

Investigation of a matter referred from the
Legislative Council on 9 February 2022 – Part 1

July 2022

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The Victorian Ombudsman pays respect to First Nations custodians of Country throughout Victoria. This respect is extended to their Elders past, present and emerging. We acknowledge their sovereignty was never ceded.

Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AB of the Ombudsman Act 1973 (Vic), I present to Parliament my
Investigation of a matter referred from the Legislative Council on 9 February 2022 – Part 1.

A handwritten signature in black ink, appearing to read 'Deborah Glass', with a stylized flourish at the end.

Deborah Glass OBE
Ombudsman

28 July 2022

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Foreword

This is my first report to Parliament into the matters referred to me by the Legislative Council in February 2022. It concerns those parts already investigated: the now infamous ‘Red Shirts’ scheme that operated before the 2014 State election, and allegations of branch stacking.

‘Red Shirts’ was the subject of my 202-page report to Parliament in March 2018, and the misuse of public funds connected to branch stacking activities resulted in the joint 233-page Operation Watts report with the Independent Broad-based Anti-corruption Commission (‘IBAC’), tabled in July 2022.

Is there anything else to investigate? The short answer is no. I explain why in this report.

In my 2018 Red Shirts report I concluded that the scheme was an artifice, and wrong. I also concluded that 21 Members of Parliament who participated in it had breached Parliament’s Members’ Guide.

But I did not conclude it was criminal. Nor did Victoria Police in its initial assessment, or the Director of Public Prosecutions in a later assessment.

Nor was it corrupt, as defined by the IBAC Act, despite much media, public and political commentary to that effect. According to the Privileges Committee of the Legislative Council in 2018, the conduct did not even amount to a contempt of Parliament. And despite assertions to the contrary, there is no persuasive evidence the Premier designed, propagated or facilitated the scheme.

Allegations of misuse of public funds connected to branch stacking were subject to a rigorous joint investigation by IBAC and the Ombudsman. That investigation noted it was highly likely that the misuse of publicly funded staff for party or factional purposes had occurred for a long period and was not limited to one faction of the ALP. But lack of evidence made it impossible to make more specific findings about other factions.

It is time to end this debate. I cannot, of course, rule out that further evidence may yet come to light, but with the passage of time and difficulty in proof I am not prepared to spend further public resources on these matters.

I now look forward to some public debate on what should happen when MPs cross the line. Investigating allegations about badly behaved MPs has taken up considerable resources of both the Ombudsman and IBAC in recent years, while some bad behaviour is not referred or investigated at all.

I recommended an independent investigative agency back in 2018. Instead, we have seen further allegations of misuse of public funds.

I welcome the government’s commitment to implementing the recommendations in Operation Watts, which exposed the continuing weaknesses of the Victorian parliamentary integrity system, and the absence of an effective framework with which to enforce parliamentary standards.

I look forward to real reform in this area, and to a commitment across the political spectrum to achieving this reform. I will be monitoring the progress.

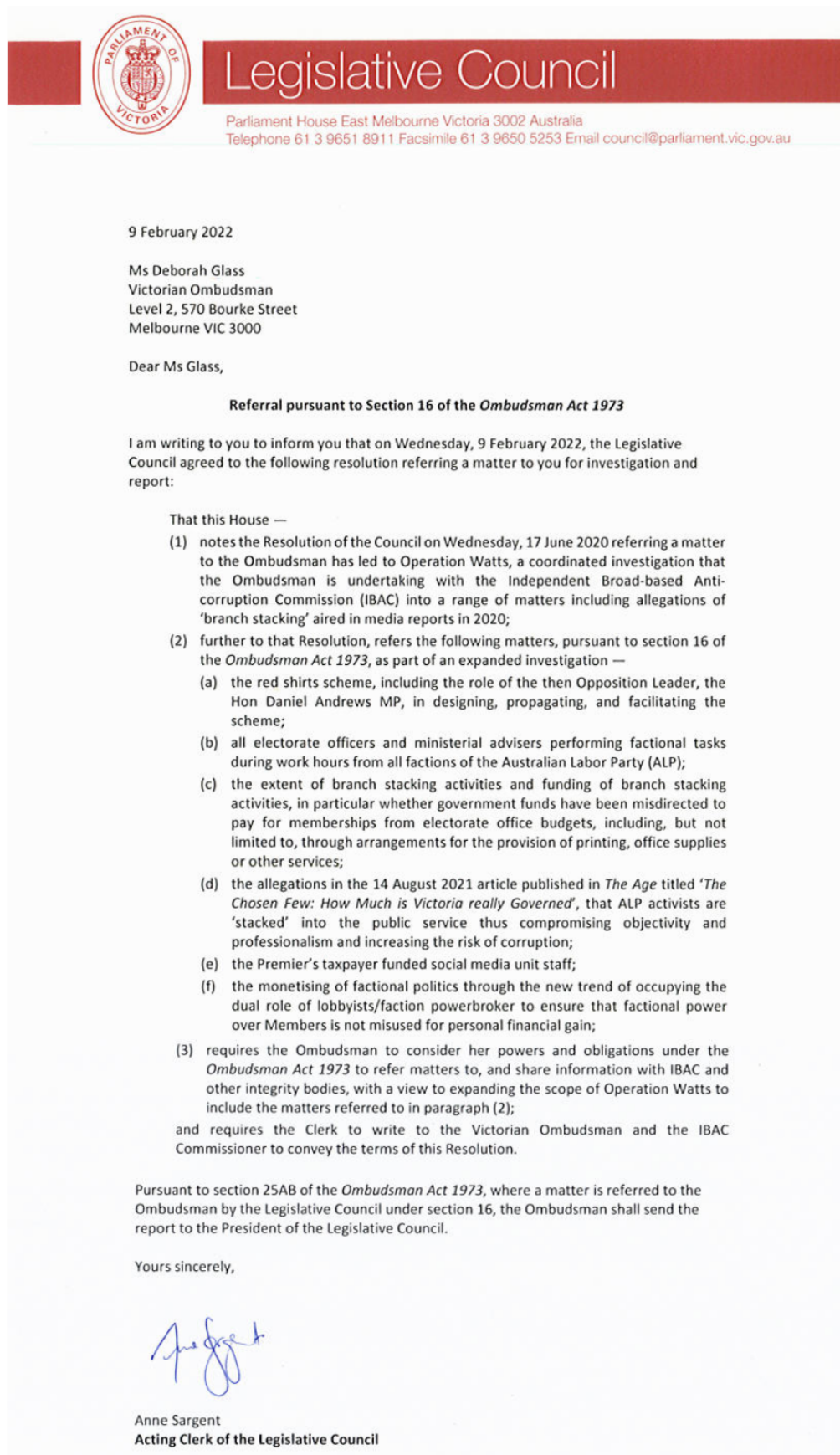
Deborah Glass
Ombudsman

Background

Why we investigated

1. On the evening of 9 February 2022, following a debate in the Legislative Council earlier that day, the Ombudsman received a referral under section 16 of the *Ombudsman Act 1973* (Vic).
2. The referral required me to investigate a number of matters, some of which had already been investigated or were at the time under investigation.
3. Specifically, the 'Red Shirts scheme' was the subject of my *Investigation of a matter referred from the Legislative Council on 25 November 2015*, tabled in Parliament on 21 March 2018.
4. Allegations of electorate officers and ministerial advisers engaging in factional activities, including branch stacking, were the subject of Operation Watts, a joint investigation with IBAC. That investigation was undertaken following a referral to the Ombudsman from the Legislative Council on 17 June 2020, and a report was tabled in Parliament on 20 July 2022.
5. This report (Part 1) responds to (a) to (c) of the February 2022 Legislative Council referral.
6. Other matters – specifically, (d) to (f) of the referral – have not previously been investigated by the Ombudsman and will be the subject of a separate report (Part 2) when the investigation is completed.

