5. The new funding must go directly to SACOV. This is what Dr Hussein wants, what I want and is also the formal position of Banyule City Council.

I have spoken to [Ministerial Staffer AC] about this. It would be great if you could follow-up with Robin and advise.

Cheers,

Rick

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<sup>106</sup> In his response to the draft report Mr Scott emphasised that he was not the minister responsible for the funding decision and that and that he did not 'as the Minister of Multicultural Affairs make any decision concerning the funding outside of the collective process of the Ministerial sub-committee' and that he 'did not have the capacity to'.

510. On 30 November 2017 Mr Garotti forwarded to Mr Somyurek a text message to Ministerial Staffer AC which was a 'recap' of agreed actions from Mr Garotti's discussion with Ministerial Staffer AC:

Hi [Ministerial Staffer AC], thanks for our chat earlier. Here's a recap on the agreed actions:

1. [Ministerial Staffer AC], Dr Hussein and Rick [Garotti] to catch up when Dr Hussein is back in Australia - mid-December.
2. [Ministerial Staffer AC] to advise on when capacity building funding round opens. Dr Hussein to put in an application for SACOV (\$50k to \$100k available per annum).
3. [Ministerial Staffer AC] to ensure that any decision regarding growth funding for the Himilo project is held off until Dr Hussein returns.
4. In the interim [Ministerial Staffer AC] to explore other options for allocating the Himilo growth funding such as allocating it to Councils or other respected peak bodies (i.e. not [the other community organisation]).

Kind regards,

Rick

### Was there an agreement between Mr Garotti and Ministerial Staffer AC and, if so, was it carried out?

511. Ministerial Staffer AC was one of the designated contacts in Mr Scott's ministerial office for multicultural affairs grants. In that capacity, Ministerial Staffer AC said that they would respond to requests and queries about those grants. Typical assistance from the minister's office included providing information about grant programs, contacting officers in the relevant departments, and arranging meetings. Ministerial Staffer AC noted that it was common for MPs to contact the minister's office to lobby and seek information on behalf of organisations in their electorates.
512. Mr Garotti gave evidence that he was acting at the request of Dr Haraco and that he had reached an agreement with Ministerial Staffer AC on action to take, to secure the outcome which Mr Garotti, Mr Somyurek, Dr Haraco, SACOV and the ML faction wanted.
513. In their evidence, Ministerial Staffer AC accepted that they received the text message from Mr Garotti, but did not recall the conversation referred to by him. Ministerial Staffer AC conceded that it was an unusual and improper request from Mr Garotti for Ministerial Staffer AC to act in a way that was well outside their authority as a ministerial adviser.
514. Ministerial Staffer AC did not accept that an agreement had been reached. Asked why Mr Garotti would communicate this outcome to Mr Somyurek if no such agreement had been reached, Ministerial Staffer AC suggested that Mr Garotti 'might have been boasting'. However, Ministerial Staffer AC conceded that Mr Garotti's description and recollection of the 'agreed' steps to be taken went beyond that.

515. Ministerial Staffer AC could not recall whether they had spoken with Mr Scott about this approach and the steps that Mr Garotti described as ‘agreed actions’. Ministerial Staffer AC did not recall taking the ‘agreed actions’, saying: ‘I don’t think I actioned it.’
516. In the text message dated 29 November 2017, Mr Garotti asked Mr Somyurek to ‘follow up with Robin [Scott] and advise’. Mr Somyurek appears to have accepted as likely that he passed on Mr Garotti’s request to Mr Scott. Mr Scott testified that, in relation to the funding, Mr Somyurek ‘very much mentioned something in passing [...] and it wasn’t pressed’.
517. There is no evidence that the ‘agreed actions’ referred to by Mr Garotti were carried out. SACOV was not successful in obtaining the grant in question.<sup>107</sup>
518. Nevertheless, the communications are of concern for several reasons.
- Concerns about conduct of ML faction ministers and staff*
519. Mr Garotti’s conduct in lobbying for SACOV was improper. Initially he claimed that it was based on the view that SACOV could do a better job of administering the funding than the other community organisation, but he subsequently conceded that the connection between SACOV and the ML faction was a consideration and that ‘there wouldn’t have been a difference’ in the delivery of the program if the funding went to the other community organisation.
520. Mr Garotti agreed that the message from 29 November 2017 was another example of him lobbying on behalf of SACOV. Although Mr Garotti did not recall the conversation with Mr Somyurek, he conceded that the result was that Mr Somyurek would do what he could to make sure that this funding went directly to SACOV.
521. Mr Garotti admitted that his statement in the text message dated 29 November 2017 about Banyule City Council’s formal position was false. He conceded that he had added this to give further credibility to the proposition and to give Mr Somyurek and Ministerial Staffer AC a further argument for the proposed arrangements in their discussions with Minister Scott. He also conceded that, given his role on that council, he would have been in a strong position to influence how the Himilo project funds would be directed if they were allocated to the council as proposed as an interim option in item 4 of the text message of 30 November 2017. He accepted that he would have conveyed to Ministerial Staffer AC that it was important for a factional ally that the grant funding go to SACOV.
522. The involvement in this communication of Mr Somyurek, a minister and leading figure in the ML faction, and his attitude towards it, are of particular concern.
523. In his evidence, Mr Somyurek said he had not thought at the time of these messages about whether intervening in a grant process for a factional ally might give rise to a conflict of interest. He said that MPs would be asked to find out information for constituents ‘from Day 1 as an MP’. He distinguished between the propriety of locating information that should be available to the applicant and interfering with the process.
524. Mr Somyurek did not recall Mr Garotti’s messages from November 2017. He said that Mr Garotti’s and Dr Haraco’s views should not be relevant to how government funding was directed. Mr Somyurek stated that the only part of the messages that may have made him curious would be if the Socialist Left faction ‘were playing factional games with community grants, because we tend not to do that’. We note, however, that none of the communications from Mr Garotti referred to other factions. Mr Somyurek said he might have asked Minister Scott whether the ALP’s Left factions were ‘mucking around with community grants’.

<sup>107</sup> Two years later, SACOV’s Himilo project did receive a \$100,000 grant from the Victorian Responsible Gambling Foundation, which is examined further below.

525. Mr Somyurek accepted that the actions set out in Mr Garotti's message to him on 30 November 2017 were 'unequivocally on the wrong side of the line'. When asked what he did in response to an apparent agreement to improperly influence the grant process in favour of a factional ally, Mr Somyurek replied, 'I'm not sure how much attention I paid', adding that he might not have read Mr Garotti's message and that he 'would have thought it's within Robin Scott's domain and he will be able to resolve whatever he's on about'. Mr Somyurek said he was not particularly troubled by the intended interference with the grant process to achieve the result sought by SACOV reflected in Mr Garotti's message, because he had faith in Mr Scott not to be influenced by factional politics in respect of grants. It was put to Mr Somyurek that Dr Haraco's continuing to work as an important factional operative after the awarding of such a grant to SACOV gave rise to a suspicion or perception of him 'returning a favour' to the ML faction. Mr Somyurek replied that he did not like that model of operating and that he thought it was 'fraught'.
526. Ministerial Staffer AC said that their job 'was to manage very difficult stakeholders, and Rick [Mr Garotti] was one of them'.
527. Ministerial Staffer AC did not recall taking the 'agreed actions' described in Mr Garotti's message, saying 'I don't think I actioned it', despite conceding that it was a completely inappropriate request for Ministerial Staffer AC to act, and that it was outside their authority as a ministerial adviser. However, Ministerial Staffer AC could not recall whether or not they had spoken with Mr Scott about this particular approach and the steps Mr Garotti described in his message as 'agreed actions'.
528. Ministerial Staffer AC recognised that interfering with a grant process in the way indicated in the messages would be wrong, because it would be based on politics rather than proper criteria. Ministerial Staffer AC had received training on the Ministerial Staff Code of Conduct after their appointment, but had not discussed with Mr Scott or anyone else in his ministerial office the rules regarding conflicts of interest. Nevertheless, Ministerial Staffer AC told the investigation that Mr Scott was 'a straight shooter' who expected them to be 'a straight bat' and not to be factional in their role.
529. Ministerial Staffer AC's evidence was that they had at times felt pressured by Mr Garotti's advocating for SACOV, and that Mr Garotti's factional role may have given rise to an expectation that he 'needs to be looked after'.
530. Ministerial Staffer AC agreed that the proper response would have been to refuse requests such as those in Mr Garotti's message of 30 November 2017, but that Ministerial Staffer AC had feared the consequences of doing so because of Mr Garotti's role in the ML faction.
531. Ministerial Staffer AC said that when they did speak with Mr Scott about being pressured by Mr Garotti, Mr Scott had told them not to carry out Mr Garotti's requests. Ministerial Staffer AC was not aware of any other actions taken in response to the concerns they expressed about Mr Garotti.
532. Mr Scott in his testimony distinguished between the ordinary process of lobbying and the content of Mr Garotti's message to Adem Somyurek on 29 November 2017. He stated that 'it would not be a normal part of a discussion around funding to reference the faction of someone or the alignment of someone close to an MP'.

533. Mr Scott said that he was surprised by the content of the messages, and that although he had a memory of Mr Somyurek raising the matter with him, he did not remember a significant conversation about it. However, Mr Scott also appeared to acknowledge the significance of Mr Somyurek even broaching the subject with him, stating that 'it wasn't as if Mr Somyurek raised with me many such matters'.
534. Mr Scott was asked whether he would have expected Ministerial Staffer AC to redirect an approach such as Mr Garotti's to the correct department and to tell Mr Scott that such an approach had been made. Mr Scott responded that he did not have a memory of Ministerial Staffer AC raising it in that context or mentioning the proposed manipulation of this grant process to him, although he said that it was 'not impossible' that Ministerial Staffer AC had done so. Mr Scott stated that the normal response would be to refer the applicant to the relevant minister's office, but that 'it would not be unheard of for ministerial advisors to engage with other ministers on behalf of people who have made representations to them'.
535. Mr Scott agreed that it was inappropriate to come to an agreement about a grant process in relation to a factional matter, that it was 'not normal to have timing varied for such considerations', and that Ministerial Staffer AC's apparent dealings with Mr Garotti (if the 30 November 2017 email was taken at face value) were not in accordance with his regular duties and responsibilities as a ministerial adviser.
536. When asked why Ministerial Staffer AC would agree to such a course as outlined in Mr Garotti's messages, Mr Scott speculated that it may have been to create a favourable impression with other members of the ML group, even though it involved misleading them about Ministerial Staffer AC's ability to influence the decision. Mr Scott stated that he had no knowledge of Ministerial Staffer AC interfering in the grant process. Mr Scott added that, in the end, the decision about the relevant grant 'was not made in a favourable manner for them'.<sup>108</sup>
537. It is difficult to conclusively determine Mr Scott's knowledge or awareness at or around the time of the text messages. Nevertheless, it is of significant concern that Mr Garotti, as an influential member of the ML faction, considered it possible to involve himself and Mr Scott's ministerial adviser in an arrangement to improperly influence a grant to a factional ally. The casual and open manner in which he communicated about such an arrangement with the leader of the faction, Mr Somyurek, suggests confidence on his part that such a proposal would be seen by others in the faction as acceptable.
538. Although SACOV was not successful in obtaining funding from the Multicultural Affairs portfolio at the time of these conversations, it ultimately received a \$100,000 grant for the Himilo project in 2019. SACOV's successful application was to fund activities supporting the Somali community's efforts to prevent harm from gambling. The relevant grant was part of a Prevention Partnerships Program administered by the Victorian Responsible Gambling Foundation (VRGF). At all relevant times Marlene Kairouz, as Minister for Consumer Affairs, Gaming and Liquor Regulation, was the minister responsible for VRGF. This is discussed in greater detail below.

<sup>108</sup> Further submissions regarding the Himilo project funding made on behalf of Mr Scott in response to the draft report are set out in Appendix A.



## Grants to the ALF, the CAV and SACOV by bodies in the ministerial portfolio of Marlene Kairouz

539. During the period from 2015 to 2020, the VRGF, an independent statutory body in the Department of Justice and Community Safety (DJCS) portfolio, provided:
- two grants to the CAV totalling \$77,250
  - two grants to SACOV totalling \$117,500
  - no grants to the ALF.
540. Although the VRGF was in the ministerial portfolio of Marlene Kairouz between 2016 and 2020, the grants it made from the Responsible Gambling Fund were approved by it rather than by Ms Kairouz.

## Factional lobbying for SACOV in 2019

541. SACOV expressed an interest in a grant under the 2019 Prevention Partnership Program managed by the VRGF. Dr Haraco emailed Rick Garotti on 24 June 2019 about SACOV's expression of interest in this project, which SACOV had submitted to VRGF on 20 June 2019. Dr Haraco's email noted that 'last time' they had spoken with Ms Kairouz and expressed concern that funding decisions would be made before SACOV submitted its full application to the VRGF. Dr Haraco's email concluded by saying 'I am not sure if we need to talk to the Minister again or not. [ML faction member] is now the Minister's adviser.'
542. Mr Garotti forwarded Dr Haraco's email to the ministerial adviser for Ms Kairouz the same day who then forwarded it to another ministerial officer in Ms Kairouz's ministerial office.
543. The ministerial adviser was 'not surprised' that Mr Garotti and Dr Haraco contacted him, knowing that they worked as a ministerial adviser for Ms Kairouz. However, the ministerial adviser also noted that they 'had nothing to do with the program as it was not within their portfolio', hence the forwarding of the email to the relevant officer and such being 'probably the last I ever thought about it'.
544. The VRGF provided SACOV with the grant for \$100,000 from the Prevention Partnership Program for the 2019/20 financial year. Under the *Victorian Responsible Gambling Foundation Act 2011*, the grant was made by the VRGF: there was no requirement for the grant to be approved by Ms Kairouz as the relevant minister. Ms Kairouz gave evidence that she did not have direct oversight of how departments determined grant applications.<sup>109</sup> A question remains about whether she or her office attempted to influence the VRGF. The emails between Dr Hussein and Mr Garotti indicate that Ms Kairouz had had some contact with Dr Haraco previously, that the submission was forwarded to the VRGF by one of Ms Kairouz's officers, and that the application was successful.
545. Mr Garotti acknowledged that the approach to Ms Kairouz's office would have been about making sure that SACOV got the grant it wanted, and that there was no other reason for him or Dr Haraco to make that approach. Mr Garotti conceded that he understood that the purpose of Dr Haraco's email was to communicate the intention that SACOV should receive the grant, for the amount it sought, and that no decision should be made before SACOV could confirm that amount. He also agreed that Dr Haraco's email was asking whether it was necessary to involve Minister Kairouz to obtain the result sought by SACOV.

<sup>109</sup> In response to the report, DJCS noted that it does not have a role in VGRF grant processes. Therefore, DJCS would not/could not undertake any requisite due diligence and any due diligence is the responsibility of the VGRF.

546. The inescapable inference to be drawn from this approach is that Dr Haraco and Mr Garotti expected that SACOV would receive preferential treatment in obtaining a grant for the amount that Dr Haraco specified because of the factional work Dr Haraco performed. Mr Garotti confirmed this in his testimony: that in essence he sought the grant with no idea what it was for or what SACOV was meant to do with it, but knowing that Dr Haraco was a factional ally who ought to be rewarded for his factional activity. In response to the draft report, Mr Garotti said that at all times he 'believed that SACOV was a genuine community group that was doing things properly and above board in servicing the community'.
547. Mr Garotti agreed that there would have been a number of occasions when he lobbied on behalf of factional allies, but he had always believed that funds granted to SACOV were used and acquitted appropriately. Mr Garotti stated that he and Dr Haraco had occasionally discussed SACOV's finances, albeit not in great detail, and that he understood that Dr Haraco was typically an unpaid volunteer who had contributed his own money to SACOV. When shown financial records suggesting that substantial grant funds were paid to Dr Haraco as apparent salary payments, Mr Garotti said that this was 'a complete shock'. In response to the draft report, Mr Garotti stated 'in unequivocal terms', his genuine belief that 'Dr Haraco did not profit personally from the grants provided to SACOV in any way'.
549. First, several of them said they understood that direct personal and familial interests needed to be declared as potential or perceived conflicts of interest if they were relevant to the grant process. However, they did not regard the factional relationships between MPs and key individuals in these associations as giving rise to any declarable conflict in connection with grant processes.
550. Second, relevant to the question of whether any conflict of interest might have existed that should be declared, numerous ministerial officers gave evidence that the grant applications were assessed by government departments, and that ministers seldom went against the department's advice in approving or refusing a grant.
551. For example, Ministerial Staffer K did not consider that there might be a perception of conflict where executive members of a community organisation applying for grants were employed in the office of a factionally aligned minister. In Ministerial Staffer K's view, the relevant departments, in making recommendations to ministers, had to take into account an applicant organisation's ability to deliver the project. Ministerial Staffer K considered that the organisation's party associations or factional alignment would be irrelevant to that process.
552. Any suggestion that advisers played no role in the grant process or that the fact that the applicant was a factional ally would not be regarded as relevant is inconsistent with the manner in which Mr Somyurek, Mr Garotti and Dr Haraco dealt with the grant applications of SACOV. It is also inconsistent with Ministerial Staffer AC's evidence that factional allies' requests could not be easily or openly refused by ministerial officers in the ML faction.

## Recognising and managing conflicts of interests in grant processes

548. Two common fallacious themes emerged from the evidence of various ministerial and electorate officers.

## Evidence of Robin Scott

553. Mr Scott agreed that his ministerial officers should have no role in facilitating the approval or direction of a grant to any particular body, and asserted: 'the more that grants and in fact payments and decisions in relation to funding are removed from operational activities of ministers, the better.' The evidence of Mr Somyurek and Mr Garotti as to Mr Garotti's dealings with Mr Scott's adviser is inconsistent with such an approach.
554. Mr Scott said that he did not believe he had any conflicts of interest about grants, because he had taken steps to remove himself from the deliberative processes. He considered his position in the process as 'acting as an authorising official for a deliberation that had been conducted by others'. This suggests a misunderstanding of his conflicted position arising because he was both the responsible minister and 'authorising official' and was at the same time a leader of the ML faction, which as part of its factional activity used these community groups for factional purposes. Although the 'deliberation' over the grants was conducted by others, this was only one step in managing the conflict. It did not remove the conflict or permit Mr Scott or his advisers to involve themselves in the grant process or make any decisions with respect to such grants.
555. In his response to the draft report, Mr Scott argued that to require a minister to go further and remove himself from the decision-making process would be too high a standard, one that would be unworkable in practice. This issue is addressed further in Chapter 8.
556. Mr Scott gave evidence that his ministerial adviser, Ministerial Staffer AC, had contacted the Premier's chief legal counsel about one grant to the CAV, and that he had been advised that no conflict arose, as Mr Scott was not involved in considering the merits of the application.

557. Mr Scott recalled involving himself in two particular decisions about grants to community organisations when he was Minister for Multicultural Affairs. The first involved truncating a grant process to make sure that a planned community festival went ahead. The other occasion involved imposing additional reporting obligations on grants to SACOV, due to allegations that had been made about that organisation. He maintained that these actions did not involve him directing who should receive a grant or determining the result of an application.

## Evidence of Marlene Kairouz

558. Ms Kairouz was Minister for Consumer Affairs, Gaming and Liquor Regulation between June 2016 and June 2020, and Minister for Local Government between September 2017 and December 2018.
559. Ms Kairouz accepted that MPs must avoid actual and perceived conflicts of interest, and that the rationale for this was that people responsible for public money should not be motivated - or be seen to be motivated - to use their position to benefit personal associates. Ms Kairouz did not accept that employing executive members of the ALF gave rise to any conflicts of interest, despite the links between the ALF and the ML faction, and the faction having used the ALF's premises as a meeting venue for factional activities on more than one occasion. The issue of recruiting someone to work in an MP or minister's office, when that person was involved in factional work for that MP or minister, is explored in Chapter 5 of this report.
560. Ms Kairouz knew that two electorate officers working for ML-aligned MPs, Electorate Officer H and Electorate Officer L, and another individual, were associated with the ALF, but claimed that she had not known they were executive members of the ALF, despite Electorate Officer H having been employed to work for her as an electorate officer.

561. Ms Kairouz maintained that Electorate Officer H's factional work had never been a consideration in ministers approving grants to the ALF. Ms Kairouz said she was aware that, during Electorate Officer H's employment as her electorate officer, they would assist community groups in preparing grant application documents.
562. Ms Kairouz acknowledged the perception of a conflict of interest for a minister approving grants to an organisation connected to their faction. Nonetheless, Ms Kairouz maintained that she relied on the department 'to do the due diligence' and said that 'as a Minister I would never ever go against my department's recommendations' on grant applications.<sup>110</sup> That justification for her continuing role, if genuinely held at the time, reflected a misunderstanding of her conflicted position. Despite her evidence about perceptions of conflicts of interest, Ms Kairouz gave evidence that Electorate Officer H spoke with her in June 2020 about enquiries they had received from journalists. Those enquiries included questions about grants to the ALF. Ms Kairouz said that Electorate Officer H was concerned that journalists were suspicious about the grants because Electorate Officer H was associated with the ML faction.
563. Later in her evidence, Ms Kairouz reiterated that 'a minister on their own does not make the decision' and would be acting on a recommendation from the relevant department. But she then conceded that a person should not be making a decision where there was a perception that they might be influenced by their connection to an entity affected by that decision. Ms Kairouz stated that it would be improper for a minister to make a decision or exercise a discretion expecting something in return, but denied that there was any 'quid pro quo' for grants she approved.

## Evidence of Adem Somyurek

564. Adem Somyurek gave evidence about lobbying by MPs. He said that they typically formed a view about the merits of a proposal and then might support it, but that this was subject to the understanding that 'the bureaucracy will decide - the decision makers will decide at the end of the day'. In his view, MPs tended not to consider whether they had a conflict of interest in lobbying on behalf of factional allies. Mr Somyurek suggested that adopting that approach would significantly limit the people and groups for which an MP could lobby.
565. Mr Somyurek was adamant that it would be completely improper for partisan or factional considerations to determine grant applications.
- I think it's incompatible to have - that's not - if we go down that path you're in trouble. You're basically buying members in the Labor Party. No. Robin [Scott] would not be a part of that. I would not be a part of that. That goes beyond patronage. That goes to misappropriating funds, if you're going to get grants up based on supporting the Labor Party. That's a red line.
566. It was put to Mr Somyurek that he had not responded in that way when Rick Garotti had asked him to look into 'VMC funding issues with SACOV' that the two had discussed in early October 2015. Mr Somyurek had replied to Mr Garotti's request by saying that he would speak with the Minister for Multicultural Affairs, Robin Scott. Mr Somyurek's evidence on his response to Mr Garotti is set out in the preceding section.
567. Mr Somyurek testified that politicians are constantly lobbied to act on behalf of constituents, and that it was perfectly appropriate to make enquiries on their behalf. However, Mr Somyurek said that putting pressure on decision makers 'crosses that line' and would be improper. Mr Somyurek did not recall speaking with Mr Scott about this matter, although, as noted above, his evidence suggests that he did.

<sup>110</sup> Although Ms Kairouz refers to the department generally, the investigation notes any due diligence for the relevant grants as being the responsibility of the VRGF rather than DJCS.

568. Mr Somyurek's evidence, like that of Ms Kairouz and Mr Scott, reveals an unsatisfactory understanding of the obligations that arise when a conflict of interest exists. It would be improper for Mr Somyurek to have raised the issue of SACOV seeking a grant knowing that Mr Scott was conflicted. Mr Somyurek was well aware that, because of Mr Scott's and SACOV's factional roles, Mr Scott could not involve himself at all in the grant process. The justification proffered by Mr Somyurek - that he trusted Mr Scott not to act inappropriately - cannot be accepted, given that the obvious and acknowledged purpose of Mr Somyurek and Mr Garotti was to lobby the minister to advance the grant to SACOV.
569. Mr Somyurek was asked about ALF officers employed as staff for ML-aligned MPs, and about a grant made to the ALF that was the subject of journalists' enquiries. Mr Somyurek stated that he understood the perception of conflict arising in this case, adding that this was why he would not allow 'anyone from my office' to establish a community organisation while working for him. Mr Somyurek's comments indicate that he believed there could be a perceived conflict of interest if a staff member established a community organisation while working for an MP, but not if the staff member was involved in a community organisation before starting employment for the MP. This distinction seems illogical and unjustified.
571. Banyule City Council (**Banyule**) provided documents identifying 29 grants to SACOV between 1 July 2014 and 28 February 2021, totalling \$431,610. Banyule also provided an audit scoping document noting that Banyule had provided funding to SACOV since 2011 and that Banyule had made an estimated 48 payments to SACOV totalling about \$587,000 over that time.
572. Despite his factional connections with SACOV and Dr Haraco, Mr Garotti as a Banyule councillor had not declared any conflict of interest on any grant to SACOV made by his council.<sup>111</sup> Mr Garotti justified this on the basis that grants were administered by council staff, and that councillors were not involved in the process of deciding or approving how funding would be awarded and therefore there was no specific item on which to declare a conflict. Mr Garotti explained that the council would set an operating budget, and that council officers had discretion to allocate funds within that budget. Mr Garotti admitted that he may have suggested to council officers that SACOV was well placed for programs supporting the Somali community but denied getting involved in the grant allocation process at council, or exercising any influence over council officers to favour SACOV. He argued that he was advocating for SACOV in a private and voluntary capacity. In the circumstances of his relationship with SACOV and his role as a councillor, we do not accept that argument.

### Evidence of Rick Garotti and grants by Banyule City Council

570. Rick Garotti accepted that it would be improper for an MP to intervene in a process in order to direct public funds to factional allies - the very thing that he and Dr Haraco sought to achieve by seeking Mr Somyurek's assistance to speak with Mr Scott. Mr Garotti agreed that this would be a 'classic conflict of interest'. He considered this scenario to be different from an MP asking questions about why an organisation aligned with the faction was unsuccessful in a grant application.

<sup>111</sup> In response to the draft report, Mr Garotti submitted that, whatever training he received when he was sworn as a councillor would have been under the Local Government Act 1989, which, he argued 'focused conflicts of interest very much on family connections' and as such had a narrower definition of conflict of interest than the Local Government Act 2020. We do not accept that submission because, from 2008, section 77B of the Local Government Act 1989 provided that 'A person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way'.

573. In respect of other lobbying for SACOV and Dr Haraco, Mr Garotti agreed that he had been an active advocate for SACOV and other factional allies to obtain government jobs and government grants. Mr Garotti stated that he did this in his role as an organiser for his faction in Melbourne's northern suburbs. He could not recall specific examples of such lobbying.

574. On 20 November 2016, Mr Garotti sent Mr Somyurek a text message enquiring about a 'Metropolitan Partnerships' program, involving a panel of business and community leaders. Mr Garotti asked Mr Somyurek whether these were paid positions, and suggested that, if this were the case, 'we put an application in for Dr Hussein (due on the website next week) and see if we can get him in the panel ... he would [be] ideal as he is both a business & industry leader'. Mr Garotti said that he thought Dr Haraco would genuinely be able to make the application himself, but conceded that this was an example of factional patronage.

575. In March 2017, Mr Garotti sent a text message to Mr Somyurek advising that Dr Haraco had put in an expression of interest for a paid position with the Coronial Council of Victoria. Mr Garotti asked if Mr Somyurek could 'follow up with ... [the Attorney-General] to see if we can get Dr over the line?' Mr Garotti agreed that this was another instance where Dr Haraco's interests were 'looked after because of [his] factional work'.

## Accounting for grant money

576. As well as looking at the processes surrounding how grants were awarded, the investigation examined how these organisations accounted for the grant money they received, and whether any portion of those funds was used for factional purposes. Although it cannot be established that money from government grants was misused to pay for ALP memberships, the investigation identified:

- inadequate monitoring of grants to make sure that money was spent on the purposes for which it had been provided
- funds being used for purposes unconnected to the relevant grants, including paying staff and third parties with no apparent involvement in delivering funded projects
- misleading reporting by the ALF on its use of grant funds in at least one instance
- serious inadequacies in SACOV's accounting of grant money received, suggesting potential misuse of these funds.

## Grants to ALF

577. The ALF was awarded grants totalling \$706,000 between financial years 2014/15 and 2018/19, of which \$567,000 had been paid into ALF accounts at the time of the investigation. The largest grant was \$400,000 in 2018/19 for a multicultural multipurpose activity centre, of which \$240,000 had been paid by DPC. Electorate Officer H served as the ALF's treasurer and on its committee for several years, but did not recall the ALF receiving enquiries from or being audited by the departments administering these grants.

578. A sample review of grants provided to the ALF identified issues with its reporting of how grant money had been spent. For example, in 2016 the ALF received a grant of \$4,950 to run the Western Suburbs Multicultural Harmony Festival. The ALF was required to keep receipts for anything purchased with the grant money, and to repay unspent funds. In its application for this grant, the ALF estimated that around 500 people would be attending the festival.

579. The event was held at the ALF's premises on Sunday 16 October 2016. The ALF provided an invoice for \$2,200 for venue and meeting room hire for the event, despite these being its own facilities. Electorate Officer H explained this invoice as effectively representing 'opportunity loss' for the ALF being unable to hire out the venue to anyone else. Other evidence received by the investigation showed that the ALF had not claimed venue-hire costs for using its own facilities for multiple events conducted for programs under at least two other grants.
580. In its accountability report to the Office of Multicultural Affairs and Citizenship, the ALF reported that it had used all of the funding from the grant and that around 400 people attended the event, along with 30 volunteers. Evidence received by the investigation suggests that this report was misleading and inadequate. Photographs from the event posted to social media and provided to the investigation showed a vastly lower turnout than estimated. The accountability report claimed wages paid (even though these were not covered by the grant) and \$2,200 for venue and meeting-room hire despite ALF using its own facilities.
581. As the ALF's treasurer and assistant secretary, Electorate Officer H signed the declaration on the accountability report certifying that all information in that report was true and correct and without false or misleading statement. When shown this report, Electorate Officer H told the investigation that he had completed and signed the statement 'based on the best of my knowledge' at the time. Electorate Officer H also noted that 'the department didn't question it'. Electorate Officer H was reluctant to commit himself to any answers about the figures claimed, despite being shown relevant records and the report they had signed.<sup>112</sup>

<sup>112</sup> In response to the draft report, the ALF highlighted that it had originally requested \$8,500 for this festival, and upon receiving only \$4,950, said it had to 'review plans for the Festival and the spendings, as well as the allocation of the funding'. The ALF also noted that the grant covered only 35 per cent of the entire estimated expenditure on the festival, meaning that the ALF was responsible for paying the balance, which was around \$8,900. See Appendix A of this report for further details of the ALF's response.

## Grants to the CAV

582. Receipts and expenses claimed by the CAV did not always accord with the related grant. For one grant from the Victorian Responsible Gambling Foundation, the CAV's project budget indicated that staffing costs would be the equivalent of one CAV officer working two days per week. These costs were reported under the general description 'Project officer Salary'. However, the CAV's bank account records indicate that the CAV paid multiple staff for work on the project funded by this grant. Separately, the CAV paid \$6,886.18 to a 'volunteer' for a radio broadcasting program connected with the project. The CAV's receipts for the project also claimed utilities costs that were not part of the grant application or the budget submitted.
583. In the 2018/19 financial year, the CAV received a DPC grant for \$80,000 for preventing family violence among the Cambodian community. An amount of \$48,932 of the grant was spent on CAV employees' salaries, of which \$35,037 was paid as salary to a single CAV officer, who was a relative of the CAV president, Person W, and who also worked in Mr Somyurek's electorate office. When asked what role his relative had in delivering a program to reduce family violence, Person W explained that the officer provided some counselling to Cambodian men and women, despite not being a qualified or trained counsellor. Person W maintained that the officer had considerable experience, including overseas, that was useful in their work at the CAV.
584. In relation to another grant for a gambling harm-prevention project, the CAV provided a list showing that the salary payments went to three CAV staff, including \$17,349 to Person W's relative. Person W's evidence was that his relative worked on other matters for CAV and had no role in delivering the project funded by the VRGF grant.

585. The CAV also provided a receipt for \$3,825 spent to fly three Cambodian singers to and from Melbourne, which did not appear to be in the scope of the DPC grant. Person W explained that the CAV wanted to attract more people to functions at which the CAV would provide information about the programs. Person W said the CAV needed to engage well-known Cambodian performers to achieve this, and that far more people would attend than if local performers were used. Person W was unsure whether the CAV informed DPC that this was how some of the grant would be spent.
586. Person W gave evidence that the CAV would normally send reports to grant providers after the relevant projects were finished. Person W stated that the VRGF had not asked the CAV to provide its receipts for expenditure claimed against grant funds. Person W said that the CAV would provide receipts when they were asked for, but that they could not really recall that having occurred. When asked whether the VRGF had conducted any formal audits of the CAV's accounting for expenditure of grant funding, Person W replied 'No'.

