



# Anti-Corruption Commissions: Roles, Powers, Accountability, and Effectiveness *Full Report*

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### **Acknowledgements**

This project is supported by an Academic Fellowship with the Australian and New Zealand School of Government (ANZSOG) to consider the roles, powers, accountability and effectiveness of anti-corruption commissions.

The author would like to express her deep thanks and gratitude to all the interviewees who have participated in this project and enriched the report with their insights. She would also like to thank Molly McNamara, who provided excellent research assistance for this project. Thanks also to Patrick Brownlee, Andrew Bushnell, and Keya Chaturvedi from ANZSOG, for coordination of various stages of the project.

### **Suggested Citation**

Ng, Yee-Fui. Anti-Corruption Commissions: Roles, Powers, Accountability and Effectiveness. ANZSOG Research Insights No. 57. Melbourne: ANZSOG, January 2026. <https://doi.org/10.54810/QUQG9873>

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## Executive Summary

The aim of this project is to analyse the roles, powers, accountability and effectiveness of anti-corruption commissions in Australian jurisdictions. It makes recommendations relating to the design and powers of anti-corruption commissions, with the aim of enhancing their effective operation.

This report makes findings based on interviews with 58 current or former anti-corruption commissioners and staff, and key individuals involved in the creation, formation and oversight of commissions (including inspectorates and parliamentary committees) in both State and federal Australian jurisdictions.

## Summary of Recommendations

This project has made recommendations for institutional design to enhance the operation and effectiveness of anti-corruption commissions. The recommendations encompass the powers, independence, oversight and effectiveness of the commissions.

Further explanation about these recommendations is provided in Part 7 of the Report.

### Powers

To enable them to effectively perform their legislative functions of exposing and preventing corruption, anti-corruption commissions should have the following powers:

- Legislative coercive powers
- Legislative power to abrogate privileges, including legal professional privilege, privilege against self-incrimination, and parliamentary privilege, combined with ‘use immunity’ preventing evidence from being used in a criminal prosecution
- Legislative power for commissions to determine privilege claims
- Legislative power to publicly report
- Legislative power to conduct public hearings, with reputational damage to be considered before holding a public hearing
- Legislative power requiring commissions to comply with procedural fairness

### Independence

To enhance the independence of the commission, the following institutional features are desirable:

- Tenure of Commissioners should be a non-renewable seven-year term
- Appointments process for Commissioners involving a bipartisan parliamentary committee with power to either appoint or veto the appointment.
- Budget autonomy, with commission performance linked to Parliament or an independent body, rather than the Executive
- Anti-corruption commissions should be established as a standalone agency with institutional independence from other entities

## Oversight

Anti-corruption commissions should be subject to both parliamentary committee and inspector oversight.

For parliamentary committees to be effective, the following institutional features are desirable:

- Independent chair of parliamentary committee
- Non-government majority composition of parliamentary committee
- Private hearings between the parliamentary committees and the commission, in addition to public hearings
- Regular periodic review of legislation establishing anti-corruption commissions by parliamentary committees

For Inspectors to be effective, the following institutional features are desirable:

- Legislated mandatory referrals to the Inspector when the anti-corruption commission exercises a coercive power
- Legislated requirement to provide a written report to the Inspector before an anti-corruption commission public hearing
- A memorandum of understanding setting out the principles of engagement between the Inspector and commission

## Performance Framework

To enhance the commission's performance, there should be the following institutional features:

- Legislative requirement for Ministers and public sector bodies to respond to the commission's corruption prevention recommendations within a certain timeframe
- Embedded integrity officers within departments and agencies

To encourage best practice to advance the commissions' educational role, the following practices should be adopted:

- Regular meetings between anti-corruption commission staff with all levels of the public sector
- Education and outreach events by the commission with politicians, the public service, and local government

# 1. Introduction

With the creation of the National Anti-Corruption Commission (NACC) in 2023, Australia's federal system now has a comprehensive network of 'broad-based' public sector anti-corruption agencies covering all levels of government – a significant development nationally and internationally. However, as also occurs globally, within Australia there remain:

- significant variations in jurisdiction, power and legislative design;
- public controversies over the general and specific performance of agencies; and
- recurring questions over agencies' independence, sustainability and accountability.

Despite the apparent consensus that every Australian jurisdiction requires a strong, independent anti-corruption agency, most if not all jurisdictions see recurring debates over their constitution, powers and performance. Along with familiar international questions over whether such 'watchdogs' (or 'tigers') have sufficient 'bark', 'bite' or 'teeth',<sup>1</sup> Australian debates have ranged from criticism of agencies as expensive complaint-handling bureaucracies, too cumbersome to even track 'elephants';<sup>2</sup> or 'kangaroo courts'<sup>3</sup> that undermine the rule of law; to pressures for agencies to only use their powers with the quiet, efficient precision of eagles, operating through occasional selective strikes.

Unsurprisingly, however, preliminary research by Transparency International demonstrates wide divergence in individual jurisdictions' delivery of these general principles and, commensurately, their agencies' apparent performance.<sup>4</sup>

More importantly, every Australian jurisdiction has faced substantial legal and policy controversies typical of the global challenge – in 2024 alone, debates ranged from backlash over the performance of the newly established NACC, especially in the wake of the Robodebt scandal, to the resignation of South Australia's ICAC Commissioner, citing the significant fettering of her powers.<sup>5</sup>

Thus, this project addresses the increasingly urgent impetus to understand the institutional and operational elements that affect the effectiveness of anti-corruption agencies as accountability institutions.<sup>6</sup>

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<sup>1</sup> See e.g. Gabriel Kuris (2015), 'Watchdogs or guard dogs: Do anti-corruption agencies need strong teeth?', *Policy and Society* Vol 34, pp.125-135.

<sup>2</sup> '[A] multimillion-dollar joke... that couldn't track an elephant through snow and, even if they could, they wouldn't know what to do with it when they caught it': Lawrence Springborg MLA, Queensland Opposition Leader, describing the then Queensland Crime & Misconduct Commission; *The Australian*, 26 May 2003; quoted with approval by Hon Jenny Mikakos MLC, 'Police: Corruption and Organised Crime', *Legislative Council of Victoria - Parliamentary Debates*, 9 June 2004.

<sup>3</sup> A 'kangaroo court' in which former NSW Premier Gladys Berejikilian was 'done over by a bad process, an abuse': Prime Minister Scott Morrison describing the NSW Independent Commission Against Corruption, *House of Representatives - Commonwealth Parliamentary Debates*, 25 November 2021. See Yee-Fui Ng and Stephen Gray, 'Robust Watchdogs, Toothless Tigers or Kangaroo Courts? The Evolution of ACCs in Australia' (2024) 47(2) *UNSW Law Journal* 415.

<sup>4</sup> Salahuddin M Aminuzzaman & Sumaiya Khair (2017), *Strengthening Anti-Corruption Agencies in the Asia-Pacific: Regional Synthesis Report*, Transparency International Bangladesh and Transparency International, October, 2017; <[https://images.transparencycdn.org/images/2017\\_ACA\\_RegionalReport\\_EN.pdf](https://images.transparencycdn.org/images/2017_ACA_RegionalReport_EN.pdf)> (viewed 1 November 2023).

<sup>5</sup> Yee-Fui Ng and Stephen Gray, 'Robust Watchdogs, Toothless Tigers or Kangaroo Courts? The Evolution of ACCs in Australia' (2024) 47(2) *UNSW Law Journal* 415.

<sup>6</sup> M Bovens and A Wille, 'Indexing Watchdog Accountability Powers: A Framework for Assessing the Accountability Capacity

This report is shaped by the descriptive account from deep experience of 58 current and past integrity officials and champions in parliament, and the rich narrative material in the report forms the collective wisdom that has informed the recommendations in this report.

## 1.1 Aims

The aim of this research is to analyse the roles, powers, operation and effectiveness of anti-corruption commissions in Australia. The project will examine and report on:

- an assessment of the powers, independence, accountability mechanisms, and performance evaluation frameworks for anti-corruption commissions; and
- recommendations for institutional design and practice.

## 1.2 Structure

The report is structured as follows:

- Part 1 introduces the project and sets out its methodology.
- Part 2 will provide a background context in terms of the roles, rationale, impetus and establishment of anti-corruption commissions.
- Part 3 will discuss the powers of the commissions.
- Part 4 will evaluate the independence of anti-corruption commissions.
- Part 5 will examine oversight mechanisms for the commissions.
- Part 6 will analyse performance frameworks for anti-corruption commissions.
- Part 7 will provide recommendations for institutional design and practice.

## 1.3 Interviews

This project has conducted 58 interviews with various stakeholders involved with anti-corruption commissions, such as current and former commissioners and deputy commissioners, ombudsmen, Premiers, Ministers, Members of Parliament on parliamentary committees overseeing anti-corruption commissions, and Inspectors.

Interviews were conducted with participants from all nine Australian jurisdictions. Several participants had experiences in multiple jurisdictions and/or statutory positions, and were able to offer comparative insights. A few participants requested to be interviewed in groups, so three group interviews were conducted: with the National Anti-Corruption Commission leadership, Integrity Oversight Victoria leadership, and the inaugural Commissioner and senior staff of Victorian IBAC. One interviewee requested to contribute anonymously.

The preliminary findings and observations were presented and tested at a meeting in Adelaide with all the anti-corruption commissioners in 2025, and feedback obtained to further refine the findings. The preliminary findings were also presented at a conference on anti-corruption commissions at Deakin University in 2025.

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of Independent Oversight Institutions' (2020) 15(3) *Regulation & Governance* 856.

The list of interviewees is at [Appendix A](#).

## Methodology

The author conducted qualitative interviews with current or former anti-corruption commissioners and staff, and key individuals involved in the creation, formation and oversight of commissions (including inspectorates and parliamentary committees) in State, Territory, and federal Australian jurisdictions (listed in Appendix A). The qualitative methodology focuses on exploration and discovery rather than measurement and confirmation of predetermined hypotheses.<sup>7</sup> A semi-structured interview format was utilised and participants were asked about their experiences in terms of the roles, powers accountability and effectiveness of anti-corruption commissions. The data collected was transcribed for analysis. Analysis was conducted manually, with a thematic analysis utilised to code and annotate the data to identify, analyse, and report patterns or themes.<sup>8</sup> In addition to interview data, the research design incorporates parliamentary reports and other primary sources to triangulate between the different sources to enhance the reliability and validity of the study.<sup>9</sup>

The participants were recruited through purposeful sampling, where stakeholders who fell within the target group were identified and individually approached to be interviewed. This was supplemented by snowball sampling through requesting interviewees to identify other stakeholders who might be interested in participating in the research.

The sample includes six former Premiers, three former Attorneys-General, nine current and former Members of Parliament, 23 current and former anti-corruption commissioners (including deputies), five current and former ombudsmen (including deputies), and four current and former inspectors.

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<sup>7</sup> S B Merriman, *Case Study Research in Education* (Jossey Bass, 1988) 17.

<sup>8</sup> J Lofland and L H Lofland, *Analyzing Social Settings: A Guide to Qualitative Observation and Analysis* (Wadsworth, 3<sup>rd</sup> ed 1995) 189-97.

<sup>9</sup> N K Denzin, *The Research Act: A Theoretical Introduction to Sociological Methods* (Prentice Hall, 3<sup>rd</sup> ed, 1989) 25.

## 2. Roles, Impetus and Establishment

### 2.1 Roles and Rationale

In all political systems, there is a risk that corruption will take root within a system without a proper system of continuous oversight. As John McMillan, acting ACT Integrity Commissioner, former inaugural acting Australian Commission for Law Enforcement Integrity (ACLEI) Commissioner, and former Commonwealth Ombudsman, stated:

**My cynical view is that if you don't have adequate procedures in place, human nature being what it is, you will get corruption in a system. The three most common causes of corruption (or at least the three that have most commonly brought down leaders from the US president onwards) are: first, conflict of interest in doing a favour for a friend or a family member; secondly, taking a freebie, such as from an expense or travel account; and thirdly, sexual misconduct. Those three factors are common themes in the work of so many anti-corruption commissions. There are as well cases of blatant corruption, but conflicts of interest and misbehaviour are certainly the most common themes. I think the commissions have done a great job in highlighting and drawing attention to this. In a crowded integrity space, with numerous bodies such as ombudsmen, auditors-general, and information commissioners, one question is what is the need for anti-corruption commissions.**

McMillan explained that anti-corruption commissions have a distinct role in the integrity framework in focussing overtly on uncovering and preventing corruption in various Australian jurisdictions:

**Anti-corruption commissions were necessary to complete the National Integrity Framework – in a sense, they were the last piece of the puzzle. An additional reason they were needed is that corruption exists in all systems, but there is a reluctance to admit that. I saw that reluctance in my involvement in the foundation years of the Commonwealth and ACT Integrity Commissions. Why, the critics would ask, are anti-corruption commissions needed? What work will they do that is not already being done by the Ombudsman, the Auditor-General, parliamentary committees and a vibrant press? There is no visible corruption, critics would allege: the commissions will simply be another form of window dressing. But the reality is that every one of these commissions has subsequently uncovered corruption. The ACT is presently a great example, with really quite serious corruption investigations being undertaken. Every governmental system in the world has suffered corruption at one stage or another. Why should we assume that Australian systems are any different? And of course, they're not.**

### 2.2 Impetus and Establishment

The first three anti-corruption commissions in Australia (NSW, Queensland, and WA), were set up as a response to corruption crises in government, and tended to have stronger powers.

The NSW ICAC was the first anti-corruption commission established in Australia, with the longest running history of legislative reform of 35 years. It was created in 1988 to fulfil the election promise of the new Liberal

Greiner government to ‘restore the integrity of public administration’.<sup>10</sup> When the NSW ICAC was first set up, Premier Greiner set a strong tone for the need of an anti-corruption body, due to the numerous corruption scandals in the State, in his second reading speech:

**[A] Minister of the Crown gaoled for bribery; an inquiry into a second, and indeed a third, former Minister for alleged corruption; the former Chief Stipendiary Magistrate gaoled for perverting the course of justice; a former Commissioner of Police in the courts on a criminal charge; the former Deputy Commissioner of Police charged with bribery; a series of investigations and court cases involving judicial figures including a High Court Judge; and a disturbing number of dismissals, retirements and convictions of senior police officers for offences involving corrupt conduct.**<sup>11</sup>

In Queensland, the revelations of the Fitzgerald Inquiry provided strong impetus to establish its own anti-corruption commission.<sup>12</sup> After nearly 30 years of National Party government, Labor was elected to office in Queensland in December 1989. Both sides of politics had promised to implement the Fitzgerald Inquiry’s recommendations,<sup>13</sup> which had ‘revealed entrenched corruption among political and police leaders, deeply ingrained abuses of process and power, and inept public administration’.<sup>14</sup> The Fitzgerald Inquiry had recommended the creation of new bodies to oversee the reform process. Hence, the Criminal Justice Commission (‘CJC’) was created to oversee the reconstitution of the Queensland Police Service, and was given a permanent role in both criminal justice reform and in ensuring that ‘future corruption was minimised and properly managed’,<sup>15</sup> which was then reorganised and restructured several times and is now the CCC.<sup>16</sup>

In Western Australia, the government set up a specialist commission to investigate allegations of police corruption – the Official Corruption Commission established in 1988, which was later reformed to be the Anti-Corruption Commission in 1996 – with limited investigative powers.<sup>17</sup> A series of corruption scandals over a decade during the 1980s and early 1990s formed a powerful impetus for the creation of a more robust

<sup>10</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 26 May 1988 (Nick Greiner, Premier) 673 (‘Greiner Second Reading Speech’); ‘History and Development of the ICAC Act’, *NSW Independent Commission Against Corruption* (Web Page) <<https://www.icac.nsw.gov.au/about-the-nsw-icac/legislation/history-and-development-of-the-icac-act>>.

<sup>11</sup> New South Wales, *Parliamentary Debates*, Second Reading Speech, Independent Commission Against Corruption Act 1988 (NSW), Hansard, Legislative Assembly, 26 May 1988 (Nick Greiner, Premier) 673

<sup>12</sup> For a discussion of corruption in Queensland under the Bjelke-Petersen Government, and of the influence of the Fitzgerald Report, Charles Sampford, ‘From Deep North to International Governance Exemplar’ (2009) 18(3) *Griffith Law Review* 559, 565.

<sup>13</sup> Michael Briody, ‘Establishing the Crime and Corruption Commission: The Reformation of Queensland’s Premier Crime-Fighting Agency’ (2015) 10(2) *Journal of Policing, Intelligence and Counter Terrorism* 136, 137 <<https://doi.org/10.1080/18335330.2015.1089634>>.

<sup>14</sup> Janet Ransley and Richard Johnstone, ‘The Fitzgerald Symposium: An Introduction’ (2009) 18(3) *Griffith Law Review* 531, 532 <<https://doi.org/10.1080/10854653.2009.10854653>>.

<sup>15</sup> *Ibid* 538.

<sup>16</sup> See ‘From the CJC to the CCC: An Overview’, *Crime and Corruption Commission Queensland* (Web Page, 21 August 2019) <<https://www.ccc.qld.gov.au/about-us/our-history/cjc-ccc-overview>>.

<sup>17</sup> *Official Corruption Commission Act 1988* (WA); *Anti-corruption Commission Act 1988* (WA). See *Royal Commission into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers* (Interim Report, 20 December 2002) (‘*Kennedy Royal Commission Interim Report*’) 11–15 <[https://www.parliament.wa.gov.au/intranet/libpages.nsf/WebFiles/Royal+Commission+into+whether+there+has+been+an+y+corrupt+or+criminal+conduct+by+Western+Australian+police+officers+interim+report/\\$FILE/WA+Police.pdf](https://www.parliament.wa.gov.au/intranet/libpages.nsf/WebFiles/Royal+Commission+into+whether+there+has+been+an+y+corrupt+or+criminal+conduct+by+Western+Australian+police+officers+interim+report/$FILE/WA+Police.pdf)>.

anti-corruption body. These scandals, known collectively as 'WA Inc',<sup>18</sup> forced Labor Premier Carmen Lawrence to announce the Royal Commission into Commercial Activities of Government and Other Matters in early 1991. The Royal Commission made a 'number of findings of serious impropriety' on the part of several WA ministers, particularly involving business deals with fallen tycoons Alan Bond and Laurie Connell.<sup>19</sup>

As former WA Premier Colin Barnett explained:

**Going way back to the 1980s, the Labor government was elected, and it was headed by a young leader called Brian Burke, and he was very popular, quite smooth politically. He became very close to some of these entrepreneurial types involved in various industries, and all was going well. It was the time that the America's Cup was being contested in Western Australia, the first time it had left America.**

**So there was a big party mood, there was a lot of money around, share prices were high, mining was doing well. But Burke got really caught up very closely with these sort of entrepreneur types, a small group that are known as the four on the floor, about four of them, not necessarily highly regarded by conventional business, but they had lots of money.**

**The 1987 share crash started in the US, that brought all of these so-called multi-millionaires into financial difficulty, and the Labor government under Burke decided to introduce a series of rescue packages. Some of them would have gone to conventional and proper building societies, but he tried to bail out all his rich entrepreneurial mates. The end result was that the state government under Burke lost one and a half billion dollars of public money, poured money into failing companies and they still failed. So that was a huge scandal and just smelt of dodgy deals, corrupt behaviour, deals for mates. It was really awful. It got known as the WA Inc period.**

**So that was 1987 and it played out over the following couple of years. Eventually, a Royal Commission was held into it and that was very public, a very major exercise and it made recommendations. Police got involved and there were criminal charges against some of the prominent players.**

**Burke as Premier and Parker as Deputy Premier were sent to jail. Bond and Connell, the two highest profile entrepreneur types, they also served jail terms.**

These scandals gave the impetus for the formation of the CCC in WA in 2004. As Geoff Gallop, the Premier who introduced the WA CCC, explained:

**The state and business were subject to intense investigation because there was evidence that government wasn't being conducted on the basis of the public interest, but on the basis of some particular interests. And so that's the background to WA. And it's similar to the background to Queensland and New South Wales, which came in at that same period. So I think there were real issues in our society. And one way of addressing them was to send a message out there. If you do certain things, it'll be exposed by an independent and powerful institution.**

<sup>18</sup> Bruce Stone, 'Accountability Reform in Australia: The WA Inc Royal Commission in Context' (1993) 65(2) *Australian Quarterly* 17 <<https://doi.org/10.2307/20635717>>.

<sup>19</sup> Stone, *ibid*, 17.

