



Centre for Theology and Ministry
29 College Crescent
Parkville Victoria 3052

Attorney General's Department
E-mail: anticorruption@ag.gov.au

SUBMISSION FROM THE UNITING CHURCH IN AUSTRALIA, SYNOD OF VICTORIA AND TASMANIA TO THE PROPOSED COMMONWEALTH INTEGRITY COMMISSION

INTRODUCTION

The Synod of Victoria and Tasmania, Uniting Church in Australia (further simply "the Synod") welcomes this opportunity to provide input to the Commonwealth Government's proposed creation of a Commonwealth Integrity Commission (CIC).

We would like to note that the author of this submission is a Senior Advisor to the Board of Transparency International Australia (TIA). However, the Synod's submission is provided independently of TIA's submission.

The Synod makes this submission in line with the Statement to the Nation made by the Inaugural National Assembly of Uniting Church in Australia representatives in 1977:

We affirm our eagerness to uphold basic Christian values and principles, such as the importance of every human being, the need for integrity in public life, the proclamation of truth and justice, the rights for each citizen to participate in decision-making in the community, religious liberty and personal dignity, and a concern for the welfare of the whole human race.

The Synod supports that the proposed CIC have a focus on serious matters of corruption, to avoid its resources being used on minor matters, such as a fraud of travel expenses involving a small amount of money. However, that said, it needs to be noted that the CIC should have the power to investigate matters of corruption that may initially appear minor, but which may be a sign of much more serious corruption taking place. Being able to discern this without conducting any initial investigation can be difficult.

The Synod considers that there is a need to focus more strongly on the inter-related issues of anonymity, confidentiality and public airing of allegations than has been done in the consultation paper. The chosen approach to these issues can have major repercussions both for accused individuals and for whistle-blowers and victims of corruption or abuse. The choice between public and non-public processes involves the application of important but (sometimes) conflicting principles.

One principle is the presumption of innocence. An individual accused of corrupt conduct or abuse can have their reputation, career, and financial security ruined by a false accusation. The impact can

be particularly serious if the accusation takes a long time to test and prove false. The presumption of innocence can therefore be a reason for not airing accusations in the public arena.

Another principle is that of open justice. This can be of particular benefit to victims who have previously felt powerless in the face of corruption or abuse by powerful figures and institutions, but who find that their case becomes more credible when they learn of other victims in a similar position.

A third principle is that public exposure of corruption (particularly high-level corruption) can be a useful catalyst for immediate reform to fix the systemic weakness that allowed the corruption to occur in the first place.

The Synod does not seek to argue that any of these principles should invariably prevail over the others, but aims in this submission to highlight some cases where the principles have been applied appropriately or less appropriately. Ultimately the Synod believes that the Commonwealth Government should allow the Commonwealth Integrity Commission to hold public hearings under legislated guidelines, as is already the case with a number of existing state based integrity commissions.

The Synod is supportive of the proposed new offence for “failure to report public sector corruption”, as this is likely to increase the detection of public sector corruption.

There is also a need to ensure that the CIC is able to collaborate with existing Commonwealth and state-based integrity and law enforcement agencies to allow for joint investigations and joint projects.

Based on the experience of NSW, it is desirable to have an accountability mechanism for the CIC to monitor its activities and the use of its powers and to receive complaints about any alleged misuse of powers by the CIC.

REFERRAL MECHANISMS

The Commonwealth Government’s proposed CIC structure does not include a provision for referrals directly from the public or public servants for the public sector division of the CIC. Instead, referrals would come from heads of agencies within the jurisdiction of the CIC, or from another integrity agency, such as the Commonwealth Ombudsman. Agencies within the jurisdiction of the public sector division would have a “mandatory referral obligation ... to report suspected corruption issues which are considered to meet the requisite threshold”.

At the same time, the stated rationale for creating the CIC includes the following:¹

- “the current structure ... exhibits several complexities and is not always well understood”
- “no single body is collecting consistent, across-the-board data about integrity issues in order to get a ‘big picture’ of problems that may arise, as a means of analysing trends and to inform prevention efforts”.

¹ [Commonwealth] Attorney-General’s Department, p. 2, *A Commonwealth Integrity Commission – proposed reforms*, December 2018. Available at: <https://www.ag.gov.au/Consultations/Documents/commonwealth-integrity-commission/cic-consultation-paper.pdf>. Accessed on 7 January 2019.

Our concern is that if the current structure is not well understood by the public, forcing referrals to be made via existing agencies will not lessen confusion. It seems more likely to result in potential complaints not being made, or being directed to the wrong agency (in which case they may be rejected as not being relevant).

The interests of existing agencies may not necessarily be aligned with the interests of the proposed CIC.

Integrity agencies may prefer to investigate the most prospective complaints themselves. They may be able to do this if they find a way of delaying transmission of complaints.

Other agencies within the CIC's jurisdiction may prefer to downplay the incidence of corruption within their organisation, so will not pass on referrals where they are able to exercise their judgement. Even where there is no conscious effort to downplay the incidence of corruption, different approaches by different referring agencies may lead to a continuation of data integrity problems.

