

# CORRECTED VERSION

## PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

### Inquiry into budget estimates 2011–12

Melbourne — 17 May 2011

#### Members

Mr N. Angus

Mr P. Davis

Ms J. Hennessy

Mr D. Morris

Mr D. O'Brien

Mr M. Pakula

Mr R. Scott

Chair: Mr P. Davis

Deputy Chair: Mr M. Pakula

#### Staff

Executive Officer: Ms V. Cheong

#### Witnesses

Mr A. McIntosh, Minister responsible for the establishment of an Anti-Corruption Commission, and

Ms P. Armytage, Secretary, Department of Justice; and

Mr T. Cook, Deputy Secretary, Government and Corporate Group, and

Mr G. Hill, Executive Director, Anti-Corruption and Integrity Taskforce, Department of Premier and Cabinet.

**The CHAIR** — I now welcome Mr Tony Cook, Deputy Secretary, Government and Corporate Group, Department of Premier and Cabinet; Mr Graham Hill, Executive Director, Anti-Corruption and Integrity Taskforce, Department of Premier and Cabinet; as well as Ms Mitra Anderson-Oliver, Policy Officer, Department of Premier and Cabinet, who will be operating the presentation only. I now call on the minister to give a brief presentation of no more than 10 minutes on the more complex financial and performance information relating to the budget estimates for the establishment of an anti-corruption commission portfolio. The remainder of the time for this hearing has been allocated to questions on the establishment of an anticorruption commission portfolio. I note the query we had at the outset, and there may be a question relating to FOI.

**Mr McINTOSH** — I take you to our election commitments in relation to IBAC. Obviously we are establishing the independent, broadbased anticorruption commission, and we are going to subsume the OPI and its functions and resources into the new commission. I also just highlight that we will want to empower the new commissioner, it being the commissioner's decision to take as many of the staff of the OPI as is felt is appropriate. From the outset that will be a decision of the commissioner. It certainly will not be a decision of government. We want to appoint a single commissioner who will head the commission. Importantly, legislation will be introduced into the Parliament later this year.

The government has set out a detailed model for the anticorruption commission, and we want to ensure that we establish the best practice anticorruption commission that money can buy. We want to look at the other models and develop the best possible model for Victoria. It will have extensive powers to investigate and uncover corruption. What is not there is that it will also have extensive powers to perform an educative function, as it is certainly another significant responsibility of the commission to inform the public sector as to the risks about corruption or otherwise. It will be responsible for educating public officers and the Victorian community on the effects of corruption and for preventing it from happening into the future.

Powers and oversight: the commission will have significant powers, obviously far more than other forms of investigative bodies but similar to the OPI. Those significant powers are there to uncover corruption and include the power to compel testimony of witnesses, documents or other evidence and carry out covert surveillance, including — subject to Commonwealth Parliament approval — the telecommunication intercept powers. The commission also has the capacity to hold public hearings where appropriate, and perhaps I will expand on that a bit later.

The commission's powers will be balanced by robust oversight, and importantly, as with other integrity bodies around the country, with the exception of here in Victoria, the commission will be responsible to a cross-party parliamentary committee — a very powerful, well-resourced committee — to ensure that the use of coercive powers are effectively monitored and that they are appropriate and proportionate in the circumstances. There will be an inspector who will be able to investigate these matters and will be reporting to the committee about them.

In relation to the inspector, there have been issues elsewhere in Australia where the inspector has acted like an appeal court, second-guessing a commissioner in relation to whether corruption has occurred. They are not an appeal court. In bestowing these significant powers on a body like IBAC, Parliament on behalf of all Victorians has a right to know whether these powers are used proportionately and appropriately, and the inspector's role will be to facilitate that applying.

The commission will oversee the whole public sector, including members of Parliament, ministers, judges, local council and council officers, sworn and unsworn members of Victoria Police and public servants. One of the issues will be the extent of that, but perhaps I will expand on that a bit later.

I move to the next slide. We are undertaking extensive consultation. We have a consultation panel set up that will be talking to a number of key stakeholders, from the Law Institute right through to the Bar Council, Victoria Police, the Police Association and the union. The CPSU have a significant stake in relation to this, not only into the staffing under the OPI but ongoing staff issues. They have an issue in relation to that. Many other bodies, such as Accountability Round Table and Transparency International, all have an interest in this, and the targeted consultation will be undertaken significantly. Rather than just giving somebody half an hour of a minister's time it is important that these matters are expanded upon and discussed and that the government be

properly informed as to the significant consequences of bestowing these sorts of powers in certain circumstances.

On the next slide I will just identify the members of that very eminent panel. I was very pleased, about two weeks ago, to announce that Stephen Charles, a former judge of appeal in this state, who served this state as both a Supreme Court judge and as a judge of appeal, is on it. Gordon Lewis, who is a former judge of the County Court, has done a lot of work for the former government, has an ongoing role with government in relation to gaming and gambling and is a former Chief Executive Officer of the Law Institute. Peter Harmsworth is a distinguished public servant who has worked for both sides of politics across a range of different portfolio responsibilities effectively and has an intimate knowledge of the workings of the Victorian public sector. Finally, Gail Owen is currently a commissioner for the Victorian Commission for Gambling Regulation, and not only is she a former president of the Law Institute, she happens to be the first woman president of the Law Institute. She is a solicitor of some note and standing over the last number of years. All of these people will undertake the process of consultation.