In 2009, Tasmania established its Integrity Commission.<sup>20</sup> The Commission was introduced in an atmosphere of crisis and perception of corruption in government. As former Premier Andrew Bartlett, who introduced the Tasmanian Integrity Commission, explained:

**We had a Premier that had just stood down who had been kind of accused of, but with no substantive kind of evidence of corruption. Before my premiership, another Minister, the Deputy Premier at the time, basically had to resign due to misleading parliament ... Then I became Premier and I was like a clean sweep, clean broom. I'm not connected to any of this stuff, fresh new approach. About two, three months into my premiership, the deputy commissioner of police and the director of public prosecutions arrested the police commissioner...**

**So suddenly you've got attorney generals and deputy premiers and ministers being charged with things and a police commissioner being arrested by his own deputy. So you can understand it's this kind of morass of horrible stench of corruption around the government. One of the things that had been called for some years in Tasmania was some form of ICAC or integrity commission.**

**And so I agreed we're going to have an integrity commission in Tasmania. Soon into my premiership, I announced what I called a ten point plan for restoring trust in democracy. And one of them was the establishment of the integrity commission.**

Bartlett established a parliamentary committee of Labor, Liberal and Greens, chaired by a respected Independent MP, Jim Wilkinson, which recommended the far more limited model of the Tasmanian Integrity Commission. This was adopted by the Bartlett government.

In 2010, the Bracks/Brumby Labor Government in Victoria was replaced by a Liberal/National Coalition Government led by Ted Baillieu. Baillieu kept the Coalition's pledge of six years previously to establish an independent anti-corruption commission, which came into existence through legislation creating Victoria's IBAC in 2011.<sup>21</sup>

Not long afterwards, in 2012, South Australia established its ICAC.<sup>22</sup> John Rau, former Attorney-General, explained the circumstances leading up to the establishment of the SA ICAC:

**In the lead up to the 2010 election, the then SA Opposition Leader started to campaign for the introduction of an ICAC. This even extended to her styling herself as "Shadow Minister for ICAC", notwithstanding the fact there wasn't an ICAC, or anything like it. This was a policy position that the then Opposition took to that election.**

**After the election, I became Attorney General. I discussed with the then Premier (Mike Rann), my concern that the Opposition had pushed this ICAC agenda fairly hard. I thought that it would be prudent for us to take the wind out of their sails, by embracing the general concept of a specialised investigative body, but making it something that was purpose-built for our local law enforcement needs. This would pre-empt any fatuous accusation that we were hiding something, or stonewalling. So, it is probably fair to say that the initiative for establishing the SA ICAC, was a pre-emptive response to what had already by then been, an uninformed,**

<sup>20</sup> See *Integrity Commission Act 2009* (Tas).

<sup>21</sup> See *Independent Broad-based Anti-corruption Commission Act 2011* (Vic).

<sup>22</sup> See *Independent Commission Against Corruption Act 2012* (SA).

**shallow and essentially politically motivated, wedging exercise. It's really important to understand that in South Australia at that time, there was zero, and I emphasise, underline, zero evidence of entrenched, systemic corruption, that could not be properly dealt with by the police. Zero evidence. This was not a case where we were responding to a crisis inspired by an Eddie Obeid, or a Brian Bourke, or one of those characters. Certainly there was no fuse. There was no smoking gun. There was no cause célèbre. There was nothing. So in that sense, it was established without pressure.**

The territories then followed suit. In 2015, the Northern Territory Legislative Assembly resolved to hold an inquiry into the establishment of an anti-corruption body in that jurisdiction. In 2016, the Anti-corruption, Integrity and Misconduct Commission Inquiry released its final report,<sup>23</sup> and recommended the establishment of a NT ICAC following the model established in SA.<sup>24</sup> Meanwhile, in 2018, the Australian Capital Territory established its Integrity Commission, pursuant to the *Integrity Commission Act 2018* (ACT). John McMillan, acting ACT Integrity Commissioner, explained the formation of the ACT Integrity Commission:

**I think the view of the ACT government was that the Commission was needed for proper accountability and oversight – as a necessary element of an integrity framework. In the ACT, not much was expected. There was not much corruption, though serious problems have since been found.**

Finally, in the lead up to the 2022 election, the Australian Labor Party ran an election campaign with integrity as a major pillar, promising a stronger model of a federal anti-corruption commission than the incumbent government. Following their electoral success, the Albanese Labor Government kept its pledge to establish a NACC,<sup>25</sup> which commenced operations in July 2023. McMillan explained that the more limited predecessor body to NACC, the ACLEI, was set up ‘primarily as a political compromise’:

**The Victorian Office of Police Integrity wanted access to telephone interception powers, which only the Commonwealth could grant. Commonwealth Attorney-General Ruddock was reluctant to give those powers to a State commission. The compromise was to set up ACLEI and say it could exercise the telephone interception powers and pass over the criminal intelligence.**

Mark Dreyfus, the Attorney-General who introduced the NACC legislation, explained the election promises that led to the formation of NACC:

**In the lead up to the 2019 federal election, Labor announced its commitment to establish a National Anti-Corruption Commission. As Shadow Attorney-General, I made repeated calls for a strong, independent anti-corruption body at the Commonwealth level with the aim of eliminating corrupt conduct affecting any part of the federal public sector and restoring trust, accountability and transparency in our democratic institutions.**

<sup>23</sup> *Anti-corruption, Integrity and Misconduct Commission Inquiry* (Final Report, 27 May 2016).

<sup>24</sup> *Ibid* 9.

<sup>25</sup> *NACC Act*.

In response, the Liberal and National Party Coalition also committed to establishing a Commonwealth Integrity Commission. They formed government following the 2019 election, but over their three-year term failed to introduce the legislation they had repeatedly promised to deliver to the Australian people.

Following the 2022 federal election, Labor formed government and I was appointed Attorney-General ... We committed to establishing a National Anti-Corruption Commission, and the Albanese Labor Government delivered it, with the support of the Australian people.

Just over four months after the 2022 federal election, on 28 September 2022, I introduced the *National Anti-Corruption Commission (Consequential and Transitional Provisions) Bill 2022* in the House of Representatives. It passed both Houses of Parliament on 30 November 2022.

Therefore, the first four anti-corruption commissions were established in an atmosphere of crisis in government, as a method of rebuilding public trust. Following that, anti-corruption commissions tended to be introduced as part of election pledges or through policy transfer from other jurisdictions.

## 3. Legislative Framework and Powers

Anti-corruption commissions are unique bodies with large-scale investigatory powers and a broad mandate to investigate corruption, with a role that is exercised more in the public forum than that other oversight bodies. As such, debate still rages about their appropriate powers and functions within the Australian political landscape.

Anti-corruption agencies in Australia have varying powers of investigation, referral and reporting. Their jurisdictions most commonly extend beyond criminal law enforcement, to include identification of other critically salient issues including non-criminal corruption, causes of corruption, imperatives for addressing corruption risk (criminal or non-criminal), cultural issues and opportunities for specific or systemic reform to control corruption.

### 3.1 Model

There are three main models of anti-corruption commissions in Australia:

- **Broad ‘umbrella’ model**, with jurisdiction wider than public sector corruption: eg the Victorian IBAC has additional jurisdiction over police misconduct, the WA and Queensland CCC have additional jurisdiction over police misconduct and serious or organised crime,
- **Specialist model**: eg in NSW the ICAC investigates public sector corruption, the Law Enforcement Conduct Commission (LECC) investigates police misconduct, and the NSW Crime Commission targets organised and other serious crime,
- **Limited model**: eg following legislative change, the SA ICAC does not have the ability to hold public hearings and lacks the ability to conduct own motion investigations. The Tasmanian Integrity Commission does not have telecommunications interception powers.

There was debate amongst participants in Victoria about the appropriateness of IBAC having jurisdiction to investigate police, as it was seen to detract resources from the public sector corruption work, and may be a limiting factor in terms of the effectiveness of the body. Former IBAC Commissioner, Stephen O’Bryan stated:

**There was always a tricky balancing act re how to divide up our limited resources between investigations and prevention and education, as well as between police and public sector jurisdictions. As we used to tell our Minister and other officials who came to visit, we can only do so much. The cake is only this big and so, how do we cut it? Down the middle or what? But they were never talking about more cake... More saying you're not doing enough in the police space. But that would have meant vacating the public sector space or at the very least being less active in that space to be more active in the police space. You just have to use your discretion and try to be as watchful and impactful as you can in both spaces taking into account capacity and capability constraints.**

On the other hand, Bruce Barbour considered the wide jurisdiction of the Queensland CCC enabled a broader view and access to data on the public sector that could then be utilised to prevent corruption:

We not only investigate issues, but we also are focused, as our Act requires, on prevention and working with the public sector and agencies to reduce the incidence and risk of corruption. To have a broad-based jurisdiction like that allows us to utilise data, to develop analytics, to understand what issues are prevalent, where the risk points are, and to be able to provide much more effective support to agencies in the public sector and guide them in terms of their own work.

Peter Johnson, Chief Commissioner of NSW LECC saw value in a specialist police investigatory body in NSW:

The Law Enforcement Conduct Commission, previously the Police Integrity Commission, is really the only standalone integrity commission that's looking at police. I think it is a reasonably effective model. There will always be arguments about whether there should be a larger agency so that you don't have police investigating police in any respect. There will also be issues about whether there ought to be a standalone model or one that's rolled into the local version of the ICAC. For my part, my view before I came here, which has been reinforced by my time here, is that there is real value in a specialised agency in New South Wales. It's a very large police force, 17,000 or so. It's one of the biggest police forces in the world in that sense. There are some in the UK and the US that are bigger, and there have been historical issues with the New South Wales Police Force. And those matters continue. So I do think there is an ongoing utility of having a specialised integrity agency for the New South Wales Police.

Several participants were critical of the limited model in South Australia, questioning whether the SA ICAC was still able to discharge its functions effectively with such a limited remit, with one interviewee describing the organisation as 'neutered'.

## 3.2 Coercive Investigative Powers

Many anti-corruption commissions possess extraordinary investigative powers, including coercive examination powers, search and seizure authorities, and telecommunications interception capabilities (apart from Tasmania). These powers often exceed those available to regular law enforcement, justified by corruption's clandestine nature.

All interviewees agree that anti-corruption commissions require these strong coercive powers to successfully carry out their functions of exposing corruption. As John McMillan stated:

Corruption thrives in secrecy – in the background. The only way you can usually find it is through the use of techniques such as telephone interception powers, compulsory examination, and seizing the smartphones of everybody who's under summons as they walk into the hearing room and downloading the contents. Covert surveillance is often the primary method used to detect corruption. That's why I've always said you should not give a corruption function to an ombudsman because it has some coercive powers (such as taking evidence under oath, authorised entry to premises and seizing items), but the Ombudsman doesn't have those more serious powers of telephone interception, surveillance and controlled operations. It would also be inappropriate to give those functions to an ombudsman. They don't have the skills, training and know-how to exercise them. Such a function would also cut across the other informal interaction work that ombudsmen do with agencies. So you need a separate anti-corruption body or commission, with very strong coercive powers.

Commonwealth and ACT Ombudsman Iain Anderson oversees the use of covert coercive powers by anti-corruption commissions, and states that these bodies have utilised their powers appropriately and have complied with the safeguards of Parliament in exercising these powers:

As Commonwealth Ombudsman and as ACT Ombudsman, one of my roles is to oversight the use of covert coercive powers by law enforcement and integrity bodies. So I do oversight the use of these powers by bodies like the ACT Integrity Commission. I also oversight the use by law enforcement bodies and I think that providing that these bodies are scrupulous about ensuring that they comply with the safeguards that Parliaments have set, I'm not concerned about the fact that they have the powers. The powers themselves are necessary and Parliament's been satisfied that the powers are necessary for specific circumstances. I do find that bodies can always improve the way in which they record their decision making in the use of covert and coercive powers and so I think that that's a general statement that there's always room for improvement in recording decision-making. But I haven't seen anything that suggests that entities are deliberately seeking to overuse powers or to extend the use of powers beyond their proper and authorised uses.

Anderson noted that commissions would often face contrasting criticism about being overzealous or alternatively not doing enough with their coercive powers:

There's always going to be a sensitivity. On the one hand, there's people who are very concerned about encroachment onto individual liberties. And then there are people who are concerned about the lack of activity to investigate alleged corruption and things like that. So there's always going to be that tension there. They inhabit that space where you have coercive powers. You can be criticised for using them. You can be criticised for not using them. So I think it'll continue to be a challenge of demonstrating that we are adding value by existing and by pursuing our functions. And ultimately, that'll be for Parliament and others to make the judgement on have we demonstrated that we're adding value.

### 3.3 Power to Abrogate Privileges

Anti-corruption commission legislation often includes extraordinary powers to abrogate fundamental privileges that normally apply to legal proceedings, such as legal professional privilege, public interest immunity, and privilege against self-incrimination. These privileges are necessary in order to allow anti-

corruption commissions to uncover acts of corruption without impediment. The abrogation of privileges is also common for royal commissions and public inquires and are intended to ensure that investigations are not unduly inhibited and all relevant information can be obtained.

Parliamentary privilege has been an issue for some commissions, with Ministers or MPs in Tasmania claiming this privilege in order to stop commissions from accessing their phones or laptops, stymieing investigations.<sup>26</sup> Due to the imperative to uncover political corruption, parliamentary privilege should also be legislatively abrogated. In some jurisdictions, such as the Commonwealth and NSW, there is a MOU between the anti-corruption commission and Parliament regarding parliamentary privilege.<sup>27</sup>

The strength of the coercive powers and the abrogation of privileges for individuals appearing before anti-corruption commissions, including that of self-incrimination, is always twinned with ‘use immunity’, which prevents the compelled evidence from being used against the individual in a criminal prosecution, ensuring it is used for the investigation rather than punishment of that person.

### 3.4 Public Reporting Powers

Public reporting powers are seen to be essential to the operation of anti-corruption commissions due to the collective rights of citizens based on the principles of transparency, accountability, agency independence and effectiveness, and public participation.<sup>28</sup>

Public reporting is seen to enhance the accountability of anti-corruption agencies, as it allows the government and the public to evaluate the performance of anti-corruption agencies based on their investigative outcomes, whether they are fulfilling their objectives effectively, and whether the expenditure on oversight is justified.

For instance, the guidance to the 2012 Jakarta Principles notes:

**Regular reporting by ACAs will enhance their accountability by providing clear accounts of their progress. It can also strengthen their institutional legitimacy if the reports are made public. Formal reports serve as another accountability mechanism designed to ensure that the Government and the public can assess the performance of an ACA pursuant to its mandate and allocated budget.**<sup>29</sup>

However, these collective rights need to be counterbalanced against the rights of individuals involved. For example, Article 13 of the United Nations Convention against Corruption, identifies that the freedom to publish information concerning corruption should be balanced with the ‘respect of the rights or reputations

<sup>26</sup> ‘Anti-corruption Probe into Tasmania MPs Stalled over Privilege Rules’, 28 October 2025, *The Mercury* <[https://www.themercury.com.au/subscribe/news/1/?sourceCode=TMWEB\\_WRE170\\_a\\_GGL&dest=https%3A%2F%2Fwww.themercury.com.au%2Fnews%2Ftasmania%2Fanticorruption-probe-into-tasmania-mps-stalled-over-privilege-rules%2Fnews-story%2F2f288b100b806440d938f6bf798e61ac&memtype=anonymous&mode=premium](https://www.themercury.com.au/subscribe/news/1/?sourceCode=TMWEB_WRE170_a_GGL&dest=https%3A%2F%2Fwww.themercury.com.au%2Fnews%2Ftasmania%2Fanticorruption-probe-into-tasmania-mps-stalled-over-privilege-rules%2Fnews-story%2F2f288b100b806440d938f6bf798e61ac&memtype=anonymous&mode=premium)>.

<sup>27</sup> See eg for NACC Memorandum of Understanding between the National Anti-Corruption Commission and the Attorney-General, the President of the Senate, the Speaker of the House of Representatives, Parliamentary Privilege <[https://www.aph.gov.au/-/media/02\\_Parliamentary\\_Business/24\\_Committees/243\\_Reps\\_Committees/Privileges\\_and\\_Members\\_Interests\\_Committee/Role\\_of\\_the\\_Committee/MOU\\_with\\_NACC\\_on\\_Parliamentary\\_Privilege.pdf](https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/243_Reps_Committees/Privileges_and_Members_Interests_Committee/Role_of_the_Committee/MOU_with_NACC_on_Parliamentary_Privilege.pdf)>.

<sup>28</sup> Yee-Fui Ng, Gabrielle Appleby and AJ Brown, ‘Public Reporting by Anti-Corruption Agencies: Applying A Framework for Principled Legislative Design’ (2025) 36(3) *Public Law Review* 245.

<sup>29</sup> United Nations Office of Drug and Crime, Colombo Commentary on the Jakarta Statement of Principles for Anti-corruption Agencies (2020) 72.

of others<sup>30</sup> and protection of national security, public order, public health or morals. The key rights engaged are the right to privacy and reputation, a fair trial and fair process.

Anti-corruption commissions are required to act in accordance with procedural fairness, where the commission must disclose adverse material to a person that they will adversely name in their public reports before the report is finalised.<sup>31</sup>

Ng, Appleby and Brown have argued that given the importance of corruption-free institutions, reinforced by the principles of executive accountability in the Australian constitutional framework and the integrity purposes of anti-corruption agencies, the collective right to transparency and good government should be prioritised, provided it is pursued fairly so as to ameliorate concerns of individual rights infringement.<sup>32</sup>

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### Box 1: Case Study - The Carne High Court Case and Public Reporting

The public reporting powers of the Queensland CCC were recently thrown into disarray, as the High Court provided an extremely restrictive interpretation of the CCC's public reporting powers in *Crime and Corruption Commission v Carne* in 2023.<sup>33</sup> The High Court held that while the CCC could report generally in relation to the performance of its corruption functions under s 64(1), it did not have the ability to publicly report on individual corruption matters through s 69(1)(b) or any other provision of the *Crime and Corruption Act 2001* (Qld).

The CCC advised that if the *Carne* result stood, 32 of its previous corruption investigation reports and 256 other public statements about investigations, spanning back over the previous 26 years, were without legal basis.<sup>34</sup> This led to the Queensland Government instigating an independent review of the CCC's reporting powers.<sup>35</sup>

Following a change of government in October 2024, legislation was introduced that restored the CCC's public reporting power to what it was assumed to be before the *Carne* decision (*Crime and Corruption (Restoring Reporting Powers) Amendment Act 2025* (Qld)).

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### Interviewee Perspectives on Public Reporting Powers

All interview participants emphasised the importance of public reporting powers as a basic fundamental in performing the functions of an anti-corruption commission, particularly in light of the Queensland experience. Deborah Glass, former Victorian Ombudsman, highlighted the importance of public reporting directly to Parliament, without being approved by a Minister:

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<sup>30</sup> United Nations Office of Drugs and Crime, *Technical Guide to the United Nations Convention Against Corruption* (2009) 63.

<sup>31</sup> See eg IBAC Act s 162.

<sup>32</sup> Yee-Fui Ng, Gabrielle Appleby and AJ Brown, 'Public Reporting by Anti-Corruption Agencies: Applying A Framework for Principled Legislative Design' (2025) 36(3) *Public Law Review* 245.

<sup>33</sup> [2023] HCA 28.

<sup>34</sup> Queensland Government, *The Independent Crime and Corruption Commission Reporting Review* (2024) 8.

<sup>35</sup> Queensland Government, *The Independent Crime and Corruption Commission Reporting Review* (2024) <<https://www.cccreportingreview.qld.gov.au/reports>>.

**I think public reporting is important. Being able to table a report directly to Parliament when you want to - without the constraints of going through a Minister - is in its way as important as a public hearing. It puts information into the public domain that's been through a natural justice process, a finished product. You're not damaging any reputations potentially unnecessarily.**

Iain Anderson highlighted the fact that a single report may have a broad impact in the public sector if promoted effectively:

**The National Anti-Corruption Commission recently produced a report from an investigation into nepotism in recruitment in the Commonwealth public sector and I think the National Anti-Corruption Commission's strong view is that the release of that single report will have a marked impact on how Commonwealth public servants engage in recruitment in the future. Now again it's very hard to assess what's the impact on the culture and practices of an entire public sector, there's 185,000 Commonwealth public servants from a single report, but my observation is that certainly that report got a lot of attention and it shocked many people and then other people will hopefully change their behaviour. So a single report could be very timely, a conviction can also be significant, but it's really about how you then promote that so it has more of a lasting normative impact.**

### 3.5 Public Hearings Powers

The use of public hearings represents a critical tension between transparency and procedural fairness. Public inquiries can enhance accountability and public confidence but raise concerns about reputational damage to individuals who may ultimately be cleared of wrongdoing.