### Grants to SACOV

587. Dr Haraco declined to give evidence during either a public or private hearing, citing medical grounds. Accordingly, the conclusions expressed below are not informed by any account from him.
588. In addition to grants from the Victorian government, SACOV received grant funds totalling \$431,611 from Banyule between 1 July 2014 and 28 February 2021. Since 2013, Banyule and SACOV have also formalised agreements for Banyule to fund SACOV to provide support services to the Somali community.
589. SACOV's annual reports show that SACOV's revenues increased from \$41,063 in the 2016/17 financial year to \$272,156 in the 2018/19 financial year. This represents a 662 per cent increase in two years.

### *Double receipting of expenses for grants*

590. SACOV produced receipts to justify spending funds received in grants from the Department of Premier and Cabinet, the Victorian Responsible Gambling Foundation, Department of Justice and Community Safety<sup>113</sup> and Banyule. Some receipts from third parties were claimed against more than one grant.
591. The investigation identified that SACOV provided receipts to DPC for grant-related expenses totalling \$18,294 that were also reported to Banyule for grants received from Banyule. SACOV claimed receipts for \$4,880 in connection with VRGF grant PPP1921, considered in more detail below, that were also claimed as expenses for two separate grants from Banyule.
592. Receipts for \$107,155 reported for grants from Banyule were submitted as expenses incurred by SACOV for multiple grants. Of these, \$83,981 of receipts was submitted multiple times to Banyule for grants awarded to SACOV.

### *Duplicate claims for salary payments*

593. SACOV claimed 10 salary payments, each for \$976, under two separate grants from Banyule and VRGF. However, SACOV's corresponding bank account records list only five withdrawals for \$976. This created a discrepancy of \$4,880 in SACOV's favour between recorded salary payments and the amount SACOV claimed as expenses under these grants.

<sup>113</sup> DJCS noted that its Community Crime Prevention unit administered the specific grants (only one each to the ALF and SACOV) and that both applications were assessed on merit and were subject to a competitive process.



#### *Payments to Dr Haraco and Haraco Pty Ltd*

594. The investigation identified 52 transfers, totalling \$84,838, from SACOV accounts to Dr Haraco's personal bank account or to Haraco Pty Ltd between May 2014 and February 2021. Dr Haraco is the sole director and a minority shareholder in Haraco Pty Ltd. These were not identified as salary payments in materials provided to the investigation by SACOV.
595. A sample of withdrawals from SACOV accounts identified 12 cashed cheques that were made payable to Dr Haraco or his spouse, with a total value of \$36,990. Ten of these cashed cheques were for the same amount, and issued on or about the same dates as invoices presented by SACOV to account for grant expenses.
596. Bank account records for SACOV and Dr Haraco revealed 41 more withdrawals from a SACOV bank account that matched a deposit to an account held by Dr Haraco. These 41 withdrawals totalled \$104,107. Another withdrawal for \$4,624 from a SACOV account matched a deposit to Haraco Pty Ltd's bank account.

#### *Accounting for VRGF grant PPP1921*

597. The awarding of a VRGF grant of \$100,000 to SACOV as part of the 2019/20 Prevention Partnerships Program was discussed earlier in this chapter. The grant appears to have been connected to the Himilo project funding and was intended to support the Somali community to improve gambling harm prevention. The grant program required SACOV to:
- deliver six community forums, with 200 or more attendees
  - provide three training sessions for 45 Somali Australian community leaders attending
  - produce three short videos, each of 2-3 minutes' duration
  - conduct five community events.

598. SACOV provided receipts and salary payments totalling \$50,412 relating to this grant. As at February 2021, \$75,000 of the grant funding had been paid to SACOV.

599. SACOV provided the investigation with two invoices purportedly from third parties to justify expenditure for this grant. One invoice dated 1 December 2020, for \$7,000, was for scripting and producing short videos on problem gambling. The other invoice was dated 9 December 2020, charging \$4,200 for delivering training and workshops for gambling harm prevention. However, cheques drawn on SACOV accounts on those dates for the same amounts as these invoices were made out to Haraco Pty Ltd.

600. SACOV provided a list of withdrawals paid as salaries in connection with this project. The list did not identify which payments were made to particular staff. Bank account statements confirmed 34 such withdrawals totalling \$37,086. Of these, 30 withdrawals totalling \$32,206 were paid to Dr Haraco's bank account, apparently as a salary relating to this project. The investigation received no evidence about Dr Haraco's qualifications relevant to problem gambling and counselling.

601. SACOV claimed that \$6,000 had been spent on administration for this grant. No specific receipts or invoices were provided to support this claim.

#### *Invoices for payments to SACOV's business*

602. SACOV owns and operates Nomads Pizza and Café (**Nomads**), having registered its business name on 6 June 2019. Its invoices describe Nomads as a social enterprise business of SACOV. The business that became Nomads was previously operated by Haraco Pty Ltd, according to the ABN (Australian Business Number) used on its earlier invoices. Nomads uses the same bank account that SACOV used to receive all of its grant funding from DPC and Banyule between January 2019 and February 2021.

603. SACOV provided invoices from Nomads to justify expenditure of grant monies received from Banyule and DPC. Grant funding from both Banyule and DPC was paid into a specific SACOV account. However, eight invoices from Nomads obtained by the investigation, totalling \$14,220, required payment to be made by SACOV into that same account. The invoices themselves provide very limited information to explain the amounts charged, other than a number of meals provided and a description of the catered event. The numbering of Nomads invoices obtained by the investigation also appears to be out of sequence: invoice 861 is dated 6 July 2019, invoice 862 is dated 15 January 2020, yet invoice 0989 is dated 25 July 2019.

604. Three of the invoices from Nomads and payable to SACOV's account included only the description 'Rental support Nomads Pizza and café'. These invoices are dated 10 October 2019 for \$1,855, 15 November 2019 for \$1,855, and 20 December 2019 for \$3,710. Each was claimed for Banyule grants for the Young Somali Fund, as part of a Cultural Precinct project. It is not clear how Nomads charging SACOV \$7,420 for rental support over three months aligned with the grant or the project's purposes.

#### *Other invoices of concern*

605. SACOV used invoices from a videography company on five occasions to justify expenditure under different grants. Four of these invoices have the same invoice number, despite being for different grants and dated between 2 September 2019 and 10 June 2021.

606. In accounting for funds spent under grant OPP-53568, SACOV provided a document purporting to be an invoice for hiring a local community sports centre. Enquiries to the centre's administrator revealed that:

- the document SACOV provided was actually a quote dated 20 August 2018
- an invoice for the same amount from DCSS was issued to another company on 28 September 2018
- the other company paid this invoice on 11 October 2018.

607. Bank records showed only one withdrawal from SACOV's accounts over the relevant period for the hire amount claimed. This withdrawal was a cheque payable to Dr Haraco and cashed by him on 21 September 2018, seven days before the date of the invoice to the other company. It is unknown whether Dr Haraco provided this cash to the other company for payment of the invoice.

#### *SACOV's accountability*

608. SACOV's accounting for its use of grant money is not reliable. Deficiencies in certain invoices provided by SACOV are apparent on their face, with basic errors and inconsistencies. At the very least, inferences can be made of inadequate management and accounting for funds received, and the authenticity of some invoices is questionable.

609. SACOV's accounts show considerable payments to Dr Haraco and related entities without explanation. However, in the absence of evidence from Dr Haraco, we could draw no conclusions at this stage about the nature of the payments to Dr Haraco or Haraco Pty Ltd, nor their relationship to grants received by SACOV.

## Auditing

610. None of the departments or agencies contacted had conducted specific audits in relation to the ALF, the CAV, SACOV or grants issued to them before this investigation. In this regard, DFFH has advised that auditing of individual grants is generally not a standard practice in grant administration, unless and until particular issues arise.
611. The Department of Families, Fairness and Housing (DFFH) commissioned an audit in December 2021 of three grants recently provided to SACOV. The audit was finalised in May 2022. DFFH is taking action to address the audit's findings. DFFH has also commissioned an audit of grant assessment processes across Fairer Victoria.
612. The Department of Justice and Community Safety advised that it had not audited grants to or acquittals from the ALF or SACOV between 2016 and 2021, although SACOV had been asked to (and did) provide further evidence and invoices for at least one grant over this period.<sup>114</sup>
613. In November 2021, DJCS commissioned a review by KPMG of Prevention Partnerships Program grants between 2019 and 2021. That review included a targeted sample of grant applications to consider the process applied to the selection, awarding and acquittal of these grants. The review identified areas for improvement including defining a scalable, risk-based approach to applicant due diligence and the ongoing grant management process; strengthening processes for documenting evidence of monitoring activities performed; and improving financial expenditure acquittal requirements of grant recipients.
614. The review noted that two of the applications it considered (from SACOV and the CAV) had related correspondence from ministerial staff or staff of MPs to assist, support or enquire about the grants. It observed that, in developing its recommended risk-based approach, 'a review of stakeholders that may give rise to a conflict of interest (e.g. through political affiliations) should be considered in assessing an application', and that the VRGF may wish to consider extending the conflict-of-interest requirements set out in its Funding Guidelines Terms and Conditions to all parties corresponding with the VRGF about a grant.<sup>115</sup>
615. VRGF advised that it had not conducted formal audits of individual community-based organisations or specific grants of interest to the investigation.
616. Witnesses told the investigation that external auditing of grants was rare. This was the case even when grant conditions requiring comprehensive receipting of expenditure were not complied with.
617. Mr Scott gave evidence that he was aware of one audit conducted by DPC following public comments by an organisation 'which were contradictory in the extreme to government policy in relation to countering violent extremism'. Mr Scott said that the Premier had requested an audit 'because of public concern' and recalled that the audit was critical of the organisation but made no findings of serious misconduct.<sup>116</sup>

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<sup>114</sup> DJCS noted that its Community Crime Prevention unit administered the specific grants (only one each to the ALF and SACOV) and that both applications were assessed on merit and were subject to a competitive process.

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<sup>115</sup> KPMG 2022 (January), *Victorian Responsible Gambling Foundation Grant Management Review*, Department of Justice and Community Safety, Melbourne, p 14.

<sup>116</sup> DPC have enquired with DFFH as to this audit. DFFH was not aware of the specific audit referred to by Mr Scott.

618. Mr Scott disagreed with the suggestion that auditing grants had not been a priority for DPC while he was Minister for Multicultural Affairs. However, he conceded that ‘it was just not something on my radar’ and that he had not demanded audits. Mr Scott acknowledged that there appeared to have been limited auditing of grants, but added that, at that time, the department had also been focused on developing responses to violent extremism. He accepted that it would not be overly burdensome for departments administering grants to require recipient organisations to comply with receipting obligations.
619. During his examination, Mr Scott was informed that DPC had required grant recipients to submit only a self-declaration on how grant funds had been spent, rather than supplying all relevant receipts. Mr Scott responded that he was not aware that this was the department’s process, and that it would have been contrary to the addendum he had put in place for grants to SACOV:
- I wasn’t aware that that was the case. In fact, that’s contradictory to the addendum that I put on the SACOV.  
[...]
- I wasn’t aware of exactly what the process was, and I’m a little surprised by the just requiring a self-declaration, particularly with some of the large-scale grants [...] I must say that points also to some further reform opportunities.
620. Ministerial Staffer K’s evidence was that departments were aware of the need to manage grants for large sums or involving buildings or facilities. Ministerial Staffer K commented that recipient organisations knew to properly account for funds received - ‘otherwise you get phone calls from the department’. However, Ministerial Staffer K did not refer to or offer evidence about any audits of grants made to the ALF.
621. On grants made to the CAV, the CAV president, Person W, stated that ‘after we finish the project we send them a report’. Person W said that the CAV provided receipts and other information as requested by organisations administering grants, and that CAV’s auditors checked its financial records annually. However, Person W did not recall any formal audits of CAV’s handling of grant funds by the Auditor-General, the Victorian Responsible Gambling Foundation or DPC.
622. SACOV’s annual reports between 2015 and 2020 typically included audited financial statements. These audits did not examine SACOV’s accounting for grant funds.
623. The details of SACOV’s income and expenditure statements in its annual reports also varied considerably over this period. In 2017, SACOV’s annual income and expenditure statement included separate entries for interest received, grant funding, and other income, while expenses were categorised into 20 types. In contrast, the 2020 annual report included only six entries, with revenue consolidated into a single figure and expenses grouped by type with limited differentiation. The difference is particularly striking given that SACOV’s revenues went from \$41,062.72 in 2017 to \$272,156 in 2019 and \$259,366 in 2020.

624. Banyule City Council stated that it had not asked SACOV to provide further or better acquittal documentation for grants between 2016 and 2021. Banyule grants to SACOV had not been specifically audited before Banyule engaged an external auditor in December 2021 to review transactions with SACOV dating back to 2011. Banyule noted that this independent audit was completed, the auditor's findings were provided to BCC in late April 2022 and that, although the audit identified gaps in process for the reviewed transactions, it detected no matters suggesting inappropriate dealings between Banyule and SACOV.<sup>117</sup>

## Role of funding agencies: Victorian government departments, Victorian Responsible Gambling Foundation and Banyule City Council

625. In order to further understand the context in which the three community organisations received and accounted for grants and, in particular, any systemic problems that could generate integrity problems for funders and grant recipients, the investigation sought and received information from the Department of Premier and Cabinet; the Department of Families, Fairness and Housing; the Department of Justice and Community Safety; and the Victorian Responsible Gambling Foundation concerning grants administration, management and acquittals. The response from DJCS did not reveal any grants made between 2015 and 2020 (inclusive) that were relevant to the investigation. Banyule also provided documents and information on its grants programs, policies and supervisory arrangements.

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<sup>117</sup> The independent audit further noted that the BCC has matured its operating framework relating to service level agreements, partnerships, and grants since 2011. The independent audit also found that, prior to that engagement, a number of internal audits have been completed at Banyule since 2020, covering topics such as management of conflict of interest, outgoing grant management, and management of leases and licences. The independent audit detailed opportunities to further strengthen Banyule's management process and governance frameworks, many of which have already been implemented by Banyule and which will continue to be overseen by Banyule's Audit and Risk Committee.

## Victorian government departments and agencies

626. All government grants must comply with government legislation and regulation relating to financial management. This includes the *Financial Management Act 1994* and the Minister for Finance's Standing Direction 4.2.2 - Discretionary Financial Benefits - Grants, Sponsorships and Donations.<sup>118</sup> The standing directions establish nine 'Investment Principles for Discretionary Grants.'
627. Principle 5 states that grant programs should be designed to minimise administration costs, and recommends that administration costs to deliver a grant program be less than 5 per cent of the program budget. Principle 7 states that accountability requirements imposed on grant recipients should be proportionate to risk, and acknowledges that accountability and reporting requirements impose a significant burden on grant recipients and therefore care should be taken to avoid excessive requirements. Principle 9 states that the Whole of Victorian Government Better Grants by Design guide (**WOVG Grants Guide**) should be used to provide further guidance when developing and delivering grant programs.
628. The main form of agreement used to provide grant funding to community organisations is the Victorian Common Funding Agreement. The standard agreement incorporates non-editable terms and conditions, including obligations for recipient organisations to keep full and accurate records, so that all financial transactions from grant funding, including receipts and payments, can be clearly and separately identified.

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<sup>118</sup> <https://www.dtf.vic.gov.au/financial-management-government/standing-directions-2018-under-financial-management-act-1994>

629. The WOVG Grants Guide provides guidance on design and implementation of grant programs across the Victorian public sector. The WOVG Grants Guide contains mostly principles-based information about monitoring and acquittal/ review processes for grants, stating that ‘[t]he extent and frequency of monitoring of the grant will depend on its value, complexity and risk profile.’
630. The WOVG Grants Guide notes that acquittal involves a final report by the grant recipient detailing how the grant monies were spent to deliver the required outputs. The levels of documentation required can vary between departments. No specific guidance is offered on documentary evidence required for acquittals, although there may be overlap between monitoring, reporting and acquittal processes for each grant or grant program.
631. The general guidance in the WOVG Grants Guide is supplemented by more specific guidance that has been developed by the departments for their own programs.
633. The DPC GMF emphasises the risk-management aspect of acquittals. It provides clear instructions based on the category and size of a grant, including detailed advice on what recipients should provide to satisfactorily acquit grant spending. Notably, for one-off grants for less than \$20,000, the DPC GMF requires recipients to keep records (such as tax returns and receipts) for inspection by DPC on request. The DPC GMF also recommends keeping extensive records of grant management activities, and segregating roles so that no single person is responsible for approving, paying and finalising acquittal of a grant.
634. DPC supplied a copy of a 2018 Grant Budgeting and Funding Review conducted across DPC, which was commissioned as part of its internal audit program at the time. DPC accepted and implemented all the recommendations of this review, which were reflected in a 2019 update to the DPC GMF. The 2018 review identified four areas requiring improvement:

- The size and complexity of grant programs were not being considered in applying the DPC GMF.
- Grants programs were not adopting the DPC GMF.
- Risk assessments were not being completed, which had implications for scoping, cost, project length and avoidable losses.
- Grant program evaluations were not being performed, making it difficult to evaluate the actual effectiveness of the grants and associated projects.

### Department of Premier and Cabinet / Department of Families, Fairness and Housing

632. DPC advised that it uses a Grants Management Framework (**DPC GMF**). The DPC GMF states that monitoring requirements should be tailored to individual grants, taking account of the perceived complexity and risks of the funded projects, the costs of administration, and the compliance burden on recipient organisations. The DPC GMF emphasises a ‘relationship centred approach’ to managing grants, explicitly noting its importance for smaller grants which may involve minimal direct supervision and ‘to avoid a “set and forget” scenario’.

635. The Department of Families, Fairness and Housing advised the investigation that it inherited DPC's grants management processes, including the WOVG Grants Guide and the DPC GMF. DPC noted that, following the machinery-of-government changes on 1 February 2021, DFFH asked DPC to continue to provide grant administrative services until DFFH could procure its own grant payment platform. DFFH uses the Victorian Common Funding Agreement template documents and approved scripts for grants certification, reports and acquittals.<sup>119</sup>
636. DFFH grant management processes are not relevant to the grants that were administered before 1 February 2021, but are relevant to its management of grants made in the Multicultural Affairs and other portfolios after that date. DFFH provided copies of correspondence with the ALF and the CAV concerning progress, funding and reporting. These communications show that DPC and DFFH officers actively monitored progress on the relevant grant-funded projects, particularly for reporting milestones and deadlines. However, the communications with the ALF indicate that grants officers were not requiring the ALF to produce receipts for expenditures claimed in final acquittal reports. Of the 17 grants awarded to the ALF in the relevant period, 11 were valued at \$10,000 or less and classified as small or low-risk grants. In keeping with Principle 7 of the Investment Principles for Discretionary Grants, the DPC GMF would not require receipts be provided on small or low-risk grants.

## The Victorian Responsible Gambling Foundation

637. The Victorian Responsible Gambling Foundation's Grants Management Framework (**VRGF GMF**) is modelled on the Whole of Victorian Government Better Grants by Design Guide, including the Victorian Common Funding Agreement templates. The VRGF GMF includes a table providing a 'quick guide to grant complexity'. Levels and frequency of reporting and monitoring are tied to the assessed project's complexity. Grants are sorted partly by value - small to moderate-value grants are \$10,000 or less, medium-value grants are up to \$100,000, and high-value grants are above \$100,000. Other considerations for grants complexity include reputational risk, likely media interest, details and capabilities of the recipient, the nature of the activity, payments, and 'value for money considerations'.
638. The VRGF GMF includes limited specific guidance on monitoring and acquittals, although its breadth of application requires flexibility. VRGF told the investigation that acquittal reports comprise a financial statement with details of how funds were spent, and that recipients must also submit income and expenditure reports. VRGF advised that income and expenditure reports are reviewed by the relevant grant program manager and its finance team, and that further information is requested if the income and expenditure report is considered insufficient.
639. VRGF has engaged external auditors to review its grants management processes, and provided copies of two audit reports from 2016 and 2021.

<sup>119</sup> DFFH Common Certification Script.

640. VRGF supplied copies of emails demonstrating further follow-up and requests for information made to the CAV and SACOV between July 2018 and April 2021. These communications show VRGF staff working supportively with grant recipients to clarify and improve project scoping, objectives and details of outputs. An email to SACOV in January 2019 requested significant further information about SACOV's final report on a 2018 prevention grant. VRGF did not supply any evidence that SACOV responded to these requests or that any responses were considered satisfactory.

### Banyule City Council

641. Banyule's grants policy from May 2017 states that a grant agreement must be signed when an organisation accepts the offer of a grant from the council. Under the policy, the grant agreement should include financial acquittal requirements and set out the necessary documents and timelines for accounting for expenditure. Council officers review the acquittal records, requesting further information as necessary if 'there are any inconsistencies in the acquittal'. The policy states that organisations are ineligible for further grants while any acquittals remain overdue.

642. Banyule uses a template form for acquittals of community grants. The form uses a table for self-reporting. Full receipts for purchases are required as supporting documents, but the table does not require a comparable level of detail for other costs, such as wages and administration. The form also includes a declaration by the recipient organisation that the details of the report are true and correct.<sup>120</sup>

643. Banyule's grants policy is currently under review, taking account of recommendations made in a March 2021 audit report. That audit report noted the need to strengthen controls to prevent fraud and corruption. The report found that Banyule's acquittals process was 'inconsistent', lacked a peer-review process, and was not supported by operating procedures or management reporting. The March 2021 audit report stated that one-fifth of grants reviewed had overdue acquittals, and that there was no formal procedure in place to monitor late or overdue acquittals so that Banyule's policy could be implemented in practice.

644. The March 2021 audit report also commented that acquittals were assessed by one of the Banyule officers involved in receiving and assessing applications and awarding grants. However, acquittals were not independently reviewed by management, increasing the risk that errors and inadequate acquittals from grant recipients may not be identified. The report recommended greater segregation of duties for grant acquittals and implementing an internal peer-review process.

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<sup>120</sup> Banyule City Council 2019–2020 Community Project/Minor Capital Works Acquittal.



## Chapter 7. Conclusions and observations

645. This chapter provides the investigation's conclusions about the conduct of individuals who were the subject of the investigation, as well as its observations about other behaviour and systemic issues that were relevant to the events being investigated.
646. The *Independent Broad-based Anti-corruption Act 2011 (IBAC Act)* prohibits IBAC from including in a report a finding or an opinion that a person is guilty of or has committed any criminal offence or disciplinary offence, or a recommendation that a person should be prosecuted for a criminal offence or disciplinary offence.<sup>121</sup>
647. Similarly, the *Ombudsman Act 1973* prohibits the Ombudsman from including a finding or an opinion that a person is guilty of or has committed an offence, or a recommendation that a person be prosecuted for an offence.<sup>122</sup>
648. Therefore, there would ordinarily be no discussion in an IBAC or Ombudsman report about whether facts found might give rise to a criminal or disciplinary charge. If it was thought that the facts supported such conclusions, the matters would generally be referred to the relevant prosecutorial bodies for further consideration and appropriate action.
649. Because of the immense public attention given to the conduct of those principal individuals under investigation, we have thought it desirable to explain why we have concluded that the evidence of the individuals' conduct in employing and using electorate officers or ministerial advisers for factional purposes paid for at public expense is such that we do not consider that the commission of a criminal offence can be established.
650. Although the deliberate and extensive use of electorate officers and ministerial advisers for party-political purposes was unethical, and offends right-thinking people's sense of propriety in the use of public funds, the conduct is not sufficiently clearly captured by any existing statutory provision or the common law offence of misconduct in public office.<sup>123</sup>
651. The problem of proof was exemplified during the argument, advanced in the examinations, that section 30 of the PA Act permitted such behaviour, despite the clear obligations in the statutory Members of Parliament Code of Conduct. We provide our assessment of whether those obligations have been breached in the following sections, but, under the present state of things, breaches of the codes of conduct that apply to ministers, MPs and their staff do not support criminal or disciplinary offences that IBAC or the Ombudsman could refer for further investigation or for potential prosecution. Although we do not accept Mr Somyurek's view of the regulatory landscape, the statutory regime, spread over so many statutes, as examined in Chapter 3, leaves too much room for argument to initiate referral or consideration for prosecution. There is presently no statutory provision that in clear and unmistakable terms creates an offence that does not leave room for reasonable argument that the conduct falls short of establishing the offence. This lacuna in the criminal law is discussed further in the recommendations in Chapter 8.

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<sup>121</sup> IBAC Act, s 162(6).

<sup>122</sup> Ombudsman Act, s 25A(1)(c), (d).

<sup>123</sup> See, for example, *R v Quach* [2010] VSCA 106.

652. The general offence of misconduct in public office, calling as it does for a value judgment about whether the conduct involves a breach of public trust for which there is no reasonable excuse and that is so egregious as to merit criminal punishment is a difficult offence to prove. This is particularly so when there is no statutory provision that unequivocally identifies such conduct as criminal. During the investigation, we also received evidence that MPs had breached various ALP rules, including rules against a person paying the membership fees for any person other than a family member. Although such breaches were an integral component of branch stacking and, as such, form part of the background to this investigation, breaches of internal party rules are outside the jurisdiction of IBAC and the Ombudsman. Accordingly, we make no findings about them.
653. Neither the Ombudsman nor IBAC is prevented by our enabling legislation from finding that the Members of Parliament Code of Conduct or the Ministerial Code of Conduct was breached by the actions of members and ministers.
654. We recognise that it is a matter for the relevant House and its privileges committee to make formal determinations about breaches of the Members of Parliament Code of Conduct, and for the Premier to decide whether a minister has breached the Ministerial Code.
655. Where we have made a finding as to a breach, we would expect the relevant House to take appropriate action to determine for itself whether a breach of the Members of Parliament Code of Conduct has occurred and whether sanctions should be imposed. We note that, under the Members of Parliament (Standards) Act 1978 (**MP(S) Act**), a breach of the code must be found to have been 'wilful' if it is to be sanctioned, which would be a matter for the relevant House to determine.
656. None of the ministers who were investigated remains as a minister, and so the question of whether the Premier should act upon breaches of the Ministerial Code of Conduct is redundant.

## Misuse of staff

### The role of factional leaders, and pressures placed on staff to do factional work

657. For reasons explained in Chapter 1, the investigation focused on the actions of Adem Somyurek and other MPs and their staff who were members of or supported the activity of the ML faction of the ALP from around 2017 to 2020.
658. During that period, Mr Somyurek was the dominant leader of the faction. Marlene Kairouz and Robin Scott also played significant leadership roles in organising and directing the ML faction's activities.
659. Factional leaders had very significant influence over the placement of staff in electorate or ministerial offices and the moving of staff between different offices depending on factional requirements. Some MPs associated with the faction felt unable to refuse when told by factional leaders to employ a particular person. Even when working for a different MP or minister, staff in the faction felt obliged to work at the direction of factional leaders, particularly Mr Somyurek.
660. Staff were placed under significant pressure to do factional work during office hours, even though it was generally understood that it was improper and unethical to do so. The pressure to do this work was in some cases implicit and in other cases overt. There was compelling evidence of staff being bullied to perform this work by Mr Somyurek. Staff complied with the directions of the leadership group because not doing so would significantly limit their career in politics or could result in the loss of their job, and there was no one with whom they could raise their concerns about the improper nature of their work.

## Nature of factional work done by staff

661. As explained in Chapter 3, electorate office and ministerial staff are provided to MPs and ministers as a public resource to help them perform their public duties. Since 20 March 2019 public duties have been defined by the MP(S) Act as:
- a) committee business
  - b) electorate business
  - c) ministerial business
  - d) parliamentary business.<sup>124</sup>
662. There was extensive misuse of staff for factional or party-specific purposes during business hours. The factional work done by electorate officers or ministerial staff during business hours included arranging for and processing membership applications and renewals for non-genuine members; preparing for ALP Membership Administration Committee meetings; and harvesting votes of non-genuine members for the election of the ALP National Executive Committee as part of the 2018 ALP National Conference. The latter activity generated extensive work for staff employed by MPs who were members of the faction. This work was in breach of MPs' obligations to use public resources to discharge their staff's public duties only, and constituted serious misconduct by the MPs who employed and instructed them.
663. The Ombudsman's Red Shirts report on the misuse by MPs of electorate office staff during the 2014 state election was published in March 2018 and received significant publicity. Part of the government response to that report was the introduction and passage of the *Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019* (**VIRTIPS Act**).
664. Despite those legislative reforms, the misuse of staff for processing membership applications and renewals, activity relating to the Membership Administration Committee, and other factional work continued unabated.
665. None of the forms of work done by electorate office staff outlined above was done to support MPs in their parliamentary and electorate duties: all three activities were clearly for party purposes. For this reason, by requiring, encouraging or permitting electorate office staff to do such work during their hours of employment, the relevant MPs were in breach of the various obligations that applied to them over the relevant period, including the Members Guide as amended from time to time, the MP(S) Act, the PA Act, and the *Parliamentary Salaries, Allowances and Superannuation Act 1968* (**PSAS Act**).
666. Notwithstanding the intent of MPs generally, which Mr Somyurek asserted lay behind the 2019 amendment to section 30 of the PA Act, that amendment did not relieve MPs of their wide obligations imposed under the statutory regime and the Members Guide on the use of public resources. Other witnesses, such as Mr Andrews, rejected Mr Somyurek's explanation for the amendment to section 30.
667. The electorate office staff involved in the work described above breached the Electorate Officers Code of Conduct issued by the presiding officers of the Victorian Parliament. They did not at all times use public resources and facilities efficiently and effectively, or in the service of the community. Because those staff were doing this work at the direction or encouragement of their MP or other leaders in the ML faction, those MPs and leaders bear primary responsibility for those breaches.
668. The ministerial staff breached the Ministerial Staff Code of Conduct by failing to make sure that government and parliamentary resources were used in a proper manner. Because those staff were acting under the direction or encouragement of their ministers and other leaders in the ML faction, those ministers and leaders bear primary responsibility for those breaches.

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<sup>124</sup> MP(S) Act, s 2.

## The extent of the misuse of electorate office staff and ministerial officers

669. It has not been possible to determine the extent of factional work done during office hours during the period under investigation, but it undoubtedly involved a very substantial misuse of public resources. Apart from the oral evidence of staff who openly acknowledged this to be so, contemporaneous records such as emails and telephone messages confirmed that factional activity was taking place during office hours.
670. A number of staff who gave evidence made the claim that they would make up for the time they worked on factional matters during office hours by performing their public duties outside office hours. The amount of factional work done by staff during office hours was significant, and there were extended periods when it is extremely unlikely that any of the factional work done during office hours was made up for by public duties performed outside office hours. Often the staff were required to continue to perform their factional work, such as work on the Membership Administration Committee, outside office hours.
671. Staff and the MPs who employed them understood that it was improper for staff to have been occupied on factional matters during office hours. They were at all material times aware that employment records would not reveal whether factional work was being done during office hours, or whether a member of staff was performing public duties outside office hours. The employment records for casual staff, and the informal nature of recording time worked by full-time or part-time staff, could have - but did not - disclose the nature of the work done during office hours, or the hours or nature of the work done outside office hours.

672. In most cases the assertion that a member of staff made up much of the time that they had spent on factional activity was attended by substantial doubt. But even if they had done so, it remained improper that public funds were being spent on factional activity during office hours, thus making staff unavailable to perform their office duties. Similar claims had been made during the Red Shirts investigation.

## Improper conduct by MPS in their use of public resources

### *Adem Somyurek*

673. It is clear that the organising force behind the ML faction's activities was Adem Somyurek. He was closely involved in its establishment in 2015 and was primarily responsible for the way in which it aggressively pursued its ambitions in the Victorian branch of the ALP. He was the architect of its branch-stacking campaigns in Melbourne's south-eastern, northern and western suburbs between 2017 and 2020, and was responsible for its cynical use of public resources to advance its agenda.
674. Although other factions were undoubtedly engaging in branch stacking, and this practice has been a scourge for the ALP for many years, the blatant misuse of public resources by the ML faction was extraordinary and shocking.
675. In the faction's misuse of public resources, Mr Somyurek led from the front. His electorate office was fully staffed, but provided little or no service to his constituents. Members of his ministerial office staff were similarly devoted to organising factional activities. The evidence in Chapters 4 and 5 of this report was gathered from witnesses, including former staff; from lawfully recorded conversations; and from records contained in files, computers and communication devices. Many witnesses attested to Mr Somyurek's bullying and abrasive communication style, which they found intimidating and distressing.

676. Mr Somyurek sought to justify his use of electorate office staff in a conveniently narrow interpretation of the amendments to section 30 of the PA Act. As stated at the start of this chapter, we reject his interpretation of section 30. Our reasons are discussed in Chapter 3. Mr Somyurek ignored his wider legal and ethical duties, especially after the passage of the VIRTIPS Act in 2019.