There are a number of issues that need to be resolved. Not every aspect of the IBAC has to be resolved, but significant issues — tension points, if you like — do. Regarding the definition of ‘public sector’, when you are talking about members of Parliament, when you are talking about ministers, when you talk about electoral officers, staff members of ministers, public servants, even police, how far do you go in relation to defining a public sector? One of the tasks that the panel will be consulting upon is whether or not you broaden it out to people that have dealings with government, either providing services, contractors or otherwise, and the extent of those matters. I understand you have got government agencies, but you have also got both local government and state government forming corporations that operate independently. Indeed they may have to be captured by this, but of course the extent of the public sector definition is certainly something the consultation panel will be looking at.

The scope of coercive powers — significant powers — of course has to be really teased out as an important issue. I will perhaps just touch on one issue. On the issue of judicial officers has certainly come to my attention that there are issues about judges. Of course judges are like any other body in the community; they can be subject to the law. If a police officer has the required intelligence and the required evidence in affidavit form and it goes before a Federal Court judge — and it is in relation to a relevant serious offence — they can apply for a telephone intercept over a judge’s phone, whether it is in chambers or otherwise. It is a significant issue which needs to be teased out with the judges themselves and with other people as to the extent of it.

Also in relation to those police powers, derivative use can be made of the evidence that is obtained under these coercive powers. For example, if someone is coercively questioned before the OPI, then there is a right against self-incrimination except that you have to give the answer. But that evidence cannot be then used in a criminal prosecution save and except in relation to perjury. Those derivative uses can be significant tension points that also need to be clarified.

On protection and privileges available to persons, I mentioned the right around self-incrimination. There is the issue about legal professional privilege, and the law institute has made it very clear that it is a very important matter for them that has to be teased out by this consultation panel. Other privileges that may be looked at include parliamentary privilege, or otherwise, and to what extent you go behind those sorts of privileges. No doubt that will be a matter of utmost importance to all members of Parliament, and certainly to the community at large, because it does impinge upon people’s traditional rights and the privileges they have.

As I said, there is an issue in relation to another body that had a problem between the commissioner and the inspector. What we want to do is to tease out precisely what the powers and functions of the committee will be — and that should be set out specifically in the legislation — and indeed the role of the inspector in all of that.

There is a significant commitment to the anticorruption commission — \$170 million over four years for the establishment of IBAC. As I said, in the next financial year there is a commitment of some \$19 million. Of course the OPI is being funded to a considerable extent, and when the IBAC is set up, as we said, the OPI would be subsumed into the IBAC and its funding would then transfer automatically, all of which is highlighted in the budget papers. As I said, \$20 million a year will be reprioritised, but on top of that there will be additional funding of some \$26 million in the 14–15 year period. It is significantly well resourced.

There is an implementation project team being set up in justice. It is undertaking the mechanical task of what this thing would look like physically and all of those matters, including the issue about the OPI's premises and things like that. Obviously the issue of current staff at the OPI is a matter of profound concern to the government, and indeed we need to try to reassure the staff that some, if not many, will go over to the new body but that there is still a place for those people back in the public service if they are not taken on board by the new IBAC. Obviously it is a matter of real concern in relation to the union. Those matters will be discussed between the implementation team and the union, and they will then relate it to the staff. I think there have been significant discussions with staff anyway both in relation to implementation team with DPC as well as in relation to justice.

If I can move to the next slide, which is in relation to the implementation process, as I said this is about providing the new commissioner with the maximum opportunity for having something that could be operational on day one. All of those decisions ultimately will be a commissioner's decision; it will not in any way be fettered by the government. But to enable this thing to start up things like change management, just talking to staff down at the OPI, possibly recruiting other staff and recruiting a commissioner — that is actually under way at the present time. The assets and infrastructure, information technology, the business systems — all of those matters have to be considered, and we need to talk about that. As I said, we have an implementation process in place to deal with that.

I think the next slide about implementation has really been discussed, and that is about the end of that slideshow. Have I filled in my 10 minutes?

**The CHAIR** — Yes, Minister.

**Mr PAKULA** — You will not have a population growth question about IBAC, surely?

**The CHAIR** — I am going to work very hard, deputy. Minister, you will agree, I am sure, that integrity and probity is critical in any system of government and governance, and that there is corruption in every society. In that context I therefore presume that the level of corruption that is identified is to some degree proportionate to the size of that community. Therefore, can I ask, Minister: how have predictions concerning population growth shaped the budget in relation to the portfolio that you are addressing the committee on now?

**Mr McINTOSH** — Thank you, Chair. Can I just say that I am gratified that you have asked that question. I have looked at the transcripts, and that is a question that is asked of everybody as a first question. I am very grateful that at least I have a slight Dorothy Dixier. Having said that, I am sure population growth may impact upon corruption, but unlike other elements in the justice portfolio, I do not think it is a going to be a significant driver.