Australian anti-corruption commissions have differing legislative mandates for public hearings, with NSW ICAC's legislation being the most permissive, in allowing for public hearings where it is in the public interest. By contrast, the Commonwealth NACC and Victorian IBAC can only hold public hearings in exceptional circumstances, and the Queensland CCC can only conduct public hearings where holding a closed hearing would be contrary to the public interest. At the other end of the spectrum, the SA ICAC never had the power to hold public hearings since its inception.

Different commissioners have had different practices in holding public hearings over time, in large part depending on their legislative mandate. NSW ICAC holds the largest number of public hearings, which is congruent with its broad legislative powers. There are several jurisdictions that have never held public hearings, such as South Australia (which is not empowered to), Tasmania, Northern Territory, and the previous Australian Commission for Law Enforcement Integrity (ACLEI).

There was a wide divergence of views about whether anti-corruption commissions should have the power to conduct public hearings, and the approach to the public hearings power.

#### **Broad Public Hearing Powers**

Interviewees who supported a broad public hearings power indicated that there were significant benefits in terms of education and deterrence for public servants, the encouragement of whistleblowers to come forward with other instances of corruption, as well as public exposure and awareness of corruption. As John McMillan argued:

I think public hearings are necessary, but when to hold them is not a straightforward choice... I will give two examples of when I think a public hearing is the proper choice. The ACT Integrity Commission did not hold public hearings in the early years, and deciding when to do so was a topic of earnest discussion. There would always be pushback against holding the first such hearing. When [the public hearing] occurred, the impact exceeded my expectations. The hearing shone a light on allegations of union interference in ACT government procurement ... Apart from whether the allegation is sustained, airing it in a public hearing sent a strong public message that such a practice would be unacceptable and could constitute corruption as regards the conduct of public officials.

I was also struck in that ACT matter by how the evidence unfolded and developed when several witnesses gave public evidence as to their role in awarding the contract and their observations about the conduct of other officials. As one would expect, there is a strong pressure on those giving evidence to give fulsome and truthful evidence. This provides a stronger evidentiary basis for assessing the propriety of the procurement activity. In a sense, airing corruption allegations in a public hearing can reveal more than was anticipated from the evidence and witness statements that were earlier collected. This can also bolster public confidence that corruption allegations have been thoroughly investigated.

My second example relates to a large investigation I undertook as New South Wales Ombudsman, called Operation Prospect. It was into an historical controversy regarding a police operation that targeted corrupt police officials. It was the largest single investigation undertaken by an Ombudsman office in Australia and culminated in a report of close to 1,000 pages that combed over detailed evidence given under summons by numerous senior police officers. No public hearings were held in this investigation, both because the Ombudsman is required by statute to investigate in private, and the evidence was mostly about undercover police operations using telephone interception, covert surveillance and the like. The Ombudsman investigation came under sustained criticism over four years because it was conducted in private. At the end of the process, my view was that it would have been astute to have held some form of public hearing at the outset, even if only to lay the groundwork and inform people as to how the investigation would proceed ... And, once again, I think this would have instilled public confidence that the Ombudsman process was professional and appropriate.

Thus, McMillan highlighted the key benefits of public hearings in terms of shining a light on misbehaviour, the way that evidence develops in a public hearing, and the tip offs the commission received, as well as public confidence in public administration.

NSW ICAC Chief Commissioner John Hatzistergos explained that the percentage of matters that go to public hearings is small, and those are the big cases that show the need for legal reform, display ICAC's accountability and transparency, in addition to holding those culpable accountable and uncovering the truth of matters:

Firstly, I think we need to put it into perspective. The matters that we get in for referral were around 3,500 a year, less than 1% of those, would go to public inquiries. This year we've had two. Last year we had one. The number of public inquiries on each calendar year basis is relatively small. But they're the important cases, they're the big cases, and they're the cases that assist us in not only demonstrating our own accountability and transparency, but also making the case for change. Of course, persons who are adversely named in our investigations, are simultaneously held accountable. And it's not always possible to make them accountable through other means, because in many of these instances, the evidence would not be admissible in a court of law. Accused persons in adversarial proceedings can decline to give evidence, whereas, of course, we can force people to come and give evidence, and by that means, under certain protections, obtain an understanding of the true picture of what happened.

Helen Murrell, NSW ICAC Commissioner, thought that public inquiries are critical in the education process of the community generally and are only held when the evidence is strong:

**I must say that when I commenced this position, I was sceptical about the appropriateness of a public inquiry and I tended to buy into the narrative that a public inquiry is something that will destroy a reputation.**

**But I now see it differently. I see a public inquiry as critical in the education process of the community generally. And also, I'm well aware that we don't run a public inquiry unless we have a lot of evidence already. To the extent that a reputation is affected, it was probably something that was going to happen anyway.**

Gail Furness, Inspector of the NACC and the NSW ICAC affirmed that public hearings by NSW ICAC are only held when there is strong evidence and a high degree of certainty that the allegations are made out:

**In my experience, ICAC holds public hearings, in appropriate cases, which means when it is in the public interest. Generally speaking, the Commission holds compulsory examinations or private hearings first and, when the evidence they have collected justifies it, they hold a public hearing. I think the public interest test is an appropriate test to determine whether and when to hold public hearings. And there's nothing that comes to mind, certainly in my time as Inspector and in more recent years, that that power to hold public hearings has been exercised anything other than properly.**

Similarly, former IBAC Commissioner Robert Redlich stated:

**Usually the basis upon which the Commission will conclude that a public hearing will not unfairly prejudice reputations of witnesses (the requirement set out in the Act) is because the Commissioner reaches the view that there is cogent evidence concerning these persons of interest, often including incontrovertible, indisputable, corroborative evidence such as emails, text messages, taped conversations, surveillance, which shows that the persons of interest have engaged in misconduct.**

Thus, Redlich, Murrell and Furness emphasised the fact that public hearings are only held when the evidence is very strong, and Furness stated that as Inspector of NSW ICAC, she thought that the public hearings power has been exercised appropriately.

Redlich also contrasted the then Victorian Premier's approach in Operation Watts, where there was a public hearing, to Operation Daintree, where the Premier was able to misrepresent the outcome of the investigation because there was no public hearing:

**Operation Watts was obviously a very effective investigation resulting in a joint report of IBAC and the Ombudsman. We had no sooner finished our press conference when the report was released when the Premier was on the phone saying the Government would be implementing every one of our recommendations. I think there are two reasons for that unqualified and enthusiastic support for those recommendations. One is because the hearings were public and the community as a whole had learned in detail of the misconduct exposed and it could not be concealed, but second it served the party because this was an opportunity for the Premier to get rid of a rogue Minister from a faction that was different to the Premier's faction, so there were personal reasons at play as well as the public interest.**

**Operation Daintree was a disturbing example of how the lack of a public hearing enabled a wholly inadequate political response which did not serve the public interest. IBAC made a large number of adverse findings that concerned varying forms of misconduct by Health Department officers, Ministers and their advisers. Operation Daintree should have been investigated in public if the IBAC Act had not limited IBAC's jurisdiction to criminal offences and had there not been a requirement of exceptional circumstances in order to conduct a public hearing ... But the adverse findings in Daintree, while falling short of that criminal offence, involved serious grey corruption and required public acknowledgement by the Government and a declaration of willingness to address the serious findings if the public interest was to be served. Rather, personal and party self-interest was served by the Premier providing a misleading account to the public in which it was maintained that there were no findings — and importantly conveying the impression that there wasn't any misconduct. Indeed, in talkback in the next 24 hours, a number of people in talkback said- "how could anyone criticise the Premier if there were no findings of anything improper?"**

**So therein lies one of the great values of public exposure of serious grey corruption. Such misrepresentations could only occur because IBAC had not conducted public hearings, and was dependent upon the Government and Parliament acting upon its report and recommendations as only a small portion of the community would ever read the report on Daintree.**

ACT Integrity Commissioner Michael Adams thought that public hearings should be the norm, even in a small jurisdiction like the ACT, noting that protections such as disallowing video images of witnesses could be undertaken:

**Regarding public hearings, I think it's entirely a question of public interest in the particular circumstances. I might say public interest, which gives due significance to privacy. The problem with open slather public hearings is that public servants are entitled to privacy in the conduct of their work, some of which is delicate, some of which is controversial, some of which is difficult, all of which out there in the Twittersphere, everyone has an opinion about. For them to be called into a public space should only be done where it's really necessary.**

This is especially important in small jurisdictions, for example, in mine, in the ACT. Public servants are entitled to go to the supermarket without being fingered, and their children go to school without being teased. So these are very important rights they have.

On the other hand, there is also an interest in public exposure of the procedures of the Commission, especially where the witness might be regarded as a whistleblower. Now, one of the ways in which I dealt with that is not entirely satisfactory, is to have a public hearing in which I did not permit video image of the witness, but only audio. Media complained about that, of course, because they liked to have pictures. But that was one way in which I could deal with the privacy questions. But otherwise, exposure is good...

So I would reverse the view that the Commonwealth Act expresses, which is that public hearings should be exceptional. In other words, they're to be the norm unless there are reasons for not having them.

Bruce McClintock argued that the benefits of public hearings outweigh the risks, and are useful in ventilating in public the processes of commissions that lead to corruption findings, and to avoid the perception of being a Star Chamber:

I do think they should have the power to hold public hearings. They are useful in two senses. They emphasise to members of the public, and any people who may be considering engaging in corrupt conduct, that there is an agency that's watching them. Also, they publicise the investigation. And as a result, people come forward and provide additional information concerning the subject matter of the inquiry. That happens quite frequently. On the other hand, there can be obviously reputational damage caused, rightly or wrongly and fairly or unfairly, to the people the subject of the inquiry. For my part, I believe that the benefits of having public hearings, provided they're conducted properly, and there have been examples where they haven't been conducted properly, outweigh the detriments of having such inquiries.

The other thing about them too is that it would bother me very greatly if you had agencies like that making findings of corruption, so to speak, secretly, and then just simply announcing them. I think if you're going to do that, the process should be exposed to public view, and that necessarily involves public hearings. Otherwise, you end up having something like the Star Chamber in 17th century England, which sat in secret and could issue bills of attainder and indeed execute people, or have them mutilated as punishment in typical 17th century English fashion.

Several interviewees in Victoria and Queensland with more limited legislative powers for public hearings expressed frustration about these limitations, and preferred a model where they had greater discretion to hold public hearings. Queensland CCC Commissioner Bruce Barbour believed that the CCC should be given a greater discretion to decide when to hold public hearings:

**My view is that we should be able to hold public hearings in investigations where we think it's appropriate to do so. And this is one of those areas where I was talking before about the element of discretion versus specified conduct in terms of legislation. We're the only people that are involved in an investigation that understand the parameters and importance of it. And it seems to me appropriate for all sorts of reasons, education, public awareness, transparency, shining a light on improper conduct, explaining to people truthfully what's happening in a matter as distinct from them reading reports in newspapers that are speculative. They're all really important things which are achieved by public hearings. And so to have such restrictions in place, I'm not sure is necessarily the best model.**

Former IBAC Commissioner Stephen O'Bryan stated that the prescriptive public hearings power in IBAC legislation led him to be held up in court for two years, leading to the matter being stale by the time it was investigated:

**You would have heard that there are restrictions in the Act, like on public hearings in Victoria that the NSW legislation for example doesn't have. And, again, that just falls, in my view, into the bucket of areas where the Act is overly prescriptive. And although in my time we had five series of public hearings, and they were five of the most important investigations we were doing, there was always a risk of a court slowing you up or stopping you because of the highly prescriptive Act. We had a police investigation that we did public hearings into. We got held up in that for the best part of two years. It was relatively stale by the time the courts finally finished with it (when the police union lost its final challenge in the High Court) and we were finally able to move on with it. But that was nearly two years down the track when things are stale and it really needed to be dealt with sooner. Just an example of an overly prescriptive piece of legislation that really should be simplified in my view.**

Likewise, Helen Haines and David Shoebridge disagreed with the high threshold for public hearings of exceptional circumstances of the NACC, arguing that the NSW ICAC model of public hearings in the public interest is preferable. Haines argued that:

**One part of it that I believe is missing from the NACC legislation, and that is somewhat problematic in ensuring that the commission is as transparent as it can be, is that there was an additional clause put into the legislation late in the piece that said that there could only be public hearings in exceptional circumstances and when in the public interest. And this is a very high bar for the commission to jump in order to allow the public to see a hearing take place in the NACC. And so far, we have not seen a public hearing happen. It is very difficult to determine what issue the commission would consider was both in the public interest AND an exceptional circumstance.**

**I believe that we should have public hearings when in the public interest in order to, number one, give confidence to the general public that we are exposing and interrogating alleged corruption so they can see that robust hearings are taking place. Secondly, I think that public hearings play a role as a very strong deterrent to corruption. I think that's really critical in terms of having a strong integrity framework. To be clear I don't believe public hearings should be the default.**

But right now, it's not clear to me under what circumstances we might have a public hearing. During the Joint Select Committee NACC public inquiry to examine the NACC Annual Report on 22 November 2024 that I participated in, I asked Commissioner Brereton about public hearings, and when did he think there would be one; and did he have a definition in his mind about what exceptional circumstances might be? And he said *we will know it when we see it*. So far, we have not seen that. I think this additional bar of exceptional circumstances is a real weakness in the legislation.

NSW ICAC Chief Commissioner John Hatzistergos stated that even with public hearings, there can be various protections accorded to witnesses, such as conducting parts of the public inquiry in private or disabling live streaming, but nevertheless publishing the transcript of evidence, or issuing a non-publication order of a person's name:

Even if we do go into a public inquiry, we can do some aspects of the public inquiry in private, and that's occurred from time to time, and there's various adjustments which can be made. We can, in some instances, direct that names not be published, or that there be a delay in publication.

We have a live stream which enables persons to watch the proceedings, but on occasions where that's seen as having a potential for an adverse impact on an individual, we may decide that we would not activate the live stream for that particular witness. In virtually all these cases we do, however, notwithstanding that, publish the transcript so that people are able to, in due course, read what the evidence was, even though the evidence was taken in a different way. In terms of persons whose names might be mentioned, where those individuals are not the centrepiece of allegations, and relatively peripheral, we may decide to make a non-publication order in relation to their name, particularly if, by not doing that, it might suggest that individual is somehow implicated.

So we're very careful to ensure that these public inquiries, as far as possible, are conducted in a way which doesn't adversely damage the reputation of persons who have not in any way misconducted themselves, and from time to time, counsel assisting may make that clear in their opening address to point out that it's not suggested that a person has misconducted themselves.

Therefore, proponents of public hearings point to the fact that it encouraged others to step forward to report corruption, and to enhance the education and awareness of corruption in the public sector and the general public. Public hearings were only held where there is strong evidence of corrupt conduct.

### **Limited Public Hearings: Arguments and Practice**

Several interviewees were proponents for limited public hearings, as they saw the value of public hearings, but thought they should be used sparingly, given the risk of reputational damage for individuals called before the commissions. Former Assistant Minister to the Commonwealth Attorney-General and Queensland MP Amanda Stoker noted that:

Public hearings can serve a purpose and I don't dismiss that there is some good that can be done by public hearings. My concern though relates to the ways that public hearings can be used. I'm thinking of the New South Wales example. I think in New South Wales the way that ICAC was operating and the way that it used public hearings had a tendency to seek scalps over small things rather than really seek out deep and systemic problems or to perform its function of continual improvement. It's a very strange thing, I think, that a premier can lose their job over a bottle of wine and yet other quite serious matters can persist in a way that doesn't seem to attract the same kind of intensity of response.

So I'm just a little bit concerned about the way that public hearings can skew outcomes and create disproportionate results. I'm not defending the bottle of wine thing, by the way, I just think having things done in a private hearing first can better ensure that things are being dealt with using the most proportionate method.

Stoker emphasised 'the importance of having most of the work in private but the ability to have public reports and proceeding to prosecution where those reports indicate that there are serious questions to be answered so that 'there is a proper respecting of the conventions of the criminal justice system and the presumption of innocence'.

NACC Commissioner Paul Brereton explained that the power to use public hearings was to be used cautiously to avoid unfairly injuring reputations, given the power of commissions to override privileges. Brereton also contended that witnesses tended to be more forthcoming in private examinations, although he would have used a 'special circumstances' test, rather than an 'exceptional circumstances' one:

**So the first thing is prematurely, adversely affecting reputations. The second thing is that we can and do override legal professional privilege, and the privilege against self-incrimination. No civil or criminal court can do that, and to override those privileges and expose in public things that in no other forum could be exposed in public, and to compel someone to incriminate themselves in public when they couldn't be compelled to do so in a court would be a very serious matter, and that's another reason why the view was taken that we should conduct public hearings only in exceptional circumstances.**

A further reason is that in my prior experience and in our experience here, most witnesses are more comfortable and more forthcoming in private than they are in a public setting. The purpose of a hearing is not to conduct a show trial, but to obtain probative evidence from witnesses, so we want them to be cooperative and to give the best evidence they can and not have their eye on how it's going to play out on television. So as I've said more than once, one day we will conduct a public hearing when the exceptional circumstances test is satisfied, but generally speaking I'm pretty comfortable with where the legislation is.

Had I been writing the legislation myself at the outset, I probably would have said special circumstances rather than exceptional circumstances, which is not quite as strong a test, but I don't think even if the exceptional circumstances test wasn't there, there's a single matter we would have done to date in public rather than private.

Kylie Kilgour, Deputy Commissioner of NACC and former IBAC Deputy Commissioner emphasised the impact of public hearings on witnesses, including a previous suicide, and the potentially adverse consequences of public hearings on subsequent prosecutions:

So we know that getting called before a hearing with us causes immense stress on the people that are called, whether that's the people who are the subject of the investigation, but also all the other witnesses that might be called to support it, because of the media reporting or the media landscape these days. As soon as you get called, all bets are off about what sort of treatment you're going to get by the media about the fact that you're appearing...

The experience that I had at IBAC of someone suiciding after having been in a public hearing and then waiting for outcomes of the investigation, I don't want that to ever happen at the NACC. So the witness welfare side of things is very present for me.

And then the other thing is, you've got to make choices in investigations as well, and that's what people need to really remember about our hearings. It's an investigative tool. It's not the outcome of the investigation. It's a process through which we gather evidence that we're going to use in our investigation. And one of the choices we have to make is to prosecute or not. And if we're doing an investigation with an eye to a prosecution, you're probably better off just doing private hearings, because you don't want there to be, if you are going to do a prosecution, a case then mounted during the prosecution that there's been an unfair impact on whether that prosecution can be fairly conducted. That was my experience at IBAC, that we would often make those choices. And I think we also have to do that at the NACC as well. Particularly if you're going to get a prosecution happening quickly.

If we've done a public hearing, there's a very real risk that a defendant later down the track in a prosecution is going to say, hang on, you know, no jury can fairly hear this matter. As for example happened in New South Wales, although not quite to that extreme extent, in one of the Obeid cases, which had to be adjourned for six months or a year after the publication of an ICAC report.

John McKechnie, former WA CCC Commissioner, explained that he only utilised public examinations conservatively where the target of investigation was not accused of misconduct, with the purpose of public hearings to highlight issues that have happened under their leadership:

The Commission generally will not have a public examination of the main suspect or target of the investigation. The Commission has conducted a number of public examinations of departmental heads and local government authorities, where there's no suspicion of misconduct in relation to their actions. But basically, "well, how did this happen under your watch? And what are you doing about it?" Those examinations have been quite effective public examinations. But our approach is probably different from some other states.

The balance in the CCM Act s 140 works well. I would say the Commission has a conservative approach, because after all, the main purpose of an examination is to gain information or evidence. If you've already gained that evidence from a person, I see little point in then redoing them in public.

When weighing up whether to have a public examination. If you're intending to report, that gives everybody who's adversely named a fair opportunity to make representations. And if necessary, the report or the draft is changed as a result of those, and if that accomplishes its aim. Sometimes in a public examination, a person is not given that opportunity.

Former ACLEI Commissioner Jaala Hinchliffe stated that the former ACLEI's approach was to avoid public hearings where there was a likelihood of a criminal brief, to avoid jeopardising a criminal prosecution.

