

Here's what our _____
ROYAL COMMISSION
INTO VICTORIA'S BIG BUILD
_____ will investigate

Terms of Reference

The Commission will inquire into and report upon the integrity, administration, procurement, expenditure and delivery of major Victorian Government-funded construction projects from 4 December 2014 until the establishment of the Commission, together with any subsequent conduct relevant to the matters under inquiry.

Without limiting the scope of its inquiry, the Commission will examine:

1. Corruption and misconduct

The nature, extent, causes and consequences of any corruption, criminality, fraud, collusion, coercion, intimidation, extortion, bribery, kickbacks, black banning, conflicts of interest, misuse of public office, misuse of public funds or other unlawful or improper conduct connected with Victorian Government-funded construction projects.

This includes conduct by or involving:

- a. contractors, subcontractors, labour hire providers, consultants and industry bodies;
- b. trade unions, officials, organisers, delegates, employees, members and associated entities;
- c. Premiers, ministers, ministerial staff, departments, public officials, project authorities and government agencies;
- d. political parties, factions, sub-factions, candidates, associated entities and fundraising organisations;

- e. industry funds, training organisations, redundancy funds, insurance arrangements and other entities receiving payments connected with project employment or industrial arrangements; and
- f. organised crime groups, outlaw motorcycle gangs and other criminal organisations, and persons or entities with actual, alleged or reputed associations with any such group or organisation or with the criminal underworld.

2. The CFMEU and other trade unions

The conduct and influence of the Construction, Forestry and Maritime Employees Union, including its construction division, and any other relevant trade union on government-funded projects, including:

- a. intimidation, coercion, standover conduct, black banning or unlawful industrial conduct;
- b. control or influence over employment, subcontracting, labour hire, site access and the allocation of work;
- c. the selection, exclusion or treatment of contractors, subcontractors and workers;
- d. relationships with organised crime figures, outlaw motorcycle gangs or other criminal organisations;
- e. misuse of safety laws and regulations; and
- f. the impact of such conduct on project costs, competition, productivity, safety and delivery.

3. Procurement and project administration

Whether the selection, procurement, contracting, administration and delivery of major projects created, facilitated, concealed or failed to prevent misconduct, waste or misuse of public money, including through:

- a. project conception, selection, prioritisation, business-case development, scope, timing and investment decisions;
- b. prequalification, tendering and tender evaluation;
- c. alliance contracts, public-private partnerships and other delivery models;
- d. contract variations, extensions, settlements and cost overruns;
- e. industrial relations, enterprise agreements, social procurement and workforce participation requirements;
- f. practices that reduced competition or excluded capable businesses; and
- g. failures of probity, transparency, recordkeeping, auditing, supervision or contract management.

4.Improper financial, industrial and political influence

The nature and extent of financial, industrial, organisational and political relationships between government decision-makers, trade unions, contractors, political organisations and associated entities.

The Commission will examine whether:

- a. any project was conceived, selected, prioritised, accelerated, expanded, re-scoped, funded or continued, wholly or partly, to confer an industrial, financial, organisational or political benefit on a trade union, union-associated entity, contractor, political party, faction, sub-faction, candidate or other connected person or entity, rather than solely on its merits and the public interest;
- b. any decision, recommendation, direction, omission or failure to act was influenced by union affiliation, political donations, fundraising, campaigning, factional or leadership support, industrial pressure, threatened disruption or anticipated political advantage;
- c. public expenditure, contracts or project decisions increased union membership, bargaining coverage or control over project workforces, directed payments or benefits to union-associated entities, favoured connected contractors or disadvantaged businesses without those relationships; and
- d. any relevant conflict of interest was properly identified, declared, recorded, managed and disclosed.

The Commission should trace relevant flows of public money, services, personnel and other benefits through contractors, subcontractors, unions, associated entities and political organisations.

5. Government knowledge, accountability and disclosure

What successive Premiers, Ministers, ministerial advisers, departmental secretaries, project authority boards and senior public officials – including but not limited to the ‘specified witnesses’ listed at Appendix A, who shall be called before the Commission at the earliest opportunity:

- a. knew or ought reasonably to have known about misconduct and integrity risks;
- b. were told through briefings, complaints, audits, intelligence, legal advice, media reporting or industry representations;
- c. did or failed to do in response;
- d. communicated to Parliament, integrity agencies, law enforcement bodies and the public; and
- e. did to identify, declare, record, manage and disclose relevant conflicts of interest.

