

Summary

Operation Watts

Operation Watts was an investigation by the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Ombudsman into allegations that some members of parliament were misusing public funds to pursue the interests of the Moderate Labor (ML) faction of the Victorian branch of the Australian Labor Party (ALP).

What prompted this joint investigation?

In May 2020, the Independent Broad-based Anti-corruption Commission (IBAC) received confidential information alleging that some members of parliament, including government ministers, were misusing public funds – primarily in the form of publicly funded staff – to pursue the interests of the Moderate Labor (ML) faction of the Victorian branch of the Australian Labor Party (ALP).

On 14 June 2020, shortly after IBAC began its investigation, the current affairs program *60 Minutes* aired allegations against Adem Somyurek and others in the ML faction. Mr Somyurek was at that time a member of the Legislative Council and senior minister in the government. The *60 Minutes* television program alleged that he and others in the ML faction were using publicly funded staff to engage in ‘industrial-scale’ branch stacking – in other words, recruiting and paying for large numbers of non-genuine members of the party – to increase that faction’s power in the Victorian Branch of the ALP.

In response to complaints, notifications and a formal referral from the Legislative Council, IBAC and the Victorian Ombudsman (Ombudsman) decided to conduct a coordinated investigation, named Operation Watts.

Factions are groupings in a political party. Commonly they are based on ideological or policy views (reflected in faction names such as ‘Moderate Labor’ or the ‘Socialist Left’), but they can also be based on personalities and personal networks. Factions can provide a mechanism for negotiating matters such as the formulation of a policy platform for the party and the pre-selection of candidates.

The pursuit of power or influence by a faction in a party takes time, energy and resources. These commitments must usually be generated voluntarily, as factions are rarely able to employ their own staff to pursue their goals.

Branch stacking is a technique used by factions to gain greater power in a political party.

There is commonly a limited pool of people who are sufficiently motivated to become members of a political party and to pay an annual membership fee.

Branch stacking involves recruiting ‘non-genuine’ members. These are members in name only. Their membership fees are paid for by the faction. In turn, the faction can ‘harvest’ the members’ votes in internal party matters. The faction can also inflate the number of members it controls, which can influence the calculation of delegates to deliberative bodies in the party.

The scope of the investigation

The evidence that prompted the investigation related to activities of the ML faction. The investigation focused on the activity of the ML faction in the ALP from approximately 2017 to 2020. That evidence was sufficiently convincing to enable IBAC to use powers under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) (IBAC Act) to gather further evidence and information about the alleged activities.

Decisions about whether to examine witnesses in public or in private were made in accordance with the IBAC Act which places strict limits on the examination of a witness in public.

In investigating the allegations, Operation Watts also explored the underlying factors that may have contributed to the alleged misuse of public resources. These factors and the nature of factional power struggles tend to confirm that misuse of public resources was not confined to one faction, and it was generally accepted in evidence that the culture allowing branch stacking to continue for so long gave rise to the real risk of corruption. But proof of the broader problem was more anecdotal. The evidence of branch stacking was not limited to one faction. But the evidence of misconduct only concerned the ML faction of the ALP. We had no specific evidence that allowed us to determine the extent of misuse by any other faction or make further findings of misconduct.

Key investigation findings

The IBAC Act prohibits IBAC from including in a report a finding or an opinion that a person is guilty of or has committed any criminal offence or disciplinary offence, or a recommendation that a person should be prosecuted for a criminal offence or disciplinary offence.¹ Similarly, the *Ombudsman Act 1973* prohibits the Ombudsman from including a finding or an opinion that a person is guilty of or has committed an offence, or a recommendation that a person be prosecuted for an offence.²

There would ordinarily be no discussion in an IBAC or Ombudsman report about whether facts found might give rise to a criminal or disciplinary charge. If it was thought that the facts supported such conclusions, the matters would generally be referred to the relevant prosecutorial bodies for further consideration and appropriate action. However, due to the significant public attention of this investigation, we thought it desirable to explain why we have concluded that the evidence of the individuals' conduct is such that we do not consider that the commission of a criminal offence can be established.