At ACLEI, we worked on setting out publicly what our policy was in terms of conducting hearings, to provide clarity about how our legislation operated and what our policy considerations would be. Our test was a two-stage test, first, whether we go to a hearing as opposed to collecting the evidence in other ways, second, the application of the test on whether to conduct the hearing in private or in public. If I had alleged conduct before me that was serious enough that it was criminal in nature, I did not go near the hearings powers until I was satisfied that I did not have enough for a criminal brief, because as soon as I went near the hearing powers, I caused all sorts of problems for any prosecution.

Findings of corruption are administrative in nature. They can be made without a criminal prosecution. But if the conduct is also criminal, part of my responsibility was to ensure that I did not impede the chance of a criminal prosecution through the way that I conducted the investigation.

Thus, there are arguments to hold public hearings only in limited circumstances, in order preserve individual reputations, and to avoid jeopardising the evidence for criminal prosecutions.

### **No Public Hearings**

A few politicians were completely opposed to anti-corruption commissions having public hearing powers altogether. They believed that public hearings irreparably damaged individual reputations, without a significant benefit. For example, former South Australian Attorney-General John Rau contended that public hearings create a theatrical atmosphere that destroys the reputation of individuals:

In my view, an ICAC is an investigative agency. It is not a court, or even an administrative tribunal. An investigative agency is not a body which should have the power to publicly vilify and defame its targeted victims, without them even being charged with an offence. Every citizen should have the right to know the substance of any criminal charges brought against them. Every citizen should have the opportunity to raise a defence before a court and to have charges against them heard and determined, according to law. Every citizen should be afforded the presumption of innocence.

The time-honoured legal process of a criminal trial, is light years away from a cheap, cowardly, theatrical stunt, where the accuser is shielded by legislative immunities, from facing any personal consequences, no matter how bogus claims may be, and no matter what public damage they may ultimately inflict on their target. There is a real risk that such a body may also attract the wrong people. People who love seeing themselves on television. Innocent people, who ultimately have no defence against this tyranny of public humiliation, may be drawn through this process, perhaps for political reasons, perhaps for reasons of malice, on the part of an accuser.

Once that's been done, once a person's reputation has been publicly destroyed, it is impossible to unscramble that egg. Later publishing a pathetic little one-line apology like, "we note that we haven't been able to find anything wrong with this person", is totally inadequate to unpick the damage.

Former Tasmanian Premier David Bartlett expressed concerns about public hearings besmirching reputations, particularly in a small jurisdiction like Tasmania,

In a small place like Tasmania, just the notion that the public idea that you've been called to a hearing, suddenly you're guilty. And I think that's a really dangerous process to follow. And because I'm obsessive about those things, I watched all of the Gladys Berejiklian public hearings about her giving her boyfriend grants for his archery club or whatever. But I only watched them really because I'm morbidly fascinated with the destruction of political careers. So I watched it as a form of sport or entertainment. And I think that's what most people are doing. How does a public hearing, as opposed to a closed hearing, obeying all sorts of rules, make that better, is a question. You make the findings public. I don't know what public hearings do other than to besmirch reputations and create political theatre for opponents.

The range of views of the interviewees reflect the controversy surrounding the public hearings power. On balance, only three politicians expressed complete opposition to public hearings, and no commissioners were completely against the public hearings power. The preponderant majority of participants (55 out of 58) were in favour of some level of public hearings power.

### **Impact of Public Hearings**

Many interviewees agreed that public hearings have had a strong positive impact in terms of public awareness of corruption and education of the public service.

Former IBAC Commissioner Stephen O'Bryan explained the benefits of public hearings in terms of whistleblowers coming out of the woodwork, as well as a deterrent effect:

The public hearings I was involved in at the time were very valuable because one of the things that occurred during all five of them, was people coming out of the woodwork who wouldn't otherwise do so, giving you information either about the matter you're investigating or about other concerning matters, i.e. there was a noticeable spike in information coming from whistleblowers and the public. It's often been said that one of the benefits of public hearings is that you do get useful information, and we did get really valuable information as a result of public hearings.

Because they see corruption raised in public, it either triggers the memory or the thought that I can contribute to this particular matter and witnesses will come out of the blue. Or people will have the confidence to think, well, that agency is actually doing something about corruption so maybe if I bring this to their attention it might finally be looked into. We saw that in action.

I'm sure these hearings have a deterrent effect. And there are the education benefits as well on both public sector and for the public benefit in terms of what corruption in the real world can look like.

Former IBAC Director of Prevention and Education Christine Howlett stated that the most powerful prevention tool was public hearings, due to their reach and impact:

**When I was heading up the prevention function at IBAC, the most powerful tool, without a doubt, was public hearings in terms of their reach and the prevention and education impact. In the early days, because there was nothing yet in the public domain when we were still privately investigating matters like Fitzroy and Ord, what a hard sell it was going to public sector agencies and trying to explain corruption - What is corruption? What does it look like? Why is it important to report? What is the public interest disclosures regime? All of that just sounded quite sort of academic in Victoria, until the public sector and community then saw the news of IBAC's public hearings involving senior executives in transport and the education department. And the impact of those hearings that were right in "mainstream department-land" like education and transport, as well as those in regional councils, really can't be underestimated in terms of showing the public sector that corruption is real and the impacts corruption can have. That's both obviously at an individual level in terms of those involved and their careers and on those around them, but also the impacts it has in terms of the waste of public resources and the impact on good government.**

Stephen O'Bryan explained the vastly greater impact public hearings had compared to public reports:

**Some ask whether it's enough to be able to just report to Parliament, it's a public report, isn't that enough publicity; why do you need more via public hearings? But in our experience, that's not enough. It's the public hearing lasting for anywhere between 10 days and a month that really gets the message across when every day it's in the news. And it really resonates, people pick up on all of that... Not many will read your report to Parliament but I am sure at least more in the public sector will read it - or at least the key summaries - if they have seen the hearings featured in the media for a week or more than would otherwise have looked at it.**

Christine Howlett, former Director of Prevention and Education at IBAC argued that if there had not been public hearings for significant IBAC investigations, it would not have had much impact:

**And on reflection, I have wondered if there hadn't been public hearings in those major IBAC investigations, and with the time it can take to produce a public report, what would their impact have been? A report would have come out, and it might've got an article somewhere in *The Age*, but that would be about it... Far fewer people would know about them. So I think without public hearings, there's no way IBAC would have had the impact the organisation has had from a prevention and education perspective.**

ACT Integrity Commissioner Michael Adams argued that public hearings are important to show that anti-corruption commissions are not kangaroo courts, and to stimulate public debate about corruption:

**The impact of public hearings is very significant. What it's shown is several things. First of all, I think it's shown that the Commission is not a kangaroo court. People see witnesses are questioned thoroughly, but respectfully and rationally. People are not bullied. They may be pressed, but they're not bullied. And the process is seen as very akin to what you would expect, where you have a judicial or ex-judicial officer presiding, not a policeman...**

The second thing is to bring the processes into the public domain. That certainly happened in the public hearings conducted in Operation Kingfisher. There was a lot of interesting debate in the public arena as the evidence unfolded. It was not always informed, but it was, by and large, educative ... And I think also ... there is deterrent in the sense that if officials are minded to conduct themselves corruptly, they can see one of the ways in which that can have an embarrassing outcome.

Inspector Gail Furness stated that NSW ICAC has a positive public perception because of its public hearings, which are done in a fair manner, and are educative about corruption:

[The public] see the NSW Commission working in public. They see that, generally, the hearings are done in a fair manner. They can actually hear the evidence as it is exposed, which is very different from just reading a report as to what happened, to actually watch it over weeks and hear people give evidence that may or may not be truthful, depending upon what other people say. It's very educative. I think they also have a large outreach program and so they're seen in regional areas quite frequently. They give a lot of talks and not just by the head of the agency, but by other officers.

The NSW ICAC has been operating for a long time. It has very many runs on the board. But the public hearings, to me, are key to people not only seeing them in action, but actually understanding what corruption means by real live examples. And the ICAC has quite a few more mechanisms in place to ensure fairness than they did a decade ago. It's a very well-established, well-run organisation.

NSW ICAC Chief Commissioner John Hatzistergos explained the significant impact of public inquiries in making the case for change and achieving legislative reform:

We are tracking at around, on average, 4,100 people watching it on the live stream a day, which is a very large number. These public inquiries attract a lot of media attention.

The critical path we want to take, however, is to engage with agencies in relation to the issues which are raised by the investigations, to understand what happened in these matters, and to put in place systems which can prevent recurrences. And when all that evidence is exposed and tested, it enables us to have these conversations in the long term.

And we've seen significant legislative reform that has followed our investigations. We just did an investigation in the year before last called Operation Hector into transport. We recommended that the government consider introducing a system which can debar persons from being able to tender for government work or procure government work under this debarment scheme. The government's accepted that recommendation and is moving to implement it.

So that's just one example of the sorts of things we've been able to achieve. And I don't think we could have done that without the background of a public inquiry which has made the case for it. So we're very careful with these sorts of things to ensure that what we propose is practical, feasible, and appropriate and calibrated to the circumstances and the risks that are involved.

Therefore, the impact of public hearings goes well beyond that of a report as it bolsters the reputation of anti-corruption commissions, is part of its job of exposing corruption, is educative of the public sector and the broader public, is a deterrent to public officials behaving corruptly, and may lead to legislative reform.

## 4. Independence

Appleby identified a set of ‘independence markers’ that she argued were necessary for the independence and effectiveness of executive integrity institutions, such as anti-corruption bodies:

- statutory guarantees of tenures (during a fixed term);
- relatively clear and broad mandates set by statute;
- statutory guarantees against being subject to the direction of the government;
- adequacy of the powers given to the institution, including the power to investigate;
- the ability of the institution to make public reports and recommendations without the permission of government;
- a guaranteed transparent, arms-length and merits-based appointment process;
- legislative guarantees of adequate funding and resourcing; and
- an appropriate allocation of responsibilities.<sup>36</sup>

All interview participants agreed that anti-corruption commissions in practice operate with robust independence from government.

However, anti-corruption commissions operate in highly conflictual, contentious environments, with governments being hostile when they are found to have engaged in corrupt conduct and embarrassed in the media by negative public reports. As John McMillan noted:

**Anti-corruption commissions live in a hostile environment. The old adage is that if you fight corruption, it fights back. And it does. It fights back in the courts. It fights back in the media. Many of the people under investigation are lawyered-up with senior barristers who stride around saying how incompetent and over-reaching the anti-corruption commission is. Generally, the commissions live in a far more hostile and controversial environment than Ombudsman, Information Commissioners, Auditors General and so on. But that said, I don't think the anti-corruption commissions have handled that complex environment as well as they might have handled it.**

A Commissioner explained that if anti-corruption commissions operate fearlessly, they are always going to be subject to criticism:

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<sup>36</sup> Gabrielle Appleby, ‘Horizontal Accountability: The Rights-Protective Promise and Fragility of Executive Integrity Institutions’ (2017) 23(2) *Australian Journal of Human Rights* 168.

**I think the nature of our organisations is we are always the subject of criticism and we're always on a bit of a roller coaster ride and you never know exactly whether you're at the peak or whether you're at the bottom of the roller coaster and it can literally change at the drop of a hat. You can be working incredibly successfully, have clear public support, clear political support, and then all of a sudden you do an investigation which is very close to home for people, which raises very uncomfortable issues and the response is very reactive and very negative and things can change dramatically. So the nature of your work, if you are doing your work in a fearless way and doing it in the way that you're supposed to do it, you always recognise that there is going to be this inherent risk that one day you're going to be in favour and the next you're going to be out.**

There are several issues that have arisen in terms of independence of anti-corruption commissions relating to legislative amendments to reduce powers, being merged into other bodies, political pressure to resign, appointments processes, and budget autonomy.

## **4.1 Appointments and Tenure**

### **Tenure**

Some jurisdictions have a model with a Chief Commissioner and Deputy Commissioners (NACC, IBAC), while others have a Chief Commissioner and part-time Commissioners (NSW ICAC), while others have a sole Commissioner and occasional acting Commissioners (WA CCC, ACT Integrity Commission).

Commissioners tend to be appointed for five to seven year non-renewable terms, apart from Western Australia, where the Commissioner's term is renewable.

Non-renewable tenures give a strong level of independence for the Commissioner to decide matters without fear or favour. As Queensland MP Mark Furner stated:

**The process we have in place results in a fixed tenure of between five and seven years. This means the chair of our anti-corruption commission can act without fear or favour of political retribution. The length of tenure also affords a high degree of expertise to develop.**

Former IBAC Commissioner Robert Redlich noted that a relatively short term is desirable to encourage commissioners to achieve as much as possible during their tenure:

**I think there's a lot to be said for there being a fixed and brief tenure. It achieves a measure of independence from executive government, reduces the risk of partiality arising with a lengthy appointment and promotes efficiency and urgency in achieving as much as possible within a relatively short period of time.**

Several Commissioners have expressed the desirability of a seven year non-renewable term, compared to a five year term, to give them sufficient time to achieve their goals. NACC Commissioner Paul Brereton stated:

**If it's a non-renewable term as this is, I would normally say that a seven year term is better than a five year term ... I think as a matter of principle, if you're having a non-renewable term, generally speaking, seven years is the standard for things like the DPP, a whole lot of range of statutory appointments of that sort have seven year terms. And I think that's probably about right on a non-renewable basis.**

Deputy Commissioners at IBAC and NACC can be appointed for a term of up to five years. Both Acts allow for deputies to have their terms renewed. In the case of the NACC, this is limited to one further term. Kylie Kilgour, Deputy Commissioner at NACC and former Deputy Commissioner of IBAC opined that renewable terms for Deputy Commissioners are desirable, as this can help with the management of matters an outgoing Commissioner may not have been able to complete and supporting a new Commissioner early in their term.

### **Appointments**

There is some variation of appointments processes across jurisdictions, with parliamentary committees deciding upon appointments in Queensland, and the Attorney-General determining the appointee, while parliamentary committees have veto power in other jurisdictions, such as the Commonwealth and Victoria.

Interviewees were generally supportive of the appointments process in their jurisdiction, although there were some concerns expressed by parliamentary committees with a more limited role in appointments about the level of information provided to them to scrutinise the candidates.

In Queensland, the parliamentary committee conducts the appointment process. As Mark Furner explained:

**I felt the Commissioner appointment process was very effective. Initially, we invited people to nominate for the position; we shortlisted those we felt were competent enough to apply; from there created a top three; and finally, we interviewed those three persons to get an understanding about who might be the best to fill that position.**

Helen Haines MP explained the appointments process at the Commonwealth level, but noted concerns about being given information about the applicant's CV and correspondence:

**The appointment process, well, it put forward candidates. It made a recommendation to the Attorney-General and then the oversight committee had to sign off on the AG's recommendation. We had some concerns in that we didn't see in total the applicants' CV and application correspondence. And we wanted to see more of that so that we could ask appropriate probity questions. It's clear in the Act that the committee does not do the recruiting. That would be highly out of order. But we do have to sign off on it. And we made reference to this in our first report and that was an area we wanted improvement on.**

In Victoria, Tim Read MP, stated that they were not told who the applicants were and could not compare the applicants with the recommended candidate:

So essentially, the commissioner is appointed by the Attorney General and they have a procedure that they go through, including advertising. There's an appropriately qualified panel that interviews applicants and they make a selection and then we are told who's selected and we have veto power and we're able to request relevant information like CV and that sort of thing. So I guess there's always a bit of a dilemma in deciding to what extent should the committee try and second guess or repeat elements of the selection process. But we're simply given a right of veto. We're not told who the applicants are and we're not in a position to compare the Attorney General's selection with anyone else. So I think that essentially means that we're really only going to use our veto power if we think that someone who's appointed is clearly inappropriate for the role. Not whether they're, for example, less qualified or less capable than someone else because we have no one else to compare them with. So the veto role is a tricky one to understand how that's best used.

A more effective appointments process might provide additional information to the parliamentary committee to enable them to properly exercise their veto power.

### Box 2: Case Study - WA CCC Appointment

There have been controversies regarding appointment processes in WA. In 2021, the McGowan government controversially used its super-majority in Parliament to by-pass the bi-partisan appointment requirements for the Commissioner and unusually passed legislation specifically naming the Commissioner of their choice, John McKechnie, despite the objections of the Opposition to his appointment.<sup>37</sup> The position of Commissioner had previously been vacant for 15 months because the Opposition had blocked McKechnie's appointment.<sup>38</sup> Thus, the appointments process for commissioners can be politicised by the major political parties.

Steve Thomas, WA MP, described the legislative intervention:

**And at the time, in the 41st Parliament, the government had complete sway. It had the majority in both houses and therefore it could do ultimately what it wanted. And what it did was to ram through legislation to appoint a particular commissioner. Now, I personally have no problem with that particular commissioner, but it was an extremely unusual and fairly blunt use of power. I don't think that's the best outcome. It would be far better given the sensitivities that you had a bipartisan approach to this, but obviously that in Western Australia fell apart and that's probably a good case study for you. Was there a better way to do it? I'm actually certain there are probably a number of better ways to do it than simply ramming it through, but obviously goodwill and negotiation disappeared and evaporated as a part of that process.**

This shows that an opportunistic government with a parliamentary majority in both houses will still be able to sidestep legislative appointments protections, such as in WA, where the government amended the legislation to directly appoint their chosen Commissioner.

<sup>37</sup> *Corruption, Crime and Misconduct Amendment Act 2021 (WA)*; Rocco Loiacono, 'McGowan's Bid for Total Control', *The Spectator* (online, 20 August 2022) <<https://www.spectator.com.au/2022/08/mcgowans-bid-for-total-control/>>.

<sup>38</sup> See Western Australia, *Parliamentary Debates*, Legislative Council, 24 June 2021, 2020 (James Hayward).

## 4.2 Legislative Amendment to Reduce Powers

As statutory bodies, anti-corruption commissions are vulnerable to legislative amendment to reduce their powers by hostile governments. Anti-corruption commissions conduct investigations that ‘air the dirty laundry’ and expose the wrongdoings of public officials. Consequently, they are often met with deep hostility by government. A former Commissioner noted that anti-corruption commissions routinely encounter crisis situations:

**On average, anti-corruption commissions across Australia have lasted about eight years before they get into some form of trouble. That's the shelf life before there's either substantial legislative amendment because of some crisis or there's a judicial inquiry of some sort or they've lost control of their covert function in some way, like what happened in WA or in New South Wales. Where there was a perception that they were destroying people's reputations unfairly. They've been seen as having sort of overstepped the mark. And similarly in Queensland. So I developed this internal message to staff, which was: “We're coming up to eight years. We need to really just be careful that we're not heading into territory where the organisation suffers for one reason or another.”<sup>39</sup>**

For example, recent legislative change has drastically reduced the South Australian ICAC’s jurisdiction by removing its ability to investigate maladministration and misconduct.<sup>40</sup> It reduced the definition of corruption to exclude all dishonesty offences, or criminal offences committed by public officers acting in their official capacity. The SA ICAC is now limited in its jurisdiction to ‘intentional and serious contravention of a code of conduct by a public officer’.<sup>41</sup> These changes have been criticised, as they lift the threshold for investigation, and many instances of dishonesty, theft, or misconduct would no longer fall within the definitions.<sup>42</sup>

The WA CCC has also experienced a reduction in jurisdiction since inception. In 2014, the Barnett Liberal Government passed legislation to reduce the jurisdiction of the WA CCC by removing the Commission’s functions over minor misconduct and public sector education and prevention, and transferring these to the Public Sector Commission.<sup>43</sup> It also ousted the jurisdiction and powers of the WA CCC over misconduct by members of Parliament relating to parliamentary privilege, thus immunising MPs from investigation by the WA CCC.<sup>44</sup>

Further, in 2012, the Queensland CCC has experienced a reduction of powers and functions, including a higher threshold of investigation, the removal of their corruption prevention function, and narrowing of their research function. The then Premier Campbell Newman was antagonistic towards the previous incarnation of the CCC (the CMC), asserting that it had been ‘used inappropriately as a political weapon’ for 20 years,

<sup>39</sup> Interview with former Commissioner.

<sup>40</sup> *Independent Commissioner Against Corruption Act 2012 (SA)* s 7.

<sup>41</sup> *Independent Commissioner Against Corruption Act 2012 (SA)* s 5(1)

<sup>42</sup> See South Australia, Independent Commission Against Corruption South Australia, *An Examination of the Changes Effected by Recent Amendments to the Independent Commission Against Corruption Act 2012: A Report Pursuant to Section 42 Prepared by the Independent Commission Against Corruption* (Report, November 2021) 5.