Figure 1: The referral



Terms of reference

7. The terms of reference for Part 1 essentially reflect the Legislative Council referral, through the lens of what is appropriate, practicable and proportionate.
8. In relation to the Red Shirts scheme, I seek to address the following questions:
 - What were the gaps in the *Investigation of a matter referred from the Legislative Council on 25 November 2015* ('Red Shirts investigation')? What were the consequences of those gaps?
 - Is there any evidence of the Hon Daniel Andrews MP designing, propagating, and facilitating the scheme, either at the time or since release of the Red Shirts report in 2018?
 - Is there any evidence, or other rationale, to justify further referral to Victoria Police, or referral to IBAC?
9. In relation to the allegation of electorate officers and ministerial advisers engaging in factional activities, I seek to address the following questions:
 - To what extent have the Red Shirts investigation and Operation Watts investigated 'all electoral officers and ministerial advisers performing factional tasks during working hours from all factions of the Australian Labor Party' and 'the extent of branch stacking activities and their funding'?
 - Is further investigation appropriate, practicable and proportionate?

How we investigated

10. The investigation involved:

- reviewing the evidence obtained by the Ombudsman in the Red Shirts investigation
- reviewing relevant open-source material including social media and parliamentary debates
- meeting with Victoria Police and obtaining further material
- obtaining data about electorate officers from the Victorian Department of Parliamentary Services
- communicating with the Clerk of the Legislative Council about matters of parliamentary privilege.

11. The investigation was guided by the civil standard of proof, the balance of probabilities, in determining the facts of the investigation – taking into consideration the nature and seriousness of the matters examined, the quality of the evidence and the gravity of the consequences that may result from any adverse opinion.

12. This report includes adverse comments about Victoria Police, and comments that could be seen to be adverse, about the Hon Adem Somyurek MLC. For the avoidance of doubt, it makes no criticism of any individual police officers or any other persons. In accordance with section 25A(2) of the Ombudsman Act, the investigation provided Mr Somyurek and Victoria Police with a reasonable opportunity to respond to the material in a draft version of this report. The Hon Daniel Andrews MP was also provided with an opportunity to respond to the material referencing him. This report fairly sets out their responses.

13. In accordance with section 25A(3) of the Ombudsman Act, any other persons who are or may be identifiable from the information in this report are also not the subject of any adverse comment or opinion. They are named or identified in the report as the Ombudsman is satisfied that:

- it is necessary or desirable to do so in the public interest
- identifying those persons will not cause unreasonable damage to their reputation, safety or wellbeing.

Investigation

The Red Shirts investigation: What were the gaps in the investigation? What were the consequences of those gaps?

A brief summary of the Red Shirts investigation

14. On 25 November 2015, the Legislative Council referred allegations to the Ombudsman that Australian Labor Party ('ALP') MPs had misused their staff budget entitlements prior to the 2014 election. The allegations were effectively that electorate officers paid out of Parliament's budget were being used for campaign purposes.
15. This was a reference to the ALP's Community Action Network ('CAN'), a group of field organisers distinguished by their red shirts when campaigning. The CAN had its origins in, among other things, the grassroots activism used by the presidential campaign of Barack Obama in the United States of America in 2012. It relied on a network of full-time, paid field organisers to organise 'thousands of volunteers' into a network of people who would persuade voters to vote for the ALP.
16. Two months before the 2015 referral, in September 2015, similar allegations about the misuse of Parliament's budget to pay field organisers had been made to Victoria Police, who began an assessment.
17. The Ombudsman's jurisdiction to investigate these allegations was questioned during the debate in Parliament, and I decided to apply to the Supreme Court to settle the matter before beginning an investigation. The Supreme Court determined that the Ombudsman did have jurisdiction. However, the Attorney-General appealed and the question of jurisdiction was eventually settled by the High Court on 5 April 2017, when the Attorney-General's application for special leave was dismissed.
18. While the High Court decision was pending, and conscious of the need to avoid further delay, I decided to commence the investigation without using coercive powers (such as summoning potentially uncooperative witnesses) as my jurisdiction to use these powers may be challenged. We obtained the material gathered by Victoria Police in their earlier enquiries, and began analysing it, as well as gathering evidence from other sources including social media.

Figure 2: Social media post about field organisers



Source: Facebook page of the Hon James Merlino MP on 7 March 2014

19. From this evidence we identified 21 people potentially involved in the Red Shirts campaign who were engaged as casual electorate officers, and 23 MPs (14 Members of the Legislative Council and nine Members of the Legislative Assembly) who had nominated them.

The assertion of exclusive cognisance

20. On 9 February 2017, while the High Court decision was still pending, the Legislative Assembly passed a resolution regarding the principle of 'exclusive cognisance'. Exclusive cognisance is a longstanding doctrine in which each House of Parliament manages its own affairs without interference from the other. The resolution asserted that the referral to the Ombudsman by the Legislative Council 'cannot be taken to apply to current or former members of the Legislative Assembly'.

21. I took my own legal advice on whether the principle of exclusive cognisance limited the referral to members of the Legislative Council and concluded that it did not.

22. I was, however, conscious of the potential for further lengthy delay if I chose to use coercive powers against a Member of the Legislative Assembly, which would likely have ended up in further court proceedings challenging the Ombudsman's jurisdiction.

23. In the course of the investigation we obtained sworn evidence from a number of former electorate officers who had been engaged as field organisers. A compelling and consistent narrative emerged from their evidence. This was largely confirmed by interviews with three current or former Members of the Legislative Council.

24. Rather than seeking to interview the remaining 20 MPs whom we identified as possibly being involved, I put this narrative to each of the MPs involved, in writing. I invited them to confirm or deny it, attend an interview if they wished, or otherwise assist the investigation. While I was mindful of the assertion of exclusive cognisance by Members of the Legislative Assembly, I was more mindful of the need to provide procedural fairness, as I intended to make findings about members of both Houses.

25. In my covering letters to Members of the Legislative Assembly I included my views in relation to exclusive cognisance and thus my intention to make findings about their conduct. I also made clear my intention to include any response they may make in a final report. Extracts from my draft report were similarly provided to all MPs about whom we made adverse comments.

26. While no Members of the Legislative Assembly responded to the report and their legal representative continued to assert exclusive cognisance, they did not address the arguments I had put to them about why I believed the doctrine did not apply.

27. In the end, they did not try to prevent me tabling my report, which made critical findings about 14 Members of the Legislative Council and eight Members of the Legislative Assembly.

The findings of the Red Shirts investigation

28. While the investigation made relatively little use of coercive powers in view of the actual and potential legal challenges, the work done was considerable. In all, the investigation of the 2015 referral included:

- analysing approximately 90,000 pages of evidence
- interviewing 21 people under oath or affirmation, totalling 46 hours and over 1,100 pages of transcripts
- providing 25 redacted extracts from a draft report to 25 people for their responses.

29. The report was tabled on 21 March 2018. It concluded:

The evidence in this investigation paints a clear picture of a well-organised campaign by the ALP to recruit and deploy Field Organisers in the run-up to the 2014 Victorian State election. It is also clear that, with some variance for individual circumstances, 21 of those Field Organisers were paid for two or three days a week between 4 March and 30 October 2014, as Electorate Officers, being paid a total of some \$387,842 of parliamentary funds.