**Mr PAKULA** — Neither do we, Minister. Good question, Chair.

**Mr McINTOSH** — The important thing here is that one would expect a significant degree of activity at the start. There no doubt will be a lot of people — and no doubt you have people writing to you about corruption in all sorts of shapes and forms — who take the opportunity to write to the commissioner. It will be the decision of the commissioner as to which matters he or she deals with and which matters he or she will say 'That is not corruption' and forward it to somebody else. The reality is that a significant driver of allegations of corruption will be the initial set-up, and I am sure it will flatten off over a period of time.

One would expect that with an increase in population it may increase. But a principal activity of the commission will be about education. Hopefully, if I can say this — this will be the government's expectation out of the IBAC — through education by proper adumbration of what those integrity issues are to the public sector, the number of allegations of corruption will drop, notwithstanding a rise in population. I hope that answers your question.

**The CHAIR** — That is a very good answer, Minister. I am impressed.

**Ms HENNESSY** — Minister, in respect of your comments during your presentation that you wanted the best IBAC that money could buy, I am trying to work out exactly how much it does cost. I note that your election commitment was that it would be up and running by 1 July of this year, but your presentation says that

legislation will be introduced later this year. Given that it is meant to subsume the powers, functions and presumably resources of the existing OPI — —

**Mr McINTOSH** — Not so much the powers. The powers of the OPI would be a much broader remit than an anticorruption commission. As you know, the OPI can look at other issues unrelated to corruption in relation to police management or otherwise. It is only about corruption.

**Ms HENNESSY** — Yes. But the resources of the OPI presumably are going to be rolled over into the IBAC. When we go to the total output cost of the OPI at page 241 we have an allocation of \$26.8 million, and that is an amount sufficient to fund an entire financial year's worth of the OPI's operation right up to 1 July next year — 2012 — which then begs the question: when will we have a fully operational IBAC that includes a police corruption fighting component?

**Mr McINTOSH** — Perhaps I will deal with both issues, which are the issue of funding and the issue of when and how it will be up and operational. In relation to the issue of funding, an examination of other corruption bodies around the country would demonstrate that in New South Wales, which has an ICAC and a police integrity commissioner, there are two separate bodies. As we have made perfectly clear, it would be a body that would cover not only the public sector but also the police as well. Certainly that is the model in Queensland.

If we start at a base figure for the next financial year — if and when IBAC is up and running, the first financial year — you are talking about a total commitment of about \$40 million. Of course that would put it on a par with New South Wales, which has the Police Integrity Commission as well as ICAC. It would also put it slightly behind Queensland, and there may be particular reasons why they invest something in the order of \$46 million in the CMC in Queensland.

Importantly, we are dealing with a body on which, yes, we can bestow the powers; yes, we can pass the legislation and we can provide the physical resources and the staff; but the government will remain completely independent of this body. Therefore we are not really in a position to know what matters an IBAC would start to look at. We will not be a referral agency. It will be an independent, broadbased anticorruption commission. We are not driving any agenda in relation to any issue that may be put to IBAC. It is going to be independent.

**Mr PAKULA** — When did that change?

**Mr McINTOSH** — I have seen your comments — with all due respect, Chair. I have seen Mr Pakula — —

**Mr PAKULA** — I have seen your comments too.

**The CHAIR** — Mr Pakula! Minister, there is no need to respond to interjections and there is no need for interjections. Ms Hennessy has the opportunity to ask a follow-up question if she wants to clarify something.

**Mr McINTOSH** — The reality is you are dealing with something that is potentially an unknown quantity. Likewise the OPI is funded to almost \$20 million a year. One would say anybody who thinks corruption is confined to police, and only police, has rocks in their head. As I said, we are dealing with a body; it is a bit of an unknown quantity at this stage. We want to provide it with sufficient resources, so we have adopted the model of New South Wales and developed about \$40 million for its ongoing operations.

**Ms HENNESSY** — Given that you were in the past a bit of a critic of the OPI, I think that is fair to say, how is that you say the transferral of those resources and some of those powers to an IBAC will improve the identification and prosecution of police corruption?

**Mr McINTOSH** — When you say I have been a critic of the OPI, certainly I was very critical of the former government's approach to corruption. I was critical of the ultimate body — the spaghetti tree — that they produced.

**Ms HENNESSY** — The one that Mr Harmsworth, who you have just appointed to your committee, was the author of.

**The CHAIR** — Ms Hennessy!

**Mr McINTOSH** — But likewise I was also critical of the process that the former government adopted to develop the OPI. As you know, it started off as a police ombudsman. It developed out of an issue in relation to the inquiry that Mr Fitzgerald did in relation to the Hodson murder. That came about as a police ombudsman's inquiry. Notwithstanding the police minister standing up in Parliament and saying that he accidentally or otherwise had provided police telephone taps — they had lawfully got these telephone taps, and of course the people who can get access to them are very small in number and they are quarantined — to the police ombudsman, nothing came of that. But as a result of that they had to develop the model of the OPI, which was this so-called independent body. But that took something like six months, to get that off the ground. Then there were further pieces of legislation that bestowed increasing levels of powers and commitments to the OPI, one of which was oversight — because the commonwealth government of course requires oversight.