<sup>43</sup> *Corruption and Crime Commission Amendment (Misconduct) Act 2014 (WA)* s 12.

<sup>44</sup> *Corruption and Crime Commission Amendment (Misconduct) Act 2014 (WA)* ss 6, 12, 21. See Daniel Emerson, ‘MPs No Longer the Untouchables’, *The West Australian* (online, 19 June 2017) <<https://thewest.com.au/news/wa/mps-no-longer-the-untouchables-ng-b88510339z>>.

and stated that he wished to impose ‘safeguards’ against it being weaponised.<sup>45</sup> The CMC had investigated three matters connected to Newman when he was Lord Mayor in relation to developer donations in the period before the 2012 election, although the CMC found no evidence of misconduct by Newman in any of those cases.<sup>46</sup>

The CCC’s jurisdiction was subsequently restored by a subsequent Labor government based on its electoral commitments to strengthen the independence of the CCC, restoring its powers and functions, and expanding its jurisdiction to incorporate conduct that related to outsourcing and privatisation.<sup>47</sup>

An anti-corruption commission senior staff member noted that rapid, almost overnight, legislative changes can radically change the operating environment of the commission:

**You can't forget what's gone on in other jurisdictions and the rapid change that can occur. There's a classic case of where something can overnight, almost within Parliament, change the complete operating model of the organisation. It's happened in New South Wales ICAC, it's happened in WA at times, it's happened in Queensland, and it's about to happen in the Northern Territory ... You always have to have that as the book of facts that you can't ignore because when governments get ahead of steam up and decide that they want to change something, they can do it incredibly rapidly and you've got no control over it. These overnight changes, which are beyond the control of the commissions, have a deep impact on how the organisation operates.**

There is therefore a potential tension between the interests of government and the robust design of – and subsequent amendment to – the framework within which anti-corruption commissions work.<sup>48</sup>

Based on an analysis of the history and evolution of anti-corruption commissions since inception, Ng and Gray have argued that legislative amendments to the design of anti-corruption commissions have generally been based on political considerations, rather than a principles-based approach.<sup>49</sup>

### 4.3 Political Pressure on Commissioners to Resign

As anti-corruption commissions operate in such conflictual environments, if commissioners fall out of favour with government through their personal behaviour or investigations, they may be pressured to resign from their positions before the end of their tenure. An interviewee described it as the ‘killing fields’.

A former commissioner observed that about half of anti-corruption commissioners have stepped down in bitter circumstances:

<sup>45</sup> Daniel Hurst and Katherine Feeney, “‘Enough’s Enough’: Newman Flags CMC Changes’, *Brisbane Times* (online, 1 October 2012) <<https://www.brisbanetimes.com.au/national/queensland/enoughs-enough-newman-flags-cmc-changes-20121001-26us9.html>>.

<sup>46</sup> Queensland Crime and Corruption Commission, ‘CMC Completes Investigation into Circumstances Surrounding a Developer’s Political Donations’ (Media Release, 27 September 2012) <<https://www.ccc.qld.gov.au/news/cmc-completes-investigation-circumstances-surrounding-developers-political-donations>>.

<sup>47</sup> Yee-Fui Ng and Stephen Gray, ‘Robust Watchdogs, Toothless Tigers or Kangaroo Courts? The Evolution of Anti-Corruption Commissions in Australia’ (2024) 47(2) *UNSW Law Journal* 415.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

**I think I counted up once that half the commissioners of Australian anti-corruption commissions have left in bitter circumstances. You kind of look at who they were and why, and they fall out with government ... I'm not saying it's their fault at all. And it is pretty much always because they were there when their commission dealt with one or more political matters. The government of the day disliked either the fact that they were looking into the matter or the methods used, and worked out a way to oust the commissioner. Every state has had it.**

**So it's a fraught area when you can see statistically about half go unhappily. It doesn't happen with other heads of important independent bodies. Rarely does an ombudsman go unhappily, or a head of a court. But that deters people from taking on the job. People see that and say, "Why would I want to put myself through that?"**

The former commissioner thought that if anti-corruption commissions investigated political matters that damaged the reputation of the government, then the government may turn against the commissioner:

**My perception around the country is the moment anti-corruption commissions touch on matters that are political, problems emerge pretty quickly ... If it's hurting government, government reacts. And we've seen that in New South Wales was a good example where they decided they didn't like a commissioner in ICAC, Megan Latham, and they just changed the legislation and got rid of their position. Well, they changed it to that three-commissioner role ... And as it turns out, she didn't even bother applying because she knew she wasn't going to get it. So they spill the boss's job and create a new, higher boss as punishment for whatever wrongs they perceived from the then head of ICAC.**

There are various examples of anti-corruption commissioners who have stepped down under circumstances of controversy. In Queensland, Alan MacSporran resigned after a parliamentary committee alleged that he failed in his duty to ensure the CCC 'acted independently and impartially', following the failed prosecution of eight Logan councillors.<sup>50</sup> In the NT, Michael Riches stepped down following allegations of domestic violence by his ex-wife, and an investigation into disciplinary matters, particularly allegations of bullying and inappropriate behaviour towards staff.<sup>51</sup>

A senior public servant observed that how commissioners performed in the job might damage their public reputation and future career prospects, but yet commissioners lacked control of 'the political process, the media cycle, the matters that come to your attention that you have to deal with and the outcomes of them and the views about those in particular quarters'.

A Commissioner noted the adverse impact on the organisation of a commissioner stepping down in controversial circumstances:

<sup>50</sup> Ben Smee, 'Queensland's Crime and Corruption Commission Boss Alan MacSporran Resigns', *The Guardian* (online 25 January 2022) <<https://www.theguardian.com/australia-news/2022/jan/25/queenslands-and-corruption-commission-boss-alan-macsporrans-resigns>>.

<sup>51</sup> Grace Atta and Alicia Perera, 'NT ICAC Commissioner Michael Riches Resigns', *ABC News* (online 14 May 2025) <<https://www.abc.net.au/news/2025-05-14/nt-icac-commissioner-michael-riches-resigns/105289604>>.

**The Chairperson resigned ... The impact on the organisation was extraordinary. People were just so demoralised and so shocked at what had happened. And the findings, if you take them to their logical conclusion, they were basically saying that a whole range of quite senior staff here conspired together to do things that were not appropriate. And nothing really could be further from the truth.**

Interviewees pointed out that the difficulties that commissioners have faced with their reputations tarnished, might deter future applicants from taking on the role. These difficulties are even faced by former judges, who already command great respect in the community. One described taking up the role as a 'poisoned chalice'.

## 4.4 Budget Autonomy

Beyond issues of power and jurisdiction, anti-corruption commissions are vulnerable to having their budgets cut by hostile governments. For instance, the NSW ICAC had its budget severely cut following its explosive revelations of then Premier Gladys Berejiklian's 'close personal relationship' with former NSW MP Daryl Maguire, who was subject to a corruption investigation.<sup>52</sup>

Former NSW ICAC Commissioner Peter Hall stated that, during his tenure, there were issues with ICAC's budget being reduced. This was the subject of an Auditor-General's report, which found that the approach to determining and administering annual funding for the integrity agencies in place at that time presented 'threats to their independent status'.<sup>53</sup> The proposed cuts to NSW ICAC in 2019 would have resulted in a \$4 million shortfall to maintain its current operations.<sup>54</sup>

Most interviewees reported that their budget was stable, and that they did not currently face problems with their budget, but some expressed concern that the budget might be utilised as a weapon in the future. All supported increased budget autonomy, as had occurred in NSW (discussed below).

Greens MP David Shoebridge explained the use of funding as a weapon by executive government:

**The lack of budgetary independence has been, at different times, a weapon that executive governments have used against the New South Wales Independent Commission Against Corruption. I was part of a multi-year struggle to push for a more independent funding model for the New South Wales Independent Commission Against Corruption, and I'm glad to see that that has now achieved, that the budgetary process is substantially more transparent at a state level than it used to be. Of course, despite my attempts to establish that budgetary transparency and good process at a federal level, given that state experience, that was resisted by both the Labor Party and the Coalition, and we don't have that kind of budgetary transparency at a federal level. And I think that is a future risk to the National Anti-Corruption Commission.**

<sup>52</sup> Michael McGowan, 'ICAC's Independence "Threatened" by NSW Funding Model', *The Guardian* (online, 20 October 2020) <<https://www.theguardian.com/australia-news/2020/oct/20/icacs-independence-threatened-under-nsw-funding-model>>.

<sup>53</sup> New South Wales Audit Office, 'The Effectiveness of the Financial Arrangements and Management Practices in Four Integrity Agencies' (20 October 2020) <<https://www.audit.nsw.gov.au/our-work/reports/the-effectiveness-of-the-financial-arrangements-and-management-practices-in-four-integrity-agencies>>.

<sup>54</sup> Christopher Knaus, 'Icac Head Says Funding Cuts will have "Immediate and Serious" Effect', *The Guardian* (online, 21 October 2019) <<https://www.theguardian.com/australia-news/2019/oct/21/icac-head-says-funding-cuts-will-have-immediate-and-serious-effect>>.

Similarly, former IBAC Commissioner Stephen O’Bryan noted the risk of funding being utilised by governments to hobble the effectiveness of anti-corruption commissions:

**The budget is one way the government can frustrate an anti-corruption commission and even more so in Victoria with IBAC having the police jurisdiction, because one of the things being mooted when I was finishing was that there might be some sort of mandate in what police matters you have to investigate. That had the potential to flood you with compulsory police investigations to the detriment of your public sector work, meaning that suddenly you can't do any major public sector investigations because you are swamped with police work without the necessary substantially increased budget to do both. Hence overnight you've become an ineffective public sector anti-corruption agency.**

### Box 3: Case Study - New South Wales Integrity Funding Reform

The New South Wales government has taken measures to increase the independence of funding arrangements for integrity agencies. In 2024, the NSW Government introduced the *Government Sector Finance Amendment (Integrity Agencies) Act 2024* (NSW).

According to this new legislation, the Treasurer must give written notice to the head of an integrity agency of the amount proposed to be appropriated for the services of the agency in the next annual Appropriation Act. If the amount is different from the amount sought for the integrity agency in a budget proposal, the notice must include reasons for the variation. The Treasurer must also give a copy of the notice to the relevant parliamentary oversight committee. The relevant parliamentary oversight committee must, within 3 months after receiving the notice, examine and report on the appropriation.

This creates a system where the government must justify departing from a funding request by an integrity agency and increases parliamentary committee involvement in the budget process.

In Victoria, the independent officers of Parliament have repeatedly called for increased budget autonomy to increase their independence.<sup>55</sup> The Victorian integrity officers have proposed options including the budget being set by: (1) parliamentary committees, (2) the presiding officers of Parliament, or (3) a statutory commission or tribunal.<sup>56</sup> These are possible models that could be considered to bolster budgetary independence of the commissions.

## 4.5 Structural Independence

Anti-corruption commission may face issues with structural independence, if they do not operate independently from other agencies within government.

<sup>55</sup> Victorian Independent Broad-Based Anti-Corruption Commission, ‘Budget Independence for Victoria’s Independent Officers of Parliament’ (19 October 2022) <<https://www.ibac.vic.gov.au/publications-and-resources/article/budget-independence-for-victoria%27s-independent-officers-of-parliament>>; ‘Advancing Budget Transparency for Victoria’s Core Integrity Agencies’ (February 2026) <<https://assets.ombudsman.vic.gov.au/assets/Joint-paper-Advancing-budget-transparency-for-Victorias-core-integrity-agencies.pdf>>.

<sup>56</sup> Victorian Independent Broad-Based Anti-Corruption Commission, ‘Budget Independence for Victoria’s Independent Officers of Parliament’ (19 October 2022) <<https://www.ibac.vic.gov.au/publications-and-resources/article/budget-independence-for-victoria%27s-independent-officers-of-parliament>>.

For example, former Queensland Integrity Commissioner, Nikola Stepanov, reported significant issues with the structure of the office, as the Queensland Integrity Commissioner is an officer of the Queensland Parliament who is independent and whose role and functions are set out in a statute.<sup>57</sup> However, the staff, finances and operations of the office fell under the then Public Service Commission and this led to tension and conflict, including in regard to ensuring the integrity office was resourced adequately taking into account the substantially increased volume of requests for advice which occurred during Dr Stepanov's time.

The issues were well traversed in a number of independent reviews and submissions including by Dr Stepanov, Peter Bridgeman, Peter Coldrake,<sup>58</sup> and the Crime and Corruption Commission, over the course of many years, including prior to Dr Stepanov's tenure. Ultimately changes were made consistent with the reviews after Dr Stepanov resigned.<sup>59</sup> Thus, the lack of structural independence of the Queensland Integrity Commission has been rectified.

In 2025, the NT ICAC has been legislatively merged into other integrity bodies, including the Ombudsman, Information Commissioner's Office, and the Health and Community Services Complaints Commission to form the Integrity and Ethics Commission.<sup>60</sup> This followed the recommendation of a review of the framework by NT ICAC inspector Bruce McClintock and NT Supreme Court Judge Graham Hiley, which noted the efficiencies based on the small size of the jurisdiction.<sup>61</sup>

The continuing independence of the NT ICAC needs to be considered in light of these changes.

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<sup>57</sup> Interview with Nikola Stepanov (3 September 2025).

<sup>58</sup> Peter Coaldrake, *Let the Sunshine In: Review of Culture and Accountability in the Queensland Public Sector* (Final Report, 28 June 2022) <<https://www.coaldrakereview.qld.gov.au/reports.aspx>>.

<sup>59</sup> *Integrity and Other Legislation Amendment Act 2024* (Qld).

<sup>60</sup> *Integrity and Ethics Commissioner Act 2025* (NT).

<sup>61</sup> Bruce McClintock and Graham Hiley, *Review into the Structural Models for Statutory Integrity Offices* (2025) <[https://cmc.nt.gov.au/\\_data/assets/pdf\\_file/0010/1555939/2025-integrity-review-report.pdf](https://cmc.nt.gov.au/_data/assets/pdf_file/0010/1555939/2025-integrity-review-report.pdf)>.

## 5. Accountability Mechanisms

The depth of coercive powers of anti-corruption commissions to compel witnesses, call public hearings that may smear reputations, and adversely name people in reports tabled in Parliament, justifies robust oversight over their functions, operations, and performance. Anti-corruption commissions face the challenge of being accountable institutions that must themselves be held accountable, creating complex accountability relationships. This exists in the form of specialist parliamentary committees and specialist inspectorates over the anti-corruption commissions.

### 5.1 Parliamentary Oversight

Anti-corruption commissions are overseen by specialist parliamentary committees specifically set up to scrutinise their actions. However, the effectiveness of parliamentary committees varies based on political dynamics, expertise, and resource availability.

#### Interactions between Commissions and Parliamentary Committees

There are both formal and informal interactions between anti-corruption commissions and the parliamentary committee overseeing them. The formal interactions in terms of public hearings tend to be theatrical and may be subject to the cut and thrust of politics, with MPs point-scoring or seeking political advantage.

The regularity of the parliamentary committee meetings with anti-corruption commissioners varied widely, with some meeting quarterly and others not meeting for years.

Several commissioners reported that informal meetings assisted in the relationship with between the commissioners and parliamentary committees. One commissioner explained that they met a new parliamentary committee for the first time in an informal setting, rather than an adversarial public hearing environment, and that assisted in building a more positive relationship.

Bruce Barbour, Commissioner of the Queensland CCC, noted that to assist the parliamentary committee, they provided private reports on individual investigations that could not be publicly disclosed, in addition to public reports.

Further, the Queensland model is to have public hearings, following by private hearings that scrutinised the CCC on investigations that could not be discussed publicly. As Queensland MP Amanda Stoker explained:

**One of the ways we try to do that in Queensland is that the committee has the right to ask questions in a closed private session in relation to investigations. If there are concerns that certain matters aren't being dealt with appropriately, they're at least required to answer to us in relation to that.**

Queensland MP Mark Furner elaborated about the balance between respecting the commission's autonomy and holding the commission to account for their coercive powers:

**Every quarter we meet with the CCC and we ask questions in public. Naturally not everything can be aired in public, so what follows the public hearing is a private hearing where we can go into other matters that the committee may want to explore.**

I find it's always a challenge of when you move from a public to a private hearing. For example, you have to adjust how much you can drill down in terms of examining the CCC. As chair I have to respect their ability to perform their functions without trying to uncover too much information that might jeopardise their success of dealing with a particular matter. There are frustrations regarding the timing of such questions and regarding some of the extreme powers the CCC has in terms of investigation. The entire process can take some time, and it often challenges the public's perception of timeliness. I appreciate it takes time for the CCC to examine the evidence, write the summary, put it in a report, and then present it to PCCC. There are times when even I get frustrated by the timeline of events.

The parliamentary committee in Queensland also conducts five yearly reviews of the CCC's functions, which is desirable to consider whether the commission's legislation should be amended in light of new developments.

### **Data Scrutinised by Parliamentary Committees**

Parliamentary committees scrutinise a range of data provided by the commission, including annual reports and staff surveys. As Chair of the IBAC Committee Tim Read explained:

We certainly look at any comments from Integrity Oversight Victoria. And we take their comments very seriously. We look at annual reports. And we look at data in those reports. We have an annual inquiry into the performance of the four agencies we oversight, including IBAC. And as part of that, we send them questions on notice. And then we interview them in a public hearing. So that's the process. And we focus on a whole bunch of things. Whatever seems to be emerging from the reports and any quantitative data that we can get our hands on, specifically numbers of complaints, numbers of investigations, time taken, average time taken to close a complaint or complete an investigation, internal staff culture assessments, which is a survey of all staff for how they feel about the workplace.

In Victoria, there is an independent performance audit conducted every four years of IBAC and Integrity Oversight Victoria. There were issues with the first performance audit, with resistance from IBAC and the then Victorian Inspectorate as to the legality of the audit, and the types of files that could be accessed due to security and secrecy concerns. However, these teething problems have been reduced in a following audit of the Victorian Ombudsman.

MPs on parliamentary committees have expressed difficulty in properly interrogating the commission due to the limitations of certain data not being able to be disclosed as it might compromise individual investigations. Queensland MP Amanda Stoker highlighted the limitations of the data provided by commissions:

Well, in many ways you're allowed to know some things and you're not allowed to know other things. And so that can constrain the degree to which you can get to the bottom of problems or possible problems. You don't even know if they're a problem really, if you can't quite dig far enough. The fact of it being a parliamentary process means it does still get affected a little by partisan politics. There are times when there is really good bipartisanship in the way that it works. And then there are other times when that is cast aside and purely political points are chased down in a way that, I'm not naive, I understand politics is part of the role, but it's probably not in the spirit of the committee ... I'd like to be able to have some more ability to hold the CCC to account on timetables for their work ... But broadly, if governments and oppositions

appoint the right people to the role and you have a good relationship with them, most of those concerns, I think you can get to the point where you are pretty comfortable that you're able to discharge the role with the rigour that it needs.

Stoker noted the difficulties in assessing the CCC's use of resources, compared to its educative functions:

I think it's very hard to assess whether resources are being used well, and whether there's good performance for input in the political corruption space or public sector corruption space, because you don't really get as clear a sense of what it should cost to do one of these things, and how long it should take. And again, it depends on the nature of the potential offending and the nature of the behaviours involved.

The educative function, I think, is probably easier to assess, because you know how many public servants they've gone and spoken to, and that is a much more outbound kind of measurement ... There's metrics around how much corruption is actually going on in our community, as compared to metrics of how much corruption is perceived by members of the community, the perception is much higher than the reality of what actually gets found. And there's possibly very few mechanisms to determine whether or not that is because of the failings of a system, or an exaggeration of perception. But I think it's probably the case that corruption is just, in fact, quite low in at least our system ... But of course, there's always exceptions.

### **Effectiveness of Parliamentary Committees**

Interview participants varied widely in their assessments of the effectiveness of parliamentary committees. Some reported a positive relationship with the committee, while others stated that the committees were not knowledgeable or skilled enough to interrogate the commission, were focussed on point scoring, or consisted of MPs who lacked interest in integrity issues.