This '60:40 split' appears to be the brainchild of Mr [John] Lenders, in consultation with the then-ALP State Secretary Mr [Noah] Carroll. The evidence is that the split was devised after Field Organisers were recruited in December 2013, and before their initial training week in March 2014. It is hardly surprising that those Field Organisers who recall Mr Lenders addressing the group on the first day of training were startled to learn of their pay arrangements, and equally unsurprising, given Mr Lenders' status within the party, that it was accepted with few questions.

While the roles of a Field Organiser employed by a political party and an Electorate Officer employed by the Parliament are plainly different, there is some crossover, particularly in research and community engagement. On that basis, the 60:40 split could have operated legitimately; it is important to note that the planned cut-off for Electorate Officer payments was 31 October 2014, when the 57th Parliament ceased a month before the election.

However, the legitimacy of the 60:40 split was dependent on those involved being clearly instructed to perform Electorate Officer duties on the dates they were paid out of parliamentary funds. While Mr Lenders and Mr [Jadon] Mintern say that he did explain this, no-one else present at the training remembers this taking place and, in any event, for at least the vast majority, it did not happen. In the one instance when a demarcation was claimed, it is telling that the Field Organiser involved was told by the ALP's campaign leadership that he was spending too much time on his Electorate Officer duties.

In the 18 other instances when Field Organisers were co-employed as casual Electorate Officers, the 60:40 split appears to be an artifice to secure partial payment for Field Organisers out of parliamentary funds. Although Field Organisers and ALP Members of Parliament alike defended the arrangement on the basis that the work overlapped and was useful to the nominating Member, there was no practical demarcation in what was, on any interpretation, political campaigning. Field Organisers employed as casual Electorate Officers in 2014 worked at the direction of ALP campaign staff, and were expected to do so on a full-time basis.

Although Mr Lenders claims that his design 'morphed' into something that was not intended, it appears that there was never any attempt to separate the roles. Field Organisers received no training in Electorate Officer work at the training week (although one claimed to have received on-the-job training during 2014). Most did not receive the Electorate Officer handbook at any time during 2014, and most never used the parliamentary email system.

While Field Organisers employed as casual Electorate Officers had varying levels of contact with their nominating Member, ranging from none to moderate, including occasional tasking, it is apparent that any contact and tasking was incidental to the Field Organiser's core role, reporting daily to ALP headquarters and meeting campaign targets.

Nor was the design approved by DPS (the Department of Parliamentary Services), who administered the ALP staff pool, or by the Presiding Officers of the Parliament. While Mr Lenders had approached the Secretary of DPS about expanding the pool, he had been advised it could not be done with casual staff or contributions from Members' Electorate Office and Communication Budgets. Mr Lenders' consistent evidence was that he had not spoken with the Presiding Officers about the proposed arrangements at any stage.

The result of this arrangement is that 22 Members of Parliament, including Mr Lenders, signed time-sheets certifying Electorate Officer work that had not, in fact, been performed.

The evidence suggests that those 21 other Members had been assured by Mr Lenders that this was a legitimate use of their staffing entitlements, and believed they were contributing to a DPS-approved pooling arrangement. However, the arrangement contravened the Members' Guide ...

The Legislative Council Privileges Committee Inquiry

30. After my report was released, the Legislative Council on 28 March 2018 agreed to a motion requiring the Privileges Committee to, among other things, inquire into and report:

in relation to those current and former Members of the Legislative Council named in paragraphs 45 to 50 of the Ombudsman's report, on the following —

a. whether any Members are in contempt of Parliament in relation to the Code of Conduct in the *Members of Parliament (Register of Interests) Act 1978*;

b. whether any fine should be imposed and the amount to be imposed pursuant to section 9 of the *Members of Parliament (Register of Interests) Act 1978*;

c. whether the conduct of any current or former Members constitutes any other form of contempt of Parliament and if so, what sanction, if any, should be imposed

31. The Committee tabled its report: *Inquiry into matters relating to the misuse of electorate office staffing entitlements* in August 2018.

32. The Committee took advice that contempt of Parliament required 'proof of a very high order'¹ and by a majority concluded this threshold was not met in the case of 13 Members, because their conduct was not 'wilful'. In the case of the Hon John Lenders, former Leader of the Opposition in the Legislative Council, the Committee found:

On the balance of probabilities, the Committee finds that Mr Lenders acted with deliberate disregard for the Members' code of conduct in establishing the scheme. However, the Committee does not have 'proof' to a High Civil Standard that his actions were 'wilful', and therefore is unable to find him to be in contempt of Parliament under the *Members of Parliament (Register of Interests) Act 1978*.

¹ Legislative Council Privileges Committee, Parliament of Victoria, *Inquiry into matters relating to the misuse of electorate office staffing entitlements* (2018) 23 [3.1.1]

What were the gaps in the investigation and what were the consequences?

33. I reflected in my foreword to the Red Shirts report that the investigation's task:

... was to get to the truth of the matter – were entitlements misused? If so, what happened and who was responsible?

Answering this had been like trying to complete a jigsaw puzzle from which, at the outset, you are not sure how many pieces are astray and whether you will have enough to see the image. In the end, although some pieces are missing because of claims of parliamentary privilege and exclusive cognisance or simply loss of memory as some witnesses asserted, a clear picture emerged.
34. The question now is: How important were those missing pieces and do they justify further investigation? Would the investigation have achieved a different result if all 20 remaining MPs had been compelled to give evidence to the Ombudsman?
35. Mr Lenders provided sworn evidence to the investigation that he had explained the scheme to participating MPs as a legitimate extension of existing ALP pooling arrangements (the combining of individual MP entitlements). Other evidence received by the investigation either supported, or at least did not contradict this.
36. The main gap in our investigation was the lack of evidence from Members of the Legislative Assembly.
37. Participating Members of the Legislative Assembly could potentially have told us what Mr Lenders, or others, told them about the scheme. These Members may also have been able to tell us what, if anything, they instructed electorate officers also working as field organisers to do on a day-to-day basis. Having this information would have allowed me to report in more detail about their involvement, including their understanding of how the scheme was intended to operate, and their knowledge of how the field organisers in their electorate were managed and funded.
38. Despite this, our understanding of the scheme was put to each of the participating MPs and field organisers, for them to refute or provide further evidence. While the Members of the Legislative Council, in the main, responded, the Members of the Legislative Assembly did not. But they were also presented with an opportunity to disagree with any negative findings about them, which they also did not.
39. If I were to successfully compel the 20 MPs who did not provide evidence in 2017 to give evidence now, some eight years after the event, they could credibly claim not to remember conversations in early 2014.
40. The investigation obtained a significant amount of evidence about the history of pooling arrangements and their acceptance by the Department of Parliamentary Services, who administered MPs' budget entitlements. Those MPs who gave evidence told us they believed the scheme to be an extension of an approved staff pooling arrangement.

41. In light of Mr Lenders' and others' sworn evidence, the investigation did not identify a deceptive intention on the part of participating MPs. Rather we found a lack of understanding of Parliament's rules around legitimate electorate office work, the appropriate use of ALP pooled staff and MPs' power to direct them. There was no evidence to rebut what was consistently put to the investigation, that participating MPs relied on Mr Lenders' assurance that the scheme was legitimate.

42. The assertion of exclusive cognisance had a significant effect on the Red Shirts investigation. It required different investigative steps to be taken, reducing our reliance on coercive powers. Because I did not seek to compel Members of the Legislative Assembly to give evidence, it is likely to have reduced the level of detail in the report about MPs' knowledge of the scheme and their motives. But this limitation was not as damaging to the investigation as it could have been, as we received documentation such as timesheets, for Members of both Houses, from Victoria Police.