Although the deliberate and extensive use of electorate officers and ministerial advisors for party-political purposes was unethical and not in-line with community standards in the use of public funds, the conduct is not sufficiently or clearly described by any existing statutory provision or the common law offence of misconduct in public office.³ There is presently no statutory provision that in clear and unmistakable terms creates an offence that does not leave room for reasonable argument that the conduct falls short of establishing the offence. This gap in the criminal law is discussed further in the recommendations in Chapter 8 of the full report.

The general offence of misconduct in public office, is a difficult offence to prove. This is particularly so when there is no statutory provision that clearly identifies such conduct as criminal.

During the investigation, we also received evidence that Members of Parliament (MPs) had breached various ALP rules, including rules against a person paying the membership fees for any person other than a family member. Although such breaches were an integral component of branch stacking and, as such, form part of the background to this investigation, breaches of internal party rules are outside the jurisdiction of IBAC and the Ombudsman. Accordingly, we make no findings about them.

We also recognise that it is a matter for the relevant House and its privileges committee to make formal determinations about the reach of the Members of Parliament Code of Conduct, and for the Premier to decide whether a minister has breached the Ministerial Code. Where we have made a finding as to a breach, we would expect the relevant House to take appropriate action to determine for itself whether a breach of the Members of Parliament Code of Conduct has occurred and whether sanctions should be imposed. We note that, under the *Members of Parliament (Standards) Act 1978 (MP(S) Act)*, a breach of the code must be found to have been 'wilful' if it is to be sanctioned, which would be a matter for the relevant House to determine.

None of the ministers who were investigated remains as a minister, and so the question of whether the Premier should act upon breaches of the Ministerial Code of Conduct is redundant.

¹ IBAC Act, s 162(6).

² Ombudsman Act, s 25A(1)(c), (d).

³ See, for example, *R v Quach* [2010] VSCA 106.

Misuse of staff for factional work

An MP is elected to represent their constituents. An MP receives publicly funded staff (electorate officers) and allowances to enable them to represent their constituents. The staff should not be used for party-political purposes, although there is a political dimension to some of the work because activities such as arranging for an MP to attend community events in the electorate and helping constituents in their dealings with government raises the profile of the MP and their chances for re-election.

If an MP is appointed as a minister in the government, the MP will gain publicly funded ministerial advisors and other staff to assist the MP to fulfil their duties as a minister. Again, there is a political dimension to such work that will involve implementation of the policy platform of the minister's political party. However, this work can be distinguished from 'party-political' or 'party-specific' or 'factional' work by such staff.

Many Labor Party MPs belong to factions, which are internal groups of like-minded members, usually with a common policy agenda. The factions are the main vehicle for advancing policy agendas and their members' interests within the party.

The investigation focused on the activity of the ML faction in the ALP from approximately 2017 to 2020. During that period, Adem Somyurek was the dominant leader of the faction. Other leading factional members included government ministers Marlene Kairouz and Robin Scott.

The investigation found that factional leaders, in particular, Mr Somyurek and Ms Kairouz, had significant influence over the placement of staff as electorate officers or ministerial staff, and over the movement of staff between MPs' offices. Some MPs in the faction felt unable to refuse when told by a factional leader to employ a particular person, and staff working for MPs in the faction felt under pressure to work at the direction of factional leaders, particularly Mr Somyurek.

Staff were placed under significant pressure to do factional work during office hours. Most witnesses called as part of the investigation understood that it was improper and unethical to do so, although both Mr Somyurek and Ms Kairouz claimed that it was not unlawful for their electorate staff to undertake some internal party work. The pressure to undertake this work was in some cases implicit and in other cases overt. There was compelling evidence of staff being bullied by Mr Somyurek to perform this work. Some staff testified that they complied with the directions of the factional leadership group because to refuse would significantly limit their career in politics or could result in the loss of their job, and there was no-one with whom they could safely raise any concerns.

Work relating to branch stacking

Branch stacking is an administratively intense activity that involves recruiting 'non-genuine' members who are members in name only. Their membership fees are paid for by the faction. In turn, the faction can 'harvest' the members' votes in internal party matters. The inflated number of voting members controlled by a faction can boost its representation on the party's deliberative bodies.

Branch stacking has been a long-term problem for the ALP (and other political parties) as it distorts decision making, undermines the efforts and commitment of genuine members, and harms the party's reputation. In response, the ALP has adopted a range of rules and processes that have made branch stacking more difficult but have not eliminated it, as shown by the circumstances of this investigation.