A Commissioner flagged the limitations of parliamentary committees in terms of expertise and resources:

As a matter of principle, parliamentary committees are not likely to be effective for two reasons. First of all, the members of Committee are unlikely to have any relevant experience. So they are essentially lay people. Secondly, they do not have necessary information. They can't spend weeks in the Commission seeing how the Commission functions or works. They can never really understand the nitty-gritty. The most they can have is access to reports. Most of them don't have staff adequate to analyse the issues in the reports or to interrogate them. So essentially, the problem is, although it's a good idea, the problem is resourcing adequately so that you get a real level of oversight, instead of oversight that's essentially limited to public trigger points, where something enters into the public domain. Then it becomes extremely difficult to negotiate. How do you negotiate in that context highly sensitive material? So I don't disagree with the notion. I think it's a worthwhile notion. But I think its practical utility is relatively limited.

A Deputy Commissioner noted the lack of knowledge of the members of the parliamentary committee about the nature of the basic functions of the anti-corruption commission:

I've appeared a number of times in estimates. And the questions from the MLAs indicate there is still more to do in respect of their understanding of the work that we do. And ... when we talk to public officers as part of our education function, that they themselves don't understand what we can and can't do.

**So when we make findings about that a public officer has engaged in improper conduct, they're demanding that the ICAC discipline or the ICAC prosecute or why has this person not been charged with a criminal offence. Now, the ICAC doesn't have any of those powers. We can refer a matter to police or we can refer it to the DPP, but we can't lay a charge.**

A former Commissioner pointed out the political nature of MPs and the lack of attention to their committee roles:

**I've met frequently with parliamentary committees, and I've generally been disappointed with them. Their focus, their attention of the individual members is elsewhere, particularly in this current day and age. They're more interested in the political side of their role. Their attention span can be very limited.**

The effectiveness of parliamentary committees is highly dependent on the membership of the committee, the level of commitment the members show to their committee responsibilities, and the expertise of the committee members.

Queensland MP Steve Thomas outlined the ideal attributes for parliamentary committee members:

**Committee members have to take on this role of we're watching the watchers, if you will. So, you could argue perhaps there's a bit of luck in getting the right committee members. You'd like to think that the party recognises the importance and try and put good members on there. But again, that's not always the case, either. So getting the right membership is critical in that role.**

**I think first comes with attitude. So people who have a passion for justice ... So I don't think it works well if one or more of the members, for example, run a crusade against the police; that doesn't help. If they're on a crusade for certain sections of the community, that doesn't help. But you have to have a general passion for justice, and a general abhorrence of corruption. And that really does help. And the committee that I was on certainly had that. So I think that's the first thing.**

**The second thing is high personal standards yourself, because that becomes important. You have to behave with high integrity ... And then they have to be sort of forward thinking as well going, how do we make this better? But those skills combined are not potentially all that common. So getting the right people becomes critical.**

Thus, Thomas considered that MPs with a strong passion for justice and high personal standards were ideal for the role.

### **Independent Chair and Committee Composition**

One institutional factor that may affect the effectiveness of parliamentary committees overseeing the commissions is the independence of the Chair of the parliamentary committee.

David Shoebridge, member of the NACC oversight committee, argued that an independent non-government chair, as well as ensuring that there is no government majority, would improve the effectiveness of the committee:

Well, the government of the day can shut down any critical questioning of the commission's staff and the commissioner. And it has no interest in having vigorous, independent, active oversight of the National Anti-Corruption Commission. That makes the work on the committee challenging, to say the least ... My personal experience is that it defangs the committee and I don't think it generates public trust in parliament's oversight role.

Shoebridge contended that the joint parliamentary oversight committee at the federal level in practice exercises very limited oversight because of its composition of having a government chair and government majority:

It has a very marginal impact on the operation of the National Anti-Corruption Commission. It's chaired and dominated by the government of the day, which has a stultifying impact on the oversight work. Its remit expressly prohibits it from looking at individual matters. And whilst there may be some sense in that, that is interpreted in a very broad way by the government and government members on the committee to greatly limit the scrutiny and to prohibit some tough questioning on matters of extreme public interest.

Mark Furner, the independent Chair of the Queensland CCC strongly supported the independent chair model, as being a true commitment to bipartisanship:

I am chair of the Parliamentary Crime and Corruption Committee (PCCC). It is an unusual situation because I am not a member of the government, but a member of the opposition. The PCCC chair is the only committee which is chaired by a member of the opposition. The committee is made up of three opposition members, including myself, and four government members giving seven members in total.

I think the chair being from the opposition demonstrates a true commitment to bipartisanship. The committee is structured that way because of the reforms which proceeded from the Fitzgerald inquiry which was handed down in 1989. So many of the anti-corruption and integrity matters in Queensland were created in response to Fitzgerald such as the *Crime and Corruption Act 2001* – which is the foundational document for the Crime and Corruption Commission.

Sean Coley, Manager of the Victorian Integrity and Oversight Committee, explained that the most effective chairs are consensus-based, bipartisan in decision-making, and evidence-based:

The most effective chairs are the ones that are bipartisan when it comes to decision-making and evidence-based. So, I've got great admiration for Tim Read at the moment. He has actually had quite a difficult role to balance as a minority party and also was a Greens spokesperson on integrity issues, which did lead to some conflict on that because his statements were made in the House. But some of that, I think, has been pragmatically passed over to others in his party. He's very consultative. And there's been other chairs like that as well ... I think the very effective ones are consensus-based. So, they'll go around the room, and obviously without disclosing anything committee in confidence, they'll actually ask for all views. And they will hear those views out until there's some sort of agreement. And where there's not agreement, at least the arguments are well-articulated ... So, I like the fact that it's evidence-based because it could quite easily be a very jaundiced, partisan committee just because it is opposition-controlled with the numbers ... So adaptability, neutrality, engagement, being consultative, all those factors I think are really good.

Therefore, to enhance the effectiveness of parliamentary committees, an independent non-government chair could be appointed, and the committee could be constituted so that the government does not have a majority.

## 5.2 Inspector

### Role of Inspector

In all Australian jurisdictions, there is an Inspector of the anti-corruption commissions, who assists the parliamentary committees. These inspectors have two main functions under legislation: they monitor the operations of the agency to ensure they are complying with the law, and deal with complaints of misconduct against the commission. Bruce McClintock, former NSW ICAC Inspector, NSW LECC Inspector and NT ICAC Inspector, elucidated several additional functions of the Inspector, including to act as a sounding board to the senior officers of the agency, to advise on possible courses of action to assist the Commission, to provide support if appropriate to the Commission in times of controversy, and to receive and maintain information from the Commission.

Iain Anderson, ACT Inspector and Commonwealth Ombudsman, highlighted the tricky role of the Inspector ensuring that it is not second guessing the commission, but yet the commission might readily perceive the Inspector is overstepping the boundaries:

**The Inspector has the potentially challenging role of sitting on top of an anti-corruption commission and ensuring that you're not second-guessing the anti-corruption commission. That you're not trying to act as a sort of merits review or judicial review. You're not interposing yourself directly into the conduct of its investigations. But at the same time you're, as appropriate, checking that it itself is complying with relevant legislation and also having regard to things that it should be having regard to. There are operational and tactical and legal decisions that are matters only for the anti-corruption commission to be making.**

**So I simply find and I know other Inspectors do that it's sometimes difficult because the Commission might be ready to perceive that you're overstepping the boundaries even though as Inspector you've been scrupulously careful not to overstep the boundaries.**

### Interactions between Commission and Inspector

LECC and NT ICAC Inspector Bruce McClintock provided the 'six commandments' of an Inspector to enable a cooperative relationship with the Commission which he had outlined at the 2024 APSACC Conference:

**First commandment, the Inspector should never forget that he or she has no value except in so far as he or she increases the effective and just operation of the agency in question, there's no other independent value to have an Inspector except in so far as that person enhances the operations of the agency.**

**Second commandment, the attitude of the Inspector should be cooperation in relation to the agency, not capture; that in a sense is self-explanatory.**

Third, and one will bear in mind that people who are heads of agencies like ICAC and LECC wherever they are likely to be strong-minded people with long experiences as judges certainly in senior positions and, as I said, they're inevitably going to be strong minded, therefore there will be disagreements between the Inspector and the agency inevitably. Inspectors tend to be strong minded too because they have similar backgrounds to the commissioners.

Commandment number 3, never permit a dispute with the agency to develop or become public unless you are specifically required by the legislation, for example, to report to parliament. Governments hate with good reason public fights between public agencies, and they should be avoided at almost all cost. They're destructive to the agency probably because ordinary citizens are not in a position to judge the rights and wrongs of a dispute between an Inspector and the agency and also it's unseemly for government agencies not to sort out their differences.

Four, and this is obvious, maintain effective lines of communication with the agency, pick up the phone.

Fifth commandment — remember that every intervention by an Inspector requires the agency to expend resources which would otherwise be used to advance the agency's core purpose. This applies particularly to complaint handling. Every time an Inspector refers a complaint to the agency rather than dealing with it directly themselves, the agency is forced to use resources to deal with that complaint that could be used for the core purpose. If you can, deal with the complaint immediately without reference to the agency.

Final commandment, most of the complaints that you get as Inspector, in my experience, are about the agency's failure to investigate a matter that's been referred to it, I would say something like 90% at least of the complaints that I've had over the years are of that. The agency has to have a wide discretion as to what it investigates. It is the master of its budget: those budgets are limited. If it investigates one matter, it can't investigate another. In my view, this last and sixth commandment is that the Inspector should be very slow to intervene in circumstances where the agency has refused to investigate a matter and only where there's clear evidence of some form of malpractice.

Thus, McClintock highlighted the importance of good communication between the Inspector and the commission, and the need for the Inspector to respect the commission's discretion in investigations, while maintaining proper oversight and the ability to critique the commission.

Some commissions reported a positive relationship with their Inspector, while others had a combative relationship that has played out publicly in the media. Similarly, some Inspectors have reported a more difficult relationship with the commissions, and that the commissions have not welcomed certain reports they have issued. As a former Inspector noted:

I published a number of reports that were two or three, related to the commission that were critical of particular aspects of their operations. And so much is personality in life, isn't it? I mean, how people react to criticism and feedback. It would have been better in some of those matters had the commission been more open to accepting recommendations and comments, rather than insisting on publishing long responses in my reports, which I actually included. Because that really doesn't help the public at all.

A Commissioner explained that some commissioners who were former judges did not welcome being oversighted:

**Frequently, commissioners are former judges. And frankly, they may have difficulty adjusting to the fact that they are now in the executive arm of government and they may not take kindly to oversight by an inspector. So the attitude of the commissioners can make it difficult for the Inspector.**

Bruce Barbour stated that the Qld CCC maintained a respectful separation and cooperative relationship with their Inspector (called a Parliamentary Commissioner in Queensland):

**We see that as an important role. We maintain a very respectful separation where we're not too close to them, but it's important to have the most cooperative relationship we can. And so that it's clear that we are providing them with whatever they need and that we're making sure that we're open and transparent with any of their functions in terms of oversight and audit.**

NSW ICAC Commissioner Helen Murrell was positive about the relationship between NSW ICAC and its Inspector, and noted the qualities of a good Inspector:

**Somebody who is willing and able to form a good relationship with the commissioners and who invites them to share information with them. And somebody who's experienced in this area so that they fully understand the responsibilities and the way that the commissions operate so that they can ask pertinent questions and come from a position of being well informed, as opposed to being on a learning curve themselves in relation to the work of a commission. Luckily, with our present Inspector, she is someone who has done a lot of this sort of work as a barrister. She's very senior and she has common sense and is relatable.**

### **Effectiveness of Inspectors**

All interviewed Inspectors considered their powers under legislation to be sufficient to conduct their role effectively.

Cathy Cato, CEO and General Counsel of Integrity Oversight Victoria, stated that their legislation was particularly effective in overseeing coercive powers, as it included a requirement of mandatory notification to Integrity Oversight Victoria when IBAC utilises its coercive powers, and a requirement to provide the Inspector with a report 10 days before a public examination containing reasons for holding the public examination that comply with legislative requirements.

Further, Cato stated that the Chief Integrity Inspector and IBAC had signed a Memorandum of Understanding (MOU), which contained principles of how Integrity Oversight Victoria and IBAC would relate to each other, how they exchanged information, and key points of contact. Cato stated that the MOU has made a positive difference in the interactions between Integrity and Oversight Victoria and IBAC:

**In the last six months since we've been under the MOU, we met more regularly, but also the discussions are trusted and open and provide more context for the work that we're doing. I think that has been really good.**

Cato also noted that IBAC had a new designated senior stakeholder liaison officer, who assists Integrity Oversight Victoria with the appropriate contact points within IBAC, which has been helpful for the Chief Integrity Inspector.

There are varying views about the effectiveness of Inspector oversight, with some considering their Inspectors to be effective, while others being extremely critical of their Inspector.

NSW Inspector Gail Furness explained that the effectiveness of the Inspector is affected by the attitudes of the position of Inspector:

**In my experience, the role of the Inspector is best performed when the leadership of the Commission and the Inspector have shared or similar views as to the value the Inspector's oversight can bring to ensuring the public have confidence in the work of the Commission in promoting the integrity and accountability of public administration. There will always be occasions when there will be tension, for example when the Inspector makes findings adverse to the Commission. However, the more aligned the views are, the better the relationship. The less aligned it is, then there's more challenges. The Parliament has determined that there needs to be robust, independent oversight of a Commission. And that needs to be accepted and embraced for the whole system to work as effectively as it can.**

Furness explained that her relationship with NSW ICAC was particularly effective.

**In New South Wales, there has been an inspector for a decade or more. So it also has a well-established office. The Commissioners and inspectors, to date, have had 5 year appointments which means that one inspector deals with the one set of commissioners usually. I have a very good relationship in New South Wales with the ICAC. It's cooperative. We talk regularly. They give me a lot of information which assists me to do my job. They are very responsive when I ask them for responses to complaints. And we work well and effectively together to achieve the same goal.**

Several commissioners were very critical about the performance of their Inspector, stating that they were inappropriately interfering in minor matters. A former commissioner stated:

**I think the risk for any inspectorate, I would say, is because there's possibly not enough to do, they kind of focus on more minor things to keep themselves occupied. And naturally that has the potential to irritate the anti-corruption commission because you're trying to get on with your work and you're being distracted sometimes by more minor things...**

**But an inspectorate like that, I always felt, very quickly can lose sight of the common goal, which is to fight corruption in the public sector. Instead, they want to fight the body trying to fight corruption. And that's what they do. They turn all their attention on fighting the body and I used to try to explain, we should be pulling in the one direction here and not sort of holding us back.**

Similarly, a former senior leadership member of an anti-corruption commission criticised their Inspector for being pedantic, rather than focussing on larger issues:

So I think the previous leadership of the Inspector, they were very black letter. They were very, "you missed a full stop in that sentence in your summons". It was nit-picking. Whereas what is the strategic point of this? Where are you actually going? If you want to say we think your entire approach to summons is wrong or they're actually riddled with errors, fine. But missing one full stop in a sentence... I got pulled up recently because I'd signed a summons when I was working from home and faxed it back because the scanner wasn't working on my printer. I faxed it back to the office. And apparently the resolution of the summons wasn't good enough. Oh, okay. So that's the feedback we get.

A Commissioner stated that responding to Inspector inquiries took up a significant proportion of his time, which could have been used to investigate corruption:

I would say that a vastly disproportionate amount of our time and effort is consumed by responding to Inspector inquiries that distract us from getting on with our main work. So I will probably spend at the moment 20 to 25 per cent of my time on dealing with Inspector-related matters, instead of investigating corruption. There's quite a large proportion. It's about a day a week.

A few former commissioners remarked upon the fact that the Inspector themselves had vast coercive powers but are themselves not subject to oversight. As a Commissioner contended:

The problem is you have one Inspector who himself or herself is not subject to any supervision themselves. Where does the line stop? Who guards the guard? And what resources do they have? And what background do they have? Now, I'll tell you a practical problem in my jurisdiction. The practical problem is that the Inspector of the commission is dealing with matters which he has never investigated. And with processes that he has never undertaken.

### Impact of Inspector

Several interviewees gave the example of the NACC Inspector's investigation of Robodebt as a positive example of an Inspector oversighting the commission. Greens MP David Shoebridge was complimentary about the performance of the NACC Inspector over her investigation of the complaints arising from the initial failure of NACC to investigate the Robodebt scandal:

Not only did the Inspector have powers to oversight that decision, to review that decision by the commission, but she exercised those powers with a high degree of independence in an incredibly timely and professional manner and she engaged the services of a highly qualified former senior judge to assist her in drawing conclusions. It was, I thought, a textbook example in an Inspector carefully, competently and professionally using those oversight powers.

In 2022, the Victorian Inspectorate produced a public report, colloquially known as the Emma Report, about IBAC's handling of complaints about Victoria Police's response to police-perpetrated family violence, which led the very police station that had worked with the alleged perpetrator to reveal information to the perpetrator and leak an escape plan of the complainant, which put her life in serious jeopardy.<sup>62</sup> Following

<sup>62</sup> Victorian Inspectorate, *Special Report: IBAC's Referral and Oversight of Emma's Complaints about Victoria Police's Response to Family Violence by a Police Officer* (October 2022) <<https://www.integrityoversight.vic.gov.au/sites/default/files/2024-03/Special-report-IBAC%27s-referral-and-oversight-of->

this report, IBAC accepted the recommendations and put in place steps to improve the way they refer matters to Victoria Police and considering risk before they do so. Integrity Oversight Victoria are now doing a monitoring project that is looking into the effectiveness of changes made by IBAC following the Emma Report.

In addition, the Victorian Inspector produced a special report on witness welfare in IBAC investigations in 2018, which led to the introduction of witness welfare frameworks across the country.<sup>63</sup> Commonwealth Ombudsman and ACT Inspector Iain Anderson explained that inspectors have provided guidance to the commissions on witness welfare:

**I think there are examples of where Inspectors have taken very useful steps like giving guidance to the anti-corruption commission and their oversight on how to deal with witnesses, because witnesses to anti-corruption processes can find that process very traumatic and there have been instances of self-harm because people had a lack of certainty about what was happening. So I drew upon guidance issued by both the Victorian IBAC and New South Wales Inspector to make some suggestions to the ACT Integrity Commission because they didn't have a witness well-being policy before they commenced on public hearings. So I think that's an example of how the Inspector relationship with the anti-corruption commission can be a very positive, constructive one.**

Thus, Inspectors have clearly been active in holding commissions to account through the production of public reports, as well as providing guidance to commissions in performing their role, although there have been varying assessments about the Inspector's effectiveness.

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Emma%27s-complaints.pdf>.

<sup>63</sup> Victorian Inspectorate, *Special Report: Welfare of Witnesses in IBAC Investigations* (October 2018) <<https://www.integrityoversight.vic.gov.au/sites/default/files/2024-03/Special-report-Welfare-of-witnesses-in-IBAC-investigations.pdf>>.

## 6. Frameworks for Evaluating Anti-Corruption Commissions

Measuring anti-corruption commission effectiveness remains one of the most significant challenges in integrity system design. Traditional performance metrics often fail to capture the complex, long-term nature of corruption prevention and institutional culture change.

**Quantitative Indicators:** Metrics such as complaint numbers, investigation completion rates, and prosecution outcomes provide measurable data but may create perverse incentives and fail to reflect actual corruption reduction. High prosecution rates might indicate poor prevention efforts, while low complaint numbers could reflect either effective prevention or public distrust.

**Qualitative Assessments:** Measuring cultural change, institutional reform implementation, and corruption prevention effectiveness requires more sophisticated assessment frameworks. Public perception surveys, stakeholder interviews, and institutional capacity assessments provide valuable insights but are resource-intensive and methodologically complex.

**Comparative Analysis:** Cross-jurisdictional comparison is complicated by varying mandates, powers, and operating environments. What constitutes effectiveness in one context may be inappropriate in another, limiting the transferability of best practices.

**Long-term Impact:** Corruption prevention benefits may only become apparent over extended periods, making short-term performance assessment problematic. This temporal challenge affects both resource allocation decisions and public confidence in the value of anti-corruption commissions.

### 6.1 Performance Measurement

Interviewees reported the following internal performance measurement mechanisms:

- Length of time to finalise investigations based on complexity
- Number of people charged with criminal offences and what criminal offences have been identified
- Number and satisfaction levels with educational programmes, and whether educational programmes raised levels of knowledge about corruption
- Number of meetings with senior leadership of agencies
- Regular periodic surveys on perceptions of corruption with the public sector or general public (eg every two or three years)
- Surveys on specific topics of interest to the commission
- Whether recommendations of the anti-corruption commission have been adopted (some commissions publicly publish this data)

Interviewees reported the following external assessment methods:

- Appearances before parliamentary committees
- Periodic legislative review by the parliamentary committee overseeing the commission

- Oversight by the Inspector
- Performance audit of the commission by an external auditor
- Surveys of the public sector and community to assess whether the commission is dealing with issues of concern to the community.