43. I also made this point in my evidence to the Privileges Committee inquiry on 18 July 2018:

I am reasonably confident that, while there are gaps, they are probably not huge gaps. We had enough evidence from the timesheets and material to be able to fill out a lot of the gaps we might otherwise have experienced.

44. Given the above facts and on balance, I expect my ultimate findings would have remained the same, had I sought to compel Members of the Legislative Assembly to give evidence. I reached conclusions based on consistent and compelling evidence about how the Red Shirts scheme had been designed, propagated, and facilitated.

The role of the Premier: Is there any evidence of him designing, propagating, and facilitating the scheme?

45. The terms of the referral specifically ask the Ombudsman to investigate 'the role of the Hon Daniel Andrews MP in designing, propagating, and facilitating the scheme'. The question must be asked: What evidence is there to support this allegation?

46. Mr Andrews was not one of the 23 MPs found by my Red Shirts investigation to have participated in the scheme.

47. The evidence showed that Mr Andrews was involved and immersed in the Red Shirts campaign in 2014, as he necessarily would have been as party leader. However, there was no evidence he was aware of what I described in my report as **the artifice**: the manner in which Mr Lenders had proposed the field organisers would divide their activities and be paid in a split fashion by both the ALP and Parliament.

48. Mr Lenders' evidence was that it was his brainchild, and that he and his electorate officer propagated and facilitated the scheme to participating MPs. Given this evidence, which was confirmed by other MPs, the investigation had no reason to question Mr Andrews about it.

49. Evidence was sought from Mr Andrews in 2017, as leader of the Parliamentary Labor Party, about parliamentary and party practices including pooling arrangements. He declined to give evidence, citing exclusive cognisance, and referred me to Mr Lenders. I had no reason to seek to compel him.

50. Mr Andrews did give evidence to Operation Watts, as set out later in this report.

51. I have also considered whether any further evidence implicating Mr Andrews had come to light since the publication of my report in 2018.

The evidence: Mr Somyurek

Prior to publication of the report in March 2018

52. Mr Somyurek was one of 23 MPs against whom adverse findings were proposed. Each MP was contacted to receive a redacted draft of the report, around late December 2017. A file note records that Mr Somyurek told investigators arranging delivery of the report that his response to it may be limited due to party discipline.

53. When he collected the report on 4 January 2018, a file note records he commented to the investigator that the ALP had done the 'wrong thing' and it was working out how this could be managed.

54. As with all MPs involved, Mr Somyurek was invited to respond to the investigation twice; first to a request for information and then to the investigation's provisional findings, in writing or by attending an interview. He did not respond to either invitation.

Evidence to the Privileges Committee, 19 July 2018

55. Since the report's release, the only additional evidence indicating Mr Andrews had any involvement in the scheme comes from statements made by Mr Somyurek. They concern a conversation had sometime in 2014 between him and Mr Andrews, who was then Leader of the Opposition.

56. The allegation first arose from evidence given by Mr Somyurek during the Legislative Council Privileges Committee Inquiry on 19 July 2018:

Mr RICH-PHILLIPS: When this was first raised with you and you obviously had concerns, as you outlined, did you discuss those concerns with anybody else?

Mr SOMYUREK: Look, there was a bit of chatter around the place. Yes, there was a bit of chatter around the place.

Mr RICH-PHILLIPS: Did you raise it with Mr Andrews as the overall leader?

Mr SOMYUREK: At some point I had a very brief, casual chat to him, which did not last long. If I can explain the setting, it was at the end of a caucus meeting. We were walking out. There were 55 caucus members or so in our caucus at that point, so 55 people walking out of a room such as this. I did sort of ask for a second and just raised the matter with him. It was very brief.

Mr RICH-PHILLIPS: So with you raising it he was certainly aware of the issue?

Mr SOMYUREK: I raised this matter with him, yes.

Mr RICH-PHILLIPS: What was his response?

Mr SOMYUREK: He referred me back to John — Mr Lenders, sorry.

57. The Privileges Committee also asked whether Mr Somyurek believed Mr Andrews was familiar with the scheme:

Mr RICH-PHILLIPS: It has been put to this committee that the reason that a number of MPs agreed to do this was Mr Lenders' standing. Did Mr Lenders in seeking to put pressure on you to participate indicate this was what your party leader, Mr Andrews, wanted, this was coming from the leadership of the party, that you had to participate for those reasons, that your position in shadow cabinet, and ultimately cabinet, depended on you being a participant?

Mr SOMYUREK: No, not at all. He did not suggest it was coming from the leadership or from the opposition leader. He had enough authority on his own. He was the leader of the upper house, and he was very well-regarded in Labor Party circles, and in government circles in the Bracks-Brumby era, and I think he was well-regarded by Daniel Andrews as well. He did not need to; he had the authority on his own to be able to enforce this.

...

Mr RICH-PHILLIPS: Did he give you the impression he was familiar with what you were talking about?

Mr SOMYUREK: No. He might have thought I was just a whingeing MP not wanting to relinquish resources; I do not know.

58. On 25 July 2018 the then Special Minister of State the Hon Gavin Jennings also gave evidence to the Privileges Committee:

Mr RICH-PHILLIPS: ... to the best of your knowledge, was Mr Andrews aware of the structure, the artifice and the involvement of electorate officers? You indicated that he was aware of people being employed as electorate officers participating in the scheme. Am I correct in understanding your earlier answer?

Mr JENNINGS: Well, your question deserves the following answer. At no stage did he or anybody else in the Labor Party believe that they were participating in an artifice — at no stage — and indeed that would continue to be the case to this very day.

Evidence to Operation Watts, November 2021

59. On 8 November 2021, Operation Watts questioned Mr Somyurek about his interaction with Mr Andrews:

IBAC COMMISSIONER: You mentioned earlier you spoke to the Premier about this. At what point of time was that, that you had that conversation?

MR SOMYUREK: So I have emails. I can get you those emails from the - - -

IBAC COMMISSIONER: I just want to know what - - -

MR SOMYUREK: It's now seven years - it's now a long time ago. It's probably eight years ago now; six or seven years ago. I can't remember. Probably going back to the evidence in the privileges inquiry will help. It was just before I signed up to the scheme; okay? This was the sequence of events. Lenders - I won't talk too much, but I kept rebuffing John Lenders; right? He was the senior figure in the Opposition, he was the Leader of the Upper House and a respected figure. He came up with this scheme, which was extraordinary ... That's why I resisted. I asked for a letter. He said he'll get one from Parliamentary Services. He never did. I went to the Premier. I said, 'Do you know what John's doing?' He said, 'Yes.' Words to the effect, 'Well, you're either going to - you know, if you want to win an election or not,' basically. And the letter wasn't forthcoming. I took part anyway. Perhaps I shouldn't have. I did.

Further accounts

60. On 9 February 2022 Mr Somyurek gave a further account of this conversation during a parliamentary speech on the referral:

At the end of the day what we had was that we were desperate to win. We were desperate to win long term. We knew and Mr Andrews knew he had one shot in the locker. He was having a hard time from caucus from both the left and the right. They wanted to bring him down. He was desperate. He did something well beyond what he should have. He crossed the line. He designed this system. He told me personally, 'You've got to take part in this process whether you want to win or not', and that reflected his mentality at the time.