### **Breach of the Code of Conduct for Ministers and Parliamentary Secretaries**

677. By requiring his ministerial staff to undertake party-specific activities on behalf of the ML faction during their employment in his ministerial office, and to use ministerial office resources to undertake those activities, Mr Somyurek breached the Code of Conduct for Ministers and Parliamentary Secretaries (2018), which provides:

*Section 2.2 (1)* - In carrying out their duties: Ministers ... must ensure that they act with integrity ... by the appropriate use of the resources available to their office for public purposes.

*Section 2.6* - They must not encourage or induce other public officials, including public servants, by their decisions, directions or conduct in office to breach the law or to act improperly.

*Section 2.8* - They must have proper regard to efficient and effective government administration including ensuring that resources, facilities and personnel provided at public expense are not subject to wasteful or extravagant use and that due economy is observed.

*Section 2.9* - In particular, Ministers ... are provided with various 'ministerial' office facilities and equipment at public expense in order that public business may be conducted. The use of these resources should be consistent with the requirements of section 2.8.

*Section 7.1* - Ministers ... should be familiar with the requirements of the Ministerial Staff Code of Conduct and ensure that their staff comply with it.

### **Breach of the Members of Parliament Code of Conduct contained in the *Members of Parliament (Standards) Act 1978***

#### **Before 20 March 2019 (the date on which most of the relevant VIRTIPS Act amendments commenced)**

678. Before the VIRTIPS Act amendments, the Members of Parliament Code of Conduct was expressed in limited terms. When the Legislative Council Privileges Committee considered similar issues in relation to the MPs' conduct investigated by the Ombudsman in the Red Shirts report, it concluded that the only possible breach of the code of conduct at that time was the requirement not to bring discredit upon the parliament. It concluded that the MPs had brought discredit upon the parliament under the following Macquarie Dictionary definition:

**Discredit**  
*verb* 1. to injure the credit or reputation on. 2. to show to be undeserving of credit or belief; destroy confidence in ... - noun 3. loss or lack of belief, of confidence; ... 4. loss or lack of repute or esteem; disrepute. 5. something that damages a good reputation.

**Discreditable**  
*adj.* such as to bring discredit; disgraceful.

679. However, the Legislative Council Privileges Committee did not find the MPs guilty of contempt of parliament, because their conduct lacked the necessary element of wilfulness.<sup>125</sup>
680. Unlike other types of breaches, the question of the parliament's reputation and whether it has been discredited to the extent that a contempt of parliament has been committed is, we think, a question that only the parliament can assess. It would be a matter for the Legislative Council Privileges Committee and the Legislative Council to decide whether Mr Somyurek wilfully brought discredit upon parliament as a result of his use of his electorate office staff for party-specific activities before 20 March 2019, including the organising of votes for the National Conference ballot in 2018.

<sup>125</sup> Parliament of Victoria 2018, *Inquiry into Matters Relating to the Misuse of Electorate Office Staffing Entitlements*, Victorian Government Printer, Melbourne.

### On and after 20 March 2019

681. As described in Chapter 3, most of the additional elements of the Code of Conduct inserted by the VIRTIPS Act commenced on 20 March 2019. By requiring, inducing or allowing his electorate office staff to undertake party-specific activities on behalf of the ML faction during their employment, as described in Chapters 4 and 5, Mr Somyurek breached<sup>126</sup>:

- *Section 12(b)*, which requires compliance with guidance on the use of public resources. In particular, Mr Somyurek's conduct breached the Members Guide (as revised on 20 November 2018), which provided that 'Parliament does not fund Electorate Officers to engage in work that is party specific.' 'Party-specific work' was defined as having two aspects, including the administration, organisation or management of a political party, as discussed in Chapter 3.
- *Section 13(2)(a)*, which requires an MP to act ethically, reasonably and in good faith when using, and accounting for the use of, public resources in relation to the performance of their public duties. Mr Somyurek's use of electorate office staff for factional purposes was not ethical, reasonable or in good faith.

682. In addition, section 14(2) of the Members of Parliament Code of Conduct requires an MP to respect the confidentiality of information they receive in the course of their public duties. It is arguable that the authorisation by Mr Somyurek of the use of electoral roll information obtained under the *Electoral Act 2002* (Vic) to check the accuracy of ALP members' and applicants' addresses for membership purposes was not within the uses permitted by section 36 of that Act. Section 36 permits use by MPs of information about people in their own electorate only, and for the limited purposes of monitoring the accuracy of electoral roll information, exercising functions in relation to an MP's constituents, or in connection with an election.

683. Section 13(1) of the MP(S) Act requires an MP to make sure that their conduct does not bring discredit upon the parliament. It is a matter for the Legislative Council Privileges Committee and the Legislative Council to decide whether Mr Somyurek's actions constituted such conduct during this and subsequent periods.

### On and after 16 September 2019

684. In addition to the ongoing breaches of the Members Guide as detailed above, the commencement of the amendments to the PSAS Act triggered a further series of breaches of section 12 of the Members of Parliament Code of Conduct, which requires compliance with the PSAS Act. Specific breaches that arose from requiring, inducing or allowing his electorate office staff to undertake party-specific activities on behalf of the ML faction during their employment included breaches of:

- *Section 4A of the PSAS Act*, which provides that public resources are provided to support an MP in performing their public duties. The use by Mr Somyurek of electorate officers and associated public resources to perform factional tasks was not a use that supported Mr Somyurek in performing his public duties.
- *Section 4B of the PSAS Act*, which provides that an MP must act ethically, reasonably and in good faith when using, and accounting for the use of, public resources in relation to the performance of their public duties. The use of electorate officers and associated public resources to perform factional tasks was not an ethical, reasonable or good-faith use by Mr Somyurek of public resources to perform his public duties.
- *Section 4C of the PSAS Act*, which provides that an MP must be responsible and accountable for their use of public resources and must be able to publicly justify their use of public resources. The use of electorate officers and associated public resources to perform factional tasks was not a responsible use of public resources and is not publicly justifiable.

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<sup>126</sup> Members Guide (as at 20 November 2018), p 101.

- *Section 9A of the PSAS Act*, which requires an MP to provide value for money in using their work-related parliamentary allowances and their electorate office and communications budget (EOC budget) by making sure that the costs incurred are reasonable and proportionate to the costs of performing their public duties. The costs incurred by Mr Somyurek in using the electorate office and communications budget to employ casual electorate officers, and directing or otherwise permitting casual and non-casual electorate officers to use publicly provided accommodation, facilities and administrative expenses while performing factional tasks, did not deliver value for money and were not reasonable and proportionate to the costs of performing Mr Somyurek's public duties.
- *Section 9B(1) of the PSAS Act*, which prohibits an MP from claiming or using a work-related parliamentary allowance or their EOC budget unless it is claimed for the dominant purpose of performing their public duties. The use by Mr Somyurek of his EOC budget to employ casual electorate officers and otherwise support casual and non-casual electorate officers to carry out factional tasks was not for the dominant purpose of performing his public duties.

685. It is also possible that on and after 1 May 2019 Mr Somyurek was in further breach of section 12(b) of the Members of Parliament Code of Conduct, which requires compliance with guidance on the use of public resources. Guideline 4.3 of the VIRT MP Guidelines 1/2019 commenced on that date and required members to certify that their use of their EOC budget complied with the PSAS Act. Any such certification was likely to be incorrect.

### **Marlene Kairouz**

686. Ms Kairouz was not the primary figure in the ML faction, but, as a minister and close ally of Mr Somyurek, she was part of the leadership group and strongly supported its branch-stacking activities, by paying significant amounts for other people's memberships and by ensuring that her ministerial and electorate staff were used to pursue the faction's internal party agenda.
687. Ms Kairouz's Kororoit electorate office was a hub of factional activity in the western suburbs, and she employed a number of significant factional operatives in her ministerial office, including Michael de Bruyn, who apart from being her chief of staff also performed the role of factional secretary. Ms Kairouz supported Mr Somyurek's approach and on occasion used her leadership authority to undermine staff who were considered not to be contributing sufficiently to factional activities.

### **Breach of the Code of Conduct for Ministers and Parliamentary Secretaries**

688. By requiring or actively permitting her ministerial staff to undertake party-specific activities on behalf of the ML faction during their employment in her ministerial office, and to use ministerial office resources to undertake those activities, Ms Kairouz breached the Code of Conduct for Ministers and Parliamentary Secretaries (2018), which provides:

*Section 2.2(1)* - In carrying out their duties: Ministers ... must ensure that they act with integrity ... by the appropriate use of the resources available to their office for public purposes.

*Section 2.6* - They must not encourage or induce other public officials, including public servants, by their decisions, directions or conduct in office to breach the law or to act improperly.

*Section 2.8* - They must have proper regard to efficient and effective government administration including ensuring that resources, facilities and personnel provided at public expense are not subject to wasteful or extravagant use and that due economy is observed.

*Section 2.9* - In particular, Ministers ... are provided with various 'ministerial' office facilities and equipment at public expense in order that public business may be conducted. The use of these resources should be consistent with the requirements of section 2.8.

*Section 7.1* - Ministers ... should be familiar with the requirements of the Ministerial Staff Code of Conduct and ensure that their staff comply with it.

### **Breach of the Members of Parliament Code of Conduct contained in the *Members of Parliament (Standards) Act 1978***

#### **Before 20 March 2019 (the date on which most of the relevant VIRTIPS Act amendments commenced)**

689. For the same reasons outlined in relation to Mr Somyurek's potential breach of the same provision, the Privileges Committee of the Legislative Assembly, and the Legislative Assembly itself, are the proper bodies to decide whether Ms Kairouz has breached the Members of Parliament Code of Conduct before 20 March 2019 and in subsequent periods, by bringing discredit on the parliament.

#### **On and after 20 March 2019**

690. As described in Chapter 3, most of the additional elements of the Members of Parliament Code of Conduct inserted by the VIRTIPS Act commenced on 20 March 2019. By requiring, inducing or allowing her electorate office staff to undertake party-specific activities on behalf of the ML faction during their employment, as described in Chapters 4 and 5, Ms Kairouz breached:

- Section 12(b), which requires compliance with guidance on the use of public resources. In particular, Ms Kairouz's conduct breached the Members Guide (as revised on 20 November 2018) that provided that 'Parliament does not fund Electorate Officers to engage in work that is party specific.' 'Party-specific work' was defined as having two aspects, including the administration, organisation or management of a political party,<sup>127</sup> as discussed in Chapter 3.
- Section 13(2)(a), which requires an MP to act ethically, reasonably and in good faith when using, and accounting for the use of, public resources in relation to the performance of their public duties. Ms Kairouz's use of electorate office staff for factional purposes was not ethical, reasonable or in good faith.

#### **On and after 16 September 2019**

691. In addition to the ongoing breaches of the Members Guide detailed above, the commencement of the amendments to the PSAS Act triggered a further series of breaches in relation to section 12 of the Members of Parliament Code of Conduct, which requires compliance with the PSAS Act. Specific breaches that arose from requiring, inducing or allowing her electorate office staff, in particular, to undertake party-specific activities on behalf of the ML faction during their employment included breaches of:

- *Section 4A of the PSAS Act*, which provides that public resources are provided to support an MP in performing their public duties. The use by Ms Kairouz of electorate officers and associated public resources to perform factional tasks was not a use that supported Ms Kairouz in performing her public duties.

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<sup>127</sup> Members Guide (as at 20 November 2018), p 101.



- *Section 4B of the PSAS Act*, which provides that an MP must act ethically, reasonably and in good faith when using, and accounting for the use of, public resources in relation to the performance of their public duties. The use of electorate officers and associated public resources to perform factional tasks was not an ethical, reasonable or good faith use by Ms Kairouz of public resources to perform her public duties.
- *Section 4C of the PSAS Act*, which provides that an MP must be responsible and accountable for their use of public resources and must be able to publicly justify their use of public resources. The use of electorate officers and associated public resources to perform factional tasks was not a responsible use of public resources and is not publicly justifiable.
- *Section 9A of the PSAS Act*, which requires an MP to provide value for money in using their work-related parliamentary allowances and the EOC budget by ensuring that the costs incurred are reasonable and proportionate to the costs of performing their public duties. By directing or otherwise permitting her electorate officers to use the publicly provided accommodation, facilities and other administrative expenses of her electorate office to perform factional duties, Ms Kairouz did not deliver value for money, and the expenses incurred were not reasonable and proportionate to the costs of performing Ms Kairouz's public duties.
- *Section 9B(1) of the PSAS Act*, which prohibits an MP from claiming or using a work-related parliamentary allowance or their EOC budget unless it is for the dominant purpose of performing their public duties. The use by Ms Kairouz of her EOC budget to enable her electorate officers to carry out factional tasks was not for the dominant purpose of performing her public duties.

692. It is also possible that on and after 1 May 2019 Ms Kairouz was in further breach of section 12(b) of the Members of Parliament Code of Conduct, which requires compliance with guidance on the use of public resources. Guideline 4.3 of the VIRT MP Guidelines 1/2019 commenced on that date and required MPs to certify that their use of their EOC budget complied with the PSAS Act. Any such certification was likely to be incorrect.

#### **Robin Scott**

693. Mr Scott was the third member of the ML faction's leadership group and played an active part in its organisation. He employed factional operatives or their relatives in his ministerial and electorate offices, and admitted to paying membership fees for many members. Although it is possible that the employed factional operatives were undertaking party-specific activities during work time, the investigation did not find any evidence that this was occurring on a widespread level. Accordingly, we make no findings about whether Mr Scott might have breached the Ministerial Code of Conduct or the Members of Parliament Code of Conduct on this question.

#### **Other MPs**

694. The federal MP for Holt, Anthony Byrne, gave evidence at a public hearing about his long history of helping branch stacking by paying members' fees, and his association with Mr Somyurek in operating the ML faction. He said he continued to communicate with Mr Somyurek even after they had a falling out in 2016-17. The investigation received evidence that Mr Byrne on occasion employed people in his office because of their factional role or connection to an influential factional member. However, because Mr Byrne is a federal MP, neither IBAC nor the Ombudsman is able to comment on any possible breaches of Commonwealth laws or standards.

695. Other MPs also employed ML factional operatives, but the investigation did not find or receive evidence that the operatives were extensively engaged in factional business during working hours. It was quite clear that the ML leadership group moved factional operatives between different MPs' electorate offices and believed them to be at the leaders' direction to some extent, but it was not clear whether the MPs participated in providing such direction, passively allowed some ML activity to occur, or complied with the legal and ethical obligations to make sure that any such work did not occur during publicly funded hours.

## Employment provided to factional allies and their relatives

696. Factional members or their relatives were given publicly funded employment in electorate or ministerial offices as a reward for recruiting members or working for the faction. Often such employment also advanced factional objectives by discouraging factional operatives from taking their skills or the members they recruited or managed to a different faction.

697. Employment of electorate and ministerial staff was characterised by a total absence of the usual recruitment and selection processes used to select the best available person for a job. Apart from factional operatives, it was common to employ relatives of the employing minister or MP, relatives of other ML-aligned MPs, or relatives of factional operatives who were not ministers or MPs. In some cases, the employment was provided with little regard to the person's ability to perform the public duties for which they were ostensibly employed, and with little or no regard to whether they actually performed those duties. More than 15 relatives of ML-aligned MPs or operatives were employed in ministerial and electorate offices.

698. Members argued that they needed to have complete confidence in their staff, which resulted in the employment of people they knew or who were recommended by other faction members. Trust and confidence in staff are relevant and necessary. The *Equal Opportunity Act 2010* recognises that employment of staff by reference to their political views is a legitimate exception to the usual rule prohibiting discrimination on the grounds of political belief.<sup>128</sup>

699. Although trust, confidence and political alignment are relevant, it is also clear that some factional operatives and relatives were employed as a favour or reward, were not appointed on merit, and did not possess the skills and experience to perform their job well.

700. To the extent that some people were employed predominantly because of their factional value or a relative's value to the faction, ministers and MPs might have breached provisions of the Code of Conduct for Ministers and Parliamentary Secretaries and the Members of Parliament Code of Conduct, particularly on the inefficient or wasteful use of public resources.

701. Mr Somyurek also employed staff in his electorate office despite the almost total absence of any official work for them to do in communicating with and helping constituents, or supporting Mr Somyurek in his parliamentary duties. Nevertheless, he made sure that he had a full complement of staff and used his EOC budget to also employ numerous factional members as casual employees.

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<sup>128</sup> *Equal Opportunity Act 2010*, s 27.

702. These factional employment practices were driven by senior members in the faction, especially Mr Somyurek. The employees themselves were not responsible for the employment decisions. They hold differing levels of moral responsibility for the factional work they undertook, depending upon their seniority, their particular roles, the amount of factional work they did during working hours, and their understanding of the wrongfulness of such activities. For this reason we have chosen not to make findings about the individuals who were the subject of these unjustifiable employment decisions. The specific code of conduct provisions that were breached by Mr Somyurek and Ms Kairouz are discussed below.

#### Code of Conduct for Ministers and Parliamentary Secretaries

- *Section 2.2 (1)* - In carrying out their duties: Ministers ... must ensure that they act with integrity ... by the appropriate use of the resources available to their office for public purposes.
- *Section 2.6* - They must not encourage or induce other public officials, including public servants, by their decisions, directions or conduct in office to breach the law or to act improperly.  
[This provision would apply where Mr Somyurek arranged for or directed the employment of a factional activist in another MP's office to pursue factional agendas.]
- *Section 2.8* - They must have proper regard to efficient and effective government administration including ensuring that resources, facilities and personnel provided at public expense are not subject to wasteful or extravagant use and that due economy is observed.

#### Members of Parliament Code of Conduct

##### Before 20 March 2019

703. The privileges committees of the Legislative Assembly and Legislative Council, and the Legislative Assembly and Legislative Council themselves, are the proper bodies to decide whether MPs breached the Members of Parliament Code of Conduct before 20 March 2019 - and in subsequent periods - by bringing discredit on the parliament through such employment practices.

##### On and after 20 March 2019

704. Section 13(2)(a) of the MP(S) Act requires an MP to act ethically, reasonably and in good faith when using, and accounting for the use of, public resources in relation to the performance of their public duties. The MP's employment of electorate office staff as a favour or reward for factional activities was not ethical, reasonable or in good faith.

##### On and after 16 September 2019

705. Section 9A of the PSAS Act requires an MP to provide value for money in using their work-related parliamentary allowances and the EOC budget, by ensuring that the costs incurred are reasonable and proportionate to the costs of performing their public duties.

706. The costs incurred by ministers and MPs in employing electorate officers as a favour or reward to factional allies, and in the employees' use of the accommodation and facilities of the ministerial and electorate offices, did not represent value for money, insofar as no merit-based selection process was used, and some of the employees were unsuited to the public role they were employed for. Consequently, the costs incurred in employing them did not help ministers and MPs perform their public duties, and were not reasonable or proportionate.

707. The factional leaders who directed or arranged for the employment of factional operatives in other ministers' or MPs' offices repeatedly breached these provisions.

## Grants to community organisations

708. There was a close relationship between certain ML factional operatives and three community organisations (the ALF, the CAV and SACOV) that received grants from departments or agencies overseen by the ML-aligned ministers Robin Scott and Marlene Kairouz.
709. Despite the allegations that were, in part, the reason for establishing Operation Watts, no evidence was uncovered that such grants were used to pay for ALP memberships.
710. The evidence does show that people in the ML faction - in particular, Mr Somyurek, Mr Garotti and Dr Haraco - sought to improperly influence the grant process, although the investigation did not find or receive evidence that any ministers overrode departmental advice on grants or sought to improperly influence departmental advice or decisions.
711. The lobbying of ministers and their staff by factional operatives on behalf of the associated organisations, and the grants made to those organisations whose leaders actively supported the ML faction's activities, inevitably gave rise to perceptions of a conflict of interest and favoured treatment. Factional allies could expect greater access and could exert greater pressure on ministerial officers to help them on grant processes. Even requests to improperly interfere with grant programs were not openly refused, although they may not have ultimately been carried out.

## Grant accountability

712. The conclusions drawn from examining financial records for the three community organisations revealed problems with some grant acquittals. Receipts were not requested as a matter of course on low-value grants, and it was difficult to tell whether requests for further information were responded to or followed up.
713. SACOV's record keeping was inadequate and raised more questions than it answered on the expenditure of grants, including evidence of SACOV using the same invoices to justify expenditure to different grant bodies, other questionable invoicing practices, and the purpose of salary payments to Dr Haraco. The gaps and discrepancies should be the subject of further investigation by the relevant funding bodies, including the Department of Families, Fairness and Housing (DFFH) (as the successor to the Department of Premier and Cabinet in administering multicultural affairs grants); the Victorian Responsible Gambling Foundation (VRGF); and Banyule City Council.
714. Similarly, misrepresentation of how funds were spent in the ALF's financial reporting on low-value grants and the purpose of some expenditure by the CAV raise similar accountability concerns, but not on the same scale as the SACOV expenditures and records.
715. Grant reporting and acquittal processes need to be adaptable to the full range of grants for which the administering government agency or council is responsible. Most of the grants examined in this investigation required only a declaration by the recipient organisation about how it spent the funds, without detailed itemisation of expenses. This is not necessarily unreasonable where full audits of project records and finances would cost more than the value of those grants. Requests for further documents and information are more efficient responses for low-value grants, particularly when a non-compliant organisation faces exclusion from future grants.

716. In keeping with the 'Investment Principles for Discretionary Grants' (part of the Minister for Finance's Standing Direction 4.2.2 - Discretionary Financial Benefits - Grants, Sponsorships, and Donations), which recommend that accountability requirements imposed on grant recipients be proportionate to risk, acquittal by declaration is frequently used across government on low-value and low-risk grants. However, the system of acquittal by declaration is vulnerable to abuse, particularly if grants and acquittals are not actively monitored. Several grants examined by investigators included receipts and expense claims that did not align with the purposes of the grants or the anticipated costs of the projects funded. For some grants to the ALF, the CAV and SACOV, salary payments to certain staff were claimed despite having no clear connection to the relevant grant or project. In one case, the ALF claimed \$2,200 for venue hire despite using its own facilities for an event, and photographic evidence supplied by the ALF for that function was clearly inconsistent with reported attendance.
717. SACOV's acquittal documentation and receipting practices demonstrated a further vulnerability. SACOV's records show that it submitted the same receipts for expenditure against different grants from state government agencies and Banyule City Council. SACOV also claimed the full amounts of five salary payments as expenses against grants from both Banyule City Council and the VRGF. These practices overstated SACOV's expenditures against the grants. They allowed grant funds to remain in SACOV's hands, which could then be used for purposes unconnected to the grants. Such double receipting of expenses was unlikely to be detected unless the granting organisations shared and collectively audited all of an organisation's receipts and acquittal documentation. The practice demonstrates the importance of managing grants proactively, and for grant administrators to have both the capacity and willingness to conduct meaningful sample audits and targeted audits.
718. Although cost-benefit considerations weigh against widespread auditing of small grants, a targeted, risk-informed program is necessary to ensure that grant recipients maintain adequate records and remain accountable for their expenditure. Effective risk assessment relies on diligent monitoring of reports and acquittals, and maintaining constructive working relationships with recipients.
719. All funding bodies had end-to-end frameworks for administering grants from inception to final acquittal. The Department of Premier and Cabinet, Department of Justice and Community Safety and Banyule City Council have each reviewed aspects of their processes in recent years, to identify flaws and suggest improvements. However, even the best systems and processes are ineffective in preventing or detecting under-reporting or misuse of grant funds if they are not properly administered. Reporting and monitoring are essential controls for making sure that grant funds are used for their intended purposes. Proper supervision requires clear statements about the details of expenditure, supporting evidence for progress reports and acquittals, and the capacity and willingness to enforce those requirements through active monitoring and auditing.
720. The need for more careful analysis of grant acquittals and risk-based auditing of targeted individual grant recipients was clearly demonstrated by SACOV's inadequate accounting for monies that it had received and the unanswered questions about Dr Haraco's use of funds. We do not make any finding in relation to Dr Haraco's use of funds provided to SACOV, but note that he was unable to give evidence to the investigation and that further explanation is required about the use of those funds. SACOV also needs to provide a fuller explanation for the grant expenditure highlighted in this report.

721. The Department of Premier and Cabinet, VRGF and Banyule City Council all granted SACOV significant funds during the period 2015-20. They appear to have been unaware of problems with SACOV's expenditure and records, although the VRGF was able to show that it had asked some questions in response to one return from SACOV but could not show evidence of a reply or further follow-up to obtain a response. These deficiencies have highlighted the flaws in these bodies' grant administration processes and, in particular, their approach to monitoring, auditing and risk management.
722. In response to the draft report, DFFH advised that, in response to the PwC Audit of DFFH Assessment Practice and the Victorian Auditor-General's Office Assurance Review of Grants to the Migrant Workers Centre, it is undertaking a range of activities to improve the monitoring and acquittals of grant processes. A summary of DFFH's grant-reform activities is attached in Appendix A.

## Factors that contributed to the misuse of public resources

723. Operation Watts focused on the activities of the ML faction. The evidence received establishes conclusively that there is a nexus between the various underlying factors set out below and the ML faction's misuse of public resources. Although it is not possible to say that all of the unethical practices followed by members of the ML faction have also been employed by other factions, there is cogent evidence that these underlying factors are not limited to the ML faction or to the period covered by this investigation. Moreover, this is acknowledged by Steve Bracks and Jenny Macklin in their report commissioned by the ALP, and in the Premier's evidence. As such, it is highly likely that the misuse of publicly funded staff for party or factional purposes, and the employment of family members and factional allies, has occurred for a much longer period and is much more widespread than the ML faction.
724. We now discuss the underlying factors.

### The culture of branch stacking

725. The misuse of electorate office staff described in this report forms part of a self-perpetuating system of factional power and influence.
726. There is a limited pool of people who are sufficiently interested in becoming party members to pay their own annual membership fee, attend branch meetings, and vote in internal party ballots. Factions have a powerful incentive to expand the pool of party members by using community networks to recruit people who are members in name only. For the price of their annual membership fees, the faction can harvest those non-genuine members' votes in internal party ballots, to the benefit of individuals and the faction. This enables the individuals and faction to gain seats on influential party committees, such as the Administrative Committee, the Public Office Selection Committee (which has a powerful role in pre-selecting parliamentary candidates) and the Membership Administration Committee, which can facilitate the stacking of non-genuine members by that faction and block the stacking of members by rival factions.
727. To obtain pre-selection, prospective candidates for parliament and those standing for re-election commonly need to align themselves with a faction and to have community connections that enable them or their associates to recruit substantial numbers of non-genuine members. Alternatively, they may need to provide money to the faction to pay the fees of non-genuine members.
728. The ML faction often sought to recruit and retain non-genuine members from Melbourne's multicultural communities, undermining the efforts by genuine party members from those communities to increase their communities' participation and representation in Australian parliamentary democracy.

729. If a candidate is pre-selected and then elected to parliament, they gain electorate office staff. These staff are valuable to the faction because they can be used to perform the administratively complex and time-consuming tasks associated with branch stacking. These tasks include circumventing ALP rules that are designed to prevent the corrosive effects of branch stacking and to perform the time-consuming work of harvesting the votes of non-genuine members to consolidate the power of the faction.

730. The investigation asked Jenny Macklin and Steve Bracks to comment on the allegations that led to their appointment as administrators of the ALP's Victorian branch and to the establishment of this investigation. In their statement, which echoed the Dreyfus Report of 1998, they wrote:

As we described in our final report to the National Executive, we formed the view that the issue of branch stacking was widespread within the [Victorian] Branch. It was not an issue that related to a single faction or [a] few individuals. The members whose memberships we revoked were from branches that aligned with various factions and were not isolated to one group within the Branch. In our view, prior to our appointment, branch stacking was systemic within the Branch. However, we considered that the activities of one sub-faction, the Moderate Labor Group, represented the most egregious conduct in this regard and caused other groups to form the view that, in order to survive, they too were required to engage in such conduct.

731. Mr Somyurek gave a different explanation for why the ML faction engaged in that egregious conduct. According to him, it was because other factions were doing so that the ML faction needed to do so. There are some contemporaneous conversations involving Mr Somyurek in which he said so. We do not need to consider whether his description of the conduct of the Socialist Left faction was unrealistic or factual. Ample evidence from differing sources was consistent with the conclusion that these factional activities occurred at a serious level across the factions. What matters is the acknowledgment that 'branch stacking' is 'systemic' in the Victorian branch of the ALP and that the 'egregious conduct' was engaged in by different factions. Such a finding inevitably gives rise to the prominent hypothesis that MPs engaged in such activity and that, whatever their faction, would misuse their electoral allowances and staff to more effectively facilitate branch stacking.

### Political culture set by senior leaders

732. Operation Watts found a political culture - condoned or even actively encouraged by senior figures - of ends justifying means and of bending or breaking rules.

733. Over many years, the ALP has adopted various rules to prevent branch stacking. These include prohibiting the payment of any other person's membership fee (with a limited exception for the person's immediate family members). Despite this rule, senior ML members used staff to collect money from MPs and prospective MPs and to use that money to pay for large numbers of memberships or membership renewals.

734. Again, this cultural issue of breaking rules regarding branch stacking was not unique to the ML faction. In their statement to the investigation, Jenny Macklin and Steve Bracks accepted that branch stacking was longstanding, widespread and widely known in the Victorian branch of the ALP. They went on to write:

We also formed the view that branch stacking, although pernicious in its own right, was a symptom of deeper cultural issues that had emerged within the [Victorian] Branch [of the ALP]. A 'winner takes all' mentality had emerged within some factional groups, a mentality that was exacerbated by a 'balkanisation' of two major factions.

The growth of the Moderate Labor Group, and a fear of the power Mr Somyurek had amassed, resulted in factional brinkmanship within the Branch. It was commonly-known that Mr Somyurek had been recruiting broadly - including genuine and non-genuine members - and as a bulwark, we believe that other groups engaged in branch stacking to retain a level of balance within the Branch. This, of course, is no excuse for such conduct, but goes some way to explaining why the Branch found itself in the position it did.

735. The senior leaders of ML openly or tacitly condoned this and other improper behaviour.

736. For example, Mr Somyurek admitted that in March 2020 he and factional staff were aware that it was very likely that a staff member had been forging members' signatures on party application forms, but he did nothing to have any such activity investigated or stopped. Evidence also indicates that Ms Kairouz was aware of staff forging signatures, but that she too failed to take any action to investigate or stop the practice.

737. In another example, on 30 November 2017 Mr Somyurek received a message outlining an apparent arrangement between two members of the ML faction to improperly influence a grant process to favour the Himilo project for SACOV, a community organisation with close ties to the ML faction. While it is not possible to conclude that their plan was carried out, it is significant that, at the time he received the message, Mr Somyurek appears to have spoken to Mr Scott and did nothing to address what he later admitted in testimony was a highly improper agreement.

738. The political culture involved perverse incentives. Staff could see that improper conduct was rewarded rather than punished. Staff understood that engaging in factional activity would improve their career prospects in the party, and that declining to do factional work during their employment hours would inhibit their prospects in the party.

739. As already stated, the unethical cultures exposed by Operation Watts are not confined to the ML faction. These unethical practices are embedded in the Victorian branch of the ALP and are systemic to all of the ALP's factions. The evidence adduced enables the conclusion that these practices have been approved or condoned by the party leadership for decades. Leaders must be willing to expose and denounce such activity regardless of their alignment. Without the rigorous participation of the leaders of the branch, the reforms proposed in this report are unlikely to be effective.



## Existence of a pool of under-used staff

740. Some electorates generate a substantial amount of constituent-related work, and their MPs actively reach out to their constituents. These electorates tend to be Legislative Assembly electorates, particularly if they are held by a relatively small margin of votes.
741. By contrast, some other electorates generate much less constituent-related work. These electorates tend to be either:
- in the Legislative Council
  - electorates in the Legislative Assembly held on a wide margin of votes.
742. Legislative Council electorates might generate relatively little constituent-related work because the Legislative Council comprises only eight electoral regions, each of which is represented by five members. The very large size of each Legislative Council region and the number of MPs for each of those regions can mean that constituents are less aware of their Legislative Council representatives than of their Legislative Assembly representative. As such, if a constituent has a problem, they may be more likely to contact their Legislative Assembly representative than one of their Legislative Council representatives.
743. In safe Legislative Assembly electorates, the incumbent MP may feel less need to be active in the local community than an MP in an electorate held on a smaller margin of votes. A number of witnesses commented that an MP in a safe seat might be tempted to focus on factional activity because they were at greater risk of losing their seat to a factional rival in a pre-selection process than to a candidate from outside their party at a general election.

744. Such tendencies are by no means universal, and the investigation was aware of many Legislative Council and Legislative Assembly MPs whose offices were busy and actively engaged with their local communities. Some constituents might also prefer to deal with a Legislative Council MP from the party for which they vote if their Legislative Assembly MP is from another party.
745. It was established that, in some Legislative Council electorates and in some safe Legislative Assembly electorates, some of the electorate office staff were treated as a surplus resource that was available for factional work. The investigation found that such staff were pooled by members of the ML faction and were subject to direction by the factional leaders. In many cases, their factional work was directed by an MP other than the MP they were employed to serve.