The Commission will also examine whether any person or entity:

- f. concealed, suppressed, delayed, altered or failed to create or retain relevant information;
- g. discouraged complaints, investigation or referral;
- h. retaliated against whistleblowers, workers, contractors, journalists or public officials;

- i. improperly obstructed scrutiny through claims of confidentiality, commercial sensitivity, Cabinet confidentiality or legal professional privilege; or
- j. provided false, misleading or materially incomplete information to Parliament, regulators, integrity agencies, law enforcement bodies or the public.

6. Costs and consequences

The financial, economic and human consequences of the matters under inquiry, including:

- a. bullying, threats, unsafe workplaces, discrimination, commercial exclusion and retaliation against those who reported or resisted misconduct;
- b. increased tender prices, cost overruns, contract variations and delays;
- c. reduced competition, productivity and value for money;
- d. inflated or unnecessary labour, subcontracting, security, insurance and compliance costs;
- e. exclusion of competitive suppliers;
- f. public money flowing to persons or entities engaged in criminal, corrupt or improper conduct; and
- g. the facilitation of crime, including on project sites;

In quantifying these consequences, the Commission should distinguish legitimate wages, safety protections and employment conditions from costs attributable to corruption, coercion, restrictive practices, waste or mismanagement.

7. Oversight, recovery and reform

The adequacy, effectiveness and independence of the institutions responsible for preventing, detecting, investigating and responding to misconduct, including:

- a. government departments, project authorities and infrastructure delivery bodies, including the Department of Transport and Planning, the Victorian Infrastructure Delivery Authority and its constituent project offices including VIDA Rail, VIDA Roads, VIDA Metro, VIDA Health, and the Suburban Rail Loop Authority;
- b. WorkSafe Victoria, Victoria Police, the Independent Broad-based Anti-corruption Commission and the Victorian Ombudsman; and
- c. relevant Commonwealth departments and agencies, together with any predecessor, successor or superseded department, authority, agency, office, program or administrative entity that performed substantially similar functions.

The Commission should recommend measures to:

- a. recover public money lost through corruption, fraud, collusion or breach of contract;
- b. exclude serious offenders from future government-funded work;
- c. improve procurement, probity, auditing and contract management;
- d. strengthen the disclosure and management of political, financial and industrial conflicts;

- e. protect workers, businesses, public officials and whistleblowers;
- f. enable integrity and law enforcement agencies to follow public money through contractors, unions and associated entities; and
- g. prevent similar misconduct from recurring.

8. Additional directions

The Commission may:

- a. examine any matter reasonably incidental to these Terms of Reference;
- b. consider previous reviews, audits, inquiries and investigations;
- c. obtain and analyse relevant government, commercial, financial, industrial and political records, including – for the avoidance of doubt – documents of or prepared for Cabinet or any of its sub-committees, whether draft or final;
- d. make referrals to law enforcement, integrity, regulatory or prosecutorial authorities for consideration of criminal charges or civil action;
- e. deliver interim reports on urgent matters; and
- f. recommend immediate action to protect public money, preserve evidence or prevent further misconduct.

APPENDIX A – SPECIFIED WITNESSES

In addition to being able to call any person at its discretion, the Commission will be required to call the following witnesses:

1. Daniel Andrews
2. Mick Gatto
3. John Setka
4. Jacinta Allan
5. Joe Myles
6. Ben Carroll
7. James Merlino
8. Tim Pallas
9. Elias Spervovasilis
10. Natalie Hutchins
11. Jaclyn Symes
12. Danny Pearson
13. Derek Christopher
14. Gabrielle Williams
15. Nick Staikos
16. Lissie Ratcliff
17. Jessie McCrone
18. Harriet Shing
19. Melissa Horne
20. Anthony Carbines
21. Jeremi Moule
22. Jeroen Weimar
23. Kevin Devlin
24. Duncan Elliott
25. Chris Barrett