The evidence: Mr Andrews

61. On 28 March 2018, the Hon Matthew Guy MP, Leader of the Opposition, first questioned Mr Andrews in Parliament about whether any past or serving Labor members had raised concerns about the scheme Mr Lenders had devised:

Mr GUY (Leader of the Opposition) (11:16) — ... Premier, do you categorically deny that any of your past or present Labor MPs, concerned about Mr Lenders' advice, ever raised concerns directly with you or your office regarding the funding of Labor red shirts campaign staff as Electorate Officers?

Mr ANDREWS (Premier) (11:17) — No concerns as to the probity of these arrangements were raised with me.

62. Mr Andrews was not required to give evidence to the Privileges Committee in 2018. The day after Mr Somyurek's evidence on 19 July 2018, Mr Andrews responded to media questions about whether he was being truthful in his account:

Nothing said yesterday [by Mr Somyurek] in evidence was in any way inconsistent with what I've said and what I continue to say. That's my position and I'm not interested in running a commentary beyond that.

63. On 24 July 2018, Mr Guy questioned Mr Andrews on the consistency of his previous statement to Parliament in March:

Mr GUY (Leader of the Opposition) (12:06) — My question is to the Premier. On Wednesday, 28 March, I asked you about the Labor red shirts rorting scandal, asking:

... do you categorically deny that any of your past or present Labor MPs ... ever raised ... directly with you or your office regarding the funding of Labor red shirts campaign staff as Electorate Officers?

You replied:

No concerns as to the probity of these arrangements were raised with me.

However, when questioned about the probity of the scheme in the upper house privileges inquiry, Adem Somyurek in the Council said, and I quote:

I raised the matter, probably for my own comfort and reassurance, directly with the Premier.

Premier, did Adem Somyurek lie under oath to the Privileges Committee or did you lie to this house on 28 March?

Mr ANDREWS (Premier) (12:08) — Thank you very much, Speaker. I thank the Leader of the Opposition for his question. The answer is neither. There is no inconsistency between what I have said and the evidence that has been led at the Privileges Committee — none at all.

64. On 8 December 2021, Mr Andrews was privately examined by IBAC in Operation Watts, in the course of which he was asked to comment on Mr Somyurek's evidence of their conversation:

COUNSEL: Mr Andrews, you've referred to some evidence given by Mr Somyurek about a conversation with you ... He said this: 'I went to the Premier. I said, 'Do you know what John's doing?' He said, 'Yes', words to the effect, 'Well, you're either going to, you know, if you want to win an election or not, basically.' Now, did you have a conversation with Mr Somyurek about his involvement or potential involvement in the Red Shirts process?

MR ANDREWS: Yes.

COUNSEL: Can you give us the content of that conversation as you recall it?

MR ANDREWS: I had a very brief encounter with Mr Somyurek at the end of a caucus meeting. I have detailed this I think not long after or, sorry, at an earlier point when this was a matter of media enquiry. It was a very brief encounter and I referred him to John Lenders. That is my - that's my recount, my recall of that particular encounter, brief and really only an issue of referral, and I don't believe that he raised anything other than he didn't - he raised - I don't even know that he raised concerns, other than that, you know, he might have gone on to raise concerns with me, but I directed him to Mr Lenders.

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

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

65. During this examination, Mr Andrews also commented on Mr Somyurek's version of events:

MR ANDREWS: I've gone and reviewed what he said at the Privileges Committee, and my submission to you would be that I've been wholly consistent and accurate. I don't know that he'd be able to say the same.

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

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

66. Mr Andrews told Operation Watts he believed the scheme had been approved by the Department of Parliamentary Services:

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

MR ANDREWS: Yes.

COUNSEL: And were you aware that it involved Electorate Officers doing party-political work?

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

Analysis of the evidence

67. The only witnesses to the conversation between Mr Somyurek and Mr Andrews were the parties themselves, from whose evidence there is no dispute a conversation took place between the two sometime in 2014.
68. The sworn evidence of both is reasonably consistent; that it was a brief conversation after a caucus meeting, that no particular concerns were raised, and that Mr Andrews referred Mr Somyurek to Mr Lenders. Mr Somyurek told the Privileges Committee in 2018 that he raised the matter with Mr Andrews but also replied 'no' when asked whether Mr Andrews was aware of the scheme. Under oath again in 2021, he described Mr Lenders as coming up with the scheme.
69. Mr Somyurek made no reference in his evidence to the Privileges Committee in 2018 to Mr Andrews having said words to the effect of the red shirts scheme being necessary for an election victory. Mr Somyurek raised this claim for the first time when giving evidence in the public hearings of Operation Watts. Mr Somyurek further changed his version of events in his account to Parliament in February 2022, when he claimed Mr Andrews 'designed the system'.
70. Mr Somyurek has not provided the emails which he claimed supported his account.
71. In response to a draft version of this report, Mr Somyurek provided extracts from media reports following his evidence to the Privileges Committee, including an extract from The Age on 19 July 2018, which he said:

... demonstrates that I was expected to lie under oath to protect the Premier. Especially since the election was only four months away.

72. He also said:

The Herald Sun ran my words on the front page. At the time I knew everything I said would have been interpreted as an attack on Andrews therefore I had to be truthful but very careful. I crafted a response that would cause as little damage to Andrews as possible which meant omitting parts of the conversation that did not change the facts materially which is that I had spoken to him about the issue. He had been denying that anybody had spoken to him about it.

The choice was lie to comply with party discipline and protect the Premier in the interest of not causing the party damage only four months out from an election or stick to the spirit of the truth.

I was very courageous to have gone as far as I did. For that I should be congratulated not condemned.

Figure 3: *Herald Sun* front page, 20 July 2018



Source: Twitter @theheraldsun

73. Advice from the Clerk of the Legislative Council, provided to me by Mr Somyurek in response to a draft of this report, is that it would be a breach of the parliamentary privilege of freedom of speech for me to question Mr Somyurek's motives or credibility.
74. I advised the Clerk that I am an independent officer of Parliament, equally bound by privilege, required by the Legislative Council in this instance to investigate this matter and send my report to the President of the Council. But I refrain from comment and allow the evidence, presented in its entirety, to speak for itself.
75. While Mr Andrews openly confirms he was aware of the scheme, there is no evidence available to me showing that he had any role in designing, propagating, or facilitating it.

Referral to Victoria Police or IBAC: Is there any evidence to justify further referral to Victoria Police, or referral to IBAC?

The police response in 2015

76. The 2015 referral did not require the Ombudsman to decide whether the alleged conduct was criminal. But these considerations are always at the forefront for Ombudsman staff. First, they must assess whether section 13AB of the Ombudsman Act applies – which requires the Ombudsman not to prejudice legal proceedings or investigations, or an investigation by IBAC. The Ombudsman also has an obligation to assess whether a matter must be referred to IBAC as corrupt conduct under section 16E of the Act.
77. I wrote to Victoria Police in accordance with section 13AB on 26 November 2015, the day after the referral was received. The Chief Commissioner replied on 9 December 2015 that Victoria Police were assessing the matter and requested me not to proceed with an investigation at that stage.
78. Victoria Police notified me on 8 June 2016 that they had assessed the claims, had not identified evidence to prove any criminal offence and would take no further action in the matter.
79. When Victoria Police subsequently provided their material to the office it included legal advice in relation to potential criminal offences. The advice considered the following questions:
- Is there a reasonable prospect of conviction against persons involved in the conduct?
 - Does section 30 of the *Parliamentary Administration Act 2005* (Vic) permit parliamentary members to direct their Electorate Officers to engage in political campaigning and if so:
 - can those officers engage in such campaigning in another electorate?
 - can parliamentary members release their Electorate Officers to work for the Labor Party generally, foregoing any supervisory powers over the officer?
80. The offences considered in the advice were the common law offence of misconduct in public office and section 82 of the *Crimes Act 1958* (Vic), obtaining financial advantage by deception. The advice only considered the culpability of MPs and senior members of their staff as there did ‘not appear to be any suggestion that the Electorate Officers themselves knowingly engaged in any misconduct, and have simply followed instructions’.