## Absence of clear legal guidance on permissible and impermissible use of staff

746. There were competing interpretations of the legal framework governing the use of electorate office staff.
747. As detailed in Chapter 3, the amendment made to section 30 of the *Parliamentary Administration Act 2005* by section 84 of the VIRTIPS Act addressed only the narrow issue raised by the Red Shirts investigation; it did not resolve the broader question of the extent, if any, to which electorate office staff can do factional work during their work hours.

748. For the reasons explained in Chapter 3 and at the start of this chapter, we do not consider that section 30 permits electorate office staff to be used for the factional purposes described in this report. However, the fact that parliament chose to enact only one part of the two-part definition of ‘party-specific work’ set out in the 2018 Members Guide issued by the President of the Legislative Council and the Speaker of the Legislative Assembly prompted Mr Somyurek to claim that, in passing the amendment, MPs had wished to retain the ability to use their staff for at least some party-specific work, and that this was permissible under the amended provision. As explained in Chapter 3, consideration of the statutory regime, viewed as a whole, and the Members Guide shows that his interpretation of the provision is misconceived.
749. The evidence also demonstrates that there is insufficient initial and follow up training and information for MPs and electorate officers about their roles and responsibilities.

### Limited safeguards or accountability

750. MPs and staff were able to engage in the activities detailed in this report in part because of inadequate safeguards against such conduct.
751. The evidence established that there was inadequate scrutiny of grants; that staff in the ALP head office turned a blind eye to evidence of branch stacking, payment of members’ fees and the harvesting of their votes; that staff and MPs were aware of practices such as the forgery of signatures and yet took little or no action to address the practice; that staff, with the knowledge of MPs, let other staff use their identity and password to log in to ALP databases containing sensitive electorate office data on electors and misused that data; and that there appears to have been little if any effective auditing of such activities.

752. There was uncertainty about the extent of the role of the Department of Parliamentary Services (DPS) in managing and auditing electorate office work. DPS was not significantly involved in employing and managing electorate officers. Although DPS carried out an audit program for electorate offices, it was not targeted at identifying possible misuse of staff resources.
753. There was also a lack of adequate investigative and enforcement structures and processes to deal with improper conduct by MPs. The narrow interpretation by some MPs of the nature of the wrongdoing in the Ombudsman’s Red Shirts investigation, and the apparent general lack of awareness of the changes to the Members of Parliament Code of Conduct in the MP(S) Act and the principles in the PSAS Act that were enacted by the VIRTIPS Act in 2019 underline the lack of ethical interest or the complacency of many MPs who were the subject of this investigation.
754. The current system of referring misconduct breaches to the privileges committee of the relevant House also weakens the accountability of MPs, because of its apparent ineffectiveness. The privileges committees are responsible for both investigating and recommending sanctions for parliamentarians’ misconduct. Their powers of investigation have rarely been used - since 1974 it appears that only nine substantive matters have been referred to the Legislative Assembly Privileges Committee and no findings of guilt or recommendations for sanction have been made. The referral in 2018 of the Red Shirts report’s findings to the Legislative Council Privileges Committee for investigation did not break this pattern.

755. The privileges committee processes have often been criticised for being convoluted and in need of improvement. Mr Andrews in his evidence also acknowledged the need for change in the approach to the imposition of sanctions for misconduct.

### No viable avenue for staff to raise their concerns

756. Several staff testified that they were aware that the factional work that they were required to perform during their employment hours was inappropriate. However, they testified that they did not consider that they had viable options to voice their concerns.
757. Ministerial staff are formally appointed by the Premier. However, several staff testified that they did not consider complaining to the Premier's office, because that office had little direct power over the running of a ministerial office, they were not confident that their claims would be dealt with on the merits, and they feared repercussions against them if they were to complain.
758. An electorate officer for an ML-aligned MP testified that they had considered making a formal complaint about the factional work they were required to do, but realised that to do so they would have to complain to the President of the Legislative Council. They considered this to be an insurmountable obstacle because they knew that the President was in a strong factional alignment with Mr Somyurek, Ms Kairouz and Mr Scott.
759. The requirement for any disclosure about an MP under the *Public Interest Disclosures Act 2012* to be made to the relevant presiding officer of parliament was perceived to present a similar obstacle.<sup>129</sup>

### Role of Department of Parliamentary Services

760. The Secretary of the DPS is the delegated employer of electorate officers, in accordance with a delegation by the presiding officers, although the role in practice has been limited to facilitating the administrative arrangements for electorate officers.
761. DPS also helps to produce the Members Guide issued by the presiding officers, which provides further information about the employment and management of electorate officers, including the restrictions on their use for party-specific purposes, and is responsible for monitoring expenditure of the EOC budget, including arranging for the Victorian Auditor-General's Office to conduct sample audits of electorate offices.
762. DPS is in a structurally weak position to enforce obligations, because it is accountable to the presiding officers, who have the power to hire and fire the Secretary. The Secretary is employed for a term of up to four years, which is renewable. The role of DPS is to facilitate the work of MPs; it relies on building a harmonious and cooperative relationship with MPs to carry out its functions efficiently and effectively. The Secretary and staff of DPS walk a delicate line between providing services according to the relevant laws and guidelines while fostering a cooperative and mutually supportive relationship with a diverse and sometimes volatile group of MPs.
763. The inherent weakness of DPS's compliance role was recognised in the creation of the VIRT to independently set the EOC budget and resolve disputed claims - functions previously undertaken by DPS.

<sup>129</sup> *Public Interest Disclosures Act 2012*, s 17. The relevant presiding officer is the Speaker of the Legislative Assembly in the case of a member of the Legislative Assembly, and the President of the Legislative Council in the case of a member of the Legislative Council.

764. MPs jealously guard the independence of parliament, and their associated privileges and entitlements. The insertion of the wide power of control over electorate officers in section 30(4) of the PA Act was unexplained in the parliamentary papers and debates that accompanied its passage, but some of those interviewed by the Ombudsman for her Red Shirts report thought that its purpose was to reinforce the view that MPs had control of their electorate officers' duties and priorities and should not be subject to direction by the presiding officers or other MPs.<sup>130</sup>

765. The absence of DPS from any part of the recruitment and selection process (for example, in the formulation of merit-based procedures) and the lack of more than basic monitoring and audit controls encouraged some MPs to believe that improper conduct would not be discovered - or, if discovered, would not be punished.

## Consequence of the misuse of public resources

### Harm to the public interest

766. Electorate office staff are publicly funded employees. They are provided to MPs to help the MPs perform their public duties.

767. The evidence established that many of these employees did not perform their public duties, either because the role had been given to them as a sinecure or because they were performing factional tasks instead of their public duties.

768. In this way, constituents were deprived of support and services that should have been available to them. In some electorates, very few constituents sought to contact the MP's office. A low level of engagement does not necessarily mean that there was no demand for services to constituents: it may simply mean that the MP has failed to draw out a latent demand for such services by making the office accessible to constituents and making them aware of the services. Such a situation is certainly not an excuse to redirect staff for factional purposes. Performing public duties outside office hours would not excuse doing factional work during office hours.

769. Similarly, the publicly funded ministerial staff who were diverted to factional work deprived the government, and ultimately the public, of a resource that should have contributed to the efficient and effective management of the relevant minister's portfolio.

770. The practice of employing staff due to factional considerations, without sufficient regard to their interest in or capability to perform the public duties of the role, and without a requirement that they actually perform their public duties, further harms the public interest.

### Misuse of sensitive information

771. Each Victorian MP is given access to the Victorian Electoral Commission rolls for their electorate for the purpose of conducting their public duties. Factional leaders arranged for staff to improperly obtain access to the electoral rolls for the whole state of Victoria in order to scrutinise ALP membership applications for Membership Administration Committee meetings.

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<sup>130</sup> Victorian Ombudsman 2018, *Investigation of a Matter Referred from the Legislative Council on 25 November 2015*, pp 102–105.

772. Section 36 of the *Electoral Act 2002* (Vic) permits MPs to use information about people in their own electorate only, and for the limited purposes of monitoring the accuracy of electoral roll information, exercising functions in relation to the MP's constituents, or in connection with an election.
773. It is arguable that MPs encouraging their staff to use electoral roll information to check the accuracy of ALP members' and applicants' addresses for membership purposes was not within the uses permitted by section 36 of the Electoral Act 2002.

### Corrosive effect on staff of having to engage in improper practices

774. The testimony in both public and private examinations from current and former electorate office and ministerial staff demonstrated how destructive these practices were on the staff compelled to undertake them. Many had joined the ALP as teenagers or university students with a strong interest in politics and public policy. They obtained work as electorate officers as a stepping-stone to a career in politics. Many testified that they had become disenchanted by the factional work that they were required to do instead of their legitimate public duties, and left the ALP as a result. There was also evidence that some other younger staff were willing factional activists and embraced the rule-breaking and rule-bending in pursuit of their political careers.
775. Many of the MPs examined during this investigation had begun their political careers as electorate officers for other MPs, through whom they were exposed to the branch-stacking techniques and political culture described throughout this report. In turn, they themselves absorbed and practised the methods for gaining and manipulating power in the ALP, to the extent that they became willing to misuse public resources for those ends.

### Undermining public confidence in politicians and the political process

776. The improper conduct revealed by this investigation was inconsistent with the MPs' legislated Statement of Values, which obliges MPs to serve the public interest and to act with integrity. It was also inconsistent with the legislated Members of Parliament Code of Conduct, which requires MPs to make sure that their conduct as an MP does not bring discredit upon the parliament, and that they act ethically, reasonably and in good faith when using, and accounting for the use of, public resources in relation to the performance of their public duties.

### The moral effect of long-term engagement in unethical practices

777. A large number of those who aspired to a parliamentary career or to some leadership role in politics were required to immerse themselves over a protracted period in the unethical factional activity discussed in this report. A consequence of such exposure to improper practices renders more likely, over time, 'ends justify means' reasoning - that unethical behaviour is acceptable to achieve desired results. Such a training ground, approved by their employers - ministers and MPs - and the party leadership, risks seriously and permanently compromising the moral judgment of those who engage in such unethical activity.

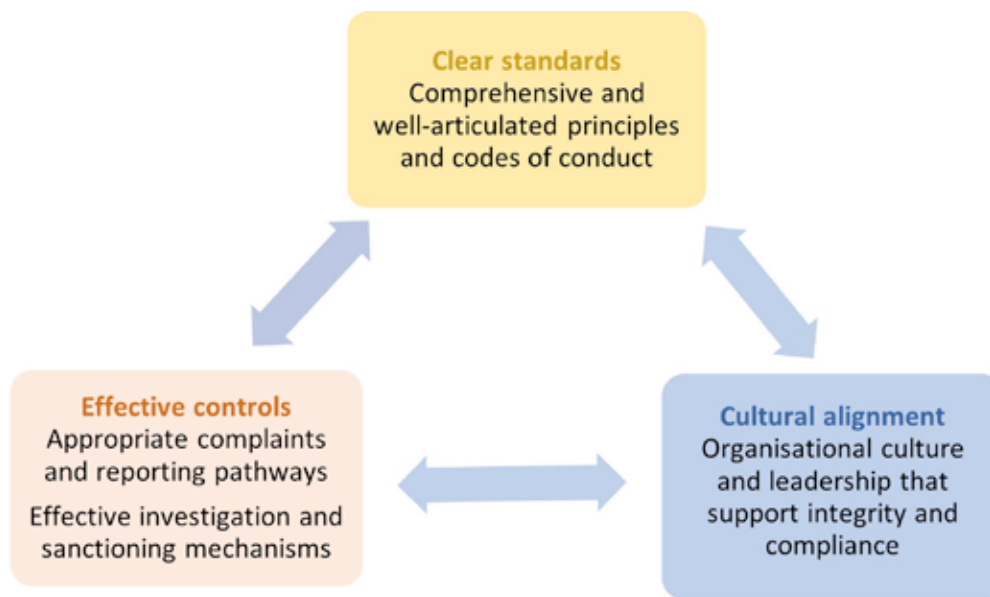
# Chapter 8. Recommendations for reform

## Overview

778. This investigation has uncovered extensive misconduct by parliamentary members of the Moderate Labor faction of the Victorian branch of the Australian Labor Party, as detailed in the previous chapters. The misconduct centred on the appointment and misuse of electorate officers and ministerial staff to pursue ML factional agendas instead of performing the jobs for which these people were ostensibly employed. Some electorate and ministerial staff actively supported their time being used in this way, while others were reluctant participants. We have taken the view that it is their parliamentary and ministerial employers (in the practical rather than formal sense of that term) who must be held accountable for these employees' actions. The investigation has also found questionable accountability for the use of publicly provided funds by some community associations with links to the ML faction.
779. Both IBAC and the Ombudsman in performing their roles are concerned to identify underlying causes of problems that are exposed by their investigations, and to make recommendations to improve organisations, their processes and cultures in order to prevent recurrence of such problems.
780. The following sections discuss possible approaches and make recommendations in respect of the misconduct that was identified and the underlying integrity of the systems within which the main persons of interest were active.
781. In making our recommendations, we are mindful of the Victorian Parliament's fundamental sovereignty and independence, and that our organisations have no jurisdiction over private political parties such as the Australian Labor Party.
782. However, in the same way that it was necessary to investigate internal party branch stacking in order to understand the activities of the ML members who were publicly funded, we think that it is within our organisations' remit to comment on some aspects of the ALP's organisation and culture insofar as they contributed to the parliamentary problems that were exposed. We do so carefully and briefly, and we have avoided making specific recommendations for implementation by the ALP.
783. Neither of our organisations usually investigates matters of parliamentary integrity. One of the reasons why the subject matter of this investigation has been directed to us is the lack of an adequate framework to hold MPs accountable for their actions, outside the election cycle. Short of criminal conduct, breaches of ethical standards by MPs cannot be investigated in a consistent or credible fashion. The vulnerability of the privileges committees' processes to party-political agendas damages their ability to deal fairly and equally with alleged breaches of parliamentary standards.

784. Although the *Members of Parliament (Register of Interests) Act 1978 (the MP(RI) Act)* was one of the earliest Australian examples of legislation to set parliamentary ethical standards, Victoria has not kept up with developments in other jurisdictions or with public expectations of accountability. The primary duties in the MP(RI) Act's Members of Parliament Code of Conduct related to various types of conflict of interest and a duty not to bring discredit upon the parliament. The code was finally updated in 2019 by the *Victorian Independent Remuneration Tribunal and Parliamentary Standards Act (VIRTIPS Act)*, which significantly broadened the scope of MPs' obligations.
785. Regrettably, the VIRTIPS Act also worsened the position on the use of electorate officers and ministerial staff for internal party-political activities. For reasons set out below, the Act's amendments adopted only one half of the prohibition in the Members Guide on using electoral officers for party-specific work. The VIRTIPS Act amended the *Parliamentary Administration Act 2005 (PA Act)* to expressly prohibit electorate officers from doing campaigning work but not from participating in internal party administration and management, which included membership recruitment activities. The amendment created some confusion about whether such membership work was therefore permitted, although, as has been discussed in this report, the more correct view is that an MP's obligations in relation to public resources prevented any such misuse of electorate staff.
786. Similarly, when the Ministerial Staff Code of Conduct was updated in 2019, it omitted the previous code's provision that warned of conflicts of interest between an advisor's official duties and their membership of community or political organisations. Consequently, the new code did not include any guidance on, or prohibition of, party-specific activities.
787. Taken together, the two omissions indicate that, although the government in 2019 was making sure that the VIRTIPS Act would stop the use of electorate officers for campaigning purposes, it was not concerned about preventing electorate officers and ministerial staff being used on internal party tasks.
788. The Operation Watts investigation has resulted from this failure to prevent publicly funded electorate and ministerial officers from being used by some MPs and ministers for party-specific purposes.
789. This investigation has exposed the continuing weaknesses of the Victorian parliamentary integrity model, and in particular, the absence of an effective framework to support and enforce the MP(S) Act's new standards.
790. The overall parliamentary governance and accountability regime remains unbalanced and retains defects that could have been cured by a more systemic approach. The problem is best considered by examining the elements of a robust integrity model.

Figure 1: Parliamentary integrity model



791. This is consistent with models used elsewhere, for example, in the United Kingdom and the approach taken by the Organisation for Economic Co-operation and Development in its Public Integrity Handbook.<sup>131</sup> Victoria has the opportunity to lead the country once again on public governance by adopting a more comprehensive and rigorous model of parliamentary accountability, based on three elements:

- **Clear standards** are comprehensive, providing both high-level principles and relevant, specific guidance for participants. Principles and guidelines are monitored and updated for relevance and effectiveness. They are visible, promoted and well understood. Different but related standards are consistent with each other.

- **Effective controls** make sure that the standards are respected and that alleged breaches can be fairly and efficiently investigated. Sanctions are proportionate and are sufficiently strong to demonstrate the consequences of misconduct.
- **Cultural alignment** underpins the overall effectiveness of the model. Any integrity model is weak if organisational participants do not understand and support the standards and apply them in their daily activities. Many witnesses to the investigation noted that rules can always be avoided, bent or broken by people who are not motivated to abide by them.

<sup>131</sup> See Organisation for Economic and Cultural Development 2020, OECD Public Integrity Handbook, Table 2.1, [https://www.oecd-ilibrary.org/sites/ac8ed8e8-en/1/3/2/index.html?itemId=/content/publication/ac8ed8e8-en&\\_csp\\_=676f6ac88ad48a9ffd47b74141d0fc42&itemIGO=oecd&itemContentType=book#tablegrp-d1e1604](https://www.oecd-ilibrary.org/sites/ac8ed8e8-en/1/3/2/index.html?itemId=/content/publication/ac8ed8e8-en&_csp_=676f6ac88ad48a9ffd47b74141d0fc42&itemIGO=oecd&itemContentType=book#tablegrp-d1e1604)



792. The strength or weakness of each element strengthens or weakens the other elements. The model is generic and could be applied in other contexts. For example, the ALP's experience demonstrates that rule changes (Standards) that are unsupported by an organisation's leaders (Culture) can be ignored by members who might believe that the new rules are not really meant to change the way they operate. Alternatively, they might be aware that processes for sanctioning breaches of the rules (Controls) are weak and unlikely to lead to negative consequences for a person who breaches the rules.
793. In the parliamentary context, clear and comprehensive rules, leadership and a culture of respect for the statutory Members of Parliament Code of Conduct, reinforced by fair and effective processes for dealing with breaches, would greatly improve MPs' standard of conduct.
794. In the next section of this chapter, on setting standards (paragraphs 804 to 848), and the following section, on complaint handling and investigation (paragraphs 849 to 924), we propose a package of reforms that will help Victoria not only catch up with other Australian jurisdictions but also become a leader on parliamentary integrity. In particular, we propose the establishment of:
- a Parliamentary Ethics Committee that would promote and monitor the operation of the Members of Parliament Code of Conduct and other ethical obligations, produce ancillary guidance, and recommend improvements to the integrity framework for parliament
  - a Parliamentary Integrity Commissioner, who would receive and investigate complaints about non-criminal breaches of the Members of Parliament Code of Conduct and other parliamentary ethical obligations, resolve minor complaints, and submit findings and recommendations on more serious complaints to the privileges committee of the relevant House. In addition, the Commissioner would work collaboratively with the Parliamentary Ethics Committee to review the operation of the integrity framework, make recommendations for reform, and provide training and information on the framework.
795. The fourth part of this chapter (paragraphs 926 to 937), also deals with cultural issues in relation to the values and behaviour that should be reflected in Victoria's parliament and that form the third limb of the parliamentary integrity model. Our focus on integrity in government and the need for change in political culture aims to better support compliance with rules designed to strengthen our democratic system and make sure that those rules are not bent or broken in the interests of short-term political gain.
796. In developing these reforms to parliamentary accountability, we were mindful of special reports being prepared by IBAC on other, concurrent, investigations. These reports deal with some of the same matters and are expected to be released in the near future.

797. The fifth part of this chapter, on employment arrangements for electorate officers (paragraphs 925 to 936), shifts focus from the structures that support MPs' ethical standards to the improvements that could be made in relation to the employment arrangements for electorate officers, which the investigation has shown are unclear and unsatisfactory. They need to be tightened to increase the focus on merit-based appointments, while permitting a degree of flexibility in recognising that a person's political preferences are an important part of the trust relationship necessary for the role.
798. Changes are also needed to make sure that work is performed only to assist an MP to discharge their public functions, and that party-specific work is prohibited during the time that they are employed to perform such publicly funded work. We recommend amending the PA Act, reviewing the Members of Parliament Code of Conduct, and creating an offence for MPs who allow or direct the use of electorate office staff for party-specific purposes.
799. The sixth section (paragraphs 937 to 981) briefly deals with the way in which standards for ministerial conduct are set and allegations of misconduct are handled. The subject of ministerial responsibility and potential controls to strengthen adherence to the Code of Conduct for Ministers and Parliamentary Secretaries (the Ministerial Code of Conduct) is being considered in greater depth in other matters currently before IBAC. We have therefore limited our recommendations to matters of clarification, review and amendment of the Ministerial Code of Conduct to prohibit the use of ministerial resources for party-political purposes.
800. The seventh section (paragraphs 982 to 989) covers ministerial staff roles, where misuse of publicly funded staff in a similar way to that of electorate officers was also identified. Some ML-aligned ministerial staff were expected to undertake factional duties during working hours. This section proposes changes to the current employment arrangements for ministerial staff to more clearly prohibit their use for party-specific work.
801. The eighth section (paragraphs 1008 to 1033) deals with the lack of accountability by some community organisations in their use of grant funds received from state and local governments. It also deals with factional operatives' attempts to influence the allocation of grants, and the corresponding need for ministers and their advisors to follow strict protocols to manage potential conflicts of interest.
802. The ninth and final section of this chapter (paragraphs 1034 to 1040) deals with miscellaneous issues arising during the course of the investigation that require further discussion or reform. These include strengthening the role of multicultural communities in public life, and the use of the electoral roll by political parties.
803. These proposed reforms stand together as an integrated package. They support each other in a systemic way and we urge the government and parliament to implement all of them. Cherry-picking will undermine them and destroy their effectiveness. As the next sections show, partial reforms only expose the gaps that allow other forms of misconduct to flourish.

## Setting standards: reforms to the ethics regime for MPs

### The VIRTIPS Act

804. A striking feature of the investigation was the piecemeal nature of Victoria's parliamentary integrity framework which purports to hold MPs to account for their conduct. Before the commencement of the VIRTIPS Act in 2019, the expressed obligations of MPs were either non-existent, too ambiguous or too general to be of much use.

805. The Ombudsman encountered this problem in her Red Shirts inquiry, where the MPs' obligations on the use of electorate officers were:

- not clearly defined, in the absence of particular criminal offences or clear guidance on their appropriate duties
- ambiguous, because section 30(4) of the PA Act created uncertainty about the breadth of an MP's control of their electorate officer's activities and was contrary to guidance in the Parliamentary Handbook
- too general, as shown by the Legislative Council Privileges Committee's resort to the vague obligation in the MP(S) Act not to bring the parliament into disrepute when it was considering the Ombudsman's report and possible sanctions for the relevant MPs.

806. The unsatisfactory nature of the outcomes of the Red Shirts investigation underlined the need for change. Serendipitously, during the Red Shirts investigation but before tabling the report, the government had been reviewing Victoria's parliamentary salaries, allowances and standards system. In December 2017 it introduced the VIRTIPS Bill, to:

- establish the Victorian Independent Remuneration Tribunal
- improve the processes for MPs claiming expenses and administering their electorate office and communications budget
- introduce new principles into the PSAS Act
- overhaul the MP(RI) Act by:
  - o renaming it the *Members of Parliament (Standards) Act 1978* (the **MP(S) Act**)
  - o introducing a Statement of Values
  - o expanding the duties in the Members of Parliament Code of Conduct
  - o revising the register of interests requirements
  - o including a wider range of sanctions for breaches of its provisions.

807. The minister introducing the Bill stated, in her second reading speech:<sup>132</sup>

Victorians entrust members of Parliament with significant powers and responsibilities. It is crucial that Victorians have confidence in the Parliament and its members, and that members discharge their public duties and use public funds according to the highest standards of integrity and probity.

The current system for parliamentary salaries, allowances and standards is outdated, fragmented, confusing and inadequate. These reforms aim to restore public confidence in the Parliament and to ensure that parliamentary standards are consistent with community expectations and current professional practices.

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<sup>132</sup> Hansard – Legislative Assembly, 13 December 2017, p 4388.

808. The MP(S) Act's new Members of Parliament Code of Conduct provisions were drawn from a Bill that had been introduced in 2010 following an extensive review of the *Members of Parliament (Register of Interests) Act 1978* (as it then was). The review was conducted by the Law Reform Committee of Parliament in 2009. The Bill lapsed in 2010 with the calling of the state election. Like its predecessor, the 2017 VIRTIPS Bill lapsed with the calling of the 2018 state election, but the government upon its return moved quickly to ensure passage early in 2019, and a staggered commencement occurred during the course of 2019.
809. The Red Shirts report was tabled in March 2018,<sup>133</sup> and the government took the opportunity of the VIRTIPS Bill's reintroduction in 2019 to include the amendments to section 30 of the PA Act that flowed from the Red Shirts report and that are discussed in Chapter 3, and later in this chapter.
810. Apart from characterising the previous arrangements for parliamentary salaries and standards as 'outdated, fragmented, confusing and inadequate', the minister introducing the VIRTIPS Bill 2017 also commented that Victoria was the only Australian jurisdiction that did not use a remuneration tribunal to set the value of salaries and allowances for members. Although the Bill significantly improved the governance regime for parliamentarians in the areas of salaries and allowances, and financial and ethical behaviour, it only partially 'caught up' with other Australian jurisdictions.

## Clear standards

811. Different jurisdictions articulate their parliamentary standards in different ways. The more developed frameworks, such as in the United Kingdom, have a hierarchy of standards, starting with a general statement of overarching values that apply across all activities in public life, followed by a set of principles for a particular domain, such as parliament, with guidance then provided on the application and interpretation of the domain principles.
812. Clear and comprehensive parliamentary standards are particularly important in addressing increasing concerns about so-called grey, or soft, corruption, where politicians make decisions that are difficult to prosecute to the criminal standard of proof, but that unfairly favour their or their party's political interests or the political or commercial interests of people and entities in their networks. Typically, only the most egregious and demonstrable of such cases of misconduct will result in criminal prosecution for offences such as misconduct in public office.
813. Lesser forms of this pervasive phenomenon corrode standards of public governance, decision making in the public interest, and trust in government. The need for non-criminal processes to set clear, comprehensive and enforceable standards has never been greater. The absence of clear standards and strong sanctions for lesser forms of misfeasance serves only to encourage the growth of such practices.

<sup>133</sup> Victorian Ombudsman 2018, *Investigation of a Matter Referred from the Legislative Council on 25 November 2015*.

### Statements of values

814. In the UK, the Committee on Standards in Public Life, chaired initially by Lord Nolan, formulated seven overarching standards in 1995.
815. The VIRTIPS Act amendments emulated this approach to some extent by introducing a high-level Statement of Values into the MP(S) Act alongside the expanded Members of Parliament Code of Conduct. The Statement of Values is specific to MPs, unlike the UK standards, which apply to all public office holders. The Victorian Statement of Values is complemented by the 'public sector values' set out in the *Public Administration Act 2004*, which are designed to guide public officials, not including MPs and ministers, in carrying out their duties.
816. A comparison of the values or standards in each jurisdiction is provided in Appendix B. Many of the values are the same, but the most significant differences are not so much differences in content but the absence in Victoria of any accompanying explanation of the values, and the lack of any entity responsible for promoting, monitoring, discussing and reporting on their application. In short, Victoria lacks an entity that is responsible for enlivening the Statement of Values.
817. By contrast, the UK standards are supported by the Committee on Standards in Public Life, which is not a parliamentary committee but is appointed by the prime minister. It is composed of a chair, four independent members and three members from each of the three major parliamentary parties. It has produced numerous reports and submissions on matters of standards and behaviour in public life, including providing guidance on individual standards and monitoring their relevance and effectiveness in the changing circumstances of British society.

818. New South Wales does not have a general values statement to inform the preparation of the separate codes of conduct for each House of parliament.
819. Queensland's *Parliament of Queensland Act 2001* provides for the Committee of the Parliament – which is that parliament's paramount committee – to publish and review a code of ethical conduct for MPs (other than in their capacity as ministers), including procedures for handling complaints. The code must have regard to the ethics principles and values set out in the *Public Sector Ethics Act 1994* and the desirability of consistency between standards of ethical conduct and the ethics principles and values.<sup>134</sup>

### Codes of conduct

820. The Members of Parliament Code of Conduct contained in the MP(S) Act translates the Statement of Values into more specific obligations, and sets out the manner in which an MP should demonstrate the values.<sup>135</sup> The relevant provisions are included at **Appendix C**.
821. Like Victoria and other Australian jurisdictions (although not the Commonwealth), the UK Parliament also has a specific code of conduct. Unlike the Victorian model, the UK Parliament has a separate code for each House of parliament, approved by a resolution of the relevant House.
822. The UK House of Commons Code of Conduct is subject to regular review. The Parliamentary Committee for Standards, which is established under the House of Commons Standing Orders, has recently conducted a detailed review of that Code of Conduct.<sup>136</sup>

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<sup>134</sup> *Parliament of Queensland Act 2001*, ss 84, 86.

<sup>135</sup> *MP(S) Act*, Part 3.

<sup>136</sup> House of Commons Committee on Standards 2022, *New Code of Conduct and Guide to the Rules: promoting appropriate values, attitudes and behaviour in Parliament HC227*, House of Commons, London, <https://committees.parliament.uk/publications/22338/documents/165774/default/>

823. In New South Wales, the role of preparing the codes of conduct is assigned to the Privileges and Ethics Committee in the Legislative Assembly and the Privileges Committee in the Legislative Council. Unusually, the code of conduct enabling provisions are contained in the *Independent Commission Against Corruption Act 1988* (NSW) (**ICAC Act**).<sup>137</sup> The ICAC Act also requires the committees to advertise the preparation of a code and invite public comment. Both committees must review their respective codes every four years. The Legislative Assembly Committee may also appoint any member of the public to assist it in preparing a code.
824. The functions of the New South Wales designated committees also include providing education on ethical standards and giving advice on ethical standards in response to requests by each House, but not on the actual or alleged conduct of any person.
825. The Queensland Parliament's Code of Ethical Standards contains a statement of six fundamental principles, followed by more detailed elaboration of the obligations flowing from the principles. The more detailed obligations represent a different approach from other jurisdictions by pulling together disparate sources of obligation into one document. For example, the obligations that underpin the principle of 'Appropriate use of information' include four widely disparate examples of specific obligations, from inappropriate use of Legislative Assembly insignia to insider trading and protected public-interest disclosures.
826. Many jurisdictions supplement their parliamentary codes of conduct with more specific guidance on interpreting and applying the general statements of obligations contained in the codes. Guidance is useful for helping MPs understand their specific obligations
827. The UK and Queensland parliaments have supplemented their codes of conduct with additional guidance, while the New South Wales Code of Conduct includes a commentary that provides some general guidance and refers MPs to other sources of assistance, such as the Members' Guide.
828. Following receipt of three complaints alleging breaches of the Victorian Members of Parliament Code of Conduct, the Legislative Assembly Privileges Committee has issued guidance on the thresholds for referral of conduct by the Speaker of the Legislative Assembly in relation to three specific provisions of the Code of Conduct.<sup>138</sup> The provisions – sections 6(d), 13(1) and 13(3) of the MP(S) Act – relate to treating all persons with respect, ensuring that conduct does not bring discredit upon the parliament, and the requirement for fairness, objectivity and courtesy. Two complaints raising these provisions referred to comments made in debates in the Legislative Assembly, which the committee said was beyond its remit, and another raised comments made on social media.
829. The Victorian Parliamentary Members' Guide provides detailed assistance to MPs about the operation of parliament, including services and facilities, and the administration of their budget, salary entitlements and allowances, and their electorate office. It also summarises particular legislative issues of relevance, such as privacy and data protection, occupational health and safety, and protected disclosures. The Members' Guide does not provide any specific guidance on the Members of Parliament Code of Conduct. As discussed earlier, its guidance on the use of electorate officers for party-specific purposes was interpreted by some MPs to be contrary to, and overridden by, section 30 of the PA Act.

### Guidance

<sup>137</sup> *Independent Commission Against Corruption Act 1988* (NSW), Part 7A.

<sup>138</sup> Legislative Assembly Privileges Committee 2022, *Report on Certain Complaints Under Part 3 of the Members of Parliament (Standards) Act 1978*, Parliament of Victoria, Melbourne.