Conversely, if the agency is required to pass on every complaint to the CIC without applying judgement, the agency is simply a post-box, building in delay and complexity without adding value.

As can happen in any environment, existing agencies, particularly integrity agencies, may have been prone to some degree of regulatory capture. In that case, they may choose not to pass on complaints that appear trivial on the surface but are indicative of deeper problems. Even if there is no actual regulatory capture, potential complainants may believe this to be the case with a long-standing agency, and therefore be reluctant to come forward.

In discussion with civil society representatives², Commonwealth Government officials have raised the issue of trivial or vexatious complaints. One consideration put forward is that lack of direct referrals will ensure that the CIC can devote its resources to more important priorities. We note that the 2012 Ian Callinan review of the Queensland Crime and Misconduct Commission did find the vast majority of complaints made to the Commission were trivial, vexatious or misdirected.³ However, the review did not recommend an end to the Commission being able to accept direct complaints, but did make recommendations to deter trivial, vexatious and misdirected complaints or reports. These included the suggestion of penalty for making a baseless complaint.

The CIC should have the ability to stop a government Department, agency or law enforcement agency from taking action on an allegation of corruption where it has strong grounds to believe such action would comprise an investigation that is likely to expose a greater level of criminal conduct than the original information reported to be taking place. Effectively, the CIC needs anti-ti[p-off powers.

CONFIDENTIALITY AND PUBLIC HEARINGS

² Civil Society Consultation on 24 January 2019 in Australian Government Solicitor's office, Melbourne.

³ 'Review of the Crime and Misconduct Act 2001', 2013, 204, https://www.justice.qld.gov.au/__data/assets/pdf_file/0003/178518/CMA_Review_Summary_Recommendations.pdf

As noted in the introduction, the Synod sees the need for a balance between the behind closed doors investigations carried out by the CIC and the holding of public hearings under legislated criteria where the public interest will best be served. The Synod recognises that Members of Parliament and Ministers can be subjected to pressure to resign if an allegation is made against them, even if the allegation is later proven to be false. This can be due to a desire by their party or by the government to end media coverage of the allegations and re-focus on other issues they would rather discuss.

For example the Queensland Crime and Corruption Commission found that with regards to allegations of corruption made against councillors or candidates in the lead-up to local government elections “a large number of allegations received by the CCC are baseless and merely designed to effect electoral damage on political opponents.”⁴

At the same time, the CIC’s approach needs to take account of a potential public perception that Members of Parliament or Ministers will get special treatment that is not given to public servants or law enforcement officials subject to similar allegations.

Attachment A sets out summaries of some recent cases that are useful in an examination of principles to be applied when making decisions about confidentiality. A number of these cases relate to matters of criminal law unrelated to corruption matters, but are merely being used to illustrate the issues at play.

An example where the principle of open justice should have prevailed but did not is the case of Gerald Ridsdale. Because his early crimes were not made public, Father Ridsdale was able to continue with sexual abuse of young boys for possibly three decades.

An example where the principle of open justice prevailed, and was taken much too far, was the British police investigation known as Operation Midland, which commenced in 2014. This had its genesis in the investigation of sexual crimes committed by the late BBC broadcaster Jimmy Savile. Many serious accusations investigated by Operation Midland were found to be baseless by 2016. However, since the accusations and investigations were all made public, with police commenting that they were “credible and true”, there were major repercussions for the reputations and livelihoods of innocent individuals. Details of Operation Midland, and other cases mentioned here, are set out in Attachment A.

An interesting examination of the principles of open justice and presumption of innocence is set out in the report by Sir Richard Henriques⁵ analysing the failures of Operation Midland. The Henriques Report made a number of observations and recommendations, such as the following:

- In cases involving prominent people, consideration should be given to inviting complainants to sign confidentiality agreements.⁶

⁴ Queensland Crime and Corruption Commission, ‘Publicising allegations of corrupt conduct: Is it in the public interest?’, December 2016, viii.

⁵ Henriques, Sir Richard, *An Independent Review of the Metropolitan Police Service’s handling of non-recent sexual offence investigations alleged against persons of public prominence*, October 2016. Available at <https://factuk.org/wp-content/uploads/2017/04/Report-Independent-Review-of-the-Metropolitan-Police-Services-handling-of-non-recent-sexual-offence-investigations-1-3-1.pdf>. Accessed on 11 January 2019. Further cited in this submission as “Henriques Report”.

- Allegations against prominent people will inevitably attract media attention, and it may be impossible to enforce a confidentiality agreement.⁷
- Investigators should be aware of the possibility of false complaints.⁸

One issue highlighted in the Henriques Report, and often overlooked elsewhere, is the problem of ‘bandwagoners’. The report defines a bandwagoner as “a person who learns that a complaint has been made and decides to support the original complaint (true or false) with a false complaint”.⁹

In Operation Midland, the most significant bandwagoner was “Nick”, who chose to make false accusations against prominent individuals such as Lord (Leon) Brittan.¹⁰

Examples abound elsewhere. For example, the process of confirming Judge Brett Kavanaugh’s nomination to the Supreme Court of the United States attracted at least one alleged bandwagoner with no connection to Judge Kavanaugh.