The investigation demonstrated that much of the work that some staff were encouraged or pressured to do was related to branch stacking. Electorate office and ministerial staff did not do this work in order to support MPs in their electoral or ministerial duties: it was clearly for party purposes.

It was improper for publicly funded staff to be occupied with factional matters during office hours. By requiring, encouraging or permitting electorate office staff to do such work during their hours of employment, the relevant MPs (in particular, Mr Somyurek and Ms Kairouz) breached various obligations that applied to them over the relevant period, including the Ministerial Code of Conduct, as well as the Members of Parliament Code of Conduct contained in the MP(S) Act. That said, it is ultimately a matter for the Premier to decide whether a minister has breached the Ministerial Code of Conduct, and for the relevant House and its privileges committee to make formal determinations about breaches of the Members of Parliament Code of Conduct.

Although the electorate and ministerial staff involved in this work also breached their applicable codes of conduct, they were doing so at the direction or encouragement of their MP, minister or other leaders in the ML faction, who must bear primary responsibility for those breaches.

Other MPs also employed ML factional operatives, but the investigation did not find or receive evidence that the operatives were extensively engaged in factional business during working hours. It was clear that the faction moved its operatives between different MPs' electorate offices and believed them to be at the leaders' direction to some extent, but it was not clear whether the local MPs actively provided such direction, passively allowed some ML factional activity to occur, or complied with their legal and ethical obligations to ensure that any such work did not occur during publicly funded hours.

Publicly funded jobs given to factional allies and operatives

The investigation found that members of the ML faction or their relatives were given publicly funded employment in electorate or ministerial offices as a form of reward for their recruitment of members or their work in organising the faction.

Employment of electorate and ministerial staff was characterised by a total absence of the usual recruitment and selection processes used to ensure that the best person available is selected for a job. Apart from factional operatives, it was common to employ relatives of the employing minister or MP, relatives of other factionally aligned MPs, or relatives of factional operatives. In some cases, the employment was provided with little regard to the person's ability to perform the public duties for which they were officially employed, and with little or no regard to whether they actually performed those official duties. More than 15 relatives of ML faction MPs or operatives were employed in ministerial and electorate offices.

While trust, confidence and political alignment might be a crucial requirement for employment in an MP's office, some factional operatives and relatives were employed as a favour or reward, were not appointed on merit, and did not possess the skills and experience to perform their job well.

To the extent that some people were employed predominantly because of their factional value or a relative's value to the faction, ministers and MPs breached provisions of both the Ministerial Code of Conduct and the Members of Parliament Code of Conduct.

Mr Somyurek employed staff in his electorate office despite the almost complete absence of any official work for them to do in communicating with or assisting constituents or supporting Mr Somyurek in his parliamentary duties. Nevertheless, he made sure that his office was staffed to capacity and used his electorate office and communications budget to also employ numerous factional members as casual employees.

Grants to community organisations

There was a close relationship between certain factional operatives of the ML faction and three community organisations that received grants from departments or agencies overseen by the ML-aligned ministers Robin Scott and Marlene Kairouz. Those three community organisations were the Somali Australian Council of Victoria (SACOV), the Australian Light Foundation (ALF) and the Cambodian Association of Victoria (CAV).

Despite the allegations that were, in part, the reason for establishing Operation Watts, no evidence was uncovered that such grants were used to pay for ALP memberships. The evidence does show that people in the ML faction, including Mr Somyurek, sought to improperly influence the grant process in favour of SACOV, and that those attempts were not openly refused, although they may not have ultimately been acted upon.

The investigation did not find or receive evidence that any ministers overrode departmental advice on grants or sought to improperly influence departmental advice or decisions. However, the lobbying of ministers and their staff by factional operatives on behalf of SACOV inevitably gives rise to perceptions of a conflict of interest and favoured treatment in relation to grants that SACOV received from departments or agencies in the portfolio of a minister in the ML faction.

The investigation also found deficiencies in the documentation and acquittal of grants received by the three organisations.