So we then had to develop this model and bestow it in the OPI legislation, which did not even have its own particular piece of legislation at that stage. We then had to develop a special investigations model to provide to enable telephone-tapping powers to be provided to the OPI. I think from recollection there were something in the order of 11 pieces of legislation that were introduced by the government, starting with the police ombudsman and ultimately coming out with what we know as the OPI in its own stand-alone act.

That is not the approach of this government. We want to get it right from the outset. It has to be right. It has coercive powers; it has significant powers to investigate these matters. I emphasise 'investigate'; it is not a prosecuting body. It will have these significant powers, and it is important to get it right before we actually deliver on that commitment.

**Ms HENNESSY** — When?

**The CHAIR** — Thank you, Minister. Mr Morris.

**Ms HENNESSY** — We do not know when or whether it is going to change.

**Mr PAKULA** — When was the initial question?

#### **Members interjecting.**

**The CHAIR** — Order! Mr Morris.

**Mr MORRIS** — I did not realise it was quite that late in the day, Chair.

Minister, thank you for a comprehensive overview of the establishment of the proposed anticorruption commission. I am conscious of the time limits, so there may be additional matters that you would like to bring before the committee in terms of the government's commitment. But I would like to also turn to a specific aspect of that, and that is to seek an indication from you as to what the government is doing to ensure that the model for the anticorruption commission is appropriate for the Victorian jurisdiction.

**Mr McINTOSH** — I think importantly, as I mentioned before, we have this implementation project, which has been set up inside justice with their experience in relation to gambling and licensing and things. That implementation project is looking at a range of things as to premises, staffing issues and information technology, and that is something that has to be got right. Rather than just create the body and then say, 'Go away and do it', what I think is important is that the superstructure, if you like, is in place — the physical structure is also in place.

The second aspect is the legislative process, which is the delivery of the legislation. That legislation must be got right because, as I said, we are bestowing incredibly powerful tools on an IBAC to actually develop an outcome. As I have adumbrated in my opening remarks, there are still significant issues that are of concern to key stakeholders about this, and this needs to be resolved. I mentioned legal professional privilege. I mentioned the exercise of telephone-tapping powers, on specific individuals or otherwise. All of these processes need to be gone through.

Can I just say that I am very pleased to say that the government has been able to engage four people, to set up this consultation panel to consult with key stakeholders. I emphasise it is a consultation body. They are there to flesh out those issues that are important to those key stakeholders, whether it is telephone-tapping powers right through to issues relating to derivative use of matters that come before IBAC.

The critical thing here is that when you look at the quality of the candidates we have, as I said, you have someone like Stephen Charles, who has been an eminent jurist in this state for a number of years and before that was an eminent silk at the Victorian bar. He is the chairman of the body. I mentioned Gordon Lewis's qualifications as well, both in the law and indeed in assisting government in other projects. Gail Owen was the first female president of the law institute. I think it is important to note her eminence in the profession as well as her involvement with the law institute.

Can I just particularly highlight someone like Peter Harmsworth, for example. He started off in Victoria Police. He later worked as the Deputy Director-General of the Office of Corrections. In 1988 he was appointed Director-General responsible for the Victorian prisons system and community-based correctional officers. In 1993 Mr Harmsworth was appointed head of the Office of Training and Further Education within the Department of Education, with responsibilities for TAFE and adult and further education across the whole state. In 1998 he was appointed Secretary of the Department of Justice, and in 2003 he was appointed Secretary of the Department of Innovation, Industry and Regional Development. In 2005 he was appointed the inaugural chair and CEO of the State Services Authority.

I cannot think of a better person, with his involvement across the whole public sector in a whole range of areas, to actually be a part of this task force to deal with a body that is going to be looking at the whole public sector and to deal with all of these important issues. Derivative use, telephone-tapping powers, the role of the parliamentary committee, the role of the inspector, all of these matters are critical factors to get right, and I am very pleased with the consultation panel. Ultimately they will be providing a list of options — —

**Mr PAKULA** — He is the author of the model you were just bagging.

**The CHAIR** — There is no need to interject, and there is no need to respond.

**Mr PAKULA** — Staggering!

**Ms HENNESSY** — But now we love him.

**Mr PAKULA** — Now we love him, yes.

**The CHAIR** — Minister, to continue.

**Mr McINTOSH** — As I was saying, Chair, the critical factor here is that they just must get it right. The reality is these are critical issues for key stakeholders like the Law Institute, the police, right through to the Accountability Round Table, and they just have to be got right. If they are not going to be got right, then we are going to have serious consequences. What we want to avoid is the hotchpotch of legislation that we got from the former government in setting up the OPI.

**Ms HENNESSY** — Minister, when you promised that your commission would be established by 1 July were you being naive or footloose and fancy free with the truth? When will the commission be operational?