In Australia, a high-profile example of bandwagoning occurred when Marcus Einfeld was accused of providing a false statement to avoid a traffic penalty. One bandwagoner provided a false statement in support of Mr Einfeld’s position and later received a non-custodial sentence for perverting the course of justice. Another bandwagoner provided (genuine but confidential) documents that tended to undermine Mr Einfeld’s position.

Bandwagoners can be more than a minor irritation. The Chairman of the United States Senate Committee on the Judiciary, in reference to the Kavanaugh case, has pointed out that bandwagoners can divert resources and materially impede investigative work.¹¹

The Henriques Report notes that the existence of bandwagoners tends to discredit people who come forward with a genuine complaint after an investigation is made public.¹²

Nevertheless, there are strong arguments for making some investigations public where the public interest will be served by doing so. For example, British police in the Jimmy Savile case noted that many additional victims had come forward when the investigation became public.¹³

From a public administration point of view, an equally strong argument is that public exposure of corruption or abuse can lead to pressure for immediate reform of the institutional weakness that allowed the problem to arise in the first place.

⁶ Henriques Report p. 30.

⁷ Henriques Report p. 30.

⁸ Henriques Report p. 28.

⁹ Henriques Report p. 27.

¹⁰ Evans, Martin, ‘Met Police pays compensation to Lord Bramall and Lady Brittan over disastrous Operation Midland investigation’, *The Telegraph* [UK], 1 September 2017. Available at <https://www.telegraph.co.uk/news/2017/09/01/met-police-pays-compensation-lord-bramall-lady-brittan-disastrous/>. Accessed on 17 Jan 2019.

¹¹ Grassley, Charles (Chairman of United States Senate Committee on the Judiciary), letter to Attorney General and Director FBI, 2 November 2018. Available at [https://www.judiciary.senate.gov/imo/media/doc/2018-11-02%20CEG%20to%20DOJ%20FBI%20\(Munro-Leighton%20Referral\)%20with%20redacted%20enclosures.pdf](https://www.judiciary.senate.gov/imo/media/doc/2018-11-02%20CEG%20to%20DOJ%20FBI%20(Munro-Leighton%20Referral)%20with%20redacted%20enclosures.pdf). Accessed on 17 January 2019.

¹² Henriques Report p. 43.

¹³ British Broadcasting Corporation, ‘Police “got things wrong” with Operation Yewtree’, 12 November 2015. Available at <https://www.bbc.com/news/uk-34801011>. Accessed on 21 January 2019.

One example that has been mentioned in this regard is Operation Ord, the Victorian Independent Broad-Based Anti-Corruption Commission (IBAC) investigation into misappropriation of funds from Victorian schools. IBAC held public hearings that exposed a far-reaching network of corruption all the way up to the level of a departmental Deputy Secretary. These revelations led to immediate moves to reform the system, with the Department of Premier and Cabinet (DPC) reporting back to IBAC on the progress of reforms.

It is worth noting, however, that IBAC undertook extensive private investigations before going public. Operation Ord commenced in September 2013, executed numerous search warrants from November 2013 to August 2014, and held private hearings in July 2014 and November 2014. The first public hearing was in April 2015.

IBAC's legislation requires specific conditions to be satisfied before a public hearing can take place. Subsection 117(1) of the Victorian *Independent Broad-based Anti-corruption Commission Act 2011* sets the following three-pronged test:

- ... an examination is not open to the public unless the IBAC considers on reasonable grounds—
- (a) there are exceptional circumstances; and
 - (b) it is in the public interest to hold a public examination; and
 - (c) a public examination can be held without causing unreasonable damage to a person's reputation, safety or wellbeing.

The IBAC Act also has other conditions, for example the hearing should not be public if it could lead to the identification of a whistle-blower.

The legislation governing hearings by the Queensland Crime and Corruption Commission (CCC) sets similar conditions for a public hearing to take place. Section 177 of the Queensland *Crime and Corruption Act 2001* states that a hearing can only be public if the CCC considers that this will make the relevant investigation more effective, and that a public hearing would not be unfair to a person or contrary to the public interest.

The legislation governing hearings by the NSW Independent Crime and Corruption Commission (ICAC) uses similar language. Subsection 31(1) of the NSW *Independent Commission Against Corruption Act 1988* specifies that “the Commission may, if it is satisfied that it is in the public interest to do so, conduct a public inquiry”. Subsection 31(2) sets out some matters that ICAC should consider in making this decision, including “whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned”. The ICAC Act also has additional provisions designed to ensure that public inquiries take place within a reasonably restricted framework.

While the legislation covering anti-corruption inquiries in NSW, Queensland and Victoria is written in similar terms, in each case the relevant commission is able to exercise some judgement in deciding whether an inquiry should be public or private. Of the three bodies, it appears that the NSW ICAC

has been most disposed to choose public hearings, which has resulted in some controversy and debate.