Factors that contributed to the misuse of public resources

Many factors contributed to the misuse of public resources examined in this investigation. In considering these factors outlined below, it is important to note that since the commencement of this investigation, the ALP has made a further series of reforms that are designed to eliminate branch stacking, including abolishing the Membership Administration Committee.

The culture of branch stacking

Factions have a powerful incentive to expand the pool of party members by using community networks to recruit people who become party members in name only. To obtain pre-selection, prospective candidates for parliament and those MPs standing for re-election commonly need to align themselves with a faction and to have community connections that enable them or their associates to recruit substantial numbers of non-genuine members. Alternatively, they may need to provide money to the faction to pay the membership fees of non-genuine members.

The ML faction often sought to recruit and retain non-genuine members from Melbourne's multicultural communities, undermining the efforts by genuine party members from those communities to increase their communities' participation and representation in Australian parliamentary democracy.

If a candidate is successful in gaining pre-selection and being elected to parliament, they gain electorate office staff. These staff are valuable to the faction because they can be used to perform the administratively complex and time-consuming tasks associated with branch stacking.

The branch stacking culture resulted in operatives breaking rules without fear of consequences, such as forging members' signatures and misusing access privileges to electoral data that contained sensitive personal information.

Absence of clear legal guidance on use of staff

The investigation found that there were competing interpretations of the legal framework governing the use of electorate office staff. Mr Somyurek and other factional leaders sought to use a dubious interpretation of the relevant provisions of the *Parliamentary Administration Act 2005* to justify their use of electorate office staff.

Limited safeguards or accountability

Ministers, MPs and staff were able to engage in the activities detailed in this report partly because of inadequate safeguards against such conduct. The accountability systems for ministers, MPs and their staff are different, with some overlaps (for example, ministers are MPs and accountable to both the Premier and the Parliament). The absence of a robust accountability framework was characterised by non-existent or outdated processes, including:

- lack of awareness and training on relevant standards of conduct
- the absence of a safe, confidential process for staff or others to raise concerns
- the absence of an independent, transparent complaints investigation process
- Parliamentary bodies and procedures are dominated by the major party in each House, resulting in weak and inconsistent approaches to alleged misconduct
- the absence of a Parliamentary or other independent body responsible for promoting the Codes of Conduct, monitoring their operation and recommending improvements, and
- the hands-off approach taken by the Department of Parliamentary Services (DPS) to monitoring electorate officers' work.

The DPS Secretary is the formal employer of electorate officers, as delegate of the presiding officers of parliament. However, the department is in a structurally weak position to enforce obligations, as electorate officers' daily work tasks are directed by their MP, and DPS is accountable to the presiding officers, who have the power to hire and fire the secretary.

Recommendations for reform

The misconduct by parliamentary members of the ML faction in appointing and using electorate officers and ministerial staff to pursue ML factional agendas deeply concerns IBAC and the Ombudsman. Although the Victorian Parliament's fundamental sovereignty and independence are inalienable, repeated scandals regarding MPs' use of their parliamentary budgets underscores the need for systemic reform.

The Operation Watts investigation resulted from failure to prevent publicly funded electorate and ministerial officers from being used by some MPs and ministers for party-specific purposes. This investigation has exposed the continuing weaknesses of the Victorian parliamentary integrity model, and in particular, the absence of an effective framework to support and enforce the new standards inserted in the MP(S) Act.

The overall parliamentary governance and accountability regime remains unbalanced and retains defects that could have been cured by a more systemic approach.

Clear and comprehensive rules, leadership and a culture of respect for the statutory Members of Parliament Code of Conduct, reinforced by fair and effective processes for dealing with breaches and imposing proportionate sanctions would reduce the incidence of misconduct and improve the community's respect for parliament.

IBAC and the Ombudsman propose a package of reforms, outlined below, that will help Victoria to not only catch up with other Australian jurisdictions, but also to become a leader on matters of parliamentary integrity. These reforms stand together as an integrated package. They support each other in a systemic way and we urge the government and parliament to implement all of them.