### *Other sources of parliamentary duties*

830. Not all duties of MPs in Victoria are contained in the Statement of Values and the Members of Parliament Code of Conduct. MPs are also subject to the general law, including the criminal law in cases of serious misconduct. Specific regimes and sanctions have been developed for commonly occurring types of misconduct, such as improper expense claims.
831. In Victoria, the establishment of the VIRT and processes for issuing guidelines and resolving disputes was a significant advance in respect of MPs' salaries, expenses and allowances. The Speaker of the Legislative Assembly at the time of preparation of this report was developing processes for managing complaints about bullying and harassment, although it is not clear how the review is progressing since his appointment to the ministry in June 2022 and the appointment of a new Speaker.

### *A Parliamentary Ethics Committee for Victoria*

832. The establishment in 2019 of the VIRT and the overhaul of the MP(S) Act to include a Statement of Values and expand the Members of Parliament Code of Conduct were significant steps in developing an integrity framework for Victoria's parliament. After a lengthy period of inactivity on these issues, the reforms demonstrated a commitment to adopt practices that had benefited similar jurisdictions in Australia and the UK.
833. The ALP, in its response to a request we made to all parliamentary parties for their ideas for reform, suggested that the VIRTIPS Act's reforms should be allowed time to mature before further reforms are investigated.
834. On the contrary, we think that the reforms achieved by the VIRTIPS Act highlighted other areas of parliamentary accountability where change is still needed. In particular, the piecemeal nature of the reforms and the difficulties that this investigation has faced in undertaking its work and holding some MPs to account for misconduct have highlighted the need for a body to undertake continuing work on parliamentary standards. A Parliamentary Ethics Committee could well have highlighted the limited and contradictory nature of the amendments to section 30 of the PA Act made by the VIRTIPS Act.
835. The government's approach in using legislation to articulate the Statement of Values and the expanded Members of Parliament Code of Conduct, rather than by passing resolutions in each House of parliament, had a number of significant benefits, including:
- demonstrating the importance of the standards by the use of primary legislation
  - providing a degree of stability and protection from capricious changes
  - providing consistency for all MPs by making both Houses subject to the one regime.
836. Despite these benefits, the changes also had some drawbacks:
- No provision was made for a body to monitor the operation and effectiveness of the Statement of Values and the Code of Conduct, to promote them or to suggest improvements.
  - No provision was made for a body to issue guidance about the Statement of Values and the Code of Conduct. The Values in particular are stark statements of principle with no indication of how they might be interpreted.

- Apparently, no public consultation was undertaken to define the Statement of Values or develop the Code of Conduct. The government may have been relying on the consultation undertaken in 2009 by the Law Reform Committee of Parliament that initially reviewed the MP(S) Act.
  - The decision to insert the changes into legislation highlighted the weakness of parliamentary entities in leading ethical and institutional change.
837. The consequence of these omissions has been that the Statement of Values and the Members of Parliament Code of Conduct have had very little apparent traction, either in parliament or among the general community. The commencement in 2019 of the Statement of Values and expanded obligations in the Members of Parliament Code of Conduct and the PSAS Act (on financial conduct) had no apparent effect on the willingness of some MPs to use electorate officers for non-public purposes in 2019 and 2020.
838. A Victorian Parliamentary Ethics Committee established as a joint committee of both Houses would provide a framework in which issues of parliamentary standards could be regularly considered. The creation of a committee would:
- demonstrate the importance of MPs' ethical conduct and provide an institutional framework to support leadership on ethics and integrity
  - enable proactive monitoring and review of parliamentary standards, resulting in better formulation of standards and a capacity to deal with new and emerging issues
  - create opportunities to involve the public in discussing and setting standards
  - provide capacity to give more helpful, detailed guidance to MPs about how to interpret the Code of Conduct and other obligations, similar to the guides produced in other jurisdictions
- provide for more extensive information and education programs on parliamentary standards
  - provide support and guidance to the Parliamentary Integrity Commissioner, a role that is discussed in the next section of this chapter.
839. The benefits of such a committee would extend beyond the specific types of misconduct identified in this report, by providing an institutional means of responding to the other ethical issues that are a constant hazard in parliamentary life, such as conflicts of interest, bullying, harassment and other types of substandard personal behaviour.
840. It would be logical for all MPs to be subject to the same ethical standards and for an ethics committee to be established as a Joint House Committee, either by amendment to the *Parliamentary Committees Act 2003* or by resolutions in each House. The public perception of MPs rarely differentiates between Members of the Legislative Assembly and Members of the Legislative Council, and it would seem strange if the members of each House were subject to different ethical obligations. Although it would be possible for parliament to establish a joint ethics committee by votes in each House, using legislation would signal the importance of the role and also give the committee a degree of institutional substance that might otherwise be lacking.
841. A core source of ethical obligations for all MPs is the MP(S) Act, which applies to every MP in each House. The proposed committee would have unique responsibilities in relation to the MP(S) Act that could not be served by establishing separate committees in each House. Creating separate committees or asking the privileges committee in each House to undertake the task would create fertile ground for disagreements about the content and application of the MP(S) Act, whereas a joint committee would support the effectiveness of the unitary code of conduct contained in the MP(S) Act.



842. Because more experienced MPs tend to be appointed to the privileges committees, it might be a useful application of their experience if some members from each privileges committee were appointed to the joint committee, although they should not be the only parliamentary appointees.
843. A joint committee might be less likely to be constrained by partisan politics, insofar as the alignment of the parties in each House would be less likely to shape the course of discussions. A joint committee from both Houses might be able to focus more readily on the overall ethical standards that should be applied by the parliament, and thereby create more respect for the institution.
844. Although new committees should only be established to meet a demonstrated need, it is clear that the Statement of Values and the Members of Parliament Code of Conduct are likely to wither unless a dedicated body is given the job of ensuring their effectiveness and continuing relevance. All other jurisdictions with codes of conduct have established committees with responsibility for their stewardship; the absence in Victoria of such a committee demonstrates the incomplete nature of the VIRTIPS Act's reforms.
845. We encourage the government and the parliament to treat the establishment and work of a committee as an opportunity to promote public engagement with the Victorian Parliament. Possible options for such engagement and to promote bipartisanship include:
- either prescribing a number of positions for members of the public, as in the UK's House of Commons Standards Committee, or enabling the committee to appoint members of the public to the committee, as in the NSW Legislative Assembly's Privileges and Standards Committee
  - requiring the committee to review the Statement of Values and Code of Conduct every four years, and to consult the public when doing so
  - limiting the number of government members on the committee to no more than half, and/or requiring the chair to be a member of a non-government party, as in the House of Commons committee.
846. This report addresses an identified gap in stewardship of values and codes of conduct for MPs and electorate officers. Other IBAC investigations under way are considering the stewardship of codes related to other classes of public office holders, such as ministers and ministerial staff. It may be an option for pathways to be created for these groups of officials to also benefit from the support of the proposed Parliamentary Ethics Committee. Broadening the role of the new body to include monitoring and reviewing other associated codes would strengthen compliance and better safeguard the common ethical standards by which all public office holders are expected to abide. Reports from these other IBAC investigations may make further recommendations on these issues.
847. The Parliamentary Ethics Committee's work would complement the work of the proposed Parliamentary Integrity Commissioner, discussed in the next section. It could be expected that the Committee would have a role in the Commissioner's appointment, would collaborate with them in providing information, education and training, and would receive reports from the Commissioner on aspects of parliamentary ethics and integrity.
848. For the reasons explained in the next section, we do not think that the Parliamentary Ethics Committee should be responsible for receiving reports on investigations into alleged breaches of the Members of Parliament Code of Conduct by MPs or for recommending action on such reports to the relevant House.

## Recommendation 1

That:

- (a) the government and the parliament work together to establish a Parliamentary Ethics Committee that would:
  - (i) monitor the effectiveness of the Statement of Values and Code of Conduct in the *Members of Parliament (Standards) Act 1978* and other ethical obligations imposed on MPs
  - (ii) promote and provide training and information about the Statement of Values and Code of Conduct, in the parliament and in the general community
  - (iii) prepare guidance materials on the Statement of Values and Code of Conduct
  - (iv) work with the Parliamentary Integrity Commissioner in carrying out its functions and receiving reports about ethical standards
  - (v) review the Statement of Values and Code of Conduct at least once every four years.
- (b) the Parliamentary Ethics Committee should be a Joint House Committee composed of equal numbers of members from the Legislative Assembly and Legislative Council and be established by amendment to the *Parliamentary Committees Act 2003*. Consideration should be given to including some members from each of the parliamentary privileges committees.
- (c) the government and parliament should consider for inclusion in the Parliamentary Ethics Committee's role and composition:
  - a requirement to consult the public when undertaking reviews
  - a power to appoint members of the public to assist it with its work, or specify a fixed number of members of the public to be Committee members
  - appointment of a non-government member as the chair of the Committee
  - a power for the Committee to undertake related integrity roles as may be requested, such as in relation to codes of conduct for ministers, ministerial advisors and electorate officers, or a parliamentary bullying and harassment protocol.

## Reforms to complaint handling and investigation of alleged misconduct by MPs

### Current investigation procedures

849. It became clear during the investigation that the parliamentary processes for resolving allegations of misconduct by MPs were often vague and ineffective. The absence of clear and effective processes to address misconduct removes the deterrent effect of possible exposure and sanctions for MPs who might be considering unethical or unlawful actions, or who might lean towards their own self-interest over the public interest if faced with an ethically ambiguous situation.
850. The absence in Victoria of effective controls to reinforce parliamentary ethical standards is the weakest part of the integrity model described at the start of this chapter.
851. Not all allegations of ethical misconduct suffer from the absence of clear and effective processes. Allegations of the most serious forms of misconduct amounting to possible criminal behaviour are referred to the police for investigation and prosecution, or to another law enforcement body such as IBAC for specific types of conduct, such as corrupt conduct.
852. The establishment of the Victorian Independent Remuneration Tribunal and related amendments to the PSAS Act that were enacted by the VIRTIPS Act in 2019 created a clear framework for determining parliamentary salaries and expenses, including a process for some salary and expenses claims to be disputed and adjudicated by an independent Compliance Officer. However, as described in Chapter 3, the provisions of the two Acts do not contemplate a process for applying sanctions or recouping money in respect of electorate office staff who have not been used to support an MP's performance of their public duties. The payment of casual electorate officers from the electorate office and communications budget might provide a basis for rejecting claims if the officer is not actually supporting an MP in discharging their public duties.
853. The Victorian Ombudsman has a broad jurisdiction upon a referral from either House of parliament or a parliamentary committee, under section 16 of the Ombudsman Act 1973. However, such referrals are subject to the vagaries of majoritarian politics in each House and cannot be the basis for a consistent and systematic approach to the problems of parliamentary misconduct.
854. The VIRTIPS Act also expanded the Members of Parliament Code of Conduct (as described in Chapter 3) to include a much wider range of principles and obligations, including compliance with the PSAS Act and any other law, rule or guidance on the use of public resources.<sup>139</sup>

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<sup>139</sup> PSAS Act, s 12.

855. The continuing weak point in the processes for maintaining ethical accountability in the Victorian Parliament is the absence of a clear and effective process for dealing with non-criminal breaches of the Members of Parliament Code of Conduct.
856. Conduct breaches by MPs that are not in the jurisdiction of law enforcement bodies, IBAC, the Ombudsman or the VIRT fall into the jurisdiction of the relevant House and its privileges committee. The continuing reliance on the privileges committees as the investigative bodies that make findings and recommendations to the relevant House about possible sanctions reflects the traditional constitutional emphasis on making sure that the parliament is the master of its own affairs and is entitled to apply its own processes and sanctions to those in contempt of it. As discussed below, these committees have not proved effective in exposing conduct breaches by MPs.
857. An MP may refer an alleged breach of the Members of Parliament Code of Conduct to the presiding officer of the relevant House. The presiding officer must refer allegations of criminal conduct to the relevant law enforcement agency, and otherwise must determine whether or not to refer the allegation to the privileges committee of the relevant House.<sup>140</sup>
858. The privileges committee may decide to investigate the conduct and make findings and recommendations to the relevant House if it finds that there has been a wilful breach of the Members of Parliament Code of Conduct or other obligation. The House may then impose a range of sanctions on the MP.
859. The VIRTIPS Act amendments introduced a wider range of possible sanctions that can be imposed by the House, including ordering an apology, imposing a fine of up to 100 penalty units, suspending the MP, or declaring the MP's seat to be vacant. The last two penalties can be imposed only by a special majority of three-quarters of the total number of members of the House.<sup>141</sup>
860. The inherent powers of the parliament exercised through the privileges committees do not prevent the parliament from also legislating to prescribe alternative processes, within constitutional limits. The Victorian Parliament has done so by establishing the VIRT and conferring power on the VIRT's Compliance Officer to resolve disputed claims regarding parliamentary salaries, expenses and allowances.
861. The privileges committees usually conduct hearings in private, but may decide to hold some hearings in public, as occurred with the Legislative Council Privileges Committee's investigation following the Red Shirts report. The committees may determine their own procedures for investigating a matter, but usually follow the rules of natural justice in seeking to provide a fair hearing. The Legislative Assembly Privileges Committee published high-level guidance in 2019 on the procedures that it would apply to complaints of alleged breaches of the expanded Members of Parliament Code of Conduct and obligations in respect of the conflicts of interest register under the MP(S) Act.

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140 MP(S) Act, s 30.

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141 MP(S) Act, s 31.

862. The privileges committees themselves do not have any powers to impose any sanctions for a breach. They are only able to make a recommendation to the relevant House on how to sanction an MP if they have found that an allegation of misconduct has been proven. From 1974 to 2007, only seven matters of privilege involving MPs were referred to the Legislative Assembly Privileges Committee, and none resulted in the Legislative Assembly imposing any form of sanction for the relevant MP.<sup>142</sup> Nor did a further two referrals since that date result in any recommendations for sanctions.<sup>143</sup>
863. The Legislative Council Privileges Committee's consideration of the Ombudsman's Red Shirts report did not result in any sanctions,<sup>144</sup> although the ALP repaid \$387,842 of the publicly funded salaries of the electorate officers who participated in the scheme. Information on any earlier action by the Legislative Council Privileges Committee was not available.
864. Because the privileges committees are composed of MPs, decisions on critical matters are more likely to be made along party lines, with the majority party likely to prevail. The record of inaction on MPs' misconduct demonstrates the need for reform, especially given the increasing concern about 'grey' or 'soft' corruption influencing government decision making and the difficulty of using the criminal law to hold to account the participants in such conduct.
865. It is very hard for a committee to avoid the perception that a decision that favours the party of the majority represents the result of a fair and independent process, regardless of the actual merits of the case. The problem is particularly acute in the Legislative Assembly, where the government of the day usually commands a majority, and an MP has not been sanctioned since at least 1974.
866. Although the current composition of the Legislative Council Privileges Committee reduces the risk of perceived government interference, its proceedings might still be open to the general criticism of being tainted by political considerations.
867. The need for perceived independence is likely to have contributed to the requests for independent bodies such as IBAC and the Ombudsman to investigate alleged misconduct in this matter and the Red Shirts inquiry. The Ombudsman has once again acted upon a referral from the Legislative Council, and IBAC has investigated the ML faction's activities on the basis that the activities might disclose corrupt conduct. The IBAC Act requires IBAC to prioritise serious or systemic corrupt conduct.<sup>145</sup>
868. Although this investigation is within the scope of both organisations' legislative remits, it is simply not feasible or practical for all alleged breaches of the Members of Parliament Code of Conduct or other ethical standards to be referred to the Ombudsman, or to IBAC as potential corrupt conduct. The limits of our respective jurisdictions and statutory purposes have exposed the gap in current parliamentary accountability arrangements.

142 R McDonald 2007, 'The role of the privileges committee and the relevancy of a penal jurisdiction of a House in current-day parliaments', *Australasian Parliamentary Review*, vol. 22, no. 2, p 75.

143 Legislative Assembly Privileges Committee 2011, *Report on the Complaint by the Member for Northcote*, Parliament of Victoria, Melbourne; Legislative Assembly Privileges Committee 2014, *Inquiry in Relation to Recommendation 2 of the Ombudsman's Report 'Whistleblowers Protection Act 2001: Investigation into Allegations Against Mr Geoff Shaw MP'*, Parliament of Victoria, Melbourne.

144 Legislative Council Privileges Committee 2018, *Inquiry into Matters Relating to the Misuse of Electorate Office Staffing Entitlements*, Parliament of Victoria, Melbourne.

145 BAC Act, s 15(1a).

869. Apart from independence, the additional question is whether the privileges committees have the resources, time and experience to manage such investigations. They are not constituted to conduct investigations in the same way as IBAC and the Ombudsman, and they do not have the investigative tools and resources available to IBAC and the Ombudsman. Nor do their procedures allow for the proportionate flexibility of process and result that are a feature of contemporary investigation and dispute-resolution processes.
870. IBAC and the Ombudsman have attempted to identify possible solutions to these dilemmas that would provide a fair and effective accountability regime while maintaining parliament's fundamental independence and power to manage its own affairs.

### Other jurisdictions

871. All parliamentary systems grapple with the challenges of ensuring the proper accountability of their members. In the **United Kingdom** the House of Commons and the House of Lords each established a Commissioner (in the case of the House of Commons in 1995) and Commissioners (in the House of Lords in 2010) for Parliamentary Standards.
872. The House of Commons Parliamentary Commissioner for Standards is an independent officer of the parliament who is appointed by a vote of the House for a fixed term of five years. They are responsible for investigating alleged breaches of the code of conduct and supervising the investigation of bullying and harassment complaints under a separate protocol. Although investigations are confidential, the names of MPs under investigation and the nature of the allegation are published by the Commissioner.
873. For less serious breaches, the Commissioner is empowered to 'rectify' the breach if the MP acknowledges the breach and apologises. For more serious breaches, the Commissioner's investigative findings and recommendations are considered by the House of Commons Standards Committee. That committee has equal numbers of MPs (in proportion to their party's representation) and lay members, all of whom can vote. It is chaired by a member from the opposition party. The committee can impose lesser sanctions, such as requiring an apology, but more serious sanctions, such as suspension or expulsion, must be voted on by the House. A report recommending further refinements to the investigation processes has recently been tabled for consideration.<sup>146</sup>
874. The Commissioner also maintains the register of members' financial interests, monitors the effectiveness of the code of conduct and recommends improvements, and can provide confidential advice to MPs, a function replicated in Victoria by the Parliamentary Integrity Adviser (see Chapter 3).
875. In **Canada**, the Conflict of Interests and Ethics Commissioner is an independent officer of the national parliament, who administers the Conflict of Interest Act 2006, which applies to ministers and parliamentary secretaries, and the Conflict of Interest Code, which applies to Members of the House of Commons. There is a strong emphasis on ministers' and MPs' reporting obligations regarding their private interests, and the Commissioner may investigate alleged breaches. Sanctions may be imposed by the parliament only. A Senate Ethics Officer has a similar role in the Canadian Senate.
876. Some Canadian provinces, such as British Columbia and Ontario, have established integrity regimes similar to the national regime, including the appointment of independent commissioners to manage MPs' reporting obligations, give advice and conduct inquiries into alleged breaches. Sanctions can be imposed by the relevant parliament only.

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<sup>146</sup> n136 above.

877. The **Australian Capital Territory** is the only Australian jurisdiction to have created a Standards Commissioner. The Commissioner's position was created in 2014 by a resolution of the ACT's Legislative Assembly as an independent officer responsible for investigating complaints including possible breaches of the Members' Code of Conduct.

878. The **New South Wales** Independent Commission Against Corruption (ICAC) has, on several occasions in the last two decades, raised the possibility of an independent officer to investigate parliamentary misconduct that does not amount to corruption. In 2014 it recommended creating such a position, commenting that:<sup>147</sup>

The effectiveness of codes of conduct and statutory pecuniary interest regimes is dependent on timely and impartial enforcement mechanisms. No such enforcement mechanism exists in NSW outside of that provided by the Commission's jurisdiction. This is problematic for allegations of minor breaches given the role of the Commission, as far as practicable, to direct its attention to serious and systemic corrupt conduct. Furthermore, the provisions of s 9 of the ICAC Act require a 'substantial' breach of an applicable code of conduct.

[...]

The establishment of a parliamentary investigator to examine minor allegations about members would provide a number of benefits. These include the provision of an impartial and timely mechanism for resolving minor complaints about the conduct of members. Public confidence in the institution of parliament might be enhanced if the standards that apply to members are enforced. The creation of a parliamentary investigator may also provide for a 'graded' approach to non-compliance rather than the 'all or nothing' response of the current system.

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<sup>147</sup> New South Wales Independent Commission Against Corruption 2013, *Reducing the Opportunities and Incentives for Corruption in the State's Management of Coal Resources*, p 41, Recommendation 25.

879. Although both the Legislative Council Privileges Committee<sup>148</sup> and the Legislative Assembly Privileges and Ethics Committee<sup>149</sup> in New South Wales supported proposals for a Parliamentary Compliance or Investigations Officer, they were unable to agree on a common approach until recently. They each produced reports in 2021 that were followed by a further report by the Legislative Council Privileges Committee in November 2021.<sup>150</sup> In the most recent report, the Legislative Council Privileges Committee advised that sufficient agreement had been reached between the presiding officers and clerks of both Houses for the proposal to progress.

880. The draft joint resolution that was the subject of the reports envisaged that a Compliance Officer would independently investigate low-level minor misconduct that falls short of corrupt conduct, as well as allegations of bullying and harassment, misuse of allowances and entitlements, and minor breaches of the pecuniary interest disclosure scheme. The Compliance Officer would also perform educational and advisory functions and monitor the operation of the Members of Parliament Code of Conduct.

881. It seems likely that any such position will be created by a vote of both Houses rather than through legislation.

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<sup>148</sup> Legislative Council Privileges Committee 2014, *Inquiry into Recommendations of the ICAC Regarding Aspects of the Code of Conduct for Members, the Interest Disclosure Regime and a Parliamentary Investigator*, Report 70, Parliament of NSW, Sydney; Legislative Council Privileges Committee 2021, *Proposal for a Compliance Officer for NSW Parliament*, Report 83, Parliament of NSW, Sydney.

<sup>149</sup> Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics 2014, *Inquiry into Matters Arising from the ICAC Report Entitled 'Reducing the Opportunities and Incentives for Corruption in the State's Management of Coal Resources'*, Report 2/55, Parliament of NSW, Sydney; Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics 2021, *Review of the Proposed Resolution for the Establishment of a Parliamentary Compliance Officer*, Report 1/57, Parliament of NSW, Sydney.

<sup>150</sup> Legislative Council Privileges Committee 2021, *Proposal for a Compliance Officer for the NSW Parliament No. 2*, Report 85, Parliament of NSW, Sydney.

882. In **Queensland**, the Queensland Integrity Commissioner provides confidential advice on ethics and integrity to politicians and other public office holders, including ministerial staff and senior public servants. The Commissioner also regulates lobbyists' activities, raises public awareness of ethics and integrity matters, and sets additional standards at the Premier's request. However, the Commissioner does not have a role in considering misconduct breaches by MPs, which are investigated by the Parliamentary Ethics Committee.

### A Victorian Parliamentary Integrity Commissioner

883. Although Australian jurisdictions have been slow to embrace an independent complaints investigation role for their parliaments, there has been widespread recognition of the gap in the current accountability structures. The need to fill that gap with a credible and effective solution has been increasingly acknowledged in many reports, spurred on by the growth in concern about 'grey' or 'soft' corruption, by the failure of existing mechanisms to be impartial and responsive, and the recent focus on bullying and harassment complaints, although the last is not of primary concern in this investigation.

884. The establishment of a Parliamentary Ethics Committee should improve the articulation of, and compliance with, standards of conduct for MPs and others. However, the Parliamentary Ethics Committee will be mere window-dressing unless it is accompanied by a robust process for investigating alleged breaches of the standards and imposing appropriate sanctions where misconduct is established.

885. We recognise that such changes will be significant for the parliament and will require further discussion. Although the detailed policy development work that will be necessary to implement our proposals is more appropriately progressed through government and parliamentary bodies, we have identified the basic structure and processes needed to deal effectively with non-criminal misconduct.

886. The core elements and considerations for establishing a Parliamentary Integrity Commissioner as an officer of the Victorian Parliament should be:

- independence
- scope of jurisdiction
- fair and efficient processes
  - o complaint initiation
  - o powers
  - o adjudication
- proportionate sanctions
- appropriate and secure resourcing.

### *Independence*

887. Parliamentary sovereignty does not require parliamentarians to control the investigation of allegations of misconduct by individual MPs. The fairness and credibility of the process are strengthened if it is independent of those who are being investigated. Parliament can make sure that investigations are not subject to influence by MPs or external bodies by establishing an independent Parliamentary Integrity Commissioner with the following features:

- *Establishment by legislation rather than resolutions in each House* – legislation would provide a firmer foundation for an independent entity than an office created by parliamentary resolutions, which could potentially be undone by one House where a majority objected to the actions of the officeholder or the existence of the office.



- *Appointment for a fixed term longer than the four-year electoral cycle* – the officeholder should have reasonable security of tenure that provides a measure of protection against termination upon a change of government. The government and parliament could consider whether longer terms might also allow appointments to be non-renewable. Non-renewability is another mechanism by which an officeholder can be seen to be free of influence or bias based upon the possible renewal of their appointment.
- *Merit-based appointment upon recommendation by a non-partisan panel of MPs* – parliament should control the appointment process and make sure that it is open, competitive and merit-based.
- *A process supported by the whole parliament* – the selection panel should be non-partisan, possibly chaired by a non-government MP, and should not be so large as to be cumbersome. It could possibly be a subcommittee of the proposed Parliamentary Ethics Committee and/or include the presiding officers from each House or their nominee. The actual appointment should be made by the Governor in Council upon the recommendation of the chair of the selection committee.
- *Dismissal only for proven misbehaviour or incapacity* – as with many such independent positions, the Commissioner should be dismissed for clearly defined reasons only, such as misconduct, bankruptcy, criminal conviction or incapacity. Dismissal would need to be by the Governor in Council after a transparent and fair process.

#### *Scope of jurisdiction*

888. The boundaries of the Commissioner's role should be clearly defined to include some matters and exclude others. Allowance should be made for possible extension of the role if considered necessary or appropriate.
889. The core jurisdiction should be to investigate non-criminal breaches of the Members of Parliament Code of Conduct and other specific obligations imposed on MPs, such as occur in the PSAS Act, the guidelines issued by the VIRT (if the allegations are not appropriate to be resolved by the VIRT claims-resolution processes), or the Parliamentary Handbook. These are the areas where breaches might not amount to criminal conduct or justify criminal prosecution, but where the abuse of power corrodes public confidence in Victoria's democratic institutions.
890. The Commissioner's role should include preventive activities to minimise the risk of misconduct. The Commissioner should share responsibility with the Parliamentary Ethics Committee for promoting ethical conduct and awareness of the Members of Parliament Code of Conduct. The Parliamentary Integrity Adviser's current role in promoting the Code of Conduct and providing training and information about it should be changed to assisting the Commissioner and the Ethics Committee in such activities. The Parliamentary Integrity Adviser's role in providing confidential advice to MPs about their ethical obligations should be retained. The Parliamentary Commissioner for Standards in the UK has been given such a function, but we think that this presents a difficult conflict of interest for a Commissioner who might later be asked, or decide, to investigate the same person who sought the advice.

891. The Commissioner should also monitor the operation of the Members of Parliament Code of Conduct and other parliamentary standards, and make recommendations for reform. This could occur as part of the committee's proposed four-yearly review of the code.
892. Some matters should be excluded from the scope of the Commissioner's activities, including:
- criminal offences, which are properly matters for investigation by the police or another law enforcement body
  - matters that are properly in the VIRT's jurisdiction
  - allegations regarding the conduct of parliamentary business in the chamber of a House of parliament, which is properly a matter for the relevant presiding officer.
893. Consideration should be given to the Commissioner undertaking further activities relevant to their core role, including implementing protocols for responding to bullying and harassment complaints from or involving any person who works in the parliamentary precinct. It is understood that at the time of this report's preparation the Speaker of the Legislative Assembly is currently developing such protocols, although it is unclear when this work might be finished.
894. Consideration could also be given to the Commissioner taking over responsibility for managing the MPs' Register of Interests from the clerks of the parliament; we express no view on the merits of such a proposition.
895. As noted above, IBAC is considering the effectiveness of current accountability controls for other public office holders, including ministers and ministerial staff, in separate concurrent investigations.

896. The Premier has responsibility as the first minister to oversee the conduct of ministers and ministerial staff. The availability of an independent integrity expert such as the Commissioner to support the Premier in this important role could be an attractive option for dealing with specific complaints and allegations that might arise in the future. Any such role would need clear reporting lines and post-investigative processes appropriate for the executive nature of the issues. Future IBAC special reports are expected to explore this option in further detail.

#### *Fair and efficient processes*

897. The design of an effective complaints-handling framework will require detailed attention by the government and the parliament.

#### **Design principles**

898. Care should be taken not to design the framework as though it were a court proceeding. Although fairness should underpin the process, the nature of a court's role – to adjudicate specific legal rights and obligations – differs from parliament's role and the exercise of its powers.
899. It is intended that the Commissioner, as a parliamentary officer, should not only investigate a complaint, but also resolve minor matters and make findings and recommendations for sanctions in more serious matters.
900. The subject of an investigation should be given the opportunity to respond to the allegations against them, but the process should not be burdened by technical, procedural arguments.

901. We express caution about allowing legal representation, acknowledging that there may be merit in allowing a lawyer to be present to advise a witness when being interviewed. We note that cross-examination is not permitted in inquiries conducted by the UK Commissioner for Parliamentary Standards.

902. The UK Commissioner for Parliamentary Standards has released an information note on how she exercises her functions, which would be a useful guide for framing a Victorian Commissioner's approach.<sup>151</sup>

903. We make the following observations on the main elements of the process.

#### **Initiating complaints**

904. It should not be so easy to make a complaint as to encourage vexatious or trivial complaints, or complaints that are made for ulterior motives such as tactical political advantage. On the other hand, the necessary filter should not be so restrictive that it concentrates power in a person or entity external to the Commissioner.

905. We suggest that legislation should provide for:

- individual members of the public as well as MPs to make a complaint
- the Commissioner to determine which complaints warrant investigation, based on statutory criteria
- the Commissioner to have a power to initiate a preliminary inquiry and investigation on their own motion, whether or not a complaint has been received.

#### **Investigative powers**

906. The Commissioner should have sufficient powers to call for documents and request witnesses to give evidence. The Commissioner's powers should be broad but informed by the principles of necessity and proportionality.

#### **Minor complaints**

907. The Commissioner should have a range of options for resolving a minor complaint that has been accepted for investigation, as appropriate to the specific circumstances, including:

- mediation
- apologies
- reimbursement of wrongfully claimed or applied funds
- enforceable undertakings.

#### **Transparency and confidentiality**

908. The Commissioner should document and publish their investigative processes and provide an annual report to parliament. The identity of MPs who are the subject of investigation should be kept confidential until the conclusion of an investigation, when the Commissioner should publish the report of the investigation.

#### **Adjudication**

909. The roles of the privileges committees and each House in deciding on the result of a complaint is the most contentious aspect of the current accountability framework. The need for an impartial, independent process sits awkwardly with the power of parliament to manage its own processes and to sanction MPs who, by breaching its rules of conduct, damage the institution's reputation and credibility.

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<sup>151</sup> Parliamentary Commissioner for Standards 2015, *Commissioner's Information Note*, [UK House of Commons, London], <https://www.parliament.uk/globalassets/documents/pcs/pcs-information-note.pdf>.

910. The introduction of a dedicated Commissioner to conduct investigations removes some of the problems of a relatively unstructured, lightly resourced, part-time committee. However, ultimate responsibility to decide the result of an investigation, at least in serious examples of misconduct, should remain with the House to which the MP belongs. The gatekeeper for such matters being presented to the House should be the relevant privileges committee.
911. The low number of inquiries into MPs' conduct by the Victorian Parliament's privileges committees in the last 50 years, and the absence of any sanctions at all during that period, indicate that the privileges of parliament have been used as much as a shield from scrutiny as a bulwark of democracy. The Premier in his evidence conceded that the current processes are not perfect.
912. The parliament is plainly aware of the problem and in recent years has passed legislation such as the VIRTIPS Act to define MPs' obligations more clearly. The establishment of the VIRT has provided a more satisfactory way of resolving claims around parliamentary expenses and allowances than a reference to the relevant privileges committee.
913. Further improvements can and should be made. We believe that the following reforms would promote greater transparency, fairness and accountability in the processes for adjudicating breaches of the Members of Parliament Code of Conduct and other specific parliamentary integrity obligations:
- As discussed above, the Commissioner should have a power to resolve minor breaches of relevant rules if an MP admits the breach and agrees to one of a range of minor sanctions, such as an apology, reimbursement or enforceable undertaking.
  - The Commissioner's reports and recommendations on more serious matters should be provided to the relevant House privileges committee and the MP. The MP should be able to respond to the report orally or in writing, after which the committee should decide whether to accept, modify or reject the Commissioner's recommendations. The committee should not be able to conduct hearings or seek further evidence.
  - The committee must table the Commissioner's report and recommendations within a fixed period of receipt, together with its recommendation to the House on what action should be taken. If the committee wishes to modify or reject the recommendations, it should provide full reasons for its position.
  - The House should vote on the recommendations within a specified period of the tabling of the report, with limited time allowed for debate in order not to provide the House with an opportunity to either stall or re-investigate the matter. The House should be permitted to choose the Commissioner's recommendations in preference to the committee's if there is a difference, but no amendment should be permitted to either the Commissioner's or committee's recommendations.
  - The power of the majority party to control the privileges committee in each House should be tempered by measures such as:
    - o appointing a chair from a non-majority party
    - o limiting the majority party to no more than half the members on the Committee
    - o appointing two or more lay members with voting rights to the Committee.

