

# The objectives and outcomes of a National Integrity Commission

## *A National Integrity Commission should be empowered to investigate and expose corruption and misconduct in federal public administration*

*Briefing paper prepared by the National Integrity Committee*

### Summary

- The objectives of a National Integrity Commission will be to promote integrity and investigate and expose corruption and misconduct in public administration
- These objectives are largely achieved by holding investigations that gather evidence of corruption and misconduct, expose the conduct to the public, deter future corruption and educate the public sector and community about the impacts of corruption and how it can be prevented
- During the course of investigations, conduct may be revealed that could constitute a criminal offence. These cases will be referred to the Commonwealth or a State or Territory Director of Public Prosecutions. Referrals to the DPP from state commissions have a high conviction rate, although prosecution is not the main aim of investigations, or the primary purpose or measure of a commission
- The definitions of corrupt conduct across state integrity commissions is much broader than conduct constituting a criminal offence and includes any conduct that could adversely affect the impartial exercise of public administration, or constitute a breach of public trust
- This means that conduct investigated and exposed by state integrity commissions will often not constitute a criminal offence. For example, soliciting political donations is not illegal, but in the context of an application for a mining licence or development approval, the relationship and conduct between the decision maker and the applicant may warrant investigation by an integrity commission

## The National Integrity Committee

The National Integrity Committee was established to design and advise policy makers on specific accountability reforms, including a national anti-corruption commission. Members of the committee are: Margaret McMurdo AC, David Ipp AO QC, Stephen Charles AO QC, David Harper AM QC, Paul Stein AM QC and Antony Whealy QC.

## The objectives of a National Integrity Commission

Integrity commissions are established to promote integrity and investigate and expose corruption in public administration. The main tool used by integrity commissions is investigation. Investigations are used to meet the objectives of promoting integrity, and investigating, exposing and deterring corruption. Investigations achieve this through the use of coercive powers to determine whether corrupt conduct has occurred, hearings to gather further evidence and expose the conduct to the public, and public reporting to summarise what the commission investigation found and to make prevention recommendations and referrals.

A National Integrity Commission will not be a judicial body. Its main task will not be to make findings, but rather to investigate, expose, report upon and refer matters that need to be dealt with elsewhere in public administration. Experience from state commissions shows that the act of exposing the conduct achieves greater integrity in the public sector, including bringing more witnesses forward with information about instances of corrupt conduct, educating the public about corruption, deterring others from engaging in corrupt conduct in the future, and even causing the conduct under investigation to cease.

During the course of an inquiry, if it is revealed that a criminal offence may have occurred, a National Integrity Commission will be empowered to refer the matter to the relevant Director of Public Prosecutions (DPP). The DPP assesses the case and determines whether to proceed with charges and prosecution.

Prosecution will not be the main objective of a National Integrity Commission. Indeed many types of conduct that lead to corruption are not criminal offences. The act of making a political donation is not illegal, nor is soliciting a donation. However if this act is done in the context of a political favour, then it may warrant investigation for misconduct or corruption.

Despite this, referrals to the Directors of Public Prosecutions from state integrity commissions have a high conviction rate. From 2012-2017, the WA CCC recommended to the DPP that 52 people be charged with 706 charges. Of these, 700 charges were

convicted and 6 acquitted. Over this period, 7 people were acquitted after being referred for prosecution from NSW ICAC.<sup>1</sup>

## Objectives of state integrity commissions

Each state integrity commission aims to promote integrity and tackle corruption and misconduct. In addition to this corruption function, the Queensland and Western Australian commissions also have jurisdiction to combat organised crime. All state integrity commissions use investigations and hearings as the main tools to achieve their objectives.

The detailed objectives from the New South Wales Independent Commission Against Corruption (NSW ICAC), the Queensland Crime and Corruption Commission (Qld CCC), the Victorian Independent Broad-based Commission Against Corruption (Vic IBAC) and the Western Australia Crime and Corruption Commission (WA CCC) are provided below.

### *New South Wales Independent Commission Against Corruption*

The principal objects of this Act are:

4. (a) to promote the integrity and accountability of public administration by constituting an Independent Commission Against Corruption as an independent and accountable body:
  - (i) to investigate, expose and prevent corruption involving or affecting public authorities and public officials, and
  - (ii) to educate public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and on the community, and
- (b) to confer on the Commission special powers to inquire into allegations of corruption.<sup>2</sup>

### *Queensland Crime and Corruption Commission*

- (1) The main purposes of this Act are—
  - (a) to combat and reduce the incidence of major crime; and
  - (b) to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector.
- (2) The Act also has as the purpose to facilitate the commission's involvement in a confiscation related investigation.

5. (1) The Act's purposes are to be achieved primarily by establishing a permanent commission to be called the Crime and Corruption Commission.
- (2) The commission is to have investigative powers, not ordinarily available to the police service, that will enable the commission to effectively investigate major crime and criminal organisations and their participants.