**Mr McINTOSH** — As we said, the legislation will be introduced later this year, and indeed what happens with that legislation is going to be in your hand and every other hand of the opposition.

**Mr PAKULA** — How is that? You have got a majority in both houses.

**Ms HENNESSY** — You have got a majority in both houses, and we would be more than happy to work with you on it.

**Mr McINTOSH** — What we want to try to avoid is a long debate that goes on until the wee hours of the morning. Now it will be in your hands.

**Mr PAKULA** — So that might influence it by a day.

**The CHAIR** — Minister, through the Chair, please.

**Mr PAKULA** — That might influence it by a day — —

**The CHAIR** — Mr Pakula!

**Mr PAKULA** — Chair, that is a ridiculous comment by the minister. The length of the parliamentary debate will not influence when the commission comes into effect.

**Mr ANGUS** — Let the minister finish.

**The CHAIR** — Mr Pakula!

**Mr O'BRIEN** — It is for the Parliament to determine when legislation is passed.

**Mr PAKULA** — It was just an absurd comment. It was an absurd comment, Mr O'Brien.

**Mr O'BRIEN** — It is actually constitutionally accurate, and you did not need to get upset. Have a drink of water and calm down.

**Mr MORRIS** — On a point of order — —

**The CHAIR** — A point of order. I will recognise — —

**Mr PAKULA** — It is an absurd — —

**The CHAIR** — Mr Pakula, will you be quiet? Thank you. What is the point of order?

**Mr MORRIS** — The point of order is, Chair, if we are going to have a debate, then we should take it somewhere else — probably the parliamentary chamber. The purpose of this hearing is to discuss the estimates and the programs funded by the estimates —

**Mr PAKULA** — I was responding to the minister's comment.

**Mr MORRIS** — and none of the last 2 or 3 minutes of commentary have had anything to do with the estimates hearings at all. I would ask you to bring the — —

**Mr PAKULA** — On the point of order, Chair, I was responding to the minister's comment. The minister's comment was that the implementation date of the IBAC would be influenced by how long the parliamentary debate runs. As a worst case scenario, the length of the parliamentary — —

**The CHAIR** — No, on the point of order. Do not debate it; speak to the point of order.

**Mr PAKULA** — Mr Morris seemed to be suggesting that we were somehow responsible for this debate. I was responding to the minister's comment, which is a nonsense.

**Mr O'BRIEN** — On the point of order —

**Members interjecting.**

**The CHAIR** — That is enough!

**Mr O'BRIEN** — On the point of order — —

**Mr PAKULA** — Are we now not allowed to debate these things in Parliament?

**Members interjecting.**

**The CHAIR** — Mr O'Brien wants to speak on the point of order, and I am not going to hear him. We all know what is happening here, which is that we have got off the track. I would like to bring the committee back to the issue. Mr Morris moved a point of order, which was to bring the committee back to the issue, and I am quite happy to bring us back to the issue and resolve the matter. I am asking the minister to respond through the Chair and not respond to interjections. Ms Hennessy has asked a question, and the question is going to the issue of comments that the minister has previously made. She has opened up a field for commentary by the minister, so I guess if you ask a question, you have to accept the answer. Minister, will you complete your answer, thank you.



**Mr McINTOSH** — As I said, the legislation will be introduced later this year. It will then be dependent upon what the Parliament does with that bill.

**The CHAIR** — Thank you, Minister.

**Mr McINTOSH** — I have not quite finished, Chair.

**The CHAIR** — If you have not finished, please continue.

**Mr McINTOSH** — I was also saying that obviously one of the tasks of the implementation project is to deal with not only the information technology, other assets, leases and things like that but also to deal with people's lives and keep them, necessarily, apprised of what is going on to enable the new commissioner to take on as many new people as possible, and as appropriate. That is something that needs to be properly communicated. Perhaps, through the union or otherwise, that is a matter that needs to be panned out.

Critically, we have to appoint an appropriate commissioner. We have started an international search in relation to selecting the best possible candidate for that role, and ultimately it will be the commissioner who will then be responsible for determining what assets are needed and the human resources that will be moving across, potentially, from the OPI. All of these matters are a critical factor in when this is going to happen. As I said, we are focused on getting the best possible outcome for Victoria, not trammelling upon people's lives at the OPI or otherwise and getting all of these things right. It has to be got right. That is what we are focused on delivering.

**Ms HENNESSY** — I have a point of clarification arising out of the issues that the minister's answer canvassed. Minister, you spoke about the fact that the recruitment process is currently under way, and I just wondered whether or not you or any other representative of the government had in fact had discussions with Sir Ken Jones in relation to this matter and offered him the role and then subsequently withdrew the role, or is the recruitment process consistent with what your policy is, that the commissioner must have the qualifications to be a Supreme Court judge?