During the Red Shirts investigation

81. As the Ombudsman’s investigation progressed, investigators remained alert to the possibility that the evidence collected may cause me to suspect corruption. If so, I would have notified IBAC, as required by the Ombudsman Act. Similarly, while my Act prevents me making findings of a criminal nature, at the end of an investigation I may (and have done, on several occasions) recommend referral to Victoria Police.

82. I did not refer the Red Shirts matter to IBAC or recommend further investigation by Victoria Police.

83. I was assisted throughout my investigation by a Strategic Advisor, former Court of Appeal judge the Hon Murray Kellam AO QC, who carried out the key interviews and whose sound and practical judgement about criminal and other matters was both helpful and influential.

84. At no time did Mr Kellam consider that the unfolding evidence provided evidence of criminality.

85. Although the Red Shirts investigation resulted in a much clearer picture of the scheme than was available to Victoria Police, the evidence in respect of potential criminality was essentially unchanged since they first reviewed the matter in 2015. Fundamentally, it revolved around whether an offence may have been committed either by those who signed allegedly false timesheets (the 21 MPs), or those who had designed the scheme (Mr Lenders).

86. Regarding the design of the scheme, the Red Shirts investigation considered the impact of section 30(4) of the Parliamentary Administration Act, which gives the nominating MP the power to determine an electorate officer's duties. While my view was, and remains, that section 30(4) should be read narrowly so as not to permit party-political activity, its very ambiguity provided a potential defence.

87. Overall, the interaction between the loosely drafted Parliament of Victoria Members' Guide, section 30(4) of the Parliamentary Administration Act, the varying understandings of what constituted legitimate electorate officer pooling arrangements, and the lack of evidence of recklessness or intent to deceive, all set up an obvious defence if criminal proceedings should ever be brought.

88. In respect of the allegedly false timesheets, potential crimes were obtaining financial advantage by deception and falsification of documents. The first of these crimes was previously considered by Victoria Police. Both offences require the elements of both deceit and dishonesty. Even though MPs signed timesheets for work not performed when it was claimed to be, and were undoubtedly wrong to do so, the failure to check would not have amounted to deception, or reckless deception, as required by the Crimes Act.

89. Ultimately, my conclusion was that the actions of participating MPs were wrong – but did not cross the line of potential criminality, which requires a higher standard of proof, that the case must be proven beyond reasonable doubt.

The police response in 2018

90. The question of wrongdoing in the Red Shirts matter did not rest following the publication of my report in March 2018. On 13 June 2018, Chief Commissioner Graham Ashton AM APM wrote to me, following a request from the Shadow Minister for Police, seeking my advice as to whether my investigation had uncovered new evidence that would warrant further police investigation.

91. I replied on 21 June 2018:

You will of course be aware that I did not start my investigation until Victoria Police had completed its own assessment of the allegation that gave rise to it, and that my investigation commenced with the receipt of the evidence obtained by Victoria Police, under summons. The time-sheets referred to by the Shadow Minister for Police were all provided to us by Victoria Police, so would have already been considered by your officers.

While I referred in my report to gaps in the evidence due to the assertion of 'exclusive cognisance' by the Legislative Assembly, as a result of which Assembly members declined to co-operate with my investigation, I note that this issue did not affect the police investigation. Your officers obtained documents, including time-sheets, in relation to both Houses of Parliament.

While my investigation obtained significantly more evidence than that obtained by Victoria Police, in particular in relation to the background of the Members' Guide and the context of pooling arrangements, the core evidence in relation to any criminal investigation remained substantially the same as your officers had already reviewed.

As you will of course also be aware, I apply a different standard of proof from the police investigation. I need to be satisfied on the balance of probabilities, while a criminal case is required to satisfy a court beyond reasonable doubt. This allows me to conclude an action is 'wrong' without it necessarily reaching the threshold for criminal action.

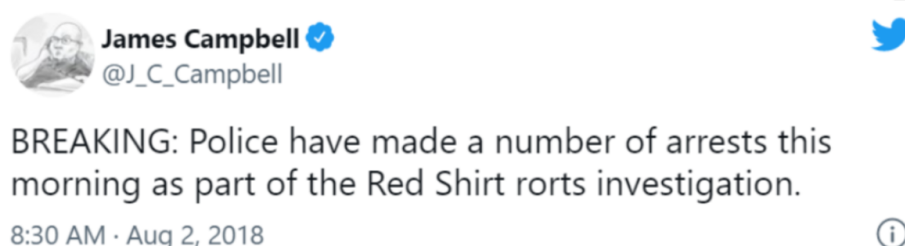
92. Despite this strong hint that no further action should be necessary, in July 2018, Ombudsman investigators were advised that Victoria Police intended to commence an investigation. Chief Commissioner Ashton advised the Privileges Committee he would be writing to the Ombudsman requesting further information on the matter.

93. In response to a draft version of this report, Victoria Police advised:

The Victorian Ombudsman report was assessed by investigators which involved legal advice being obtained from an independent Queen's Counsel. It was determined that the matter warranted an investigation for potential criminal offences. At all times, Victoria Police has taken the complaints regarding the 'red shirts' seriously and embarked on and completed a comprehensive investigation of the facts.

94. On 2 August 2018, the media widely reported 'dawn raids', arrests and strip-searches of 17 former field organisers who were also electorate officers named in the Ombudsman's report, across Victoria, New South Wales and the Northern Territory.

Figure 4: Social media post about Red Shirts arrests



Source: Twitter @J_C_Campbell

95. Some media reports were critical of the arrests and referred to my report and evidence to the Privileges Committee as being unambiguous.

Figure 5: Media reporting about the Red Shirts report

It is clear from her report and from her testimony before the committee, Ms Glass did not view the red shirts affair as a criminal matter.

Source: *The Age*, 3 August 2018

96. From the media reports, the public expectation appeared to be that following the arrests of the former field organisers, arrests of the MPs involved would soon follow. This did not happen.
97. Subsequent media reports claimed that Labor MPs 'refused to be interviewed' and that a 'directive' from senior police command not to compel them to be interviewed had 'significantly weakened the cases against the MPs'. An article in *The Age* on 21 November 2018 claimed:

The directive caused further disquiet among [police] officers, amid claims it was inconsistent with standard police procedure and dramatically different to the treatment of 17 Labor staffers, who were raided, arrested and interviewed in August.

98. On 14 February 2019 Victoria Police announced that no charges would be laid against any of the electorate officers or 16 MPs, but said 'potential fraud matters' were continuing to be investigated in relation to two men. In relation to the 16 MPs exonerated, then-Deputy Commissioner Shane Patton said:

[the case] ... lacked the prerequisite points of proof in relation to intent, in relation to knowledge to lay charges against the MPs and electorate officers ... It's one thing for the Ombudsman to make a finding in relation to standard of proof on the balance of probabilities ... As we all know, Victoria Police, we charge people, we investigate, we have to be satisfied there is sufficient evidence to charge and there wasn't in this case. We lacked the prerequisite points of proof in relation to intent, in relation to knowledge ...