In 2016 the then Inspector of the ICAC, the Hon David Levine, recommended in a report to the NSW Premier that “the examinations and inquiries conducted by ICAC be held in private”. The Inspector also recommended legislation of an “exoneration protocol”, which would allow persons accused of corruption by ICAC but not convicted at trial to apply for a court order expunging the ICAC records, or having the ICAC findings set aside.¹⁴

The catalyst for the Inspector’s recommendations was ICAC’s Operation Hale, an inquiry into the conduct of then NSW Deputy Senior Crown Prosecutor Margaret Cunneen SC¹⁵ and others. The NSW Court of Appeal and the High Court of Australia ultimately found that ICAC had no power to conduct the inquiry.

ICAC did not support the Inspector’s recommendations. In a formal response to the NSW Premier, ICAC stated that removal of public hearings “would seriously weaken the Commission’s proven effectiveness in exposing and preventing corrupt conduct”. Further, ICAC argued against an exoneration protocol, pointing to different standards of proof, and the fact that ICAC proceedings are inquisitorial rather than adversarial. ICAC stated that it “is, in effect, a standing Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission”.¹⁶

On balance, the Synod can understand why Mr Levine argued that ICAC should hold only private inquiries, and why the Commonwealth Government has proposed that the CIC should only hold private inquiries. Misdirected public inquiries can cause serious and unnecessary damage to the reputations and livelihoods of innocent individuals. This was starkly highlighted by the impact of Operation Midland in Britain, and arguably was also demonstrated by the over-reach of Operation Hale in NSW. Based on such examples, it seems reasonable to at least restrict the ability of a CIC to hold public hearings.

However, the Synod considers that there are ways of addressing concerns without completely removing the CIC’s ability to exercise judgement in the choice between public and private inquiries, to achieve outcomes comparable to Victoria’s IBAC. For example, IBAC’s approach in Operation Ord, where extensive private investigation preceded a decision to hold public inquiries, shows a judicious application of public scrutiny to achieve the most effective outcomes. It should be possible for the

¹⁴ Office of the Inspector of the Independent Commission Against Corruption, *Report to the Premier: The Inspector’s Review of the ICAC*, May 2016. Available at <https://www.oiiac.nsw.gov.au/assets/oiiac/reports/other-reports/Report-to-Premier-Inspectors-Review-of-the-ICAC.pdf>. Accessed on 29 January 2019.

¹⁵ In December 2018 the Commonwealth Attorney-General appointed Ms Cunneen to the three-member CIC Review Panel which will advise the Commonwealth Government on the proposal being discussed in this submission. Media release from The Hon Christian Porter MP, Attorney-General for Australia, *Commonwealth Integrity Commission Review Panel Announced*, 18 December 2018. Available at <https://www.attorneygeneral.gov.au/Media/Pages/Commonwealth-Integrity-Commission-Review-Panel-Announced-18-Dec-2018.aspx>. Accessed on 29 January 2019.

¹⁶ Independent Commission Against Corruption NSW, *Submission to the Premier of NSW on the ICAC Inspector’s Report on His Review of the ICAC*, May 2016. Available at http://www.icac.nsw.gov.au/images/Submission_to_the_Premier_May2016.pdf. Accessed on 30 January 2019.

CIC to have a public inquiry power, but to ensure that the power is subject to stringent conditions designed to avoid abuse and over-reach.

POWERS

The Synod believes that the public sector division of the CIC should have the same powers as the law enforcement division. The consultation paper fails to explain why the two divisions would need different powers. A corruption Minister, Member of Parliament or public servant is capable of doing as much harm to the community as a corrupt law enforcement official so the powers of CIC should be the same for both divisions.

RECOMMENDATIONS

The Synod of Victoria and Tasmania, Uniting Church in Australia recommends that:

- The Commonwealth Government allow direct referrals to the proposed Commonwealth Integrity Commission (CIC) public sector integrity division.
- The Commonwealth Government allow the proposed CIC to institute public inquiries, subject to extensive safeguards to avoid damage to innocent individuals and the exposure of whistle-blowers to retaliatory action.
- The law enforcement division and the public sector division of the proposed CIC should have the same powers.
- The CIC should be granted anti-tip-off provisions in the legislation that establishes it so that it can prevent actions being taken that would undermine its investigations and prevent exposure of the full extent of the criminal activity being investigated.
- The Commonwealth Government should establish a Parliamentary Joint Committee on the Commonwealth Integrity Commission and a Parliamentary Inspector of the Commonwealth Integrity Commission to oversee the activities of the CIC and its use of powers and to be able to investigate and address any complaints about the misuse of powers by the CIC.

Dr Mark Zirnsak
Senior Social Justice Advocate
Synod of Victoria and Tasmania
Uniting Church in Australia
Centre for Theology and Ministry
29 College Crescent
Parkville Victoria 3052
Phone: (03) 9340 8807

ATTACHMENT A –RELEVANT EXAMPLES

Father Gerald Ridsdale long-term sexual abuse¹⁷

Father Gerald Ridsdale was ordained a priest in Ballarat in 1961. Soon afterward his bishop received a complaint that Father Ridsdale had sexually abused a child. As a result, Father Ridsdale was transferred to a different parish and told there would be serious consequences if he repeated his behaviour. This was not an effective deterrent.