**Mr O'BRIEN** — On a point of order, I fail to see how this arises from the estimates or the previous answer.

**Mr PAKULA** — It is responding to the minister's answer.

**Ms HENNESSY** — BP3, page 67.

**Mr O'BRIEN** — He could have had a discussion with Mickey Mouse too, but it does not arise from the estimates.

**Ms HENNESSY** — The minister can dispose of it in any way he wishes.

**The CHAIR** — Thank you, Ms Hennessy, for your assistance and the advice you have just given the Chair.

**Ms HENNESSY** — Always happy to help.

**The CHAIR** — The minister full well knows that how the minister replies is up to him, providing that it is truthful. Thank you, Minister.

**Mr McINTOSH** — As the Premier said in the house the other day and as I have said consistently, the commissioner for IBAC will be a serving Supreme Court judge, someone who has been a Supreme Court judge or someone who is qualified to be a Supreme Court judge. That is the sole criteria for the commissioner for IBAC.

**Ms HENNESSY** — Tim Smith?

**Mr ANGUS** — Minister, can you please outline for the committee what the government is doing to ensure that the views of stakeholders are taken into consideration in establishing the commission?

**Mr McINTOSH** — As I said, the consultation panel is exploring a whole range of disparate views that are clear. Some of those views have already been expressed to the government, and some of those views have been expressed publicly. But there are key stakeholders in this body that have strong views, and they need to have that opportunity of expressing those views in a cogent way to the government.

In drafting the legislation we need to take on board all of those matters. If we do not take on those matters, we jeopardise IBAC. Ultimately the decisions about the construction of IBAC, what it looks like and how it behaves will be the responsibility of the government. We certainly need to talk to stakeholders. Indeed I have had the opportunity of talking to key stakeholders, and it is abundantly clear that when you are talking about things like legal professional privilege and the derivative use of coercively answered questions right through to issues relating to public hearings, there are strong views on either side of the equation. I have spoken to people who will say public hearings are critical to the outcome of an IBAC. I have also had put to me that if you do that, you destroy reputations in relation to an investigative body and you must conduct most of these hearings in private, if not all of these processes in private. If I can just use the example in New South Wales and Queensland, it is certainly the experience in New South Wales. It has a power to have a public hearing and public hearings are used almost as a matter of course. In Queensland, which has very similar legislation, it is very rare to have a public hearing. All of these matters need to be distilled to enable us to get the best possible outcome.

As I said, this body is about education, but it is also about investigation. We are bestowing upon it terribly significant powers, and the exercise of those powers must be done appropriately and proportionately. The first thing we have got to do is get this thing right. You are not going to satisfy everybody, but you at least have to give them an opportunity of more than 15 minutes with the minister to put their case. That is why we have a consultation, and frankly, looking at the calibre of the consultation panel, I am sure it will do the job.

**Ms HENNESSY** — I would just like to take up a couple of issues canvassed in your previous answer in respect of the rights and powers around investigations. As you would be aware, the government has committed to adopt the national shield laws, with some exceptions. You would also be aware that in New South Wales one of the few journalists to be prosecuted, and who received a suspended sentence, was in fact a journalist who refused to give up her source, who ironically was a police whistleblower blowing the whistle on corruption. It is incredibly important that the balance is got right, and I am interested in what your view is, given this is a new domain of evidence law that will be adopted around the shield laws. Will a journalist's right to protect a source be protected from investigation in the course of an IBAC hearing?

**Mr McINTOSH** — Certainly the government is currently considering the issue of journalist shield laws, but of course that applies in a criminal prosecution. What is also clear is that with an IBAC you have got a body that can coercively question during the process of investigations and indeed can use other coercive powers such as the telephone-tapping powers. Importantly, I am not aware of any prohibition on those coercive powers being used in relation to ICAC in New South Wales or in Queensland or elsewhere, so journalists — like any other citizen, be they judges, ministers or otherwise — could be subject to that type of investigation. It is a separate issue to the journalist shield laws.

For example, for most telephone-tapping powers you go before a Federal Court judge, if you have got the appropriate material, the appropriate evidence, if it is properly presented and if there is a case made out, then a judge will of course make an order that someone's phone can be tapped to enable that investigation to continue. It then becomes a question of what derivative use can be made of that material, and that of course is a trigger point is that we need to resolve as well.

**Ms HENNESSY** — Or indeed a contempt prosecution arising from a journalist's failure to disclose a source in an IBAC investigation is probably the other issue it engages.

**Mr McINTOSH** — All of that, of course, is a matter of concern, but as I see it, those journalist shield laws do not necessarily apply in other bodies.

**Ms HENNESSY** — So they would have the benefit of protection in a criminal court, but not necessarily in an investigatory body like an IBAC?

**Mr McINTOSH** — Indeed. As I said, this is a matter that we want to clarify, and I think it is a very valid point. It is something that the consultation panel could take up. The critical thing here is that — and this goes to the issue of public hearings versus private hearings — if those matters are held in private, there is a strict quarantine as to who can have access to that material, and indeed that would militate against public hearings. That is certainly something they have adopted in Queensland.