Improve parliament's integrity framework

IBAC and the Ombudsman propose that the government and the parliament work together to pass legislation that would establish:

- a Parliamentary Ethics Committee that would be responsible for promoting and monitoring the operation of the Members of Parliament Code of Conduct and other ethical obligations, producing additional guidance, and recommending improvements to the integrity framework for parliament. [see Recommendations 1 and 4]
- an appropriately resourced Parliamentary Integrity Commissioner who would receive and investigate complaints about non-criminal breaches of the Members of Parliament Code of Conduct and other parliamentary ethical obligations, resolve minor complaints, and submit findings and recommendations related to more serious complaints to the relevant privileges committee of each House. [see Recommendation 2]

The Privileges Committee of each House should receive reports of serious misconduct identified by the Commissioner and should table the report in the House together with its comments and recommendations within a fixed time of receiving the report. The relevant House should vote within a fixed time of the report being tabled to support or reject some or all of the Commissioner's or Committee's recommendations but should not be permitted to amend them. [see Recommendation 3]

The introduction of a Joint Ethics Committee and an Independent Parliamentary Standards Commissioner is a significant aspect of the proposed reform package. However, the changes must be supported by a broader suite of reforms to improve and ensure ethical practices by MPs and their staff.

Reforms to Department of Parliamentary Services and to electorate officers' employment arrangements

The employment arrangements for electorate officers should be reformed to tighten the definition of permissible work. *The Parliamentary Administration Act 2005* (PA Act) should be amended to expressly prohibit electorate officers from engaging in any predominantly party-specific activity, such as administration, organisation or management of a political party. [Recommendation 7]

Further, in keeping with community expectations of MPs' ethical conduct, the legislation should provide that any MP who directs or allows a person to undertake party-specific activities while employed to assist the MP in discharging their public duties is guilty of an offence.

The government should allow for specific circumstances where it is difficult to separate the party-political aspect of an activity from the usual duties of a staff member, and for unavoidable and reasonable communication with a political party's head office or local branch on minor or incidental matters. [Recommendation 18]

The PA Act provides that the presiding officers are the joint employers of electorate officers, although the power is currently exercised under delegation by the DPS Secretary. To remove the potential for party-political considerations to interfere with the employment relationship, we recommend that the DPS Secretary should become the electorate officers' employer, and that the DPS secretary's term of appointment should be increased to more than four years, in order to separate the role from the electoral cycle.

The DPS Secretary, in appropriate consultation with the presiding officers, should review processes for the recruitment, training and supervision [Recommendation 13] of electorate officers, including those engaged as casual employees. [Recommendation 12] This would include reviewing, promoting and enforcing a publicly available Electorate Officers Code of Conduct [Recommendation 10] and an effective complaints process, to ensure that electorate officers have a clear process for raising concerns regarding their employment. DPS should also strengthen the audit program that it arranges in respect of electorate office activities. [Recommendation 14]

Although it is reasonable for members to want prospective employees to hold political views similar to their own, better oversight of recruitment processes would also allow the DPS to ensure merit-based recruitment in all instances, avoiding nepotism and other inappropriate practices.

MPs should be prohibited from employing close family members in their electorate office. The government should also consider extending this prohibition to employing family members of other MPs. [Recommendation 11]

Ministerial obligations

The accountability arrangements for ministers are different from those for MPs. Ministers are appointed and removed by the Governor acting on the Premier's advice, and effectively hold office at the Premier's discretion. They are also individually responsible to parliament for their actions as ministers, as well as for their actions as MPs. The Premier issues a Ministerial Code of Conduct, which details the obligations of ministers in performing their roles. The code is publicly available. It requires ministers to resign if the Premier is satisfied that they have breached or failed to comply with the code in a substantive and material manner.

Detailed consideration of whether those standards are sufficient and whether they are applied in practice falls outside the scope of this investigation but warrants further consideration by the government. At a minimum, the Ministerial Code of Conduct should be amended to clarify that ministers must ensure that all public resources are used for performing their duties and prohibit their use for party-specific purposes. [Recommendation 19] Also, the government and parliament should clarify the extent to which the Parliamentary Code of Conduct should cover breaches by ministers in relation to their ministerial portfolios. [Recommendation 16 and 17]

We recommend that legislation should provide that a minister who directs or allows a person to undertake party-specific activities while that person is employed to assist the minister in discharging their public duties is guilty of an offence, subject to the same types of extenuating circumstances as for the proposed electorate officer offence. [Recommendation 18]