In 1975 Father Ridsdale was parish priest in Inglewood, and was told of police inquiries about him. He left the parish overnight. In 1981 there was a complaint about him in the parish of Mortlake. In 1982 there were complaints about him living with a young boy at the Mortlake presbytery.

After this, Father Ridsdale moved to the Catholic Enquiry Centre in Sydney. He stayed there until 1986, when he was asked to leave because of an incident with a young boy.

After further complaints, Father Ridsdale was removed from the priesthood in 1993. He was convicted of sexual offences in parishes including Ballarat East, Swan Hill, Warrnambool, Apollo Bay, Inglewood, Edenhope and Mortlake.

Marcus Einfeld perjury case¹⁸

In 2006 Marcus Einfeld's car was photographed by a speed camera in Mosman travelling above the speed limit. In order to avoid a penalty (which would include a loss of points on his driving licence), Mr Einfeld, a former judge of the Federal Court of Australia, lodged a statutory declaration, and later testified in court, that the car was driven by his friend Teresa Brennan, who was resident in Florida but had since died.

By chance, journalists from Sydney's *Daily Telegraph* investigated Teresa Brennan's background, and discovered that she had died in 2003, so could not have been driving the car in 2006. In response, Mr Einfeld lodged a 20 page statement with police, stating that the driver was another person with a very similar name, who also lived outside Australia and who had also since died. Mr Einfeld did not produce any evidence (such as emails) of contact with this person, nor indeed any evidence of her existence.

In support of Mr Einfeld's second statement, Angela Liati provided his lawyers with her own statement, which was passed on to police. Ms Liati claimed that she had driven through Mosman on the relevant date in Mr Einfeld's car with Theahresa Brennan, a friend of Mr Einfeld's whom she had met at a meditation retreat. When questioned in court on her statement, Ms Liati changed some details of her story (for example, she had met Ms Brennan in a café rather than at a meditation

¹⁷ Information on Father Ridsdale is extracted from Royal Commission into Institutional Responses to Child Sexual Abuse, pp. 138-141, *Final Report Volume 16 Religious institutions Book 2*, December 2017. Available at https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_16_religious_institutions_book_2.pdf. Accessed on 18 January 2019

¹⁸ General background on the Marcus Einfeld case is taken from two sources. Firstly: Harari, Fiona, *A tragedy in two acts: Marcus Einfeld and Teresa Brennan*, Victory Books, Melbourne, 2011. Secondly: Ferguson, Sarah. 'The dishonouring of Marcus Einfeld', Australian Broadcasting Corporation (ABC) Four Corners program 23 March 2009. Available at <https://www.abc.net.au/4corners/the-dishonouring-of-marcus-einfeld/8953040>. Accessed on 18 January 2019.

retreat). Eventually Ms Liati admitted that she had fabricated the whole episode in order to obtain an introduction to Mr Einfeld.¹⁹ As a result, she was sentenced to 200 hours of community service. The sentencing judge had considered a good behaviour bond, but decided in favour of community service because Ms Liati “wasted a lot of the community’s time and money, [so] perhaps she should do something to assist the community”. The judge also commented that Ms Liati’s actions were “annoying and caused a waste of time of public officials at considerable expense”.²⁰

Further colour was added to the case by Marie Christos, who was in a relationship with Mr Einfeld’s solicitor, the late Michael Ryan. Ms Christos searched Mr Ryan’s rubbish bin one night and found drafts in Mr Einfeld’s handwriting of a statement by him, with corrections and alterations by Mr Ryan designed to make the statement more vague. Ms Christos shared these documents with the police and with the media, thus keeping the story in the headlines and placing herself in the limelight.²¹

A further twist was added to the case by Vivian Schenker, a prominent reporter on the SBS television network. Ms Schenker had lunch with Mr Einfeld on the relevant date, and provided police with a statement that they had travelled to lunch in Mr Einfeld’s mother’s car. Police eventually obtained closed circuit footage showing that Mrs Einfeld’s car had not left her apartment that day. When confronted with this evidence, Ms Schenker admitted that her statement had been untrue, and agreed to give evidence in exchange for immunity from prosecution. In court she testified that she had “an imperfect memory” of the day, and could not picture the car she had been in.²²

Mr Einfeld was sentenced in 2009 to three years in jail for perjury and perverting the course of justice.

Operation Ord - misappropriation of funds from Victorian schools²³

In September 2013, following the referral of a complaint from the Victorian Ombudsman, the Victorian Independent Broad-based Anti-corruption Commission (IBAC) commenced the investigation known as Operation Ord. “The complaint included allegations that senior officers of the

¹⁹ ‘Angela Liati tells jury about story to save Marcus Einfeld’, *Daily Telegraph* [Sydney], 10 February 2009. Available at <https://www.dailytelegraph.com.au/angela-liati-tells-jury-about-story-to-save-marcus-einfeld/news-story/390b53c800173cd6c779e19e72385b11?sv=7cfa9d51e0face2e156b9ef2c6856910>.

Accessed on 22 January 2019.

²⁰ Drummond, Andrew. ‘Angela Liati sentenced to community service’, news.com.au 11 May 2009. Available at <https://www.news.com.au/national/hours-of-community-work-for-liati/news-story/88af27f4da07ded0ff4017a2ea09b35e>. Accessed on 22 January 2019.