99. On 15 October 2019, Victoria Police announced that no-one would be charged in relation to the operation. No reasons were given. ABC News reported that:

This morning police announced their investigation was complete and after receiving advice from the Office of Public Prosecutions, no-one would be charged.

100. On receipt of the 2022 referral I met with Chief Commissioner Patton and asked to see the advices, which I have now reviewed.

101. The advices of the Director of Public Prosecutions are robust and unequivocal that there were no reasonable prospects of conviction in respect of any of the proposed charges, despite the view of the investigating officers that the evidence was sufficient to bring charges against at least some of the people involved. There is no suggestion that any further investigative work by the police would change this advice.

102. It is clear that the Director of Public Prosecutions came to a similar view of the evidence as the Victoria Police lawyer who reviewed the matter in 2015, and the Ombudsman's own analysis of the likely success of criminal charges; that there was no or insufficient evidence of recklessness or intent to deceive. Despite other legal advice obtained by Victoria Police and the Opposition coming to a different view, the view of the person responsible for bringing criminal proceedings must be the definitive one.

103. The ultimate outcome, far from demonstrating that the police were prevented from bringing serious charges, simply confirms that little had changed despite further investigation.

104. Victoria Police also advised me that in November 2021, following Mr Somyurek's evidence to IBAC, the Shadow Minister for Police and Emergency Services sought to have the police investigation re-opened. A Detective Superintendent contacted Mr Somyurek to offer him the opportunity to provide the evidence he had referred to publicly.

105. On 22 December 2021 Mr Somyurek's legal counsel advised that Mr Somyurek 'does not wish to participate in discussions with Victoria Police'.

Referral to IBAC – was the conduct corrupt?

106. Since the tabling of the Red Shirts report in 2018, various Opposition MPs, media commentators and members of the public have described the conduct criticised in the report as corrupt. Calls have been made for further investigation by Victoria Police and IBAC, and the desire for further investigation by IBAC is reflected in the terms of the 2022 referral.

107. During his speech in the Legislative Council on 9 February 2022, Mr Somyurek referred to the way in which the Ombudsman characterised the conduct at the heart of the Red Shirts matter. He stated:

So she thought, obviously—I am just trying to assume her state of mind— that this was not a corruption matter, it was a breach-of-entitlements matter. Now, what the legislation says that she ought to have done—not 'ought to have', compels her to do—is that if there are any reasonable grounds to suspect corruption, 16E(1) of the Ombudsman Act 1973 states clearly that she ought to have gone to IBAC and notified IBAC. Why? Because it is corruption.

108. Mr Somyurek correctly identified that under section 16E of the Ombudsman Act the Ombudsman must notify IBAC of corrupt conduct. Prior to July 2016, the Act required the Ombudsman to notify matters that appeared to involve corrupt conduct. Following amendments to the legislation in 2016, the Ombudsman is now required to refer matters that the Ombudsman suspects on reasonable grounds involve corrupt conduct.

109. However, alleging that conduct is corrupt does not make it so. Corrupt conduct is defined by the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic).

110. Section 4 of the IBAC Act specifies the types of corrupt conduct. It must be either an indictable offence or one of four specified common law offences:
- an attempt to pervert the course of justice
 - bribery of a public official
 - perverting the course of justice
 - misconduct in public office.
111. If a matter does not fall within this definition it cannot be considered corrupt conduct within the purview of IBAC, no matter how egregious it may appear.
112. To this end, as part of the investigation into the 2015 referral, I was mindful throughout as to whether any of the alleged conduct appeared to involve corrupt conduct. The threshold requires criminality, and for the reasons explained above, this was not reached.
113. No further evidence has since been provided, or otherwise come to light, to change this view.

The current situation

114. Much of the public commentary and concern about the lenient treatment of MPs in the Red Shirts investigation stems from an apparent belief that the conduct investigated in Red Shirts was much more serious than that in Operation Watts, in which IBAC was using its considerable powers including holding public hearings. Mr Somyurek made this assertion in the debate on 9 February 2022:

I was surprised when IBAC came back and said that they were holding a public inquiry [in Operation Watts] ... because, they said, they had distilled the entire program to electorate officers ... They said that that in their view potentially met a serious corruption charge, and that was based on electorate officers perhaps doing some party-political work.

115. The view that the MPs involved in the Red Shirts scheme were treated too leniently would have been strengthened by events following publication of the Red Shirts report. The police investigation included the dramatic arrests of 17 former field organisers. That those arrests were not followed by equally dramatic arrests of the 23 MPs involved, and the prosecution of at least some of them, was the subject of further media speculation. It was surmised that the police had been nobbled, and that this was the true reason no prosecutions were brought.
116. My jurisdiction does not extend to Victoria Police and I do not usually comment on their actions. But in my view, given that the core evidence remained essentially unchanged since 2014, the 2018 Victoria Police operation contributed to misleading the public perception of the conduct in question.
117. It was always open to the Victoria Police to commence an investigation after the publication of my report even though I did not recommend it, and I do not criticise them for that. Nor do I criticise any individual police officer who undoubtedly believed they were acting in the public interest by pursuing the investigation. But in my view, the high-profile arrests of 17 people some four years after the events for which they were being questioned, was a mistake.

118. In response to my draft report, Victoria Police said:

An investigation management decision was made to conduct simultaneous arrests under section 459 of the Crimes Act of the electorate officers on 2 August 2018. After receiving legal advice, the investigators formed a reasonable belief that an indictable offence or offences had been committed. Five briefs of evidence were prepared for consideration for prosecution as a result of the arrests.

It is usual police practice for simultaneous arrests to occur when there are multiple persons of interest involved; the investigators chose this option as the preferred operational approach.

119. I acknowledge the rationale above and I accept these were operational decisions made in good faith. It does not change my view that a less public and intrusive approach would have been more proportionate given the evidence and the age of the matters for which people were being questioned. It would also have reduced the level of inaccurate public speculation about the culpability of the people involved.

120. It is not clear why MPs were not treated in the same, allegedly heavy-handed, fashion as their staffers. In response to the reference, in the draft version of my report, to a 'directive by senior police command' (see para 97) Victoria Police stated:

Victoria Police is not aware of any directive by Police Command to treat the members of parliament in a separate manner to the electorate officers... The actions in relation to the members of parliament were operational decisions that followed the assessment of all information including that obtained from the arrests of the electorate officers.

121. Whether or not such a directive existed, if senior command did intervene, I do not criticise it. It is only a pity that they did not intervene to stop the dawn arrests of the former field organisers. It may relieve the sense of unfairness that at least some of those arrested must have felt, if senior police command would acknowledge this and apologise to them.

122. Despite the arrests and a further eighteen months of police investigation, the Director of Public Prosecutions ultimately came to the same conclusion as the police had before the Ombudsman investigation began; that criminal offences had not been made out.

123. Despite various assertions in Parliament and elsewhere that the participating MPs' conduct in the Red Shirts scheme was far more 'corrupt' than those involved in the branch-stacking scandal, this is not borne out by the evidence.

124. Both investigations considered the misuse of public funds as a result of electorate officers engaging in party-political activities. Both concluded, in effect, that while the use of electorate officers for party-political purposes was wrong, the unsatisfactory state of the law in relation to this type of conduct was an important contributing reason for the decision not to refer anyone for further criminal investigation. Both have led to integrity agencies' calls for serious reform in this area.

125. Operation Watts also had a broader scope. It looked at publicly funded employment and grants to community organisations as a reward for factional activity, as well as potential criminal offences such as forgery, in addition to the use of electorate officers for party-political purposes.

Electorate officers and ministerial advisers: To what extent have previous investigations covered them ‘performing factional tasks...’?