914. Because the proposed Parliamentary Ethics Committee would be a joint committee of members from both Houses, we do not think that it should be given the role of receiving investigation reports from the Commissioner. Any sanctions that might be applied as a result of a report would need to be applied by the House in which the MP sits, and it would be more logical for a committee of that House to have the responsibility of presenting the report to the House. Our views on this point are not fixed and the government and parliament could consider whether the Ethics Committee could in fact be empowered to make recommendations about a report, with members of the Committee who sat in the relevant House having the responsibility of presenting the report.

#### **Proportionate sanctions**

915. The VIRTIPS Act amended the MP(S) Act in a variety of ways, including the sanctions that could be imposed by a House on an MP who had breached the Members of Parliament Code of Conduct or the requirements for the Register of Interests. Section 30(2) provides for:

- a) an apology
- b) rectification of a return or other information on the Register
- c) a fine not exceeding 100 penalty units
- d) a suspension from the House
- e) the Member's seat to be declared vacant.

916. The last two penalties must be passed by a three-quarters majority of the total number of MPs of the House.

917. The penalty regime appears to provide a satisfactory range of possible sanctions that can be imposed in proportion to the seriousness of a breach, although in respect of the last two penalties it might be thought that a two thirds majority would be sufficient to demonstrate the strength of support for such a serious punishment.

918. The government and parliament might consider whether an additional measure that has been adopted in the United Kingdom should be implemented in Victoria. If a British MP has been found guilty of certain types of wrongdoing, the Recall of MPs Act 2015 (UK) provides for a by-election to be held if 10 per cent of voters in the MP's constituency sign a petition for the MP's recall.

919. A petition can be triggered if an MP is found guilty of a criminal offence resulting in a sentence less than the automatic disqualification period of one year's imprisonment. The Act also provides for a petition to be initiated if an MP is suspended from the House for at least 10 sitting days or 14 calendar days following a report from the Parliamentary Standards Committee. Under our proposals, the Privileges Committee for each Victorian House would have the same responsibility of making recommendations for suspension following a Commissioner's report.

920. To date, two UK Westminster MPs have lost their seats in by-elections following convictions that triggered recall petitions where the threshold 10 per cent was reached.<sup>152</sup> A petition to recall an MP who was suspended for 30 days was unsuccessful, narrowly missing the threshold with 9.4 per cent of voters in the constituency signing the petition.<sup>153</sup>

#### **Appropriate and secure resourcing**

921. The Commissioner would have a range of functions: receiving and investigating complaints; providing training and information; and monitoring and reviewing the Members of Parliament Code of Conduct and other standards and rules relevant to parliamentary integrity. The role would need to be adequately resourced and care should be taken to ensure that arrangements for staffing reflected the Commissioner's independence.

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<sup>152</sup> Fiona Onasanya, Peterborough, 2019, and Christopher Davies, Brecon and Radnorshire, 2019.

<sup>153</sup> Ian Paisley Jnr, North Antrim, 2018.

922. The Commissioner should be empowered to retain expert assistance as may be required, for example, to retain lawyers or accountants to assist with an investigation. Although we expect that the role has sufficient breadth to justify a full-time position (possibly with the addition of other functions that have been mentioned in this section), a part-time appointment would also be possible if necessary.

### A timetable for change

923. We acknowledge that the reforms proposed in this section and above under ‘Setting standards: reforms to the ethics regime for MPs’ are significant and will require further consultation and development. It will be important to secure broad support for the changes in order to promote the independent and impartial nature of the new bodies. It will be almost impossible for such changes to occur before the state election in November 2022.

924. We urge all parties to make a commitment to implement this report’s recommendations if they were elected to form government. We believe that a reasonable timetable for implementation, regardless of the specific process adopted by the incoming government, might allow 18 months for the new bodies to commence their activities:

<b>By June 2023</b>	Undertake consultation and finalise policy positions
<b>By December 2023</b>	Draft, introduce and pass legislation
<b>By June 2024</b>	Establish new entities for commencement

## Recommendation 2

That:

- (a) the government and the parliament work together to establish a Parliamentary Integrity Commissioner as an independent officer of the parliament who would:
  - (i) receive and investigate complaints about possible non-criminal breaches of the Members of Parliament Code of Conduct in the *Members of Parliament (Standards) Act 1978* and other standards and rules relevant to parliamentary integrity
  - (ii) submit reports on investigations to the privileges committee of the relevant House for consideration and action where required, including recommendations on appropriate sanctions for a serious breach of the Members of Parliament Code of Conduct or other integrity rule or standard
  - (iii) monitor the effectiveness of the Statement of Values and Code of Conduct in the Members of Parliament (Standards) Act 1978 and other ethical obligations imposed on members of parliament
  - (iv) promote and provide training and information about the Statement of Values and Code of Conduct, in the parliament and the general community, in collaboration with the Parliamentary Ethics Committee
  - (v) help the Parliamentary Ethics Committee prepare guidance materials on the Statement of Values and Code of Conduct and review the Statement of Values and Code of Conduct at least once every four years
  - (vi) undertake other integrity-related functions allocated to them by the government or parliament.
- (b) the Parliamentary Integrity Commissioner be established by legislation and be appointed by or upon the recommendation of a cross-party parliamentary panel with members from both Houses selected for that purpose
- (c) the term of appointment be for more than four years and that there be narrowly defined criteria for dismissal upon a recommendation from the proposed Parliamentary Ethics Committee
- (d) the processes and sanctions available to the Parliamentary Integrity Commissioner be fair, efficient and proportionate to the nature of the alleged breach
- (e) the Parliamentary Integrity Commissioner have the powers and resources necessary to carry out their functions, including a power to apply sanctions by consent where a member of parliament acknowledges a breach of a minor nature, such as requiring an apology or a binding undertaking.

### **Recommendation 3**

That:

- (a) the privileges committees of each House be reformed to dilute the capacity of the majority in each House to determine the privileges committees' priorities and decision making
- (b) the privileges committee for the relevant House should receive the report of a Parliamentary Integrity Commissioner's investigation, provide the relevant MP with an opportunity to respond to it, and table the report in the House together with the privileges committee's comments and recommendations, within a fixed time of receiving the report
- (c) if the privileges committee disagrees with all or some of the Parliamentary Integrity Commissioner's recommendations, it must provide a comprehensive explanation of its reasons when tabling the Parliamentary Integrity Commissioner's report
- (d) the relevant House should vote within a fixed time of the tabling of the Parliamentary Integrity Commissioner's report to support or reject all or some of the Parliamentary Integrity Commissioner's or privileges committee's recommendations, but should not be permitted to amend them.

### **Recommendation 4**

That the Parliamentary Integrity Adviser continue to provide confidential advice to members of parliament on integrity and ethical issues and help the Parliamentary Integrity Commissioner and Parliamentary Ethics Committee with information and training activities.

### **Recommendation 5**

That whichever party or parties form government after the November 2022 state election commit to introducing and commencing the legislation to establish the Parliamentary Ethics Committee and Parliamentary Integrity Commissioner as recommended in this report, by June 2024.



## Creating a culture of parliamentary integrity

925. Many witnesses gave evidence that they engaged in branch stacking and other abuses of the ALP's rules because it was the prevailing culture to which they were introduced when they joined the party. The Bracks–Macklin report was scathing in its criticism of the culture that allowed branch stacking to flourish across the party.
926. An organisation's commitment to clear ethical standards and a means to enforce those standards fairly and effectively can fail if the dominant culture of the organisation resists or undermines such measures. As the integrity model discussed earlier in this chapter illustrates, there is a mutually reinforcing dynamic between the different elements of the model: rules can provide the impetus for cultural change, but can equally be rendered ineffective by an apathetic or resistant culture.
927. For the purposes of this report, the relevant culture is the culture of the Victorian Parliament and how it promotes the values and behaviours in the MP(S) Act, as well as its commitment to the inherent traditions and conventions of parliament that have ensured its place at the heart of Victorian democracy.
928. Unlike most discussions of organisational culture, the unique dilemma posed by a discussion of parliamentary culture revolves around the recognition that the institution is composed of many competing and often hostile parts that have their own organisational characteristics. Political parties' agendas are built on promoting their different policies and drawing attention to the failings of their competitors. They bring their own organisational culture to the parliamentary forum, which is often in tension with parliamentary values and behaviours.
929. A strong commitment to articulating and implementing parliamentary values and providing a credible means of responding to improper conduct is needed to create a culture of parliamentary integrity that can balance the rivalrous nature of politics.
930. Our proposals involve structural change in the Victorian Parliament's integrity framework. However, while rule changes and new entities can help to change the attitudes of parliamentarians, cultural change also comes from leadership and a desire for change.
931. The Bracks–Macklin report made extensive recommendations for changes to the ALP's organisational structures and poor culture. It stressed the leadership role of a reinvigorated Administrative Committee as essential for the reforms' success. We note that changes have been made in response to their recommendations and we hope that the changes will bear fruit, as the benefits of a well-governed party will flow through to the conduct of parliament.
932. The issue of compliance with its own rules is ultimately a matter for the ALP, but it would be naïve to think that exposure to an environment of unethical activity by staff and those who encourage or knowingly benefit from such unethical practices would not have an insidious effect on any desire to refrain from unethical actions in the future. A more ready disposition to 'ends justify means' and 'achieving outcomes' reasoning is evident in the conduct and approach of the former ministers and senior MPs examined in this report.
933. In order to eradicate these entrenched unethical practices, leaders of the party must set an unmistakable example to others that these practices will be identified and action taken that demonstrates they will not be tolerated.

934. Leadership and integrity are required not only in the internal affairs of the ALP but also in the way that parliament conducts itself. The reforms we have proposed will not succeed unless the leaders of the parliamentary parties, as well as the presiding officers, actively support them and the related Statement of Values and Members of Parliament Code of Conduct. Visible action by the party leaders and presiding officers to support the work of the Parliamentary Ethics Committee and the Parliamentary Integrity Commissioner would send an important message about their role and significance.

935. As one submission to the recent parliamentary inquiry into the education and prevention functions of Victoria's integrity agencies said about the importance of leaders:

They are the ones whose influence on culture is greater, which then cascades on to influence people's behaviour throughout organisations. Leaders need to understand how they influence culture and people and how they can support and encourage ethical conduct. Focus on creating ethical leaders, who will then create ethical cultures, rather than compliance. Leaders need to understand how to be ethical leaders, not only good people; how they can be trustworthy, how to ensure bad news is reaching them and how they can listen to bad news without shooting the messenger, how to appreciate the interconnected nature of ethical conduct at work etc.<sup>154</sup>

936. A vigorous and continuing program of information, education and training on integrity would raise the profile of integrity-related issues and help to create a culture of integrity. Such training and education should be integrated into the overall integrity framework and focus not just on anti-corruption obligations, which often have a compliance focus, but also on the positive moral drivers of ethical behaviour. The latter focus is more likely to produce an ethical culture that promotes public trust in the institution of parliament, rather than reducing integrity to a mere framework of rules to be followed.

## Recommendation 6

That the work of the Parliamentary Ethics Committee and Parliamentary Integrity Commissioner to promote an ethical culture in parliament:

- (a) involve and be actively supported by the leaders of all political parties represented in the parliament, as well as by the presiding officers
- (b) focus closely on the role of leadership in fostering ethical practices
- (c) reinforce respect and support for the institution of parliament
- (d) create strong links with the community and community groups.

<sup>154</sup> E Tsahuridu 2022, Submission to Integrity and Oversight Committee of the Victorian Parliament's *Inquiry into Education and Prevention Functions of Victoria's Integrity Agencies* (2022), submission no. 29, p 5.

## Reforms to the employment arrangements for electorate officers

937. The investigation revealed that the arrangements for employing electorate officers were confusing and poorly understood, and that any restrictions that might have applied were easily circumvented by MPs who wished to assign to their staff tasks outside their publicly funded role.

### *Section 30, Parliamentary Administration Act 2005*

938. At the heart of the investigation was a wilfully obtuse and incorrect interpretation of section 30 of the PA Act, which has been discussed in detail in earlier chapters, particularly Chapter 3. The first step in tightening the employment arrangements for electorate officers must be to amend the section 30 prohibition of ‘party specific activities’ to include the first limb of the definition in the Parliamentary Members’ Guide.<sup>155</sup> This limb, which was omitted from the 2019 VIRTIPS Act amendments to the PA Act following the Red Shirts report, defines prohibited party-specific activities as including:

The administration, organisation or management of a political party, or equivalent for an independent Member, such as managing the party’s membership, communications, funds or property.

939. The precise wording of the amendments, and whether the entire section should be re-drafted, is a matter for the government to decide.

## A new offence

940. Equally important is the need to convey the seriousness of the misuse of public resources revealed by this investigation. This misconduct called for consideration of the offence of misconduct in public office. The offence requires a value judgment to be made: was the misconduct so serious that it amounts to an abuse of the public's trust and is worthy of criminal punishment? Such misconduct would be distinguishable from misconduct for which the appropriate sanction might be censure by MPs. Because of the difficulties in proving such an offence, we are not satisfied that our findings should be referred to prosecution authorities, but the practices we have described would be considered by most people in the community to be a dishonest and serious misuse of public resources.
941. The investigation has revealed a gap in the criminal law that should be rectified by creating an offence that provides that an MP who directs or allows a person to undertake party-specific activities while that person is employed to assist the MP in discharging their public duties is guilty of an offence.
942. The government in formulating the offence and its penalty should take account of the degree of an MP's intent or recklessness in directing or allowing the employee to undertake such activities.
943. Some allowance should be made for activities where it is difficult to separate the party-political aspect of the work from the normal duties of an electorate officer. For example, it might be difficult to differentiate the political aspects from the community-engagement aspects of an electorate officer's attendance with their MP at a community meeting that is calling for a new primary school to be built in the area.

944. The existence of some ambiguity in some circumstances is already recognised by section 30 of the PA Act, which applies a dominant-purpose test to the definition of campaigning activities. The proposed Parliamentary Ethics Committee and Parliamentary Integrity Commissioner could provide guidance on the differences between party-specific and legitimate electorate officer tasks.

## The Electorate Officers Code of Conduct

945. The Electorate Officers Code of Conduct is a modified version of the Code of Conduct for Parliamentary Officers. Parliamentary officers are employed by the clerks of the parliament or the Secretary of the Department of Parliamentary Services (DPS) to assist the business of the Victorian Parliament. Electorate officers are not parliamentary officers, although they are formally employed by the DPS Secretary upon delegation from the presiding officers. The PA Act<sup>156</sup> describes the values for parliamentary officers, which are the basis for the Code of Conduct for Parliamentary Officers.
946. The Electorate Officers Code of Conduct, prepared by the presiding officers, adopts an almost identical set of values and a very similar articulation of the responsibilities that flow from the values, with some allowance for the different nature of the job.
947. Although the values and behaviour in the Electorate Officers Code of Conduct are not objectionable, they have essentially been formulated for a different type of work, and do not provide enough ethical guidance for the role. There is no mention of the need to ensure that activities are not party political and must relate to an MP's public duties only.

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<sup>156</sup> Parliamentary Administration Act 2005, s 5.

948. The Electorate Officers Code of Conduct should be reviewed to make it more relevant to the actual responsibilities and challenges of the electorate officer role. Once again, the proposed Parliamentary Ethics Committee and Parliamentary Integrity Commissioner could conduct the review.
949. The Electorate Officers Code of Conduct is not publicly available. There is no valid reason for such secrecy in relation to publicly funded officers. The code should be published at the earliest opportunity.

### The electorate officer employment framework

950. As discussed in previous chapters, patronage and factional opportunism characterised appointments to the electorate offices of many ML-aligned parliamentarians, with scant regard to the actual requirements of the role. Although some electorate officers were not involved in factional politics, and some factional appointees also possessed relevant skills, others had few or no skills and showed little or no interest in performing their role. Their appointments on the basis of their usefulness to the faction or personal connections constituted a waste of public funds.
951. Some electorate officers were valued for their access to local ethnic or religious communities, which is a valuable and necessary part of community engagement for any politician.
952. Electorate officers are employed by the DPS Secretary as the delegate of the presiding officers, but their activities are directed and managed by their MP. The PA Act<sup>157</sup> gives an MP significant discretion in determining the nature of the tasks. The ambiguous reporting lines create potential overlaps, gaps and a consequent lack of clarity about responsibilities and accountability for job performance.

953. In practice, DPS has provided the systems and processes for the work to be performed, such as payroll and information technology services, while the MP has decided how the electorate officer's duties should be performed. There has been very little involvement by DPS in the appointment or management of electorate officers, primarily due to the PA Act's provisions and a natural desire not to interfere in an MP's management of their office.
954. The presiding officers, as the ultimate employers of electorate officers, are dependent for their positions on the continuing support of the leaders and other MPs from their parties. They might be perceived to be unwilling to intervene in relation to complaints about an MP's use or misuse of their electorate staff.

### *Changes to the employer's role*

955. The DPS Secretary is also perceived to be in a weak position to make decisions with which the presiding officers might disagree if the Secretary wanted to address a complaint about an MP's conduct towards their electorate office staff. In contrast to the clerks of the Legislative Council and Legislative Assembly, the DPS Secretary is not appointed for life and is offered only a four-yearly, renewable contract.
956. An employee is entitled to a fair and effective process for resolving disputes or complaints, but an electorate officer is in a vulnerable position because of the lack of appropriate avenues through which they can seek advice and support, or to make complaints about mistreatment or misconduct by an MP.
957. DPS should be able to provide effective support for electorate officers and also ensure that expenditure is justified by the appointment of capable candidates to such roles. Its ability to do so is undermined by the Secretary's dependence on the presiding officers.

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<sup>157</sup> PA Act, section 30(4) – see earlier discussion, n1.

958. We think that two adjustments should be made to the Secretary's role to strengthen the capacity of the officeholder to properly manage their employment relationship with electorate officers:

- The presiding officers should cease to be the employer of electorate officers. Instead, and in the same way that the clerks of the parliament employ their staff in their own right, the DPS Secretary should become the employer in their capacity as a head of department under the PA Act, not as a delegate of the presiding officers.
- The term of appointment of the DPS Secretary should be extended to a minimum term longer than the parliamentary cycle, with the usual exceptions for removal in the event of bankruptcy, criminal conviction, misconduct or loss of capacity. We do not think that the role should be for life, as its responsibilities are closer to those of a public service head of department than the clerks of the parliament. Nevertheless, some form of protection from political interference through a stronger guarantee of tenure should be included in the conditions of employment for the DPS Secretary.

#### *Recruitment processes*

959. We recognise the need for an MP to have complete confidence in their office staff and that it is appropriate that they should be able to choose who works for them. It is reasonable for an MP to want a prospective employee to have similar political views, which the Equal Opportunity Act 2010 recognises by allowing for an exception to the prohibition on employment discrimination.<sup>158</sup>

960. However, a prospective employee must also be able to perform the publicly funded functions of the role, which consist primarily of helping an MP to fulfil their parliamentary and community duties. The skills identified by DPS in preparing the standard position description for an electorate officer include organisational ability, communication skills, keyboard skills, client service skills and an ability to maintain strict confidence.<sup>159</sup>

961. A person could meet the special requirements of political compatibility, personal trust and/or links to local communities and also have the communication and administrative competencies that are the standard requirements for electorate officers. The need for employees in an electorate office to have the necessary skills for their jobs should extend to all positions, including administrative assistants.

962. The PA Act requires the Secretary of DPS, as a department head, to establish employment processes that will make sure that employment decisions are based on merit.<sup>160</sup> A more standardised, transparent process would reduce the potential for abuse of the process to secure factional or personal advantage. New processes should provide assurance that electorate officers and other electorate office staff are fit to perform the duties that the public reasonably expects from them.

963. We recommend that the presiding officers and DPS review the arrangements for employing electorate office staff, to strengthen the integrity and effectiveness of the recruitment processes.

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<sup>159</sup> Department of Parliamentary Services, Electorate officer position description, June 2017.

<sup>160</sup> Parliamentary Administration Act 2004, s 6(a).

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<sup>158</sup> Equal Opportunity Act 2010, s 27.

964. The recruitment process would be strengthened by:

- a) DPS advertising all non-casual roles. DPS would receive all applications and forward them to the MP. The desirable level of DPS involvement in helping an MP appoint an electorate officer could be reviewed, for example, in respect of whether a DPS employee should sit on a selection panel, either in all cases or upon request.
- b) reviewing position descriptions so that they correctly reflect the work being undertaken. Position descriptions should alert applicants to the fact that the role does not involve party-political work, and that party-political work by electorate officers during work time is prohibited.
- c) an MP providing DPS with a selection report demonstrating the suitability and preferability of the successful applicant compared with other applicants.
- d) all new employees signing an acknowledgement, counter-signed by the MP, that they have read and understood their obligations under the Electorate Officers Code of Conduct, and that they are not to engage in party-political work while undertaking their role, apart from incidental tasks.
- e) making mandatory the current requirement for the induction process, and strengthening it by curtailing access to support systems or salary if the necessary sessions have not been completed within two months of commencement. The content of the induction program for electorate officers should be reviewed.
- f) the DPS Secretary, in consultation with the presiding officers and other MPs, preparing a simple and accessible best-practice guide for employing electorate office staff.

#### *Casual electorate officers*

965. Many electorate officers have been employed on a casual basis, with some then being offered part-time or full-time ongoing work as an electorate officer. A casual employee may work only 570 hours (75 days) in any one year for an MP.
966. Casual employees perform a valuable role in helping an office to manage peaks and troughs of demand and to cover temporary vacancies. The arrangements for their employment must necessarily be more flexible than for ongoing employees, to allow for their speedier deployment and to recognise that, for a short period of employment, a more elaborate process might be disproportionately burdensome. However, their employment should still be subject to some of the safeguards recommended for the employment of ongoing electorate officers. Their position should have a position description, they should be properly inducted, and they should sign the acknowledgement of their duties and obligations.
967. In addition, a member who intends to employ a casual employee should notify DPS of the specific duties or project that justify the employment of the person, and how they meet the requirements for the position.

#### *Family members*

968. The employment of family members in electorate offices was one of the most common abuses uncovered in the investigation. Jobs awarded to relatives in most employment environments are perceived to have been obtained through personal connection rather than merit, and are often viewed with suspicion. Providing jobs for relatives using public funds is a particularly egregious example of such conduct, and should be prohibited.

969. Further consideration could be given to prohibiting the employment of an MP's close family members in the office of another MP from the same party, given that this practice seems to have been common among ML factional allies. Although it provides an easy option for avoiding a rule prohibiting employment of family members, banning it might be thought to unfairly prevent the entry of family members into political life. The adoption of more open and competitive selection processes would promote a greater emphasis on merit than on family or factional connection.

#### *Managing and supervising electorate office staff*

970. The local nature of electorate office work and the primary role of an MP in hiring and managing the staff in the office make it difficult for DPS to monitor the work of its employees in those offices.

971. Casual officers complete timesheets for submission to DPS in which they summarise the work undertaken. The timesheet is signed off by the MP and includes a statement that the employee must not undertake party-specific work. However, the timesheets obtained by the investigation provided little information about the actual work undertaken, often using generic terms such as 'project work' or 'administrative work'. Clearly, they did not prevent the performance of party-specific work in some offices.

972. The recommended review of recruitment arrangements for electorate office staff could include the arrangements by which these staff's activities are managed, to make sure that they are only undertaking work within their paid duties and also are able to access the normal benefits of employment, such as learning and development opportunities.

973. Staff should be aware of their rights and entitlements, such as the relevant occupational health and safety standards and protection from bullying and harassment. For example, we note that WorkSafe Victoria recently undertook a consultation process in relation to the proposed Occupational Health and Safety Amendment (Psychological Health) Regulations, which will provide clearer guidance to employers on their obligations to safeguard workers from mental injury.<sup>161</sup>

974. Most MPs appear to allocate office manager duties to one of their staff members, who are responsible for the day-to-day running of the office, especially if the MP is heavily involved with their parliamentary or ministerial duties. We are aware that some office managers are highly qualified and experienced in their role or in other roles that they undertook before starting their employment, but the review could nevertheless consider whether regular training for electorate office managers might bring greater consistency in applying the relevant standards and processes to electorate office staff.

#### *Audit*

975. DPS has an audit committee that includes three independent members with relevant audit experience. DPS arranges for the Auditor-General to audit its operations annually and also conducts its own internal audits. IBAC and the Ombudsman were advised that the Auditor-General audits eight electorate offices as part of its annual audit. No witnesses, when asked, said that their electorate office's activities had been audited.

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<sup>161</sup> See Engage Victoria 2022, Proposed OHS Amendment (Psychological Health) Regulations, <https://engage.vic.gov.au/proposed-psychological-health-regulations>.



976. Audits usually focus on whether an entity has appropriate systems in place to minimise the risks that the entity is exposed to. Unless a more expensive and time-consuming investigation is undertaken, a standard audit will not necessarily find evidence of financial misconduct. The internal audit function is more able to target particular areas of risk for a more in-depth examination.
977. We recommend that the presiding officers, DPS and the DPS audit committee review the DPS audit program in light of this investigation's findings, to refine their approach to risk identification and the choice of issues and business operations that should be audited.
981. A witness said that they were unwilling to use the processes of the *Public Interest Disclosures Act 2012* because a disclosure about an MP or minister must be submitted to the relevant presiding officer.<sup>162</sup> The witness was not confident that their identity would remain confidential or that they would not suffer detrimental treatment as a result of the disclosure, because of the presiding officer's factional affiliation. The provisions of the Public Interest Disclosures Act for receiving complaints about MPs and ministers should be reviewed, to open up an alternative course for a person who has reasonable grounds for not wishing to lodge a complaint with a presiding officer.

#### *Complaints processes*

978. It became clear during the investigation that electorate officers did not have a satisfactory or clear process through which they could raise matters of concern regarding their employment.
979. The greater independence of the DPS Secretary proposed in this report should encourage greater confidence in the impartiality and support that could be offered by DPS and its Secretary as the employer of electorate officers.
980. The proposed establishment of a Parliamentary Integrity Commissioner would provide an independent pathway through which employees could lodge complaints about potential misconduct. The development of a bullying and harassment protocol by the Speaker of the Legislative Assembly should also provide a means of recourse on such issues.

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<sup>162</sup> Public Interest Disclosures Act 2012, s 17.

## Recommendation 7

That the definition of prohibited party-specific activities in section 30 of the *Parliamentary Administration Act 2005* be amended to include activities undertaken for the predominant purpose of helping the administration, organisation or management of a political party, including the recruitment and maintenance of party members.

## Recommendation 8

That:

- a) an offence be created that provides that a member of parliament who directs or allows a person to undertake party-specific activities while that person is employed to help the member of parliament discharge their public duties is guilty of an offence.
- b) the government in formulating the offence and the penalty should take account of:
  - the degree of a member of parliament's intent or recklessness in directing or allowing the employee to undertake such activities
  - activities where it is difficult to separate the party-political aspect of the work from the normal duties of an electorate officer's role, such as attendance at a community-organised event with the member of parliament
  - unavoidable and reasonable communication with a party's head office or local branch on minor or incidental matters.

## Recommendation 9

That:

- a) the proposed Parliamentary Ethics Committee and Parliamentary Integrity Commissioner review the Electorate Officers Code of Conduct, to make it more relevant to the actual responsibilities of the electorate officer role and to explicitly prohibit party-specific work from being undertaken during an electorate officer's employment
- b) the Code of Conduct be publicly available.

## Recommendation 10

That:

- a) members of parliament be prohibited from employing close family members in their electorate office
- b) the government and parliament consider whether this prohibition should extend to a member of parliament employing a close family member of another member of parliament from the same political party.

## Recommendation 11

That, to strengthen the capacity of the Department of Parliamentary Services to perform its role efficiently and effectively:

- a) the Secretary of the Department of Parliamentary Services be the employer of electorate office staff in their capacity as Secretary of Department of Parliamentary Services, not as a delegate of the presiding officers
- b) the contractual term for the Secretary of the Department of Parliamentary Services be made significantly longer than the duration of a parliamentary term.

## Recommendation 12

That the presiding officers and the Department of Parliamentary Services review the processes for recruiting and selecting electorate office staff, to promote a more competitive, open and merit-based process. Possible topics for the review include:

- a) reviewing the standard position description for electorate officers, and including an explicit statement prohibiting the successful applicant from engaging in party-specific activities
- b) requiring all non-casual roles to be advertised by the Department of Parliamentary Services. The Department of Parliamentary Services would receive all applications and forward them to the member of parliament. The desirable level of involvement by the Department of Parliamentary Services in helping a member of parliament appoint an electorate officer could be considered, for example, in respect of whether a departmental employee should sit on a selection panel, either in all cases or upon request
- c) requiring a member of parliament, when nominating an applicant for a job as an electorate officer, to provide the Department of Parliamentary Services with a selection report demonstrating the suitability and preferability of the successful applicant compared with other applicants and advising the Department of Parliamentary Services of the reasons for employing a casual electorate officer.

## Recommendation 13

That:

- (a) the presiding officers and the Department of Parliamentary Services review the arrangements for managing and supervising electorate officers, to ensure that:
  - (i) electorate officers' work is undertaken within the limits of their role
  - (ii) electorate officers are competently and effectively supervised
  - (iii) electorate officers receive all the legal protections that they are entitled to
  - (iv) electorate officers are given learning and development opportunities to develop their skills
- (b) the Department of Parliamentary Services take a more active role in implementing the new arrangements described in (a).

## Recommendation 14

That the presiding officers, the Department of Parliamentary Services and the Department of Parliamentary Services Audit Committee review the Department of Parliamentary Services audit program in light of this investigation's findings, to refine their approach to risk identification and the choice of issues and business operations that should be audited.

## Recommendation 15

That section 17 of the *Public Interests Disclosures Act 2012* be reviewed to open up an alternative course for a person who has reasonable grounds for not wishing to lodge a complaint with a presiding officer.

## Reforms to procedures for dealing with ministerial misconduct

982. The misuse of publicly funded staff occurred in ministerial and electorate offices. We have made findings about possible breaches by the relevant ministers of the Ministerial Code of Conduct. The accountability arrangements for ministers, as members of the executive branch of government, are quite different from those for MPs. Ministers are appointed and removed by the Governor acting on the Premier's advice and effectively hold office at the Premier's discretion. Also, they are individually responsible to parliament for their actions as ministers as well as for their actions as MPs.
983. Our reform proposals have focused on improvements to the accountability framework for parliamentarians because of the significant gaps that still remain after the implementation of the VIRTIPS Act. The accountability regime for ministers is much more discretionary and within the power of the Premier. The Ministerial Code of Conduct is issued by the Premier and sets out the obligations of ministers in performing their rules. The document is publicly available. It provides for ministers to resign if the Premier is satisfied that they have breached or failed to comply with the code in a substantive and material manner.<sup>163</sup>
984. The Premier may also refer an alleged breach of the Ministerial Code of Conduct for investigation and/or advice. The code does not specify or constrain the Premier as to who may conduct an investigation or give advice. For example, the Premier has referred previous allegations of ministerial misconduct to the Secretary, Department of Premier and Cabinet for investigation and advice.
985. The existence and publication of the Ministerial Code of Conduct is a welcome demonstration of the government's willingness to declare the standards by which its ministry can be assessed. Consistent with other recommendations in this chapter, the Ministerial Code of Conduct should be amended to clarify that ministers must make sure that the public resources made available for performing their duties are not used for party-specific purposes.
986. Codes of conduct need to be embedded in an organisation's culture to be effective. Those in leadership positions, such as ministers, have a particular responsibility to model ethical behaviour and to embrace appropriate controls to strengthen compliance. In that context it has been suggested that the powers of the proposed new Parliamentary Integrity Commissioner could be broadly defined to permit investigation of not just alleged breaches of the Members of Parliament Code of Conduct, but also have a role, upon the Premier's referral, in investigating ministers for breaches of the Ministerial Code of Conduct.
987. The Parliamentary Integrity Commissioner and a future Parliamentary Ethics Committee could potentially also have a role in reviewing the standards in the Ministerial Code of Conduct. This would support the alignment of core values, common to both the legislature and the executive arms of government.