²¹ Ferguson, Sarah. ‘The dishonouring of Marcus Einfeld’, Australian Broadcasting Corporation (ABC) Four Corners program 23 March 2009. Available at <https://www.abc.net.au/4corners/the-dishonouring-of-marcus-einfeld/8953040>. Accessed on 18 January 2019.

²² AAP, ‘Einfeld witness says memory imperfect’, *Sydney Morning Herald* 11 December 2007. Available at <https://www.smh.com.au/national/einfeld-witness-says-memory-imperfect-20071211-gdrsjy.html>. Accessed on 24 January 2019.

²³ General background on Operation Ord is derived from Independent Broad-based Anti-corruption Commission (IBAC), *Operation Ord: An investigation into the conduct of officers of the Department of Education and Training, in connection with the use of ‘banker schools’ and related activities*, April 2016. Available at https://www.parliament.vic.gov.au/file_uploads/Special_report_Operation_Ord_April_2016_P9dmrRXt.pdf. Accessed on 8 January 2019.

Department [of Education and Training] had requested false invoices to pay for unofficial and non-departmental expenses.”

Operation Ord uncovered an extensive network of corruption that siphoned off at least \$1.9 million in illicit benefits between 2007 and 2014. IBAC considered that the misappropriated amount was likely to be larger, but was unable to obtain financial records for the period prior to 2007.

The illicit funds were obtained through a network of 30 “banker schools” chosen for the purpose, together with a range of companies mostly linked by family ties to a senior departmental officer, Nino Napoli. Mr Napoli was responsible for \$5.5 billion of the department’s \$11 billion annual budget. The most senior person identified as benefitting from the inappropriate arrangements was Deputy Secretary Jeffrey Rosewarne.

Operation Ord started by investigating specific information and worked outwards. In November 2013 IBAC asked for data related to two primary schools. In January 2014 IBAC executed two search warrants linked to Mr Rosewarne’s private purchases of wine and furniture. In April 2014 IBAC executed search warrants on the residences of six key players and two businesses.

After a further series of search warrants and private examinations of witnesses, IBAC instituted public hearings in April 2015.

Before moving to public hearings, the IBAC Commissioner applied the three-pronged test set out in Subsection 117(1) of the Victorian *Independent Broad-based Anti-corruption Commission Act 2011*. The “exceptional circumstances” test was satisfied by the high value of transactions, the lengthy duration of the conduct, and the apparently pervasive nature of the conduct. The “public interest” test was satisfied by the seniority of some key players (particularly Mr Napoli and Mr Rosewarne), as well as the general interest in funding for the state education sector. The test of not causing unreasonable damage to reputations was satisfied by the credible nature of the evidence that IBAC had collected by then.

Mr Napoli was dismissed from his position in the department before public hearings began.

As a result of Operation Ord four people (Nino Napoli and three relatives) have been committed to stand trial. Two people (one a distant relative of Mr Napoli) have pleaded guilty and received non-custodial sentences.²⁴

In response to IBAC’s Operation Ord recommendations, in 2016 the Victorian Secretaries Board (VSB) established the Integrity and Corporate Reform Subcommittee to lead the work of the VSB’s corruption prevention and integrity reforms, coordinate integrity-related work, and share good practice. The subcommittee meets monthly to discuss and share lessons from integrity body audits and investigations.²⁵

²⁴ Independent Broad-based Anti-corruption Commission (IBAC), *IBAC insights issue 16*, 2018. Available at <https://www.ibac.vic.gov.au/publications-and-resources/ibac-insights/issue-16/investigations-and-prosecutions>. Accessed on 31 January 2019..

²⁵ Independent Broad-based Anti-corruption Commission (IBAC), *DPC update in response to Operation Ord recommendations, July 2018*, July 2018. Available at <https://www.ibac.vic.gov.au/docs/default->

Operation Hale – ICAC investigation of Margaret Cunneen²⁶

In May 2014 a car driven by Ms Sophia Tilley was involved in a collision in Sydney. At the time, Ms Tilley was in a relationship with Stephen Wyllie, the son of then NSW Deputy Senior Crown Prosecutor Margaret Cunneen SC. Ms Tilley was the holder of a probationary driver's licence, requiring her to have a blood alcohol content of zero while driving.

In June 2014 the (then) Australian Crime Commission (ACC) hand delivered a letter to NSW ICAC with the reference "DPP Prosecutor possibly involved in corrupt conduct". Attached to the letter were a recording and transcript of a conversation between Ms Cunneen and a tow truck driver who attended Ms Tilley's collision. The tow truck driver had been under ACC surveillance for completely unrelated reasons.

Ms Cunneen's conversation with the tow truck driver apparently suggested that she had advised Ms Tilley to delay a breath test for alcohol by pretending to have chest pains. When Ms Tilley eventually underwent a blood test at hospital, the test showed zero alcohol content, even though Ms Tilley admitted that she had a drink before driving.

Under normal circumstances allegations of this nature would be a matter for police assessment. However, the ACC had concerns over Ms Cunneen's friendship with a number of high-ranking police officers, so decided to bypass the NSW police and refer the matter to ICAC.

