



Integrity inadequacies: Victoria

Discussion paper

March 2022

Summary

The strength of the frameworks in place to promote public integrity – via the transparency of ministerial dealings, the implementation of independently-enforced codes of conduct, and the regulation of lobbying and political finance – varies significantly between Australian jurisdictions. This paper identifies the inadequacies of Victoria's framework, which include:

- the lack of a requirement to publish ministerial diaries;
- the lack of an independently-enforced ministerial Code of Conduct;
- a weak lobbying framework;
- the lack of electoral expenditure caps; and
- a narrow definition of what constitutes a political donation for the purposes of the *Electoral Act (2002) Vic*.

Ministerial diaries

Ministerial diaries are an invaluable accountability mechanism: they help the public to understand who has access to Ministers, and the issues of interest to those who have that access. Unlike Queensland, New South Wales and the ACT, Victoria does not require the publication of ministerial diaries.

Ministerial Code of Conduct

While Victoria has a Code of Conduct for Ministers and Parliamentary Secretaries, it is not enshrined in legislation. Its enforcement is left to the Premier rather than an independent oversight body, and potential breaches are not sufficient to enliven the jurisdiction of the Independent Broad-based Anti-corruption Commission (unless the IBAC suspects on reasonable grounds that the conduct would meet the definition of 'corrupt conduct' under s 4 of the IBAC Act, which also requires that it constitute a relevant criminal offence).

This contrasts with the approach taken in New South Wales, where a substantial breach of an applicable code of conduct by a Minister or member of a House of Parliament (that also meets the definition of 'corrupt conduct' at s 8 of the *Independent Commission Against Corruption Act 1988 (NSW)*), is sufficient to attract the ICAC's jurisdiction.

Lobbying

The Victorian lobbying regime, which consists of a Code of Conduct, is identical in key respects to the Commonwealth's approach: this has been described by the Australian National Audit Office as a "light touch approach".

In Victoria (as in the Commonwealth), the only penalty lobbyists face for non-compliance is deregistration: jurisdictions with more robust regimes – such as New South Wales, Queensland, South Australia, Western Australia, the UK and Canada – also provide for fines, while Queensland, South Australia, Canada and the UK further provide for criminal prosecution.

Another deficiency of the regime is that the duration of the Code's prohibition on former public office holders taking up lobbying work is too short to be meaningful (12 months for parliamentary secretaries, and executives and ministerial officers under the *Public Administration Act 2004* (Vic), and 18 months for ministers and cabinet secretaries), and the Code does not apply to all in-house lobbyists (it captures only those who meet the definition of 'Government Affairs' Director', which includes persons who have held at least one of the following positions: National or State Secretary/Director or Deputy or Assistant Secretary/Director of a registered political party; former Minister or Parliamentary Secretary of a State or Commonwealth Government; Chief of Staff, Senior Adviser or Adviser in the private office of a Commonwealth or State Minister, or Parliamentary Secretary).

Expenditure caps

Unlike New South Wales, Queensland, South Australia, Tasmania, the ACT and the Northern Territory, Victoria does not impose any form of cap on electoral expenditure. The independent review mandated to take place after the 2022 Victorian election, under s 222DB of the *Electoral Act 2002* (Vic), is specifically required to consider the issue of expenditure caps.

Donations

In 2018, Victoria made substantial improvements to its regulation of political finance: donations over \$1,050 are now required to be disclosed, and donations are capped at \$4,210 over 4 years.¹ The remaining weakness of the regime is the definition of 'political donation' under s 206 of the *Electoral Act 2002* (Vic). Pursuant to this section, a 'political donation' is a gift made to any of the following: a political party, a candidate, a group, an elected member and (in some circumstances) an associated entity or third party campaigner. The same section defines a 'gift' as '*any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration*'.

The effect of this is that payments such as attendance fees for events are not necessarily captured by the definition of 'political donation' (while s 206 is expressed to include 'the making of a payment or contribution at a fundraising event [emphasis added]', this does not apply to fees paid ahead of such an event). It appears that whether or not such fees are captured depends on the commercial value the payer of the fee derives from their attendance – a value which is, obviously, difficult if not impossible to objectively determine.

This contrasts with the approach taken in New South Wales: in that jurisdiction, subsection 5(2) of the *NSW Election Funding Act 2018* (NSW) specifically includes the following in the definition of 'political donation': *An amount paid by a person as a*

¹ These are the relevant amounts as indexed for the 2021/2022 financial year.

contribution, entry fee or other payment to entitle that or any other person to participate in or otherwise obtain any benefit from a fundraising venture or function (being an amount that forms part of the gross proceeds of the venture or function).'

About The Centre for Public Integrity

The Centre for Public Integrity is an independent think tank dedicated to preventing corruption, protecting the integrity of our accountability institutions, and eliminating undue influence of money in politics in Australia. Board members of the Centre are the Hon Stephen Charles AO QC, the Hon Anthony Whealy QC, Professor George Williams AO, Professor Joo Cheong Tham, Geoffrey Watson SC and Professor Gabrielle Appleby. Former directors include the Hon Tony Fitzgerald AC QC and the Hon David Ipp AO QC. More information at www.publicintegrity.org.au.