There was variation between commissions as to whether the KPIs were set by government or the commission itself.

Thus, there are a range of performance measurements that are **activity-based** (eg number of investigations), **qualitative** (eg satisfaction levels with educational programmes, surveys), and **outcomes-based** (eg whether recommendations have been implemented).

Former Ombudsman Deborah Glass emphasised the importance of balancing quantitative and qualitative metrics to ascertain how discretions are exercised:

**There's a lot of discretion in ombudsman and anti-corruption commission work. How you exercise your discretion is a really important part of how you do your work. It's a constant discussion and there is an amount of tension in there. For me, you never compromise on professionalism and quality. That doesn't mean that you have to chase every rabbit down every hole or decide to investigate everything that comes in. You've got limited public resources. Training your staff to use their discretion wisely so that you are using resources for this kind of case but not that kind of case is part of the art and the science of the job. You've got to get that mix of qualitative and quantitative. It's got to directly relate to what the output of the office ought to be. You can deal with complaints very quickly by deciding not to investigate anything, but then what are we here to do?**

### **Difficulties in Measuring Corruption**

Many interviewees noted the difficulties in trying to quantify the performance of anti-corruption commissions, as the presence or absence of corruption of difficult to measure.

Victorian Greens MP Tim Read highlighted the issues about utilising quantitative data to measure the effectiveness of anti-corruption commissions, as some investigations that have taken a long time to close such as Victorian IBAC's Operation Sandon, but had significant broader public impact, due to the publicity of the investigation and issues ventilated:

**I think it's hard to use data. It's hard to use numbers because the impact of a single inquiry can be very significant. And everybody who pays attention to politics or what happened with Daryl Maguire and Gladys Berejiklian, and that was an instructive inquiry for people right across Australia. And so it's very difficult to put something like that into numbers and its impact was beyond New South Wales. It probably had a beneficial impact in Victoria, ironically, even though our IBAC wouldn't have had the power to conduct that investigation.**

So there might be quite a number of investigations which ultimately don't yield much in the way of publicity, perhaps because the corruption is mild and not as bad as initially feared. But I feel like IBAC or an anti-corruption commission doing its job is something that would be felt and noticed both by the people who are directly involved, who are being investigated, but also in the agencies more broadly that are affected, whether it's a government department or a local council. So what can you measure? You can measure things like response time, that is time taken to respond to complaints. How long does it take to close a complaint once its investigation has started. But something like Operation Sandon, which is the Casey Council investigation, so that was long running and to say that it took a long time to close that investigation understates its importance. You can make it sound like a failure, when it probably was successful, an example of an anti-corruption commission doing a good job.

A Deputy Commissioner raised the difficulties of certain KPIs relating to timeliness that are outside of the Commission's control, as they are based on external factors:

There's a lot of things outside of your control with KPIs. For example, we've got a KPI that we will conduct four reviews in the financial year. Now, we can only conduct a review if we receive a report that demonstrates that there's improper conduct occurring, at risk of occurring, or has occurred, because of a public body's policies, procedures, or practices. So again, that's relying on people making a report to us that meets a particular threshold for us to then do a review. That's not a reflection of our effectiveness. So there's things outside of our control... The difficulty is when you commence an investigation, if you appoint counsel assisting outside of the agency, then really you're dependent on their availability. If you're going to do examinations, generally we appoint interstate counsel, which means we've also got to arrange for them to fly up and accommodation and then the availability of witnesses, the legal counsel that's going to represent the witness. We then have submissions to be written by counsel assisting. If they've got other matters, then sometimes that can take up to seven months to get that back. It's then got to go out for procedural fairness to each of the people potentially affected. Then it comes back. If someone raises something, we might have to do another further investigation inquiry, then back in again, then back out for procedural fairness. And so it's a long process, which the commission itself has no control over. They're all external factors. So to have that as a KPI is not truly reflective of the work or the effectiveness of the commission.

Several interviewees expressed caution about measuring performance in terms of prosecutions or convictions, as this might lead to skewed incentives for commissions to behave overzealously. Former IBAC commissioner Stephen O'Bryan emphasised that he was focussed on outcomes rather than activities, and was not focussed on prosecutions or 'heads on sticks':

We were always, from the get go, quite focused on demonstrating outcomes rather than just activities. Not just about heads on sticks. That was prevention. One of our early sayings is that we're not just about how many people we're prosecuting. We were drawing on some of the lessons learned in New South Wales and WA, et cetera, which was we shouldn't measure ourselves on prosecutions alone.

Further, as NACC and NSW Inspector Gail Furness argued, evidence produced in the course of a commission hearing is inadmissible and the DPP is the one of lays charges, so prosecutions are beyond the control of the commission:

**I don't think the success of a Commission should be measured in terms of prosecutions because that's not their primary job. In New South Wales, the Commission cannot include in a report a recommendation or opinion that a specified person should be prosecuted for a criminal or disciplinary offence. The commission is limited to seeking the advice of the DPP on whether any prosecution should be commenced.**

**Because the Commission is not bound by the rules of evidence and any evidence given is generally not admissible in civil, criminal or disciplinary proceedings against the person, there's a lot of inadmissible evidence given in a corruption hearing. It follows that whether there is a successful prosecution does not reflect on the work of the Commission.**

A Deputy Commissioner criticised the blunt nature of their measurement of engagement activity, where speaking to an audience of three or a thousand are both measured as one engagement activity, and suggested that qualitative criteria should be incorporated, such as the level of understanding of participants:

**There's stuff about our engagement activity, which we've got this number of 100 engagements a year. But really, wouldn't it be better if we were able to tell people a bit more about how people reacted to the information that we were given? How have they utilised it in their work? Did they understand what we told them? Has it changed the way that they conduct themselves in their workplaces? But we don't. And then an engagement with three people from one department is an engagement. And an engagement with an online audience of 1,000 is also one engagement. So we don't have a real measure of the size of the audience that we engage with.**

## 6.2 Performance Issues

There were various performance issues by commissions reported by interviewees, with a major one being the timeliness of commission investigations and issues regarding leadership of the commission.

### Timeliness/Delays

Many interviewees raised issues relating to timeliness of investigations, with some investigations taking a long time to finalise, due to the complexity of the matter or being held by court challenges.

The Victorian Parliament's Integrity and Oversight Committee recently published their final report regarding the Performance of the Victorian integrity agencies 2022/23. They found that the main issue was IBAC's failure to meet timeliness performance targets, and recommended that the targets be revised to ensure their adequacy and fitness for purpose. They also suggested IBAC develop, use, and consistently report on key quantitative and qualitative performance indicators to allow for more precise tracking and evaluation of performance. In regard to the processes involved in the timely completion and reporting on investigations through special reports, the Committee has asked IBAC to review and report on whether legal reforms, if any, are necessary in this area.<sup>64</sup>

A former Commissioner stated that commissions need to perform better in addressing delays:

<sup>64</sup> Parliament of Victoria Integrity and Oversight Committee, *Performance of the Victorian Integrity Agencies 2022/23* (Final Report, May 2025).

I have some concerns about the way the commissions have performed. The first problem that's often brought out is delay. Now, I'm acutely aware of reasons why there has been delay and I've been a contributor to it quite often. But it's the persistent complaint that's made about anti-corruption commissions is that they are just very slow and they sit on issues for far too long without transparency. You know, 18 months for the Berejiklian and the last stage of the inquiry in New South Wales, some of the ACT were doing for three, four years. The NACC took two years to decide that it wasn't going to do anything about the Brittany Higgins affair or the Robodebt affair. That's just unacceptable. And while I understand all the reasons for the delay, I often say the integrity commissions simply have to do better. If you're running an organisation and everybody is persistently criticising it for one defect, then you've got to do something about it. And I don't think they have responded well enough.

A second concern I have, which is partly tied to this, is that in recent years, the tendency has developed to appoint former senior judges or leading barristers to head them. And they have skills that are certainly relevant. You know, their forensic and investigatory skills are certainly relevant, but they have no clue as to how to run an organisation. And they are quite impervious to the complaints about delay. You know, the right outcome takes time, natural justice principle. So they've been terrible. By and large, the commissions have been led by terrible management.

Independent MP Helen Haines raised her concerns with NACC taking a long time to progress an inquiry, pointing to Robodebt as an example:

My concern with NACC at the moment is that I think it takes a very long time to get progress on an inquiry. And I would go to the Robodebt inquiry as the case study of this. And it's particularly interesting because the anti-corruption commission would tell you that they don't want to broadcast too much about what they're doing because obviously they don't want to spook the horses, so to speak. They want to make sure that they have an element of surprise. And that's important. I acknowledge that. But in the Robodebt case, this has been fully examined by a royal commission, the six referrals well-known. And I think that the public needs to see a progress update on that much, much more expeditiously than what they have seen.

A Commissioner noted the issues relating to complexity of investigations leading to delays, but the need to spend the time to consider the material thoroughly:

As you investigate more complicated and difficult and complex matters, times for the outcome of reports get lengthened and lead to public disappointment. An inadequate understanding that the investigation itself, because it's engaging with officials, is having its own practical effect in the official sphere. The notion that only what appears in the newspaper or on the media is of any value and that the longer the investigation takes it means that you're not doing your job. Whereas what it actually indicates is that you are doing your job because you are looking at evidence and gathering evidence and that is doing your job. I think the increased readiness of those in the media to criticise decisions in an uninformed way is an increasing problem.

Similarly, a Deputy Commissioner made the point that fairness in investigations is more important than speed:

The KPIs are trying to make you do outcome-related performance measures, like it's clearing 80% of our referrals within 90 days. What does that really say in terms of performance? Because every referral is a bit different. And to me, what's more important is that every referral gets treated appropriately and assessed appropriately and the outcomes fair. But the KPI measurement system that we all kind of operate in doesn't really allow you to give that kind of level of activity reporting ... I would like us to be able to get to a space where what people understand is that it's the work that we do that counts. It's not just these very binary kind of measures about: did you do them in a particular time? Because the time taken isn't actually the measure of whether we're good or not. Fairness in what we do is more important than speed.

Former ACLEI Commissioner Jaala Hinchliffe noted the issues of backlog with the ACLEI that she had to address:

In ACLEI's history, it had times when it had too many investigations and a backlog of cases to finalise. Keeping on top of allegations as they come into an anti-corruption commission and finalising investigations is an issue that often faces anti-corruption commissions. These agencies are usually small. They usually have a large number of allegations coming to them, and they can usually only do a tiny percentage of investigations into those allegations. So picking the allegations to investigate properly and then seeing them all the way through or discontinuing them as soon as you get to the point of determining that it is not corruption are important skills to have.

Thus, Hinchliffe noted that it was important to prioritise the important cases to investigate, and to efficiently dismiss cases that did not disclose corruption. As Hinchliffe noted:

For me, the lessons were really around how to build efficiency and effectiveness into the system. So it was about how to run the organisation in a way that we were picking the right investigations, we were getting them completed, we were getting reports out so the public could see what we were doing.

Another issue relating to delay is the tendency for those subject to investigation to take the commissions to the court, leading to lengthy delays. Former IBAC Commissioner Robert Redlich stated that IBAC has had the results of various investigations delayed due to litigation:

IBAC has had glaring examples of claims of privilege where the Act precludes the Commissioner from being able to rule on the claim. Royal Commissioners are able to immediately rule on the claim. But IBAC is bound to stop the line of questioning which may mean the hearing must also be adjourned, in order for IBAC to take the matter to the Supreme Court, resulting in enormous delay. One IBAC example was where a computer was seized. The person of interest claimed privilege in relation to thousands of documents and then in accordance with the process prescribed under the IBAC Act. IBAC went to the Supreme Court. The judge was not inclined to deal with the issue as a matter of urgency once it became apparent there was an argument over thousands of documents. Eventually after preliminary hearings and protracted delay the judge ultimately ruled that a small number of documents, I think 15 documents, were actually found to validly attract privilege and the rest should not have been the subject of claim of privilege and should have been immediately been accessible. But that took well over a year before that outcome was achieved.

**I have recommended that IBAC and those other integrity commissions with a similar restriction should like Royal Commissions be allowed to adjudicate upon privilege claims and if the person of interest takes issue with the ruling, allow the person of interest sufficient time to make an immediate application to the Court to persuade a judge that there is sufficient merit in the claim to warrant stopping the line of inquiry until it can be fully considered by the Court.**

Thus, Redlich recommended that anti-corruption commissions be empowered to adjudicate upon privilege claims, like royal commissions.

### **Leadership**

Many interviewees emphasised the importance of choosing the right people to be appointed as Commissioners, as the leadership sets the agenda and approach for the whole organisation, and is the ultimate determinant of the effectiveness of the commission. As a former Commissioner stated:

**These integrity agencies really are shaped to a very strong degree by the leadership of the agency at the time. Particularly that commissioner position and the attitude and the role that they see themselves playing is really important. Really critical in terms of defining what they do. And I think if you sort of look around the country as well, at the different jurisdictions, you'll see that change as well when there's a change in the leadership.**

An Inspector opined that the problems with commissions normally stem from the choice of commissioners rather than the legislation:

**The real problem with anti-corruption commissions is who runs them. You can have the best legislation in the world, and if you put someone unbalanced, so to speak, or who's not the ideal choice, so to speak, you're going to have problems. It's rarely the legislation, it's usually the personalities. If you appoint bad people, you get bad results.**

## **6.3 Impact of Anti-Corruption Commissions**

Almost all interviewees agreed that anti-corruption commissions had a beneficial impact, particularly compared to the level of corruption in the 1980s. As WA MP Steve Thomas stated:

**Oh, they've absolutely been beneficial to the running of the state. There's no doubt about that whatsoever. If you went through all the corruption commissions, all the way back to the Fitzgerald Inquiry in Queensland, I mean, without the work of the corruption commissions, most of Australia's jurisdictions would still look like Queensland did back in the 1980s. So without them, we would be in a far worse position.**

Similarly, Queensland MP Mark Furner argued that the Queensland CCC has been beneficial in reducing corruption and increasing public trust in government:

**The reforms Queensland has brought in since 1989 have made all our state institutions stronger and more publicly accountable. Where previously, there was widespread perceptions of corruption in both Parliament and the police, today, as a result of the Fitzgerald Inquiry, and the subsequent reforms, Queenslanders can have far more faith in the integrity of our government and our legal and enforcement systems.**

Greens MP David Shoebridge agreed that anti-corruption commissions have had positive outcomes, and highlighted the public faith in NSW ICAC compared to politicians:

**Overwhelmingly, anti-corruption commissions have produced positive outcomes. The fact that many politicians are furious with anti-corruption commissions because of what they perceive as reputational damage is evidence of their effectiveness. I could probably count on one hand the occasions where I may have had a mild discomfort with some of the robustness that has happened with state anti-corruption commissions, but yet I could point you to countless inquiries, reviews, reports, recommendations that have had overwhelmingly positive impacts on public administration.**

**Of course, politicians who want to protect themselves from scrutiny, who want to avoid reputational damage for their missteps, will highlight perhaps one or two instances where they're concerned about aggressive questioning or potential oversteps by anti-corruption commissions. I think we should see the self-interest behind that when we're judging those kinds of comments. And I know for a fact if I was to leave my office and walk on the streets of Sydney and ask them, do you have more faith in the New South Wales ICAC or the New South Wales Premier's Office for enforcing standards and anti-corruption measures, I think I know what the public would say. They have vastly more faith in ICAC. That's the ultimate test for an anti-corruption commission, whether or not the public is on their side and the public feels that government is held to account and corruption will be rooted out.**

Interviewees agreed that anti-corruption commissions changed the behaviour of the public sector. However, they were more equivocal about whether anti-corruption commissions changed the behaviour of politicians, with one quipping that 'you can never change a politician'.

Greens MP David Shoebridge stated that NSW ICAC has changed the behaviour of politicians, as well as had an impact on government policies:

**I think anti-corruption commissions have changed the behaviour of politicians in my home state of New South Wales. There was notorious corruption, particularly involving the industry, development consents, incredibly lax standards for the expenditure and accounting of public money and grants and the New South Wales Independent Commission Against Corruption has been incredibly important in putting in place integrity measures and fundamentally changing government and treasury policies to ensure that gross political opportunism and party political donations are not the primary reasons for which development approvals, rezonings are given or grants are handed out. And I think that's been incredibly important. I don't think it's had significant impact at a federal level yet.**

## **Systemic Changes**

Interviewees pointed to various systemic changes that have resulted from the work of anti-corruption commissions. These include:

- Following IBAC investigations, the Victorian Procurement Board completely reformed their whole approach, including requirements for a supplier code of conduct.

- The IBAC Operation Watts recommended the establishment of a Parliamentary Integrity Commission. It was identified that there was a gap in that integrity system; consequently, legislation was passed and that body is up and running.
- Following IBAC's investigation into the Education Department, all the departmental secretaries got together through the secretaries' board and agreed to different policy statements, and codes of conduct were refreshed. All the secretaries communicated more directly to their staff about their codes and ethics.
- In Operation Hector, which involved corrupt awarding of contracts at Inner West Council and Transport for NSW, NSW ICAC recommended that the government introduce a system which can debar persons from being able to tender for government work or procure government work under a debarment scheme. The government has accepted that recommendation and is moving to implement it.
- Following NSW ICAC inquiries, there were improvements in the governance of local government, e.g. many development matters which used to be dealt with at a local government area level are now being dealt with by panels which comprise local representatives and subject matter experts.
- The WA CCC reported on misconduct in the North Metropolitan Health Service, forming opinions of misconduct in respect of public officers and making recommendations for prosecutions of public officers and contractors. Two senior public officers who were managers were convicted of corruption and a number of contractors were convicted. In relation to that investigation and a later investigation into the Deputy Director General of Department of Communities, who was subsequently convicted of defrauding the state by about \$21 or \$22 million, the government took action, changed audit requirements, enforced audit committees, having independent chairs, boosted the Auditor-General, and have made other changes to strengthen confidence in the public sector and ensure proper governance.
- The NT ICAC had an investigation on conflicts of interest in recruitment, which led to the resignation of the police commissioner in March 2025. This had a big impact on people's understanding of conflicts of interest when recruiting the need to not only identify and declare, but provide full particulars so the true nature of the relationship can be understood.
- As a result of Operation Apollo by the NT ICAC, all public officers undergo mandatory ICAC training. There were changes to recruitment checklists, recruitment policies, and the requirement to verify qualifications because the NT ICAC wrote a report where a person received a job in the public service and represented that she had various qualifications that she did not have.
- The Queensland CCC has made recommendations which have led to significant changes in the Local Government Act, strengthening the role of the State's Integrity Commissioner, including changes to recruitment practices within the state, and the issuing of directives from the Public Sector Commission around recruitment practices.

Thus, it is clear that the work of anti-corruption commissions has resulted both in changes in internal processes within departments and agencies, as well as external changes such as legislative amendments and new institutions being established.

## 6.4 Education and Prevention Functions

Commissioners reported that education and prevention functions were a core part of their role in achieving systemic change. Several commissioners also acknowledged that given the volume of investigations, the vast majority of less serious investigations are referred back to the agency to investigate. As Queensland CCC Chairperson Bruce Barbour noted:

**Importantly, dealing with corruption in the public sector in Queensland is not solely the responsibility of the CCC, it's the responsibility of the entire public sector. And that's why, with our corruption principles in our Act, one of the key principles is working cooperatively with the public sector and agencies, and also the process of devolution, recognising that for many cases that are not serious, that are not systemic, that don't raise very significant issues, the best place for those to be dealt with is the agency from which they come, provided that there are appropriate systems in place to do that, and that's where we help. We help with the development of those systems.**

This devolution of the vast majority of investigations, coupled with the mandatory referral requirement, where agencies must report any suspected corrupt conduct to the anti-corruption commission, means that the relationship between anti-corruption commissions and public sector agencies is an important element of the role.

### Implementation of Recommendations

The NSW ICAC Act requires Ministers and public authorities to provide a response to ICAC's corruption prevention recommendations within 3 months on whether it proposes to implement any plan of action in response to the recommendation and to provide that plan to the Commission.<sup>65</sup> Further, the agency is obligated to provide a written report about its progress in implementing the plan 12 months later and, if the plan is not fully implemented, a further update 12 months following that. This legislative requirement has been reported to be useful to require agencies to respond to recommendations within a certain timeframe. A senior public servant stated:

**It is helpful because at least you have a marker to force people to respond with a particular point as to how they are going to implement them, and then you can follow up.**

**In reality, still people drag the chain. It is like the report was released and it caused, or in the case of ICAC, the public inquiry occurred and then the report was released and that caused the wave, and then sort of dissipates. But not having the power means that you are in a really difficult situation.**

ACT Integrity Commissioner Michael Adams stated that he was judicious in his recommendations and was conscious of making practical and specific recommendations, which have received a positive response from agencies:

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<sup>65</sup> *ICAC Act 1988* (NSW) s 111E.