**Ms HENNESSY** — But a journalist who wanted to protect their source —

**The CHAIR** — Ms Hennessy!

**Ms HENNESSY** — in a private investigation — —

**Mr O'BRIEN** — Point of order.

**The CHAIR** — Ms Hennessy — —

**Mr O'BRIEN** — It is interesting and it is valid —

**The CHAIR** — It is interesting.

**Mr O'BRIEN** — but it does not relate to budget estimates.

**Ms HENNESSY** — Yes, it does.

**The CHAIR** — No, sorry, Mr O'Brien — —

**Mr PAKULA** — It does so! The whole hearing is about IBAC.

**Members interjecting.**

**The CHAIR** — Can everybody just pause for a moment.

**Ms HENNESSY** — And the crowd goes wild!

**The CHAIR** — Everybody just pause. Ms Hennessy, I have been extremely lenient.

**Ms HENNESSY** — I have had a good go.

**The CHAIR** — I have given you a pretty good run, so we will just move on to Mr O'Brien, who was very anxious to ask a question.

**Mr McINTOSH** — Sorry, Chair, if I can just very briefly — —

**The CHAIR** — If you would like to conclude.

**Mr PAKULA** — If David O'Brien does not object, of course.

**Ms HENNESSY** — Thank you for your approval, Mr O'Brien.

**The CHAIR** — Conclude your answer.

**Mr O'BRIEN** — I said it was interesting; I just said it did not relate.

**Mr McINTOSH** — I understand the Attorney-General is currently developing a proposal in relation to journalist shield laws. I am happy to take that on board, and I am happy to refer that specific issue to the consultation panel. Again it will be the decision of the government as to how that will apply, but importantly I will take it on board and I will refer that to the consultation panel.

**Ms HENNESSY** — Just give me one indulgence — —

**The CHAIR** — Thank you!

**Ms HENNESSY** — It is very important because that journalist —

**Mr O'BRIEN** — There is also the point of how many questions you are asking in a row —

**Ms HENNESSY** — got a suspended sentence, and we will not have suspended sentences in Victoria. Journalists will go to prison.

**Mr O'BRIEN** — and it is often not the answers that are important. It seems to be the questions.

**The CHAIR** — Thank you. Mr O'Brien, could you ask your question?

**Mr O'BRIEN** — My question does relate to the budget estimates for this important commission, and I ask the minister if he could please advise what the government is doing to ensure that the commission is appropriately resourced when it becomes fully operational, and I refer specifically to pages 66, 67 and 72 of budget paper 3.

**Mr McINTOSH** — The government is committed to properly resourcing this body. What we have always said is that the \$20 million that is applicable to the OPI forward estimates will of course be moved across to IBAC when it is operational. On top of that we are committing, this financial year, in relation to implementation I suppose, \$1 million and then next financial year up to \$20 million of assets and ongoing recurrent funding. It is a significant commitment. Obviously the experience elsewhere is that you need to provide significant resources to enable an IBAC to carry out its functions, and certainly the government's intention is to do exactly that. As I said, over the forward estimates, \$170 million over four years is a significant investment in this body.

**The CHAIR** — Before we proceed and I call Ms Hennessy, I ask the minister to respond through the Chair and not to respond to interjections or subsequent questions unless I call him.

**Mr McINTOSH** — I am sufficiently chastised.

**The CHAIR** — Ms Hennessy, could you ask your question and wait until you are called again before you interject with further questions.

**Ms HENNESSY** — Minister, I direct you to budget paper 3, page 67, particularly in relation to the affluxion of time between the 1 July start date and the proposed operational date to be determined. I was wondering whether you could clarify a matter about which there have been conflicting positions expressed in the media, and that goes to the issue of the retrospectivity of the proposed IBAC. I was wondering whether you could clarify: will the IBAC have retrospective investigatory powers?

**Mr McINTOSH** — Police, for example, are able to investigate a murder that may have occurred yesterday, last year, 10 years ago or 20 years ago. By their very nature investigations are retrospective; you are investigating something that has occurred. Education is about trying to prevent something, but investigations are by their nature retrospective. I think what you are getting at, with all due respect, is asking the question: are we going to introduce any law that will make corruption per se retrospective — that is, backdated?

**Ms HENNESSY** — Yes.

**Mr McINTOSH** — We are not creating any new offences. There are sufficient offences that deal with the issue of corruption, but again that will be prosecuting authorities like the DPP. It will not be IBAC that will be a prosecuting authority. They are an entirely investigatory body — well, not entirely, they are also involved in education, but that is their focus. By its very nature investigation is retrospective. Of course the investigation powers of IBAC will be retrospective, which means that when it is set up it will be able to investigate what occurred the day before, last year or 20 years ago in the process of exposing corruption. We are not creating any new offences; we are going to be operationally retrospective. Investigation by its very nature is retrospective.

**The CHAIR** — In regard to the establishment of the broadbased anticorruption commission — and I refer to BP3, pages 66 and 67 — can you further advise the committee what the government is doing with regard to the implementation of this commitment?

**Mr McINTOSH** — I think implementation is clearly a very serious matter. Obviously the first thing is that the legislation has to be correct. We do not want to go through the process of having to come back and cobble together pieces of legislation to rectify mistakes. On top of that of course we have a clear policy in relation to what this body will look like. It will cover the entire public sector. There will be a single commissioner. It will be the sole decision of the commissioner whether to investigate or otherwise. All of that of course is part of the announced policy.