126. This aspect of the referral requests me to look at ‘all electoral officers and ministerial advisers performing factional tasks during working hours from all factions of the Australian Labor Party’ and ‘the extent of branch stacking activities and their funding’.
127. As an independent officer of Parliament using public resources for my investigations, it is necessary to approach this request through the lens of what is appropriate, practicable and proportionate. In my view this means following the evidence of potential wrongdoing.
128. Both the Red Shirts investigation and Operation Watts examined this issue: Red Shirts sought to examine the extent of electorate officers engaged in campaigning activity before the 2014 election, and Operation Watts looked at the broader practices of involvement of both electorate officers and ministerial advisers in factional activities including branch stacking.

The activities of electorate officers in 2014

129. Aside from the 21 electorate officers identified in the report as having been recruited for the CAN campaign, the Red Shirts investigation also looked at the evidence of campaigning by permanent part-time and full-time electorate officers over the period, prior to the 2014 election.
130. Other than four permanent staff who were photographed in social media wearing the campaign red shirts, who attended the induction period, the investigation was not able to identify evidence of the extent of other electorate officer participation in the campaign. It is reasonable to assume they participated in it; and the fact they attended the CAN induction training week indicates they were engaged in active campaigning.
131. But they did not utilise the pre-filled timesheets that were a feature of the artifice criticised in the Red Shirts report. The lack of detailed records of the work they performed made it difficult, if not impossible, to identify what was and was not being done on the public purse.
132. The lack of records will lead some to infer that others engaged in campaign activities during times they were being paid as electorate officers, particularly given the politicised nature of the subject matter. This cannot be ruled out, nor can it be satisfactorily proven.
133. As noted in the Red Shirts report, the time-keeping practices oversights by the Department of Parliamentary Services at the time did not provide ‘visibility’ of the day-to-day activities of electorate officers. In the absence of evidence to the contrary, the investigation did not consider a case could be made that other electorate officers, even if involved in campaigning, were not performing electorate officer duties for their nominating MP during the relevant period at the relevant times.

The activities of electorate officers and ministerial advisers in 2019-20

134. Operation Watts considered the extent of branch stacking activity and the issue of staffers doing factional work on the public purse more broadly. Among other things, it received evidence from the Hon Jenny Macklin and the Hon Steve Bracks AC, who were appointed as administrators of the ALP's Victorian Branch after the branch stacking scandal was exposed in 2020, as well as Premier Andrews.
135. While Operation Watts focused on specific allegations connected to the Moderate Labor faction of the ALP, it received evidence of broader cultural issues signifying that the potential misuse of public resources for party-political activity was not limited to one faction. Apart from the oral evidence of staff who openly acknowledged the misuse of public resources, contemporaneous records such as emails and phone messages confirmed that factional activity was taking place during office hours.
136. While Operation Watts noted it was highly likely that the misuse of publicly funded staff for party or factional purposes has occurred for a long period and was much more widespread than the activities of the Moderate Labor, it did not find it possible to determine the extent of factional work done during office hours, or to rebut the evidence of most of those who claimed they made up for it by public duties performed outside office hours.
137. The Victorian Parliament publishes quarterly returns of MPs allowances and expenses claims, including their expenditure on casual electorate officers. However, this data cannot tell us why additional electorate staff were required or what activities they were required to undertake. While it may be a useful tool for future audits, it does not meaningfully assist an investigation into whether public funds have been misused for political purposes.
138. Given the above, in my view it is not appropriate to investigate this matter further.

Conclusions

139. The Red Shirts investigation, tabled in March 2018, found no evidence of Daniel Andrews designing, propagating, or facilitating the red shirts scheme. Nor has any evidence come to light since, other than unsupported claims made by Mr Somyurek in 2022.
140. We cannot, of course, rule out that evidence may yet come to light. But given these events took place over eight years ago and the difficulty of proving awareness of the ‘artifice’ surrounding the scheme, I would question the expenditure of public funds in pursuing this issue further. In that respect I note the finding of the Privileges Committee in 2018 that even though Mr Lenders ‘acted with deliberate disregard for the Members’ code of conduct in establishing the scheme’, his actions were not ‘wilful’, and therefore not in contempt of Parliament.
141. There is no evidence to justify further investigation by Victoria Police, or referral to IBAC, of the red shirts scheme.
142. In relation to allegations of electorate officers and ministerial advisers engaging in factional activities, these matters have been investigated as far as practicable by the Red Shirts investigation, regarding campaigning activity prior to the 2014 election, and Operation Watts. Further investigation is neither practicable nor proportionate.
143. That these issues continue to loom large in the public consciousness as an example of unpunished wrongdoing is a product of many factors, including the police operation in 2018. But it is also a product of the unsatisfactory state of the law in relation to the misuse of public funds, and an inadequate system for investigating and sanctioning MPs who break the rules.
144. I recommended reforms to address these deficiencies in 2018, and while some reforms followed, the events leading to Operation Watts showed how insufficient they were.
145. Both the 2018 Red Shirts report and Operation Watts exposed the continuing weaknesses of the Victorian parliamentary integrity model, and in particular, the absence of an effective framework with which to support and enforce parliamentary standards. The Operation Watts report, in light of the lack of meaningful reform following the Red Shirts scandal, has now recommended wholesale changes, designed among other things to address the continuing risk of misuse of publicly funded staff for political ends.
146. As the IBAC Commissioner and I have commented in the Operation Watts report, until these matters are addressed with the necessary rigour, these scandals are unlikely to be the last.

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2019

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Investigation into State Trustees

June 2019

Investigation of a complaint about Ambulance Victoria

May 2019

Fines Victoria complaints

April 2019

VicRoads complaints

February 2019

2018

Investigation into the imprisonment of a woman found unfit to stand trial

October 2018

Investigation into allegations of improper conduct by officers at Goulburn Murray Water

October 2018

Investigation of three protected disclosure complaints regarding Bendigo South East College

September 2018

Investigation of allegations referred by Parliament's Legal and Social Issues Committee, arising from its inquiry into youth justice centres in Victoria

September 2018

Complaints to the Ombudsman: resolving them early

July 2018

Ombudsman's recommendations – second report

July 2018

Investigation into child sex offender Robert Whitehead's involvement with Puffing Billy and other railway bodies

June 2018

Investigation into the administration of the Fairness Fund for taxi and hire car licence holders

June 2018

Investigation into Maribyrnong City Council's internal review practices for disability parking infringements

April 2018

Investigation into Wodonga City Council's overcharging of a waste management levy

April 2018

Investigation of a matter referred from the Legislative Council on 25 November 2015

March 2018

2017

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September 2017

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Report on recommendations
June 2016

Investigation into Casey City Council's Special Charge Scheme for Market Lane
June 2016

Investigation into the misuse of council resources
June 2016

Investigation into public transport fare evasion enforcement
May 2016

2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting
December 2015

Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations
November 2015

Investigation into the rehabilitation and reintegration of prisoners in Victoria
September 2015

Conflict of interest by an Executive Officer in the Department of Education and Training
September 2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight
June 2015

Investigation into allegations of improper conduct by officers of VicRoads
June 2015

Investigation into Department of Health oversight of Mentone Gardens, a Supported Residential Service
April 2015

Councils and complaints – A report on current practice and issues
February 2015

Investigation into an incident of alleged excessive force used by authorised officers
February 2015

2014

Investigation following concerns raised by Community Visitors about a mental health facility
October 2014

Investigation into allegations of improper conduct in the Office of Living Victoria
August 2014

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