I've made very few recommendations and such that I have they have received a positive response. Particular recommendations of course depend upon the issues in particular investigations. So there's not much point in motherhood statements. Please be more honest – yes, but not practically useful. So specific recommendations as to undertaking particular processes or using particular critical paths for decision-making I think would be taken seriously. My view of it is that where I've identified in the course of an investigation particular shortcomings that's done in the report. So responding to the report should lead to changes. By and large that's my preferred way of doing it because that gives contextual information which enables practical procedural changes. However, I think there is a case for certain recommendations and I've made some. And in the course of negotiating those I've found very positive responses.

Similarly Queensland Integrity Commissioner Linda Waugh emphasised the importance of making recommendations that are feasibly implemented, rather than utopian ones:

On the corruption prevention side of the house, when you do an investigation and you're looking at reform practices, you have to have regard for the real world. There will be a utopia, a perfect type of recommendation you can make which may be the gold standard or is so effective it will stop corruption. But you have to consider the capacity, the resourcing, and overall ability and will of the agency on actions that will most effectively mitigate risk for that agency. So it's really being quite judicious in, for example, making prevention recommendations that are realistic, practical and achievable for the agency.

Former Ombudsman Deborah Glass emphasised the importance of operationally sound recommendations, rather than the volume of recommendations:

I found public sector agencies very responsive to my recommendations. But I also put a lot of effort into making sure that they are operationally sound. I think that's something all integrity offices need to do and sometimes don't do enough of.

I do think, and I've been in this business for a very long time, and I include my UK experience in this, that all too often there's a sense that you've got to make a lot of recommendations because that justifies all the work you've done. And I don't buy into that. Sometimes a small number of really sensible, well-targeted recommendations is infinitely more effective than a large number of not terribly important ones that may not be practical - so agencies may tick the box to say they'll consider them but then they do nothing.

Thus, several interviewees emphasised the importance of generating targeted recommendations that are practical and achievable.

### **Education Events with Politicians and the Public Sector**

NSW ICAC Commissioner Helen Murrell explained that the commissioners in NSW ICAC have engaged in significant targeted education events with politicians, local government councillors, and public sector agencies, which has greatly raised awareness of corruption issues:

I think that in the last three years in particular, since the current commissioners have been there, we've been very focused on the education and prevention aspect of our work. And consider that to be the most important aspect of the work we do rather than just catching the bad actors. And I think that because commissioners have taken a very high profile in education events and our corruption prevention team has generated so much interest in education events where we're delivering an enormous amount of education, which has raised awareness in many agencies. And it's certainly raised awareness amongst politicians because we've done some important education with New South Wales politicians and also with local government councillors who are, of course, a very important source of our work. So we're regularly speaking to them and also at critical times.

So, for example, if there's been a New South Wales state election, we will have timely education sessions for the incoming members of parliament, particularly those who may not have served previously. And also looking at education for parliamentarians who may be leaving parliament in terms of employment avenues that they may be pursuing that may potentially involve some sort of conflict with their immediately preceding work as a parliamentarian. They're examples of where we might target education.

NSW ICAC Chief Commissioner John Hatzistergos affirmed the range of activities with government and Parliament:

We've done a lot of work with state government and state parliament. I addressed the Cabinet. I went through the expectations and the responsibilities. We do one-on-one meetings with ministers and MPs when they're asked for and we also do a number of sessions with MPs where we focus on particular topics and we make them interactive so we allow them to ask us questions.

### **Informal Communications with Public Sector Agencies**

Commissioners have reported that informal communications with departments and agencies at all levels was important in order to educate agencies about corruption, from agency heads and deputy secretaries, to middle management and junior staff. As Queensland Integrity Commissioner Linda Waugh argued,

The art of effective systemic change relating to building ethical culture is getting the right people within public institutions to see value and take ownership of the message, to be the spokesperson for the importance of ethics and integrity, and to pass on that message. Because they're in a different position, they're not outside, they're inside the organisation so they can develop and lead the culture of their organisation.

NACC Chief Commissioner Paul Brereton explained that NACC engaged with all levels of the public service, from junior, to mid-level to senior levels.

We engage at all levels. So, I will engage with heads of agencies, the deputies will engage with deputy secretaries and the deputy commissioners elsewhere. So, we engage at level pretty much across the agency. We normally try to adopt a one-up approach. So, if we're talking to an audience of deputy heads and so on, and down from that, I will try to speak to that. If the audience is SES [Senior Executive Service], then a deputy will deal with that. If an audience is ELs [Executive Level], we'll send a general manager to speak to them.

NACC CEO and former NSW ICAC CEO Philip Reed explained that these officer-to-officer interactions were helpful at the junior level, although implementing changes would normally happen at the senior level:

**So, there are networks established at officer-to-officer level with the integrity areas within those agencies that we're getting referrals about. And so that allows for further information gathering and gaining an understanding of the nature of the work we're doing at more junior levels within the bureaucracy. But when it comes to trying to drive change across the public service, then it's predominantly going to occur at the more senior levels of agencies.**

Informal communications with the heads of agencies have been beneficial to create a channel of communication for spreading education and awareness to agencies. As an Acting Commissioner stated:

**I look at success as the matters of improper conduct we get that we refer out to the CEO for them to consider, to take action, and to appropriately respond to and then provide us with a report. Because I see that as educating the CEO on what is occurring in their agency. It's giving them an opportunity to upskill staff around what should have occurred, what shouldn't have occurred, and why. And also gives them an opportunity, because they're best placed to know their agency, about what changes should be implemented to reduce the risk of that occurring again. It may also bring to light that this is a systemic issue within a particular area.**

**So I think the broader conversations I have with CEOs, particularly with Chatham House rules, I find that very useful. Because when I go and meet with the CEOs and I'll speak about a report that we've just released, they will say, yes, this has been an issue in our agency. But by publishing a report, which is then picked up by the media, it sends a clear message to the public service that you can't misuse leave entitlements, or that if you use personal leave, you can't be out fishing. Or if you're not in the office, you need to submit a leave application. That there will be audits done, that this is no longer acceptable.**

NSW ICAC Chief Commissioner John Hatzistergos stated that they had discussions with agencies when they were concerned about corruption reporting:

**We bring the agency in. We have discussions with them. We ensure that their reporting culture is strong and that they maintain a dialogue with us in relation to the issues.**

**We're not here to bring them down. We're here to lift them up, per se. That's our primary focus, to raise their standards and to give them advice and to give them assistance.**

**And we have to work in collaboration with them. And they have to work with us. They understand that. We try not to position ourselves as a gotcha agency.**

### **Embedded Integrity Officers within Departments and Agencies**

One mechanism for improved the coordination and dissemination of integrity issues across government is to have embedded integrity officers within departments and agencies. This has operated successfully in the NT.

Under section 97 of the previous NT ICAC Act, the CEO of an agency could nominate a staff member to be a nominated recipient, who can receive protected communications by other staff members reporting

improper conduct within the agency, who have then been reported to become champions of ICAC's work. This mechanism strongly embeds integrity systems within departments and agencies.

### **Collaboration between Integrity Agencies**

Interviewees have highlighted the positive and productive collaborations between integrity agencies within the State, including Ombudsmen and Auditors-General, as well as between the anti-corruption commissions across the federation. These positive relationships have led to information sharing of key learnings across jurisdictions, and collaborative activities within State agencies, including shared education and training sessions.

For example, former Queensland Integrity Commissioner Nikola Stepanov noted the collaborative relationship between the integrity agencies in Queensland, including the Integrity Commission, CCC, Ombudsman and Auditor-General, who would deliver shared education and training sessions for cabinet, government departments and councils about integrity issues, and women in leadership, as well as share learnings about operational matters or IT issues.

### **Public Communication**

A former Minister emphasised that commissioners had an important task of building public confidence in the commission, and this was done by communicating and explaining their work to the public, which had not always been done well, particularly by former judges. This reflected an observation made by a former Commissioner, who noted that former judges may not understand that commissioners have a role that requires public communication of their work:

**What I've learned is that for judges in particular, you start off in this role with your judicial approach to issues, which is, "My report speaks for me when I publish it, like my judgement did when I was a judge. And I don't give interviews. I don't explain what I decided. I don't talk to the public or the media or anyone else about why I've done things. I conduct the hearings and I publish a report."**

**It doesn't work within an integrity commission. There's a significant role for the head of a commission in communicating the work of the commission, what it's doing, what it's not doing, why it is doing or not doing things, explaining its education and prevention functions, identifying when there are obstacles that it's facing with executive government. These things need to be spoken about. And unfortunately, it only occurred too late in my period that I came to recognise if I was going to be really effective, I needed to do that.**

Chairperson of the Queensland CCC Bruce Barbour stated that there was a tricky balancing act between transparency and the requirement for secrecy so as not to compromise corruption investigations:

When you're outside agencies like this and you're not working in them, there's a view that we're incredibly secretive and we don't say enough about what we do and how we do it to the world at large. When you're in the agency and particularly when you're heading it and you are enmeshed in the work of the agency and what we do and how we do it, it becomes very clear that you can't be as open as you would like to be because it actually doesn't serve a purpose which is in the public interest. It's actually counter to the public interest to do that. And it's very hard for people to understand that. So you have to find the right balance between being open and transparent about your work, but not doing it in a way which prejudices your work, your effectiveness, because that's paramount.

## 7. Recommendations

Based on the analysis in the previous sections, this section provides recommendations of key institutional features for anti-corruption commissions, as well as recommended best practice, where relevant.

### 7.1 Powers

#### Recommended Institutional Features:

- **Legislative coercive powers**
- **Legislative power to abrogate privileges, including legal professional privilege, privilege against self-incrimination, and parliamentary privilege, combined with ‘use immunity’ preventing evidence from being used in a criminal prosecution**
- **Legislative power for commissions to determine privilege claims**
- **Legislative power to publicly report**
- **Legislative power to conduct public hearings, with reputational damage to be considered before holding a public hearing**
- **Legislative power for commissions to comply with procedural fairness**

It is essential that anti-corruption commissions have coercive powers, operationalised through the authority to intercept telecommunications and surveillance to effectively perform their function of uncovering corruption, which is clandestine and hidden.

Commissions should also have the power to abrogate privileges, including legal professional privilege, privilege against self-incrimination, and parliamentary privilege, so that investigations are not hindered and corruption is uncovered.

Commissions should be empowered to determine privilege claims, as historically there have been delays with litigation relating to privilege taking years to resolve in the courts.

The significant coercive powers of anti-corruption commissions, including the abrogation of privileges, should be balanced with use immunity, i.e. the inability to use evidence uncovered by the commission in a criminal prosecution, and the requirement to comply with procedural fairness.

It is also imperative for anti-corruption commissions to have the power to publicly report their findings, for the purposes of transparency, education, and promoting awareness of corruption.

The power to conduct public hearings has been a contested issue, but given the significant and proven benefits that accrue from public hearings, this should be a key design feature for anti-corruption commissions. All commissions apart from South Australia have this power, although the practices between commissions vary.

### 7.2 Independence

#### Recommended Institutional Features:

- **The tenure of Commissioners should be a non-renewable seven-year term**
- **The appointments process for Commissioners should involve a bipartisan parliamentary committee with either power to appoint or veto the appointment**
- **Budget autonomy, with commission performance linked to Parliament or an independent body, rather than the Executive**
- **Anti-corruption commissions should be established as a standalone agency with institutional independence from other entities**

Although in practice, anti-corruption commissions operate with robust independence, they operate within a hostile environment where governments may seek to attack a commission by legislatively reducing their powers, pressuring commissioners to resign, or reducing their budget.

It is essential that commissioners operate without fear and favour from government, so a non-renewable term is desirable. However, it is recommended that the Commissioners be appointed for seven years, to give them an opportunity to build expertise and fulfil any agenda they might want to achieve within the role.

The appointments process for Commissioners should involve a bipartisan parliamentary committee, either determining the appointment or with veto power.

Budget autonomy is desirable for anti-corruption commissions to operate more effectively without their budgets being cut by hostile governments.

Anti-corruption commissions should be established with institutional autonomy, in order to avoid their resources being threatened or diverted by other bodies.

## 7.3 Oversight

### Recommended Institutional Features:

#### *Parliamentary Committees*

- **Independent chair of parliamentary committee**
- **Non-government majority composition of parliamentary committee**
- **Private hearings between the parliamentary committees and the commission, in addition to public hearings**
- **Regular periodic review of legislation establishing anti-corruption commissions by parliamentary committees**

#### *Inspector*

- **Legislated mandatory referrals to Inspector whenever the anti-corruption commission exercises a coercive power**
- **Legislated requirement to provide a written report to the Inspector before an anti-corruption commission public hearing**
- **A memorandum of understanding setting out the principles of engagement between the Inspector and commission**

**Parliamentary Committee**

The parliamentary committee overseeing the commission should be chaired by an independent non-government member, and there should not be a government majority on the committee. This will allow a greater degree of scrutiny of the commission.

Parliamentary committees should conduct both private and public hearings with the commission, so that more sensitive or confidential issues can be ventilated in private.

To assess whether the commission's legislation remains fit for purpose, there should be regular periodic reviews of the commission's legislation by the parliamentary committee, e.g. every five years.

**Inspector**

There should be legislated mandatory referrals to the Inspector when the commission exercises a coercive power, so that the Inspector can ascertain whether the use of such powers is appropriate.

There should also be a requirement for the commission to provide a written report to the Inspector within a certain timeframe justifying the need for the public hearing (eg 10 days before a public hearing), so the Inspector can scrutinise the need for a public hearing against damage to individual reputation.

There should be a memorandum of understanding setting out the principles of engagement between the Inspector and anti-corruption commission, including how information will be shared and key points of contact. This will clarify and facilitate the relationship between the bodies.

## 7.4 Performance Frameworks

**Recommended Institutional Features:**

- **Legislative requirement to respond to commission's corruption prevention recommendations within a certain timeframe**
- **Embedded integrity officers within departments and agencies**

To give anti-corruption commissions a lever to ensure that agencies respond to their recommendations, there should be a legislation requirement modelled on s 111E of the NSW ICAC Act for relevant Ministers and agencies to respond to the commission's corruption prevention recommendations within a certain timeframe.

To ensure that a culture of integrity is firmly embedded within the whole of the public service, there should be integrity officers embedded within each department and agency who champion integrity issues within the agency.

**Recommended Best Practice**

- **Regular meetings with all levels of the public service**
- **Education and outreach events with politicians, the public service, and local government**

In order to enhance an anti-corruption commission's educational role, commissions should engage in regular meetings with all staffing levels of the public service, from junior to senior.

Commissions should also engage in outreach activities with politicians, the public service and local government, to ensure that there is a greater awareness of corruption across the political sphere and public sector.



## 8. Conclusion

To conclude, Australia is one of the first liberal democracies that has invested widely in anti-corruption infrastructure. This public commitment makes it essential to ascertain the effectiveness of these bodies in meeting their objectives within a liberal democracy. It is important for Australia to have well-functioning anti-corruption commissions in order to effectively detect and prevent corruption in the public sector.

This project has empirically evaluated the jurisdictions, powers and other key institutional and policy design aspects of anti-corruption commissions in Australia, which is critical to their effectiveness in preventing and addressing government corruption, and supporting public trust and confidence in government. It is hoped that this research will lead to a greater clarity about the significant issues facing anti-corruption commissions, and that the recommendations will go towards enhancing their performance and effectiveness within the Australian system of public administration.

## Appendix A List of Interviewees

[Note: some interviewees have undertaken functions in multiple jurisdictions and are listed more than once.]

### Commonwealth

- Mark Dreyfus (former Attorney-General)
- Paul Brereton (Chief Commissioner, NACC)
- Kylie Kilgour (Deputy Commissioner, NACC, former Deputy Commissioner, IBAC)
- Nicole Rose (Deputy Commissioner, NACC)
- Ben Gauntlett (Deputy Commissioner, NACC)
- Philip Reed (CEO, NACC, former CEO NSW ICAC)
- Peta Hegarty (General Manager for Communications Corruption Prevention and Education)
- Amanda Stoker (Deputy Chair, Queensland Parliamentary Crime and Corruption Committee, former Assistant Minister to Commonwealth Attorney-General)
- John McMillan (former Acting Commissioner, ACLEI, former Acting ACT Integrity Commissioner, former Commonwealth Ombudsman, former NSW Ombudsman, former Commonwealth Information Commissioner)
- Jaala Hinchliffe (former Commissioner, ACLEI, former Deputy Commissioner NACC, former Commonwealth Deputy Ombudsman)
- Helen Haines (Member of Parliament, Deputy Chair, Parliamentary Joint Committee on the National Anti-Corruption Commission)
- David Shoebridge (Member of Parliament, Parliamentary Joint Committee on the National Anti-Corruption Commission Member)
- Gail Furness (Inspector, NACC)
- Iain Anderson (Commonwealth Ombudsman)

### Victoria

- Ted Baillieu (Former Premier)
- Robert Redlich (Former Commissioner, IBAC)
- Stephen O'Bryan (Former Commissioner, IBAC)
- Stephen Farrow (Deputy Commissioner, IBAC)
- David Wolf (Commissioner, Parliamentary Workplace Standards and Integrity Commission, former Deputy Commissioner, IBAC)
- Alistair Maclean (former IBAC CEO)

- Christine Howlett (former IBAC Director of Prevention and Education)
- Marlo Baragwanath (Ombudsman, former IBAC CEO)
- Deborah Glass (Former Ombudsman)
- Eamonn Moran (Former Inspector)
- Cathy Cato (CEO and General Counsel, former Acting Inspector)
- Rai Small (Acting Director, Integrity Operations and Policy)
- Tim Read (Member of Parliament, Chair, Integrity and Oversight Committee)
- Ryan Batchelor (Member of Parliament, Chair, Integrity and Oversight Committee Member)
- Sean Coley (Secretariat Manager, Integrity and Oversight Committee)

#### New South Wales

- John Hatzistergos (Chief Commissioner, NSW ICAC) [interview scheduled in Dec]
- Helen Murrell (Commissioner, NSW ICAC)
- Peter Hall (former Chief Commissioner, NSW ICAC)
- Peter Johnson (Chief Commissioner, LECC)
- Anina Johnson (Commissioner LECC)
- Gail Furness (Inspector, ICAC)
- Michael Adams (ACT Integrity Commissioner, former NSW LECC Chief Commissioner)
- Bruce McClintock (Inspector, LEC, former Inspector NSW ICAC)

#### Queensland

- Bruce Barbour (Chairperson, CCC)
- Linda Waugh (Integrity Commissioner)
- David Solomon (Former Integrity Commissioner)
- Nikola Stefanov (Former Integrity Commissioner)
- Mark Furner (Chair, Queensland Parliamentary Crime and Corruption Committee) [done]
- Ray Stevens (Member of Parliament, Queensland Parliamentary Crime and Corruption Committee Member)
- Amanda Stoker (Deputy Chair, Queensland Parliamentary Crime and Corruption Committee, former Assistant Minister to Commonwealth Attorney-General)

#### South Australia

- Jay Weatherill (Former Premier)
- John Rau (Former Deputy Premier and Attorney-General)
- Emma Townsend (Commissioner, SA ICAC)

- Ben Broyd (Deputy Commissioner, SA ICAC)
- Josh Teague (Member of Parliament, Crime and Public Integrity Policy Committee Member)

#### Western Australia

- Geoff Gallop (Former Premier)
- Colin Barnett (Former Premier)
- Steve Thomas (former Deputy Chair, Joint Standing Committee on the Corruption and Crime Commission)
- John McKechnie (former Commissioner)

#### Tasmania

- Former Senior Leadership Staff, Tasmanian Integrity Commission
- David Bartlett (Former Premier)
- Lara Giddings (Former Premier, Former Attorney-General)

#### NT

- Naomi Loudon (Deputy Commissioner and former Acting Commissioner, NT ICAC)
- Bruce McClintock (Inspector, NT ICAC)

#### ACT

- Michael Adams (ACT Integrity Commissioner, former NSW LEC Chief Commissioner)
- John McMillan (Acting ACT Integrity Commissioner)
- Iain Anderson (ACT Inspector)

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