On top of that there are practical issues, as I said, in relation to anything from hardware to leases to accommodation right through to other matters relating to human resources, all of which have to be handled very delicately. If they are not, then they can have serious consequences. The legislation has to be right and the

implementation has to be right, but at the end of the day what we want to be able to do is bestow on the commissioner — and the process has started for the selection, and it will be a government decision as to who that will be — and ultimately thereafter the actual running of the body, where they go, who will be employed and what they investigate will be matters entirely for the new commissioner.

As I said and emphasised from the very beginning, this is an independent, broadbased anticorruption commission. It will be a decision of the commissioner, and certainly I as minister will not be directing it as to what it should or should not be able to investigate. It should be completely independent of government. Otherwise it will render it completely nugatory and useless as an investigative body to expose corruption and indeed to educate the broader public sector about corruption.

**Ms HENNESSY** — Commendable. That is good.

**Mr PAKULA** — Minister, I would like to ask you about the Office of the FOI Commissioner. There is some funding in the budget for the 2011–12 financial year in regard to the independent Office of the FOI Commissioner. I think it is \$1 million in the upcoming financial year. Can you tell the committee when the independent Office of the FOI Commissioner will be established?

**Mr McINTOSH** — The office of the independent commissioner for FOI of course is a major commitment that we made in the lead-up to the election. Indeed having gone through 11 years of opposition dealing with the issue of FOIs, and certainly having ended up in VCAT with a large number of those matters and being successful on a large number, it was a long and turgid process to get matters dealt with. For example, the police statistics in relation to police stations was a matter that was very hard fought, but the reality is that as a result of that what we want to do is establish somebody who will be able to do internal reviews completely independent of government. Yes, the normal process will still continue in relation to the decision making in relation to FOIs, but ultimately, as you know, an internal review is done by somebody else in the department. It is too close for comfort, and the whole purpose of the FOI commissioner is to conduct those internal reviews quite independently and dispassionately from government. That is why we are committed to an FOI commissioner.

**The CHAIR** — Thank you, Minister. Did you want to follow up?

**Mr PAKULA** — I did, absolutely, because the question that I asked was not answered, which was: when will the office of the FOI commissioner be up and running? Minister, I think you know that was my question, but could I also follow up on your answer. I want to understand it. Is it your evidence, then, that what will occur — for instance, in the example that I have used a few times of Don Coulson making decisions about the Premier's office FOIs — is that his decisions will then be reviewable by this independent FOI commissioner and that the FOI commissioner's decision will be binding? That is basically a follow-up to your answer, but I would also like an answer to my initial question, which was when will it be up and running.

**Mr McINTOSH** — You have mentioned Don Coulson and the Premier's office. I have worked with Don Coulson. Certainly he comes to the Premier's office with an enormous amount of experience in FOI. The fact is he has been a senior public servant in relation to FOI from the inception of the act right through until a few years ago. Now his leaving the public service is a matter of some significance. As you know, he made a decision as an FOI officer in the Department of Health, indeed until the then minister intervened, or the chief of staff intervened directly, to overrule his decision, which was a matter of some outrage. After that he left and was ultimately employed in the Premier's office. He is a distinguished public servant. The fact is he has an encyclopaedic knowledge of the FOI act. I have certainly relied on his advice over a period of time. The fact is that he is someone who provides wise counsel.

I just say that we are not talking about an FOI officer. Certainly the practices that have been adopted in the current government have been similar to practices that have been adopted in other governments where ministers have called in FOIs. They have had chiefs of staff writing to people saying, 'We are taking this over', and that is a matter entirely for you. The reality is that what we want to do is ensure that that process of decision making in departments continues. All we are saying is that the decision making in relation to an internal review should be done at arm's length to the department. That is what we are trying to do with the FOI commissioner.

**Mr PAKULA** — When? Minister, please, when? On a point of order, Chair, I have had two goes at a question that the minister has just refused to answer. Can I ask you to at least be responsive to the question — when?

**The CHAIR** — If you want to me to comment, I will say that you opened up the subject of a former public service employee by naming him and the minister responded appropriately.

**Mr PAKULA** — I want it noted that the minister is refusing to answer a question.

**Mr ANGUS** — He is not refusing to answer. He has already answered.

**Ms HENNESSY** — Mr Integrity!

**Mr PAKULA** — He is just refusing to answer the question.

**The CHAIR** — We are out of time. The hearing is closed.

**Mr PAKULA** — What an extraordinary performance!

**The CHAIR** — This concludes the budget estimates for the portfolios of corrections, crime prevention and the establishment of an anticorruption commission. I thank the minister and the departmental officers for their attendance today. Where questions were taken on notice and where there were unasked questions, the committee will follow up with you in writing at a later date. I remind you that there are a couple of graphs that we would like and which we look forward to receiving. The committee requests that all written responses to those matters be provided within 21 days.

**Committee adjourned.**