Ministerial staff

The Ministerial Staff Code of Conduct should be made publicly available in the interests of greater transparency and accountability. [Recommendation 19] It should reinstate the previously removed provision requiring ministerial staff to take care to ensure that their private activities or involvement with community or political organisations does not create a real or perceived conflict of interest. [Recommendation 19]

The investigation of the use of advisors for organising factional business has underlined the need for a more robust system of accountability. Privacy and integrity could be maintained if an independent external body such as the proposed Parliamentary Integrity Commissioner were given the power to investigate alleged breaches. The details of any complaint and referral process, the degree of confidentiality of any investigation and the nature of any recommendations would be issues for resolution during the development of the relevant legislation. [Recommendation 20]

Community grants

The investigation did not find evidence that ministers who were ML faction leaders, or their advisors, interfered in public funding processes to favour community organisations with links to the faction.

In respect of potential conflicts of interest, IBAC and the Ombudsman recommend that the government should undertake a comprehensive review of existing conflict of interest controls and the relevant codes of conduct for ministers and ministerial staff. It should also ask the parliament to consider whether the Parliamentary Integrity Advisor's role should include confidential advice to ministers about potential conflicts of interest. [Recommendation 21]

In respect of grant processes, IBAC and the Ombudsman recommend that state and local government funders of community organisations continue to improve their grant management frameworks with a particular focus on more proactive risk identification.

Conclusion

This investigation uncovered extensive misconduct by parliamentary members of the Moderate Labor faction of the Victorian branch of the Australian Labor Party.

IBAC and the Ombudsman carefully considered whether the identified misconduct constituted criminal offending which should be referred to the DPP. While the conduct was considered to be egregious, the difficulties in proof mean prosecution is not recommended.

The investigation did not uncover examples of what might be termed traditional or 'black' corruption, in which a public decision maker dishonestly exercises their power for their own private gain or reward, for example where they accept a payment from a third party. The Operation Watts investigation was firmly within the zone of 'grey' corruption in which decisions are made and rules are bent or broken for the benefit of a decision maker's friends, political organisation or networks.

Grey corruption has been the subject of numerous reports in Australia and overseas jurisdictions in recent years and raises important issues of transparency and accountability. It is characterised by questionable behaviour and decision making that benefits a person's associates or networks without amounting to criminal conduct or being sufficiently blatant to justify criminal prosecution. However, its effect on public confidence in democracy and its institutions is deeply damaging.

A recurring theme in grey corruption investigations is the question of how to design and implement processes that hold public officeholders to account for actions that might fall short of the criminal threshold but nevertheless breach the ethical standards that the community expects them to uphold. For politicians, such standards might be articulated in legislation and codes of conduct. Operation Watts has asked whether the relevant standards are clear and helpful, whether breaches can be fairly investigated and sanctioned, and whether standards are supported by a culture of integrity and respect.

IBAC and the Ombudsman have found that despite some improvements made by the current government in 2019, the systems of parliamentary accountability in Victoria are weak and fall behind those in other Australian jurisdictions. The Operation Watts Special Report makes recommendations about how those systems can be improved so that the abuses of power perpetrated by members of the ML faction can be avoided in the future.

As a result of Operation Watts, the case for meaningful reform of parliamentary standards and processes is both compelling and urgent.

Despite the findings of the investigation, we believe the vast majority of Members of Parliament, whatever their political affiliation, genuinely seek to advance the public interest. IBAC and the Ombudsman encourage them to demonstrate this by supporting these reforms.

About IBAC

IBAC is Victoria's agency responsible for preventing and exposing public sector corruption and police misconduct. This also covers the not for profit sector where organisations receive government funding to provide services on behalf of the government. Suspected corrupt conduct can be reported to IBAC, including anonymously. To report corruption and misconduct now, visit www.ibac.vic.gov.au/report or call **1300 735 135**.

About the Victorian Ombudsman

The Office of the Victorian Ombudsman promotes fairness, integrity and respect for human rights. It holds the Victorian public sector accountable to the people of Victoria using a range of functions and powers, including the investigation of administrative actions in the Victorian public sector and matters that might be referred to it by the Victorian Parliament. To make a complaint about an action or decision made by a Victorian public organisation visit www.ombudsman.vic.gov.au or call **1800 806 314**.