ICAC decided to investigate for a number of reasons. Their primary focus was the allegation that Ms Cunneen and Ms Tilley had intended to pervert the course of justice. There were also secondary issues arising from the fact that the car was leased through Ms Cunneen's employer.

In July 2014 ICAC seized the mobile phones of Ms Cunneen, Ms Tilley, Stephen Wyllie and his father Gregory Wyllie. Prior to the seizure, ICAC placed these four individuals under surveillance "so as to ascertain their activity patterns". In August 2014 ICAC applied for and executed search warrants at the premises of Ms Cunneen and Stephen Wyllie.²⁷

Later in August 2014 ICAC escalated the matter to a full investigation. There was some debate within ICAC about taking this step. The Executive Director Investigations recommended escalation, and ICAC's solicitor agreed with the recommendation. However, the Executive Director Corruption

[source/responses/summary-of-dpc-july-2018-update-in-response-to-operation-ord-recommendations.pdf?sfvrsn=933e7575_0](https://www.parliament.nsw.gov.au/ladocs/other/7148/ICAC%20Inspector%20-%20REPORT%20on%20Operation%20Hale.pdf). Accessed 1 February 2019.

²⁶ General background on Operation Hale is derived from two sources. Firstly: Office of the Inspector of the Independent Commission Against Corruption, *Report Pursuant to Section 77A Independent Commission Against Corruption Act 1988: Operation "Hale": ICAC re Margaret Cunneen SC & Ors*, December 2015. Available at <https://www.parliament.nsw.gov.au/ladocs/other/7148/ICAC%20Inspector%20-%20REPORT%20on%20Operation%20Hale.pdf>. Accessed on 29 Jan 2019. Further cited in this submission as "Inspector's report into Operation Hale". Secondly: McClymont, Kate, 'Margaret Cunneen's prayers answered: ICAC commissioner Megan Latham resigns', *Sydney Morning Herald*, 23 November 2016. Available at <https://www.smh.com.au/national/nsw/margaret-cunneens-prayers-answered-icac-commissioner-megan-latham-resigns-20161123-gsvx9h.html>. Accessed on 11 January 2019.

²⁷ Inspector's report into Operation Hale pp. 15-18.

Prevention disagreed with the recommendation and preferred that the matter be referred elsewhere, most likely to the Director of Public Prosecutions (Ms Cunneen's employer).²⁸

In October 2014 ICAC issued a media release to announce that it would be holding a public inquiry into the matter.

In November 2014 Ms Cunneen, Ms Tilley and Stephen Wyllie sought a NSW Supreme Court declaration that ICAC was exceeding its jurisdiction in conducting the investigation. The court dismissed the action.

The three individuals sought to appeal the decision, and in December 2014 the NSW Court of Appeal upheld their appeal.

As a result, in December 2014 ICAC appealed the matter to the High Court of Australia. In April 2015 the High Court dismissed ICAC's appeal, meaning that it supported the three individuals who had sought a declaration that ICAC was exceeding its jurisdiction in conducting the investigation.²⁹

In the meantime, Ms Cunneen had been directed to take leave with pay from October 2014. After the High Court result she returned to work in May 2015 and commenced a homicide prosecution.

In June 2015 ICAC supplied to the Director of Public Prosecutions, Mr Lloyd Babb SC, extensive material, some dating back to 2005, extracted from Ms Cunneen's telephone. The material included six text messages in 2012 from Ms Cunneen to a journalist friend with comments about Mr Babb. As a result, Ms Cunneen was withdrawn from the homicide prosecution.³⁰

Ms Cunneen was ultimately reinstated to her position.

In response to the High Court's decision in her case, and also in response to an independent inquiry, the NSW Government introduced legislative amendments related to ICAC's jurisdiction.³¹

Operation Midland – British police investigation of prominent people

Longstanding BBC television presenter Jimmy Savile died in October 2011. Within weeks, accounts began surfacing of his predatory sexual activities at the BBC, at National Health Service (NHS) facilities and elsewhere.³²

In response, London's Metropolitan Police Service set up Operation Yewtree in October 2012 to investigate sexual crimes by Savile, his associates and by unrelated individuals.³³

²⁸ Inspector's report into Operation Hale pp. 18-19.

²⁹ High Court of Australia, statement on Independent Commission Against Corruption v Margaret Cunneen & Ors [2015] HCA 14, 15 April 2015. Available at <http://www.hcourt.gov.au/assets/publications/judgment-summaries/2015/hca-14-2015-04-15.pdf>. Accessed on 30 January 2019.

³⁰ Inspector's report into Operation Hale, pp. 50-51.

³¹ Independent Commission Against Corruption, 'History and development of the ICAC Act', Available at <https://www.icac.nsw.gov.au/about-the-icac/legislation/history-of-act>, date of publication not specified. Accessed on 31 January 2019.