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<sup>163</sup> Ministerial Code of Conduct, Clause 9.2. <https://www.vic.gov.au/code-conduct-ministers-and-parliamentary-secretaries>

988. We have chosen not to make a formal recommendation at this time that the scope of responsibilities for a new Parliamentary Ethics Committee and Parliamentary Integrity Commissioner be extended to include some responsibilities also for the Ministerial Code of Conduct. However, we encourage those progressing these recommendations to contemplate how a broader role might work, where the aim is to further strengthen accountability for all public office holders.

989. The definition of ‘public duties’ in the Members of Parliament Code of Conduct includes ‘ministerial business’.<sup>164</sup> It is unclear whether it was really intended that a breach of the Members of Parliament Code of Conduct by a minister while performing their ministerial duties (for instance, misuse of ministerial staff) could be referred under the MP(S) Act by a presiding officer to the relevant privileges committee for investigation as well as potentially being the subject of an investigation by the Premier (or their appointed investigator) for breaches of the Ministerial Code of Conduct.

## Recommendation 16

That the Ministerial Code of Conduct be amended to clarify that ministers must ensure that the public resources made available for performing their duties are not used for party-specific purposes.

## Recommendation 17

That the government and parliament clarify the extent to which it is intended that the Members of Parliament Code of Conduct and the processes for dealing with breaches of the Code should cover the actions of ministers in relation to their ministerial portfolios.

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<sup>164</sup> *Members of Parliament (Standards) Act 1978*, s 2(1).

## Reforms to the employment arrangements for ministerial staff

990. The ML faction's use of publicly funded officers for factional work was not limited to the use of MPs' electorate officers. As described in Chapter 4, some staff in Mr Somyurek's and Ms Kairouz's ministerial offices were regularly involved in factional business during their working hours.
991. Chapter 3 described the arrangements for the employment of ministerial advisers, and their usual duties. The role of advisers is quite different from that of electorate officers, and sits at the heart of the executive branch of government. It is much more political in the sense that advisers are helping their minister to deliver the government's policy agenda, which is the basis for a government's election to office and aspirations for continuing power.
992. Nevertheless, as the duties described in the Victorian Public Sector Commission's Guide to the Victorian Public Sector for Ministerial Officers<sup>165</sup> make clear, an adviser's work is confined to ministerial-related tasks and does not include party-specific activities. The closest permissible activity in relation to a minister's political party is the recognition in practice that advisers might need to liaise with their minister's parliamentary colleagues and with a party's relevant policy committee to give and receive feedback on the minister's portfolio agenda and activities.
993. Not all ministerial staff who undertook party-specific activities for the ML faction were advisers. Some were administrative staff. The same principles of separation between ministerial portfolio activities and party-specific work apply to them, but with even greater force, given the absence of policy elements from their roles.

994. The same need to clarify the applicable standards of ethical conduct and implement effective compliance mechanisms for electorate officers applies to ministerial staff.

### A new offence

995. The proposed offence provision that criminalises the use of electorate officers by MPs for party-specific purposes should also apply to ministers. A minister who directs or allows a person to undertake party-specific activities while that person is employed to help the minister discharge their public duties should be guilty of an offence.
996. The same allowances and considerations mentioned in relation to the electorate officer offence should also be taken into account in the ministerial context.

### Ministerial Staff Code of Conduct

997. Ministerial advisers are bound by a Ministerial Staff Code of Conduct, the most recent version of which was issued in 2019. Unlike the Ministerial Code of Conduct, the Ministerial Staff Code of Conduct is not publicly available. Disturbingly, it removed the following provision from the earlier 2009 version:

Ministerial staff must take care to ensure that their private activities and involvement in community or political organisations do not give rise to any actual or perceived conflicts with their work and that they abide by any guidelines issued by the Premier.<sup>166</sup>

998. As most of the other provisions of the 2009 Ministerial Staff Code of Conduct were carried over to the 2019 version, it appears that the omission was deliberate. The 2019 code put in place a more detailed framework for managing conflicts of interest and included the following definition of 'indirect interests':

'Indirect interests' includes the personal, family, professional or business interests of individuals or groups with whom you are or were recently, closely associated.<sup>167</sup>

<sup>165</sup> Victorian Public Sector Commission's Guide to the Victorian Public Sector for Ministerial Officers <https://vpsc.vic.gov.au/resources/serving-government/>

<sup>166</sup> Ministerial Staff Code of Conduct 2009, clause 5.

<sup>167</sup> Ministerial Staff Code of Conduct 2019, p 6.

999. However, the definition is deficient in its lack of a clear reference to community or political organisations.
1000. This omission of community or political organisations corresponds to a similar omission from the VIRTIPS Act's amendments to the PA Act, in which the prohibition in the Members Guide against using electorate officers for party-specific tasks was not retained.
1001. At the very least, the omissions indicate an understanding of the potential difficulties that the two pieces of existing guidance might create in the future, and a desire to resolve any ambiguities by omitting each of the guidelines from the new codes and frameworks that were being developed.
1002. Identifying an employee's involvement in a community or political organisation as a possible conflict of interest is appropriate, but the Ministerial Staff Code of Conduct should go further and clearly prohibit advisers and other staff from undertaking party-specific work during their working hours. Noting that the Premier is the employer of ministerial advisers and custodian of the Ministerial Staff Code of Conduct, it is recommended that this code be reviewed so that, in addition to reinstating clause 5 of the 2009 Code (or an equivalent version), it prohibits such party-specific work during an employee's working hours.
1003. The Ministerial Staff Code of Conduct should also be made publicly available. The public, as the funder of ministerial staff salaries, is entitled to information by which it can assess the integrity of ministerial staff activities. This line of accountability is reflected in the Ministerial Code of Conduct, which requires ministers to account to parliament – and, through it, to the people – on the conduct of their staff.

## Compliance measures

1004. The Ministerial Staff Code of Conduct provides that a breach of the code could lead to disciplinary action or an adviser's dismissal.<sup>168</sup> Although this provision is a desirable indication of consequences that might flow from a breach, there is no external scrutiny of any such disciplinary process, and no way of knowing when the code might have been invoked.
1005. We accept that employees' disciplinary infringements should not usually be subjected to public scrutiny. However, ministerial advisers are in an unusual position of having significant power without being subject to the accountability measures that might apply if they were a minister or a public servant.
1006. Privacy and integrity could both be maintained if an independent external body such as the proposed Parliamentary Integrity Commissioner had the power to investigate alleged breaches upon a referral from the Premier. The Commissioner could make confidential findings and recommend action to be taken. The power to publish any such findings and recommendations, possibly with the consent of the Premier, would be a matter for further discussion during the development of the relevant legislation.
1007. Although we have chosen to not make any recommendations on broadening the scope of the Parliamentary Integrity Commissioner's responsibilities at this time, we encourage those progressing our recommendations to appreciate that such an extension of responsibility to ministerial advisers will likely be considered by IBAC in the production of forthcoming reports.

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<sup>168</sup> Ministerial Staff Code of Conduct 2019, clause 6.5.

## Recommendation 18

That:

- a) an offence be created that provides that a minister who directs or allows a person to undertake party-specific activities while that person is employed to assist the minister in discharging their public duties is guilty of an offence
- b) the government, in formulating the offence and the penalty, should take account of:
  - the degree of a minister's intent or recklessness in directing or allowing the employee to undertake such activities
  - activities where it is difficult to separate the party-political aspect of the work from the normal duties of a ministerial staff member's role, such as briefing other members of parliament and party members on matters relevant to the minister's portfolio
  - unavoidable and reasonable communication with a party's head office or local branch on minor or incidental matters.

## Recommendation 19

That:

- a) the Ministerial Staff Code of Conduct be reviewed to explicitly prohibit party specific work from being undertaken during the course of a ministerial staff member's employment
- b) the Ministerial Staff Code of Conduct be made publicly available.



## Accountability reforms for community grants

1008. The investigation received little evidence relevant to whether ministers who were ML faction leaders, or their advisers, interfered in public funding processes to favour community organisations that had connections to the faction through some of their executive members. However, two areas of concern emerged during the investigation:
- a) management of perceived conflicts of interest
  - b) appropriate monitoring and audit processes for grant expenditure.

## Conflicts of interest

1009. Identifying and managing conflicts of interest are a recurring theme in the exercise of ministerial and executive power. A high level of probity is required of ministers and all those who work for them to give the community confidence that they are discharging their roles impartially and fairly. Care must also be taken to avoid perceived conflicts of interest, which can be equally corrosive of public trust.
1010. Extensive guidance is available on conflicts of interest in the public sector, but typically focuses on the risks to which public servants are exposed and how to deal with them.<sup>169</sup> The OECD guidance includes political affiliation in the categories of private interests that might conflict with an official's public interests. Clearly such a categorisation would not apply to a minister or their advisers who are implementing their party's policies.
1011. The codes of conduct for ministers and MPs also deal with conflicts of interest between public and private interests, but do not define 'private interests'. For the purposes of this discussion, we have interpreted private interests as potentially including a minister's private political interests.
1012. In particular, we were concerned that where there appeared to be strong links between the senior members of a community organisation and ML-aligned ministers or MPs, including through the employment of such members in the ministers' or MPs' offices, there might be a conflict of interest if one of those ministers was making a decision that would benefit the community organisation. Similarly, a member of the minister's staff who was involved in such an organisation might have a conflict if they were involved in the decision-making process.
1013. We acknowledge that this can be a difficult and sensitive area in which to make assessments of probity. No government arrives in office and maintains its position without the wide support of a large number of individuals and organisations, many of whom will expect their views and aspirations to be treated sympathetically by the government. There is a range of policy positions that they would legitimately expect a government to endorse. They would also legitimately expect to have a degree of access to ministers and MPs to provide their views and the views of the people who they might represent.

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<sup>169</sup> For example, Victorian Public Sector Commission 2018, *Conflict of Interest Guidance for Organisations*, <https://vpssc.vic.gov.au/resources/conflict-of-interest-guidance-for-organisations/>; Organisation for Economic Cooperation and Development 2003, *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, OECD, Paris, <https://www.oecd.org/gov/ethics/oecdguidelinesformanagingconflictinterestinthepublicservice.htm>.

1014. However, this is an area of public sector activity where there are high risks of significant conflicts of interest. Strong integrity and compliance measures are needed to manage those risks in the public interest. Some of these situations fall within the regulatory domain of the Lobbyists Register or the MP(S) Act's Register of Interests. Others do not. Ministers and their advisers must be cautious in the way they manage these risks. Bare compliance with specific rules and examples is inadequate if no genuine consideration is given to the existence and management of conflicts of interests.
1015. Not all witnesses who gave evidence recognised that some of their interactions might lead to a potential conflict of interest for the relevant minister. Failure to identify potential conflicts of interest is a basic source of decision-making error. However, such failures are more likely if there are insufficient systems and guidance to help a decision maker understand the types of conflicts of interest that might arise in their situation. Similarly, their staff or associates are less likely to be aware that their interactions might trigger conflict of interest concerns if they have not been adequately trained and supported to recognise them.
1016. Conflicts of interest might not be improper or unlawful, even if systems have been established to minimise their occurrence. The critical issue is how a person responds to a conflict that has been identified. The appropriate response will vary according to the nature and seriousness of the conflict.
1017. Mr Scott in his response to the draft report of this investigation contended that, by creating a three-tiered departmental process to consider and make recommendations about grant applications, he had sufficiently distanced himself from potential conflicts of interest, even though he continued to make the final decision.
1018. Mr Scott's lawyers argued that to require a minister to go further and remove themselves from the decision-making process would be too high a standard, one that would be unworkable in practice. For example, they questioned how such an approach could allow a Labor government to manage portfolios in which union interests are an integral part of policy and operational processes, especially in relation to the negotiation of enterprise bargaining agreements or industrial relations matters.
1019. Mr Scott provided a separate submission on the policy issues raised by his examination by IBAC. He addressed the question of separation between ministers and individual grant-making decisions, and set out his suggested approach:
- In my view, Ministers should be focusing on policy decisions and high level resource allocations, rather than individual decisions on allocation of grants, other resource allocations or implementation issues.
- One of the common features of modern Ministerial life is the constant bombardment with detailed information on individual decisions. Ministers have to wade through a large number of briefs, often relating to relatively small decisions.
- This cycle of constant stimulation and response can reduce the capacity of Ministers to transcend immediate considerations, when ideally Ministers would instead focus on the truly strategic considerations within Ministerial portfolio responsibilities.
- [...]
- The introduction of the clear separation between strategic decision making and implementation would have twin benefits:
- (1) Reduce the possibility of the perception of conflict of interests and
  - (2) Improve the effectiveness of government decision making by focusing greater energies at a Ministerial, Ministerial Office and Senior Department level on strategic policy and high level resource allocations.

1020. Mr Scott cited Swedish governance arrangements as an example where such an approach has been formalised with apparent success. We are aware that financial delegations to departmental executives already allow public officials to make a range of significant funding decisions without reference to a minister. Powers and practices might vary between departments, portfolios and authorising legislation.

1021. Mr Scott suggests that the government should consider the ways in which routine ministerial decision making that is implementing agreed policy objectives could be simplified further to allow public officials with appropriate authority to make such decisions.

1022. Conflicts of interest are less likely to arise or cause problems for government if there is:

- a) a satisfactory system of disclosing interests by those involved in making decisions or advising a minister
- b) a system for identifying, managing and monitoring conflicts
- c) an effective and relevant program for educating and supporting decision makers and advisers
- d) an overall culture of integrity that informs all decision making.

1023. IBAC's forthcoming public sector special reports referred to above will be addressing this issue in greater depth. Those investigations are expected to discuss the risks that can arise when a conflict of interest is unrecognised and therefore inadequately managed, regardless of whether that risk eventuates in favourable treatment to a particular party.

1024. It is not necessary to wait for those reports to appreciate the gap in guidance, advice and policy around this issue and the opportunities that exist for reform. We recommend that the government undertake a review to consider options to strengthen the identification and management of conflicts of interest.

### Appropriate monitoring and audit processes for grant expenditure

1025. The investigation did not find any evidence that the three community organisations that were investigated were using their funds to pay for ALP memberships, but it did find a range of unsatisfactory accountability processes in relation to grant funding. The gravity of the accountability defects varied from minor to serious and hampered our attempts to identify any connections with branch stacking.

1026. We recognise that funding agencies must tread a fine line between keeping community organisations sufficiently accountable for their expenditure and not burdening them with unduly onerous compliance processes. Many organisations have small budgets and lack the resources and systems that larger entities use to ensure process probity. If they are funded by several agencies, they often need to comply with various accountability frameworks.

1027. Funding agencies at state and local government levels have developed grant funding frameworks that seek to provide transparent, fair and consistent funding and accountability processes, to give funders confidence that taxpayer money is being well spent.

1028. Although it is beyond the scope of this investigation to review overall community grant processes, we note that it is an area in which new frameworks are constantly being developed. For example, the Auditor-General tabled a report on 11 May 2022 on fraud control in local government grants,<sup>170</sup> which reported on audits of six local councils across Victoria and made useful recommendations for all councils to incorporate into their grant frameworks.
1029. Many of the funders who provided funds to the identified organisations, including Banyule City Council, have reviewed either their specific funding of those organisations or the programs under which they were funded.
1030. In some cases, agencies had appropriate monitoring and reporting processes in place but failed to implement them or follow up unanswered queries. Agencies need to balance their grant management resources according to the proportionality of risk that they are managing. Some agencies employ risk frameworks to guide their decision making, but such policies need to be supported by diligent implementation and informed by frontline officers' knowledge of the level of risk posed by subject organisations. Identifying and managing risk are important at every stage of grant administration.
1031. The Auditor-General's report found that the weakest element of grant management by the audited councils was 'monitoring and acquitting spending', for which four councils were found to have weak fraud controls.<sup>171</sup>
1032. Specific accountability problems that were raised by the present investigation and that state and local governments should consider in improving their community grant frameworks were:
- a) Copies of receipts should in principle accompany all expenditure acquittals and be checked against grant application proposals. Invoices without proof of payment should be considered insufficient.
  - b) Payment of salaries should be accounted for, especially if existing office holders are being funded from non-recurring grant monies. Their competence to undertake specific-purpose projects (for example, gambling prevention and education) should be vetted
  - c) Grant recipients should certify that items of expenditure have not been claimed against other organisational revenues or grants, to prevent the use of the same receipt to acquit different grant-reporting obligations
  - d) Grant funders should manage risk more proactively, to identify organisations with weak accountability arrangements.
1033. We note that many grant funders either withhold a final payment or refuse to accept further grant proposals from organisations if full acquittals of grants to that organisation have not been completed. We support this approach as a prudent policy for grants administration.

<sup>170</sup> Victorian Auditor-General's Office 2021, *Fraud Control Over Local Government Grants*, <https://www.audit.vic.gov.au/report/fraud-control-over-local-government-grants?section=> .

<sup>171</sup> *Ibid*, pp 73–75.

## Recommendation 20

That the Victorian Government:

- a) undertake a comprehensive review of existing conflict-of-interest controls for ministers and ministerial staff to strengthen the identification and management of conflict of interest
- b) make appropriate revisions to the codes of conduct for ministers and ministerial staff to recognise the particular risks of conflicts of interest
- c) develop associated guidance to raise awareness of the risks associated with unmanaged conflicts of interest, and provide mandatory training for ministers and ministerial staff.

## Recommendation 21

That state and local government funders of community organisations continue to improve their policies and processes to manage grants, in accordance with evolving best practice, and make sure that monitoring and reporting practices are risk-informed and sufficiently prioritised to be implemented effectively. In particular, they should consider:

- a) requiring copies of receipts with all expenditure acquittals, and checking them against grant applications
- b) requiring payment of salaries to be accounted for, especially if existing office holders are being funded from non-recurring grant monies
- c) vetting applicant organisations' competence to undertake specific-purpose projects
- d) requiring grant recipients to certify that items of expenditure have not been claimed against other organisational revenues or grants, to prevent the use of the same receipt to acquit different reporting obligations to different grant providers
- e) adopting proactive risk-management practices to identify organisations that might have weak accountability arrangements
- f) withholding final grant payments or refusing to accept new grant applications from an applicant who has not completed a full grant acquittal report.

## Other matters

1034. Apart from the matters already discussed in this report, two further matters deserving comment arose during the investigation.

## Multicultural communities

1035. The ML faction focused much of its branch stacking activities on particular ethnic communities. This was a strongly recurring feature of this investigation, which raised difficult issues about the extent to which enrolled members from those communities were being used as ciphers for factional ambition or were genuinely involved with and supportive of the ALP and of a factional organiser's efforts. The answers undoubtedly ranged across a spectrum of commitment and care must be taken not to reduce that range to patronising or racist stereotypes of community involvement and motivation.
1036. The issue raised questions about the nature of political parties' engagement with multicultural communities and their efforts to give those communities a voice in party ranks. The Bracks–Macklin Report recommended retaining, with some modifications, the ethnic community branches that began to be established by the ALP in the 1970s as a means of encouraging participation by people from those communities. Despite these efforts and the efforts of other parties, the level of representation of people with multicultural backgrounds, especially with non-European backgrounds, remains disproportionately low.<sup>172</sup>
1037. While these issues were ultimately beyond the scope of an investigation looking at the misuse of public resources, we draw attention to them as being of concern to anyone with an interest in strengthening our democratic institutions. We query if the engagement with some multicultural communities is too strongly weighted towards collecting numbers than promoting a new generation of leaders in Australian political parties.

1038. In Victoria, we note the Victorian Electoral Commission and Leadership Victoria's Active Citizenship Leadership Program, and the Victorian Electoral Commission's Democracy Ambassadors Program to develop the leadership skills, capabilities and confidence of members of multicultural communities. We also note the Dual Identity Leadership Program, an initiative of Vietnamese Community Australia – Victorian Chapter. The program has about 30 participants each year and aims to be a blueprint for how migrant communities could achieve better representation in political and public life. Three graduates of the program were elected to local council positions in 2021.

## Use of the Victorian electoral roll

1039. The Victorian electoral roll is established under the *Electoral Act 2002* (Vic) and contains sensitive personal details about Victorian electors. The investigation found that the legislative constraints on its use to protect electors' privacy were routinely circumvented by factional operatives who wanted to check the accuracy of their factional and rival factional members' details, regardless of whether or not the operative had a connection to the relevant electorate. As noted in Chapter 7, this type of use does not appear to be envisaged by section 36 of the Electoral Act, which only allows legitimate checking of the accuracy of the roll by political parties.
1040. The Victorian Electoral Commission could consider reviewing the use that political parties are making of the electoral roll data that it manages, issuing guidance and stipulating conditions for its use.

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<sup>172</sup> See Chapter 2.

# Appendix A. People named or referred to in the report and responses to the draft report

## People named or referred to in the report who are *not* subject to adverse comments or opinions

In accordance with section 162(4) of the IBAC Act, persons who were named in the report but were not the subject of any adverse comment or opinion were given the opportunity to inspect parts of the report and to comment on those parts if they wished. There is no requirement that IBAC (or the Ombudsman) set out the content of those responses. The following persons and bodies are named or identified in the report but are *not* the subject of direct adverse comments, opinions or findings by IBAC or the Ombudsman. IBAC is satisfied under section 162(7) of the IBAC Act that naming these persons in the report is necessary or desirable in the public interest and that doing so will not cause unreasonable damage to their reputation, safety or wellbeing.

- Daniel Andrews
- Mark Dreyfus
- Peter Khalil
- E-Focus
- Darebin City Council
- The Victorian Electoral Commission

## Responses provided by people named or referred to in the Report who are the subject of adverse comments or opinions

Where IBAC and the Ombudsman have made an adverse comment or opinion, or a comment or opinion that may be considered to be adverse, about any person or public body identified in this report, that person or public body has been given a reasonable opportunity to respond to those comments or opinions by being shown a draft version of the report.

A number of persons and entities who are the subject of such comments or opinions responded to the draft report and changes were made or incorporated into the report on the basis of those responses. Those responses are not set out in any further detail in this appendix.

The following persons and public bodies are the subject of comments or opinions that are, or may be considered to be, adverse and either did not provide a response to the draft report or advised they did not have any comments to make about it.

- Anthony Byrne
- Michael De Bruyn
- Sarah Connolly
- Nazih Elasmari
- Meng Heang Tak
- Katie Hall
- Cambodian Association of Victoria
- Haraco Pty Ltd
- Madaale Productions
- Nomads Pizza and Café
- YMCA

Persons identified only by pseudonym:

- Electorate Officer A
- Electorate Officer B
- Electorate Officer R
- Electorate Officer E
- Electorate Officer F
- Ministerial Staffer O
- Electorate Officer N
- Ministerial Staffer AB
- Ministerial Staffer G
- Electorate Officer I
- Electorate Officer J
- Electorate Officer X
- Ministerial Staffer P
- Person U

In accordance with sections 162(2) and 162(3) of the IBAC Act, responses that expressed broader concerns about the draft report; that sought changes between the draft report and the final report that were rejected in whole or in part; or that required further elaboration are set out as follows.

Person or Public body	Response to the draft report
<p><b>Adem Somyurek</b></p>	<p>Mr Somyurek is the subject of adverse findings in this report.</p> <p><b><i>Response from Mr Somyurek</i></b></p> <p>On 29 April 2022, IBAC and the Ombudsman received submissions on behalf of Mr Somyurek. Those submissions stated that Mr Somyurek declined to respond to the draft report on two grounds:</p> <ul style="list-style-type: none"> <li>• He submitted that the fairness of the process had been undermined by publication by <i>The Age</i> newspaper on 28 April 2022 of information from the confidential draft report.</li> <li>• Mr Somyurek also stated that IBAC was prohibited, under s 162(5) of the IBAC Act, from publishing: any and all references to his conduct; factual matters concerning his conduct; or findings of fact concerning his conduct on the basis that the publication of such information would prejudice defamation proceedings which he had brought in the Supreme Court of Victoria against Nine Network Australia Pty Ltd, The Age Company Pty Ltd and Nick McKenzie.</li> </ul> <p>Regarding the first of these submissions, we note that both IBAC and the Ombudsman are under statutory obligations to provide copies of relevant extracts of the draft report to persons referred to in the draft report. IBAC and the Ombudsman are able to confirm that the source of the leak to the media outlet was not from IBAC or the Ombudsman. At the time of drafting this report, investigations continue as to the identity of the person who released the material contrary to the law. We further note that, despite his statement that he would not respond to IBAC and the Ombudsman in relation to the draft report, on 22 June 2022, he made a speech in parliament in which he denied in detail what he anticipated would be the bases upon which IBAC and the Ombudsman would find him in breach of the Members of Parliament Code of Conduct and in which he stated he had done nothing wrong and that he has always complied with legislation, custom and practice. This report sets out our reasons why those contentions must be rejected.</p> <p>With regard to the second of his submissions, which involves the interpretation of a provision that applies to IBAC alone, IBAC disagrees that publication of this report would prejudice those proceedings.</p>



<p><b>Marlene Kairouz</b></p>	<p>Ms Kairouz is the subject of adverse findings in this report.</p> <p><b><i>Response from Ms Kairouz</i></b></p> <p>On 29 April 2022, IBAC and the Ombudsman received submissions on behalf of Ms Kairouz. Ms Kairouz stated that the draft report should be amended to remove the amount of \$15,000 - \$18,000 (the <b>figure</b>) at paragraph 84 in the section titled “<i>Payment for Memberships</i>”. During her examination Ms Kairouz stated that some of the figure would be paid back and the remainder of the figure would be used on donations to schools and community groups. Ms Kairouz states that IBAC did not clarify, during the examination, how this affected the figure and submitted that the figure should be removed from the final report to adequately reflect her evidence.</p> <p>IBAC and the Ombudsman have reviewed the evidence she gave in her examination. We do not agree with her submission that the figure should be removed, but we have clarified the wording of the paragraph in response to her submission.</p>
<p><b>Robin Scott</b></p>	<p>Mr Scott is the subject of adverse comments or opinions in the report.</p> <p><b><i>Response from Mr Scott</i></b></p> <p>On 25 April 2022, IBAC received a response on behalf of Mr Scott. The response made a series of broad contentions about the draft report, in particular that it included “many failures to provide procedural fairness”, “misunderstandings of the law” and “confusion about the facts”. The response also stated that the “language used in the report is constructed in such a way that meaning is confused on significant matters relating to Mr Scott and other person” and that “any fair minded person would likely be misled by the report [...] on key facts relating to Mr Scott”. It stated that the draft report “contains inexact proofs, indefinite testimony, and indirect inferences and there has been no attempt to apply the Briginshaw standard to the proposed findings, when it would clearly apply give the seriousness of the allegations raised against Mr Scott”.</p> <p>Mr Scott requested that, to the extent that IBAC and the Ombudsman do not in the final report adopt any of the submissions in his response, the relevant paragraphs of the submission be reproduced in full in the final report. IBAC accepted some of the changes requested by Mr Scott, those are reflected either in the body of the report or are contained in a footnote to the relevant paragraph. The paragraphs relevant to the submissions which were not accepted at all or that have not been fully addressed in the body of the report are set out as follows:</p> <p><b><i>“Alleged Misuse of Staff for Factional Work</i></b></p> <p><i>There is no adverse finding in the draft report against Mr Scott relating to the use of staff to engage in factional work during work hours ... . As such, Mr Scott’s admissions in evidence to branch stacking, referred to at [paragraph 76-77 of the final report], are irrelevant to IBAC and the Ombudsman’s report and should not be included. The draft report makes clear that a breach of ALP party rules is outside IBAC’s and the Ombudsman’s jurisdiction ... . The paragraphs objected to are not necessary to provide context to other findings – as there are no adverse findings against Mr Scott relating to misusing staff for factional purposes. The paragraphs complained of are therefore irrelevant, not necessary for the performance of any statutory function, and should be excised.”</i></p> <p>For the reasons explained in footnote 22 of the report, IBAC and the Ombudsman did not accept this reasoning.</p>

**“Employment of Staff**

Mr Scott’s evidence was that appointing persons who were both politically aligned and competent to do the job were the relevant factors in employing electorate officers (T2042, T4434-T4437).

[...]

Nonetheless, Mr Scott made clear in his evidence that only competent candidates would be employed and retained in employment.

[...]

[...] Mr Scott had a proper basis to understand [Electorate Officer Q] was qualified for the position. That there were minimal costs incurred in the hours when [they were] employed is to be understood in the context that employment decisions are not always perfect and where, as here, there was a trial period to properly and fully assess suitability (which [Electorate Officer Q] failed), it could never be concluded that there was an unreasonable cost to the public.

[...]

**The Himilo Project Funding**

[...]

As Mr Scott stated in evidence, SACOV did not receive the Himilo funding (T4372). The funding was provided to E-Focus (T4372, T4433). This is a fact that is not made sufficiently clear in the draft report (see para 525). To Mr Scott’s knowledge, there was not even an application made by SACOV for the Himilo funding in question. No evidence has appeared from the draft report to reveal that to be incorrect. The Ministerial sub-Committee, of which Mr Scott was one of approximately 6 Ministers, did not deliberate over a funding application from SACOV for the process referred to in the evidence of Mr Somyurek and Mr Garotti. The process was therefore not corrupted in any way by Mr Garotti.

[...]

Mr Scott did not ask and had no knowledge of [Ministerial Staffer AC] intervening in the grant process relating to the Himilo grant (T4433). It is not clear that [Ministerial Staffer AC] did anything at all in relation to the grant process or whether [they were] deliberately misrepresenting the facts to Mr Garotti (T4434). If [Ministerial Staffer AC] did anything to involve [themselves] in, or attempt to manipulate, the grant process for the Himilo Grant, it was beyond [their] authority to do so and involved in [them] acting contrary to Mr Scott’s instructions. Mr Scott gave evidence that if applicants for grants contact [Ministerial Staffer AC] directly, Mr Scott would have expected them to be referred to the appropriate grant processes (T2081). His expectation is that they his advisers would have no influence in how a grant is to be awarded (T2151-2152). Mr Scott had set up reforms to try and militate against that happening (T2082, T2152). [Ministerial Staffer AC] had performed excellent work for Mr Scott in a number of areas, including promoting social cohesion. At the time in question, [Ministerial Staffer AC] had significant responsibilities relating to the expansion of the role of the Minister for Multicultural Affairs, due to an increased threat of violent extremism, the rise of the far-right, and threats to social cohesion. The work [Ministerial Staffer AC] undertook in response to these issues was world-leading, providing a model for other jurisdictions, and there is little doubt in Mr Scott’s mind saved lives (T2144-T2146). As such Mr Scott had no reason to believe [Ministerial Staffer AC] would behave in the way alleged. [Ministerial Staffer AC] gave evidence that [they] had received training on the Ministerial officers’ Code of Conduct (draft report [528]). No doubt this included conflict of interest training. [Ministerial Staffer AC] gave evidence that Mr Scott was a “straight shooter” who expected him to be “a straight bat” and not be factional in his role (draft report para [528]).

[...]

Mr Scott's evidence was to the effect that the more funding decisions are removed from the operational activities of Ministers the better (T2082, T2105, T2138-2142). He also gave evidence that when he became aware of any inappropriate processes relating to grants, he did not authorise them (T2084). The only available conclusion on the evidence is that he approached the grants process as one with the utmost integrity. This is supported by what [Ministerial Staffer AC] appears to have said to IBAC. [Ministerial Staffer AC] appears to have given evidence that when [they] did speak to Mr Scott about Mr Garotti pressuring him, Mr Scott told [them] not to carry out Mr Garotti's requests (para [531]). This is consistent generally with Mr Scott's approach to the grant's process which was to ensure a completely independent, arm's length process that was beyond reproach.

[...]

Additionally, Mr Scott has genuinely engaged with IBAC by suggesting reforms relating to Ministerial involvement in the grant process (T2138-2142), not because of any acceptance of a conflict on his part, but through a genuine desire to assist the process of reform (at T2139 Mr Scott makes clear his policy reasons for suggesting these amendments). To this end, Mr Scott also made written submissions in January 2022 to IBAC suggesting reforms in this area which would involve the Ministers being removed from the grant process completely. He has seriously engaged with IBAC in relation to reform suggestions in a way that reflects positively on his integrity and credibility.

[...]

#### **No Investigation of other ALP Factions**

It is noted for the record that Mr Scott's position is that this IBAC investigation has unfairly focussed on only one faction of the ALP. The Commission and the Ombudsman have been made clearly aware of allegations of branch stacking in other

ALP factions. At para [24] of the draft report, it is claimed that "the totality of evidence" did not permit scrutiny of misuse of public resources by other factions." This is plainly at odds with the evidence before IBAC, including evidence referred to in the draft report. In the draft report at para [461], page 98, it is noted that [Electorate Officer Q] is referred to as having engaged in branch stacking for the Socialist Left faction. No doubt [Electorate Officer Q] was a witness questioned by IBAC. It is plainly inconsistent for IBAC to attempt to use [Electorate Officer Q's] evidence to implicate members of the ML faction but when [they] gives direct evidence of branch stacking against the Socialist Left, this is not pursued. Further, whilst the topic of branch stacking was touched on in Mr Scott's examination (T4344-4347), it is clear that there was a great deal of further questioning that could have been conducted in relation to the areas raised by Mr Scott, had there been a desire to do so. There appears to have been no appetite to conduct an examination of the issue on a party-wide basis. This is unfortunate. It gives the misleading appearance that branch stacking was a practice confined to one faction of the ALP. While making no comment about how and why this investigation commenced, it also leaves IBAC and the Ombudsman exposed to being seen and/or being criticised as being tools of a factional powerplay within the ALP."

Mr Scott also made a request for the transcript of Ministerial Staffer AC and Ministerial Staffer K's evidence, who were both examined privately by IBAC. This request was refused; however, the sections in the report relating to Ministerial Staffer AC and Staffer K have been substantially revised in response to Mr Scott's submissions.

	<p>On 8 April 2022, IBAC received an additional response from Mr Scott. The submissions referred, in part, to a request made by Mr Scott for access to investigation transcripts of other persons examined. IBAC refused the initial request on the basis of confidentiality. Mr Scott submitted that such a refusal constituted a denial of procedural fairness. In addition, Mr Scott submitted that unless he was provided with “the content of the adverse comment or opinion <u>and</u> the evidence upon which the findings were purportedly based” he had not been provided with a “reasonable opportunity” to respond under s 162(3) of the IBAC Act because he was unable to assess whether the findings were reasonable and supported by the evidence.</p> <p>IBAC disagrees with that submission and Mr Scott’s interpretation of the procedural fairness requirements in s 162(3).</p>
<b>Person D</b>	<p>A person identified only as Person D is the subject of adverse comments or opinions in this report.</p> <p><b><i>Person D’s Response</i></b></p> <p>On 29 April 2022, IBAC received submissions from Person D, who denied all allegations made against them.</p>
<b>Kaushaliya Vaghela</b>	<p>Kaushaliya Vaghela is the subject of adverse comments or opinions in this report.</p> <p><b><i>Ms Vaghela’s Response</i></b></p> <p>On 29 April 2022, IBAC received submissions from Kaushaliya Vaghela, who:</p> <ul style="list-style-type: none"> <li>• stated that the report does not accurately represent her views;</li> <li>• contended that the inquiry, the public and private hearings and the draft report were biased and unfairly focused only on the moderate labour faction of the Labor party, had a “set agenda” to tarnish her and her husband and “started with a pre-determined outcome”;</li> <li>• maintained, in response to the findings – which are not specific to her – at paragraphs 662 and 665 of the report, that her staff prioritised their public duties, rarely carried out party specific work during their working days and if they did, made up the time afterhours or on weekends.</li> </ul> <p>Regarding the first of these points, IBAC and the Ombudsman have made various changes to the report in response specific matters raised by Ms Vaghela. We reject her second point above. Regarding her third point, we note that those paragraphs do not specify her or her staff and that issues specifically relating to her and her staff are dealt with elsewhere in the report.</p>

<p><b>Electorate Officer Z</b></p>	<p>A person identified only as Electorate Officer Z is the subject of adverse comments or opinions in this report</p> <p><b><i>Electorate Officer Z's Response</i></b></p> <p>On 28 April, IBAC received submissions from Electorate Officer Z who raised a number of points, some of which are reflected in footnotes to the body of the report. Of note, Electorate Officer Z told IBAC that at the time of their examination they were taking medication, which in their submission, would have been a contributing factor in their demeanour. The implication is that this may have impacted the way their evidence was perceived.</p> <p><u><i>Paragraph 83</i></u></p> <p>In response to the matters in Chapter 2 of the draft report, Electorate Officer Z objected to the statement that they had engaged in 'exactly the same reimbursement process with further potential recruits' as it was 'unsupported by the evidence'.</p> <p><u><i>Case Study 11 (footnote 3, Chapter 5)</i></u></p> <p>In response to the matters set out in Case Study 11, Electorate Officer Z stated that the document found on Mr Somyurek's computer contained 'various factual errors' and contrary to that document, they did not try to recruit ALP members for Kaushaliya Vaghela in April 2016 both in part because they were aggrieved at not being selected as a member in 2018 and also because at that time Ms Vaghela had only been a member of the ALP for around a year and they would not have recruited for her if she was not running for office.</p> <p>Electorate Officer Z stated that they had initially sought employment with Mr Somyurek as a trade advisor, which was commensurate with their experience, and only accepted an electorate officer position when no positions as trade advisor were available. Electorate Officer Z also stated that their evidence and the evidence of Mr Somyurek was contrary to the proposed finding that Electorate Officer Z was employed for factional reasons.</p> <p>Electorate Officer Z noted IBAC's findings were in part based on a review of their emails and submitted that "not all work of an electorate officer is conducted by email". They also disputed that the intercepted call suggested that they were engaging in branch stacking activities with Mr Somyurek as it did not reflect their evidence. Electorate Officer Z also submitted that they were a passive participant in the call which Mr Somyurek made for the purpose of protecting his own interests. Electorate Officer Z provided an extensive list of the duties they carried out as an electorate officer at different office locations.</p> <p>Although Electorate Officer Z denied having paid for other ALP memberships, we note the evidence provided by an ALP member to the contrary, which as outlined in case study 11, is preferred to Electorate Officer Z's evidence. None of the matters raised by Electorate Officer Z in response to the draft report alters our conclusion, on all of the relevant evidence, that it is likely that Electorate Officer Z was employed for factional considerations and that those considerations were greater than the expectation that this person would fulfil the requirements of the role</p>
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<p><b>Electorate Officer Q</b></p>	<p>A person identified only as Electorate Officer Q is the subject of adverse comments or opinions in this report.</p> <p><b><i>Electorate Officer Q's Response</i></b></p> <p>On 29 April 2022, IBAC received submissions from Electorate Officer Q. In their response to the draft report, Electorate Officer Q made a number of comments about their employment, in addition to the comments in footnotes to the report, Electorate Office Q stated that they are a longstanding and loyal member of the Labor party and worked hard for the community for many years.</p> <p>Electorate Officer Q stated that they “offered to provide any additional information the enquiry may need regarding the grants provided to the ALF. Rather than asking to clarify any information provided, the report has been drafted and the conclusions have been made. A simply follow up would have resolved many issues”. They also noted the negative impacts the report was likely to have on them and requested that the reference to the ALF be removed.</p>
<p><b>Electorate Officer H</b></p>	<p>A person identified only as Electorate Officer H is the subject of adverse findings in this report</p> <p><b><i>Electorate Officer H's Response</i></b></p> <p>On 29 April 2022, IBAC received a response from Electorate Officer H. Electorate Officer stated that that they have always done their best to work hard for all the communities and to bring a positive change to peoples lives. They stated that they have assisted many hundreds of people and have worked closely with a large number of multicultural community and faith groups across all faiths and provided them with any assistance they may required. They emphasise that they “totally refute the fact that I or the ALF have provided misleading information”.</p>
<p><b>Person AA</b></p>	<p>A person identified only as Person AA is the subject of adverse findings in this report.</p> <p><b><i>Person AA's Response</i></b></p> <p>On 29 April 2022, IBAC received submissions from Person AA. Some of comments and changes requested by Person AA are reflected in the body of the report or in a footnote to the relevant paragraph, the remainder are set out as follows.</p> <p>In their response, Person AA requested that IBAC make findings and name the persons aligned with the ML faction who attended, or are alleged to have attended, the meeting referred to in paragraph 279 and the subsequent paragraphs. Person AA submitted that it was “remarkable” that those people were in attendance and invited IBAC to find that those persons were present for the purpose of an “organised branch stacking operation” and that the “invasion of the Branch meeting and what followed was part of a concerted campaign [...] designed to ruin [Person AA's] reputation in retribution for his having joined the Socialist left Faction of the Branch.”</p> <p>In their response to the draft report Person AA requested that IBAC remove the reference in paragraph 281 to “allegedly”.</p>

	<p>In their response to the draft report, Person AA strenuously denied making racist comments referred to at paragraph 281. They stated that the comments were made during a private discussion which was not part of the Branch meeting or any formal ALP event or meeting and were recorded by a person trespassing in Person AA's home. Person AA submits that there were several contextual factors which, when properly considered, demonstrate that the remarks were not racist.</p> <p>Person AA contends that a transcript of the video was made and disseminated to the media as part of a politically motivated campaign “with the direct objective of destroying [their] reputation”.</p> <p>Person AA requested that the following statement be “placed on the record” that they “have a long and fruitful working relationship with [their] local mosque, and local members of [their] community who are practicing Muslims and [they do] not hold any Islamophobic or racist opinions or views”.</p> <p>Person AA also stated that, in his view, Mr Somyurek orchestrated Person AA's Administrative Committee Referral to the Disputes Tribunal of the ALP. They emphasised that the ALP did not commence disciplinary proceedings against them. In their view, the ML faction misused its control of the Administrative Committee and Mr Somyurek directed that a dispute be brought against Person AA. Person AA stated that the original dispute made no mention of branch stacking allegations; such allegations were ‘confected’ in May 2020 and introduced in one of the disputes against Person AA. In their view, the disciplinary proceeding was ‘premised of allegations of racism made against [Person AA], which, properly construed, had no foundation’. Mr Somyurek ‘interfered with and secretly discussed the dispute brought against [Person AA]’ with the Tribunal Member responsible for determining the disputes.</p> <p>If the matters raised by Person AA in their response are correct, they do not detract from the issue of relevance to this investigation: that the incident provides another example of Mr Somyurek using electorate office staff for factional purpose.</p>
<p><b>Tien Kieu</b></p>	<p>Dr Tien Kieu is the subject of adverse comments or opinions in this report</p> <p><b><i>Tien Kieu's Response</i></b></p> <p>On 1 June 2022, IBAC received a response from Dr Kieu stating there was “<i>not a skerrick of evidence admissible in a legal proceeding or otherwise contained in the redacted Draft Report provided to [him] that would even approach the threshold for misconduct in public office or corrupt conduct or, more particularly, lead to the conclusion that he has engaged in conduct amounting to the possible misuse of electorate office and ministerial office staff and resources for branch stacking and other party related activities.</i>” He stated each and every statement had “<i>absolutely no evidentiary value on many bases including being uncorroborated hearsay.</i>”</p> <p>Footnote 96 of the report makes clear that the report makes no finding about any misuse of public resources by Dr Kieu. The evidence relating to the placement of staff in Dr Kieu's office for factional purposes or due to factional considerations, and Dr Kieu's response to specific aspects of that evidence, is dealt with in detail in the report.</p>

<p><b>Person V</b></p>	<p>A person identified only as Person V is the subject of adverse findings in this report.</p> <p><b><i>Person V's Response</i></b></p> <p>On 8 and 22 June 2022, IBAC received submissions from Person V. Person V stated that the detail pertaining to them in the draft report is “incorrect” and “wrong” in “material respects” and as a Commonwealth employee, it is not apparent that their employment circumstances or conduct are in any way matters that can be considered to fall within the jurisdiction of IBAC. Person V declined to provide any further detail about these alleged errors.</p>
<p><b>Electorate Officer L</b></p>	<p>A person identified only as Electorate Officer L is the subject of adverse findings in this report.</p> <p><b><i>Electorate Officer L's Response</i></b></p> <p>On 29 April 2022, IBAC received submissions from Officer L. Electorate Officer L stated that “at all times [they had] attended and worked in the electorate office and followed directions from the member.” They objected to the insinuation that their work was “based on factional or community volunteering ... lines” or that the party’s “grants have been favoured and [members] acted in a corrupt process.” They also stated that they had worked as an electorate officer for many years and had undertaken volunteer work contributing to the community.</p>
<p><b>Person W</b></p>	<p>A person identified only as Person W is subject to adverse comments in this report.</p> <p><b><i>Person W's Response</i></b></p> <p>Person W told IBAC that while they did not wish to make any comments in response to the draft report, the decision to make no comments should not be taken to mean they accepted the matters raised in the draft report.</p>
<p><b>SACOV</b></p>	<p>IBAC wrote to SACOV on 3 March 2022 indicating that a draft report containing adverse comments would shortly be provided for comment and review. The draft report was provided via a link on 5 April 2022. Correspondence of the same date contained an explanation of how to access the draft report and how and when to respond. SACOV were invited to contact IBAC if there were any difficulties accessing the draft report. No such contact was made. On 6 June 2022, IBAC confirmed that the draft report had not been accessed or downloaded from the available link. On 7 June 2022, IBAC wrote to SACOV seeking confirmation of whether or not it intended to respond to or comment on the draft report. On 8 June 2022, the following response was received: “we have not accessed the draft document. We are aware of what the media commented about the SACOV in regard to IBAC’s investigation. We also do not know what the allegation against SACOV is. SACOV denies any suggestion of impropriety, unethical behaviour, or misuse of the grants SACOV received”.</p>



<p><b>DFFH</b></p>	<p>IBAC and the VO makes no direct adverse comments or opinions about the Department of Families, Fairness and Housing in this report</p> <p>In respect of paragraph 699, DFFH also notes that the risk referred to in that paragraph is deemed reasonable noting the reporting burden placed on volunteer-based organisations when delivering low value and low risk grants, noting that low value grants are often, but not always, low risk.</p> <p><b><i>Grant Reform Project</i></b></p> <p>In respect of paragraph 705, DFFH stated that it is currently undertaking a Grant Reform Project that will improve policy guidance and systems when managing grants. The project has four key deliverables:</p> <ul style="list-style-type: none"> <li>• a new Grants Management System (Grants360) that supports DFFH to deliver grants to community.</li> <li>• a DFFH Grants Hub, including a department specific grant management policy framework developed in line with Standing Direction 4.2.2 – Discretionary Financial Benefits – grants, sponsorships, gifts, and donations, designed in accordance, and, practical tools that enable better grant management and monitoring.</li> <li>• improved management oversight of grant delivery.</li> <li>• a bespoke training suite for grants staff.</li> </ul> <p>The DFFH Grants Hub will provide best practice grants management policy for the department, and formalise the steps required when delivering and monitoring grants. Specifically, the DFFH Grants Hub will provide clear guidance for staff outlining acceptable information and documentation for milestone reporting and acquittals. This includes providing guidance to grant program managers when establishing expectations on reporting requirements, proportionate to risk, at the outset of a grant program.</p> <p>The DFFH Grants Hub will also provide improved guidance to staff on escalation requirements when monitoring grants, in line with those described and agreed to by grant recipients in the VCFA Terms and Conditions.</p> <p>In addition, the updated grants management system (Grants360) will enable end-to-end online grant management. It is anticipated that improved efficiency in grants administration will enable staff more time to focus on a relationship-centred approach to grants monitoring</p> <p><b><i>Funds being used for their intended purposes</i></b></p> <p>The VAGO Assurance Review of Grants to the Migrant Workers Centre recommended that DFFH ‘require all grant recipients to certify that they have used funds for their intended purpose when reporting on performance and requesting payments’.</p>
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	<p>In response, DFFH committed to review grants management processes and frameworks to tighten terms and conditions of funding; revise guidelines around drafting of agreements; and revise reporting requirements. These changes will;</p> <ul style="list-style-type: none"> <li>• ensure that funding recipients are clear on what is acceptable use of public money at the outset of the engagement;</li> <li>• (using a principled approach) oblige funding recipients to liaise with the department on certain types of high-risk or sensitive activities before engaging in them using public funds and;</li> <li>• address under-reporting to ensure the details of activities undertaken with public money are adequately captured in progress reports and acquittals.</li> </ul> <p>Consequently, DFFH has developed a departmental common and agreed certification script to be used across all progress reports and acquittals. This common certification script requires grant recipients to declare that funds have been used for their intended purpose, that information is true and correct and is provided with all necessary searches, investigations and enquires.</p> <p>In addition, DFFH are working to update both the short form and standard VCFA to explicitly state that grant funds cannot be used for political campaigning or advocacy activities for political parties.</p> <p>Together these actions will tighten the process for acquittal by declaration on small grants. Principle seven of the Investment principles for discretionary grants states ‘accountability requirements imposed on grant recipients should be proportionate to risk’ and acknowledges that accountability and reporting requirements place a significant burden on grant recipients. This is particularly true for many of the volunteer based, migrant community organisations supported through the Multicultural Affairs grant program. Consequently, acquittal by declaration is viewed by the department as a reasonable mechanism for acquitting low value and low risk grants.</p>
<p><b>Victorian Multicultural Commission</b></p>	<p>The Victorian Multicultural Commission (<b>VMC</b>) is the subject of adverse comments or opinions in this report.</p> <p>In respect of paragraph 495, the VMC wish to clarify that it was represented on various grant assessment panels, providing advice, along with other members of the panel. The department would then brief the Minister for Multicultural Affairs providing recommendations based on their assessments and the respective panel’s advice and input.</p>

<p><b>DPC</b></p>	<p>The Department of Premier and Cabinet (<b>DPC</b>) is the subject of adverse comments or opinions in this report.</p> <p>DPC have enquired with DFFH as to the audit referred to at paragraph 617 and it is not aware of the specific audit referred to by Mr Scott.</p> <p>In respect of paragraph 619, DPC considers it is misleading to state that it only requires grant recipients to submit a self-declaration as to how grants have been spent. Where appropriate, DPC requires grant managers to request substantiation of grant expenditure including receipts, audited financial statements or both. DPC considers that grant managers are guided by principles set out in DPC's Grant Management Framework and the investment principles for discretionary grants published by the Department of Treasury and Finance in the 'Better Grants by Design' document.</p>
<p><b>ALF</b></p>	<p>The Australian Light Foundation is the subject of adverse comments or opinions in this report.</p> <p>In respect of paragraphs 558-563 and 558 ALF says that there are no regulations that state that organisations that have elected members that are also an electorate officer or members of a political party cannot apply for government grants. The ALF says further that the only government department that has provided grants to it is Mr Robin Scott's department and that neither Electorate Officer H, nor any other ALF member has ever had any involvement in Mr Scott's department. Electorate Officer H's role as an electorate officer was in Marlene Kairouz's department which never provided grants to the ALF.</p> <p>The ALF also says that it always followed the required processes and did not obtain any privileged access to ministers when applying for any government grants.</p> <p>The ALF provided the following information in respect of paragraphs 577-581:</p> <p>The ALF in its response received a \$4,950.00 grant to conduct the Western Suburbs Multicultural Harmony Festival (Festival). The Festival was the first of its kind to be conducted in the Western Suburbs. The aim of the Festival was to bring together a diverse range of community participants from various culturally and linguistically diverse community backgrounds living in the western suburbs of Melbourne. The Festival encouraged the participation of the entire community which enabled various culturally and linguistically diverse community groups to come together. The activities at the Festival included cultural food competitions, rides for children, various cultural music and dance, as well as a mini world cup futsal/soccer tournament.</p> <p>The ALF says that the Report insinuates that the accountability report provided by the ALF was false and misleading and the funding was not spent in accordance with the conditions of the grant. The ALF considers that these insinuations are false and misleading.</p> <p>It says further that in its Initial Funding Application, the ALF estimated that the expenditure for the Festival would be approximately \$13,850.00. The ALF requested a grant for the sum of \$8,500.00 (being less than the estimated total expenditure). The government confirmed in the Funding Agreement that the amount of funding they would be providing was the sum of \$4,950.00. As the ALF was not provided the \$8,500.00 of funding requested, the ALF had to review their plans for the Festival and the spendings, as well as the allocation of the funding.</p>

	<p>Regarding the venue/meeting fee charge, the ALF says this fee was included in the Initial Funding Application and it considers it is reasonable and not an unusual fee to be charged as ALF could not hire out the Premises to anyone else on the date of the Festival. It is of the view that the fee is well in line with market fees for a venue of this nature. The \$518.00 (administration and overheads) was applied to wages of those people that administered and managed the Festival.</p> <p>Finally, the ALF contends that receipts provided in the accountability report evidence that a large number of items were purchased for the event and says that the volume of items purchased are reflective of the estimated figure of 400 people being in attendance at the Festival.</p>
<p><b>Victorian Branch of the ALP</b></p>	<p>The Victorian Branch of the Australian Labor Party is the subject of adverse comments or opinions in this report.</p> <p>On 25 April 2022, IBAC received submissions from the Victorian Branch of the ALP in response to the draft report. A number of specific changes were made to the content of the draft report on the basis of their response. However, a summary of the general commentary provided by the Victorian Branch of the ALP in their response is set out as follows:</p> <ul style="list-style-type: none"> <li>• In their view, the report fell short in two key areas - fairness and accuracy.</li> <li>• They stated that the conduct and behaviour of ALP members and staff as set out in the report is not reflective of the majority of ALP members nor of the Branch as a whole.</li> <li>• The Branch submitted that the draft report focuses too heavily on culture and internal party matters and that the comments made by the report about these matters “go beyond what is required” to explore the “underlying factors that support its findings”. The response stated that “intense focus on certain internal Branch processes, goes beyond the jurisdiction of IBAC, as well as the investigation’s scope and Terms of Reference” and that even if they were required for context they have been characterised in a way which is “inaccurate and unbalanced”.</li> <li>• The Branch submitted that the report uses an inconsistent definition of branch stacking which would suggest flaws in IBAC’s analysis. They also stated “[t]he Branch does not agree with the suggestion that any member who does not have an interest in “party activities” is not genuine [...] people have different motivations for joining the party. The fact that some members choose not to be “active” does not, of itself, mean they are not genuine members.”</li> <li>• The Branch does not consider that the draft report adequately articulates the magnitude of the intervention of the National Executive to appoint Administrators, the comprehensive work done by the Administrators, and the extent to which changes made by the National Executive in September 2020 and January 2021 have addressed the branch stacking “business model” identified by the Administrators and IBAC.</li> <li>• In the Branch’s view, the report unfairly speculates about the conduct and responsibility of Ministers and MPs from other factions in circumstances where those people have not had an opportunity to respond to the draft report;</li> <li>• The Branch considered that Chapter 2 of the draft report was an unfair assessment of the steps it has taken to address branch stacking, cultural issues and to improve internal branch governance.</li> </ul>

- The Branch submitted that it responded immediately to the crisis highlighted by 60 Minutes and took immediate action. The National Executive effected the largest Federal intervention into the branch since 1970. Appointing Macklin and Bracks was an unprecedented move.
- The Branch agrees with IBAC’s views regarding cultural and branch stacking issues in June 2020, but considers that the Branch has taken these issues (and is addressing them) seriously.
- The Branch also notes that The MAC was abolished and replaced by a Membership Sub-Committee, including a rule change. The ALP considers that IBAC should engage with the rationale behind Macklin and Bracks’ 37 recommendations. By failing to engage, the ALP says that IBAC is ill-positioned to forecast whether those recommendations will succeed.
- In its response to IBAC, the Branch notes that it considers the Administrators’ rule changes will ‘improve the leadership and organisational culture’. In its response, the Branch points out the following:
  - (a) *changes to the Administrative Committee will ensure that there is a stronger focus on governance;*
  - (b) *creating overarching obligations for the Administrative Committee, which include:*
    - (i) *members of the Administrative Committee being required to act in the best interests of the Party; and*
    - (ii) *members of the Administrative Committee having a responsibility to ensure the integrity of the Branch’s membership;*
  - (c) *limiting the use of proxies on the Administrative Committee and requiring each incoming Administrative Committee and their single-appointed proxy to undertake governance training;*
  - (d) *the creation of the Party Monitor – an internal ombudsman with responsibility and resources to investigate branch stacking and bring charges under the rules – a role currently occupied by the Honourable Professor John Thwaites, a former Deputy Premier. The Party Monitor is independent of the Administrative Committee and plays an ongoing role in ensuring the integrity of the membership and overseeing compliance with the rules. This includes:*
    - (i) *providing an initial report to the National Executive on the findings of its inaugural membership review;*
    - (ii) *undertaking a review of the integrity of the membership every two years;*
    - (iii) *undertaking annual reporting to the membership relating to the Party’s compliance with the rules, including the function of the Administrative Committee and its sub-committees; and*
    - (iv) *until 31 December 2025, reporting annually to the membership on the implementation of the Administrators’ recommendations;*
  - (e) *requiring all local branch executives to undertake training in relation to the Branch’s rules, legal compliance, and probity within the local branches; and*
  - (f) *strengthening the Disputes Tribunal, including by appointing a President. The first President appointed was the Honourable Kevin Bell AM QC, a former Justice of the Supreme Court of Victoria.*

- Ultimately, the ALP considers that the brevity with which the recommendations and branch reforms have been included in the report are not commensurate with those recommendations.
- The Branch notes the following as indications that it has no tolerance for breaches of its rules:
  - Mr Somyurek is no longer a member;
  - Ms Vaghela resigned her membership after being referred to the Disputes Tribunal by the IGC;
  - Ms Kairouz was charged with branch stacking offences by the Administrators. The hearing of these charges was delayed by litigation she commenced challenging the legality of the Administration;
  - Rick Garotti resigned his membership after the Administrators charged him with branch stacking offences; and
  - some of the former members who are named in the draft report as having breached the Branch rules, including Hussein Haraco, were expelled by the Administrators.
- In respect of paragraphs 45 to 51 of the report, the Branch considers that the commentary contained in these paragraphs regarding factions does not have any particular connection with the ALP in Victoria and fails to identify the basis for that commentary.
- The Branch notes that the Party Monitor has power to charge members for breaches of the rules.

The Branch considers the following paragraphs unfairly represent the Branch and summarised below:

*Paragraphs 106-107*

Regarding the Dreyfus recommendations: only some recommendations led to rule changes voted by State Conference. Comparatively, Administrators' recommendations were not left to decision of the State Conference, instead were implemented in full.

*Paragraphs 293 and following*

Deals with issues of postal and other ballots and bloc voting. The Branch contends that the matter was considered by the Administrators and dealt with by the Administrators by strengthening photo identification for all members voting at in-person ballots. The Branch says further that the Branch is currently investigating how the probity of postal ballots can be improved using IT systems, including the implementation of two-factor identity authentication.

*Paragraph 61*

The Branch considers that the report is silent on how Administrators addressed the 'branch stacking model'. The Branch suggests that, in the interests of fairness, the report refer to 'eight revised steps' that combine to make the membership process more 'robust' once the reforms are complete, which are set out below:

1. *A member applies to join through a centralised process, paying for their membership by traceable means (i.e., cash and cash-like membership payments are now prohibited).*
2. *The member's application will be processed through a new membership system and database integrated with external data sources that reviews identity, concession and enrolment information.*
3. *The member must attend a branch meeting in their first 12 months of membership and will only obtain voting rights 24 months after they attend their first branch meeting.*
4. *All transfers between branches are conducted centrally, overseen by the State Office.*
5. *The process will be supported by a new and well-funded membership and engagement division of the State Office.*
6. *The governance of the process will be overseen by a renewed Administrative Committee, which must put the interests of the party first, complemented by a small, dedicated subcommittee responsible for memberships.*
7. *Assurance on rules and processes is undertaken by the Party Monitor who will report annually to the Administrative Committee.*
8. *The Administrative Committee will report annually to the membership on the membership integrity and action taken in respect of the Party Monitor's report.*

*Paragraph 723*

In its response the Branch notes its concern that it considers the report conflates branch stacking with misuse of public resources. It notes distinction between branch stacking and other factional activities and that only branch stacking contravenes branch rules.

*Paragraph 674*

Similarly to paragraph 723, the Branch considers the report conflates branch stacking with misuse of public resources. The Branch considers that evidence of branch stacking does not equate to evidence of misuse of public resources.

*Paragraph 721*

The Branch does not consider that the evidence supports a finding that all factions misused electoral allowances and staff to engage in branch stacking. It does however agree that the words 'systemic' and 'egregious conduct' were used in the Administrators' statement in respect of branch stacking, not the misuse of electoral allowances.

In conclusion, the Branch considers that the inaccuracies in the report undermine its analysis and findings.

# Appendix B.

## Comparison of public values / principles in Victoria and the United Kingdom

\*Asterisked values are common to both jurisdictions

<b>VICTORIA</b> MP(S) Act 1978, section 4	<b>UNITED KINGDOM</b> (Committee on Standards in Public Life)
<b>Serving the public interest*</b>	<b>Selflessness*</b> Holders of public office should act solely in terms of the public interest.
<b>Integrity*</b>	<b>Integrity*</b> Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
<b>Accountability*</b>	<b>Accountability*</b> Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
<b>Leadership*</b>	<b>Leadership*</b> Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.
<b>Respect for the diversity of views and backgrounds within the Victorian community</b>	<i>(Respect was recently considered for inclusion in the UK Standards but was eventually rejected and instead incorporated into the descriptor for the Leadership Principle)</i>
<b>Diligence</b>	<b>Honesty</b> Holders of public office should be truthful.
<b>Upholding democracy</b>	<b>Openness</b> Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
	<b>Objectivity</b> Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.





# Appendix C.

## Victorian Members of Parliament Code of Conduct as provided for in the *Members of Parliament (Standards) Act 1978*

### Part 3 – Code of Conduct

#### 5 Outline of Part

- (1) This Part sets out the Code of Conduct that Members must observe when carrying out their public duties.
- (2) The Code of Conduct sets out the manner in which a Member demonstrates the values set out in section 4.

#### 5A Effect of Code of Conduct

The Parliament does not intend that the Code of Conduct –

- (a) creates in any person any legal right or gives right to any civil cause of action; or
- (b) affects in any way the interpretation of any Act or law in force in Victoria other than this Act.

#### 6 Upholding democracy and respecting others regardless of background

A Member must –

- (a) make the performance of their public duties their prime responsibility; and
- (b) exercise reasonable care and diligence in performing their public duties; and
- (c) submit themselves to the lawful scrutiny appropriate to their office; and
- (d) treat all persons with respect and have due regard for their opinions, beliefs, rights and responsibilities.

#### 7 Conflicts of interest

- (1) A Member must avoid any actual or perceived conflict of interests with their private interests.
- (2) Without limiting subsection (1), a Member has a conflict of interest if the Member –
  - (a) participates; or
  - (b) makes a decision–in the execution of the Member's office which furthers the private interests of the Member or the private interests of a specified person.

- (3) Without limiting subsection (1), a Member does not have a conflict of interest if the Member or a specified person is affected as a member of the public or a broad class of persons.

#### 8 Using position for profit

- (1) A Member must not –
  - (a) receive a fee, payment, retainer or reward; or
  - (b) permit any compensation to accrue to their beneficial interest or the beneficial interest of a specified person –for, or on account of, or as a result of the use of, their position as a Member.
- (2) Subsection (1) does not apply to any parliamentary salary or work-related parliamentary allowances, the Budget, electorate allowances, expense allowances (if any), the motor vehicle allowance (if claimed) or other prescribed allowances or other public resources under the *Parliamentary Salaries, Allowances and Superannuation Act 1968*.

#### 9 Outside employment and activities

A Member may engage in employment, business and community activities outside of their duties as a Member but must avoid any actual or perceived conflict of interest that might arise from those activities, including where the activities compromise the Member's ability to fulfil their public duties.

#### 10 Accepting any gift, hospitality or other benefit

A Member must not accept any gift, hospitality or other benefit which –

- (a) creates an actual or perceived conflict of interest; or
- (b) might create a perception of an attempt to influence the Member in the exercise of their public duties.

### **11 Use of influence**

A Member –

- (a) must exercise their influence as a Member responsibly; and
- (b) must not use their influence to improperly further their private interests or the private interests of a specified person.

### **12 Use of public resources**

A Member must comply with –

- (a) the Parliamentary Salaries, Allowances and Superannuation Act 1968 and any regulations made under that Act; and
- (b) any other law, rule or guidance regarding the use of public resources.

### **13 Personal conduct**

- (1) A Member must ensure that their conduct as a Member does not bring discredit upon the Parliament.
- (2) A Member –
  - (a) must act ethically, reasonably and in good faith when using, and accounting for the use of, public resources in relation to the performance of their public duties; and
  - (b) must not deliberately mislead the Parliament or the public about any matter relating to the performance of their public duties.
- (3) A Member must be fair, objective and courteous –
  - (a) in their dealings with the community; and
  - (b) without detracting from the importance of robust public debate in a democracy, in their dealings with other Members.

### **14 Managing confidential and personal information**

- (1) A Member must not use confidential information gained in the performance of their public duties to further their private interests or the private interests of a specified person.
- (2) A Member must respect the confidentiality of information they receive in the course of their public duties.

### **15 Post-retirement activities**

- (1) A former Member must not take improper advantage of any office held as a Member of Parliament after they cease to be a Member.
- (2) In this section, improper advantage means –
  - (a) using official information –
    - (i) that is not in the public domain; or
    - (ii) that was obtained in the course of their public duties –  
for advantage or benefit to themselves or another person; or
  - (b) breaching confidentiality obligations regarding information obtained in the course of their public duties for financial or commercial advantage or benefit to themselves or another person; or
  - (c) using their status as a former Member to obtain preferential treatment or privileged access to Government after ceasing to be a Member of Parliament.
- (3) A former Member is not to be taken to have breached confidentiality obligations regarding information obtained in the course of their public duties if the former Member was –
  - (a) required by law to disclose that information; or
  - (b) otherwise acting lawfully in disclosing that information.

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