³² Halliday, Josh. 'Jimmy Savile: timeline of his sexual abuse and its uncovering'. *The Guardian*, 26 June 2014. Available at <https://www.theguardian.com/media/2014/jun/26/jimmy-savile-sexual-abuse-timeline>. Accessed on 18 January 2019

Operation Yewtree received so many allegations that police established separate operations to investigate specific strands. One of these was Operation Midland, set up in November 2014 to investigate allegations against individuals prominent in political, military and legal circles. Many of these allegations came from a single source, an individual with the pseudonym “Nick”.³⁴

Targets for Operation Midland investigation included, among others, Lord (Leon) Brittan, Lord (Edwin) Bramall and former Member of Parliament Harvey Proctor. Allegations against them were made public, with a senior police officer stating that the allegations were “credible and true”.³⁵ Police searches of their homes received full media coverage.³⁶

Eventually police concluded that there was no basis to “Nick”’s allegations.

In the meantime, Lord Brittan died while still under suspicion.³⁷

Harvey Proctor had been employed at Belvoir Castle, which also provided him with a home. After the police raised “child protection concerns” with his employer, Mr Proctor lost both his employment and his home.³⁸

In 2017 the Metropolitan Police paid £100,000 in compensation to Lord Bramall and to Lord Brittan’s widow, Lady (Diana) Brittan.³⁹ In May 2018 Harvey Proctor sued the police for £1 million in damages, and also took legal action against “Nick” for making “false and malicious” allegations.⁴⁰

In July 2018 the Crown Prosecution Service charged “Nick” with 12 counts of perverting the course of justice and one of fraud.⁴¹

Brett Kavanaugh rape allegation by “Jane Doe”⁴²

In 2018 Circuit Judge Brett Kavanaugh was nominated to serve on the Supreme Court of the United States. As a result of this nomination, a number of women alleged that Judge Kavanaugh had a

³³ British Broadcasting Corporation, ‘Police “got things wrong” with Operation Yewtree’, 12 November 2015. Available at <https://www.bbc.com/news/uk-34801011>. Accessed on 21 January 2019.

³⁴ Henriques Report p. 4.

³⁵ Henriques Report p. 4.

³⁶ Henriques Report pp. 38-39.

³⁷ British Broadcasting Corporation, ‘Lord Brittan’s widow accepts Met Police chief apology’, 16 February 2016. Available at <https://www.bbc.com/news/uk-35584041>. Accessed on 17 January 2019.

³⁸ British Broadcasting Corporation, ‘Harvey Proctor sues Met Police over false child abuse claims’, 4 May 2018. Available at <https://www.bbc.com/news/uk-44013317>. Accessed on 17 January 2019.

³⁹ Evans, Martin, ‘Met Police pays compensation to Lord Bramall and Lady Brittan over disastrous Operation Midland investigation’, *The Telegraph* [UK], 1 September 2017. Available at <https://www.telegraph.co.uk/news/2017/09/01/met-police-pays-compensation-lord-bramall-lady-brittan-disastrous/> Accessed on 17 January 2019.

⁴⁰ British Broadcasting Corporation, ‘Harvey Proctor sues Met Police over false child abuse claims’, 4 May 2018. Available at <https://www.bbc.com/news/uk-44013317>. Accessed on 17 January 2019.

⁴¹ ‘Westminster paedophile ring accuser charged with lying about murders and abuse’, *Shropshire Star* 3 July 2018. Available at <https://www.shropshirestar.com/news/uk-news/2018/07/03/westminster-paedophile-ring-accuser-charged-with-lying-about-murders-and-abuse/> Accessed on 22 January 2019

⁴² Information on the “Jane Doe” case is extracted from Grassley, Charles (Chairman of United States Senate Committee on the Judiciary), letter to Attorney General and Director FBI, 2 November 2018. Available at [https://www.judiciary.senate.gov/imo/media/doc/2018-11-02%20CEG%20to%20DOJ%20FBI%20\(Munro-Leighton%20Referral\)%20with%20redacted%20enclosures.pdf](https://www.judiciary.senate.gov/imo/media/doc/2018-11-02%20CEG%20to%20DOJ%20FBI%20(Munro-Leighton%20Referral)%20with%20redacted%20enclosures.pdf). Accessed on 17 January 2019.

history of committing sexual assaults. One graphic allegation came from an individual identifying herself as “Jane Doe” of Oceanside, California. This was received in September 2018 by the United States Senate Committee on the Judiciary. The Committee questioned Judge Kavanaugh about this allegation, and publicly released a transcript of the interview, as well as the text of the letter.

A week after releasing the information, the Committee received an email allegedly from Ms Judy Munro-Leighton, who claimed to be Jane Doe. The email also included a typed-out text of the Jane Doe letter.

Committee investigators concluded that Ms Munro-Leighton could not be Jane Doe as described in the letter: she was “decades older than Judge Kavanaugh” and lived in Kentucky rather than California or the Washington DC area. When they contacted Ms Munro-Leighton she allegedly admitted she was not Jane Doe, and that she “did that as a way to grab attention”. She allegedly also admitted she had never met Judge Kavanaugh.

In November 2018 the Chairman of the Committee referred Ms Munro-Leighton for investigation by the US Department of Justice and the Federal Bureau of Investigation. In his referral letter, the Chairman noted that “when individuals intentionally mislead the Committee, they divert Committee resources during time-sensitive investigations and materially impede our work.”