---

<sup>1</sup> NSW ICAC and WA CCC, *Annual Reports, 2012-2017*; and NSW ICAC (2017), *Prosecution outcomes table*, 23<sup>rd</sup> February 2017

<sup>2</sup> *Independent Commission Against Corruption Act 1988* (NSW)

- (3) Also, the commission is to—
- (a) investigate cases of corrupt conduct, particularly more serious cases of corrupt conduct; and
  - (b) help units of public administration to deal effectively and appropriately with corruption by increasing their capacity to do so.
- (4) Further, the commission has particular powers for confiscation related investigations for supporting its role under the Confiscation Act.<sup>3</sup>

#### *Victoria Independent Broad-based Commission Against Corruption*

8. The objects of this Act are to—
- (a) provide for the identification, investigation and exposure of—
    - (i) corrupt conduct; and
    - (ii) police personnel misconduct;
  - (aa) provide for the IBAC to prioritise the investigation and exposure of serious corrupt conduct or systemic corrupt conduct;
  - (b) assist in the prevention of—
    - (i) corrupt conduct; and
    - (ii) police personnel misconduct;
  - (c) facilitate the education of the public sector and the community about the detrimental effects of corrupt conduct and police personnel misconduct on public administration and the community and the ways in which corrupt conduct and police personnel misconduct can be prevented;
  - (d) assist in improving the capacity of the public sector to prevent corrupt conduct and police personnel misconduct;
  - (e) provide for the IBAC to assess police personnel conduct.<sup>4</sup>

#### *Western Australia Crime and Corruption Commission*

- 7A. The main purposes of this Act are —
- (a) to combat and reduce the incidence of organised crime; and
  - (b) to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector.
- 7B. How Act's purposes to be achieved
- (1) The Act's purposes are to be achieved primarily by establishing a permanent commission to be called the Corruption and Crime Commission.
  - (2) The Commission is to be able to authorise the use of investigative powers not ordinarily available to the police service to effectively investigate particular cases of organised crime.
  - (3) The Act's purpose in relation to misconduct is to be achieved by conferring functions on the Commission and on the Public Sector Commissioner.
  - (4) The Commission is to be able to investigate cases of serious misconduct.
  - (5) The Public Sector Commissioner is to be able to investigate cases of minor misconduct.
  - (6) The Commission and the Public Sector Commissioner are to help public authorities to prevent, and to identify and deal effectively and appropriately with, misconduct.<sup>5</sup>

---

<sup>3</sup> *Crime and Corruption Act 2001* (Queensland)

<sup>4</sup> *Independent Broad-based Anti-corruption Commission Act 2011* (Victoria)

<sup>5</sup> *Crime, Corruption and Misconduct Act 2003* (Western Australia)

## Achieving objectives

The table below summarises how each state integrity commission has used investigations to achieve its objectives by:

- Educating public sector agencies regarding the prevention of corruption, including making corruption prevention recommendations
- Investigating allegations of corruption and misconduct, through private and public hearings
- Exposing cases of corruption and misconduct to the public, through public reporting and public hearings
- Recommending criminal prosecutions

**Table 1: State integrity commission investigations 2012-2017**

Body	Investigations	Private examinations	Public inquiries	Investigation reports made public	Individuals referred for prosecution	Prevention recommendations
NSW ICAC	290	721 examinations	30	32	96	117
Qld CCC	293	36 days	2	1	33	165*
WA CCC	250	52 examinations over 136 days	5	33	52	93
Vic IBAC	90	Data not available	5	11	11	47 in 2016-17 <sup>^</sup>

\*Corruption prevention was removed from Qld CCCs jurisdiction in 2014, and reintroduced in 2016

<sup>^</sup> Corruption prevention recommendations were not reported in IBAC Annual Reports except in 2016-17. Previous Annual Reports recorded 'corruption prevention initiatives' of which there were 298.

Victoria's IBAC has conducted five public inquiries to expose corrupt conduct in the public sector. One of those, Operation Ord, involved allegations of serious corrupt conduct in the Education Department. The inquiry showed that millions of dollars were transferred to "banker schools", supposedly for the purpose of facilitating the payment of invoices on behalf of a region or cluster of schools. But the investigation showed that senior departmental officers instead used these schools as a slush fund to pay for alcohol, lavish hospitality, expensive retreats and goods and services completely unrelated to departmental activities. The principal player in this conduct was the officer responsible for overseeing the administration of the multi-billion dollars budget allocated to schools. Among the consequences of the public hearings was a significant spike in the number of fresh allegations made to IBAC about corrupt or improper conduct in the education sector. And the Department itself immediately

developed a reform program designed to address the vulnerabilities identified in its systems by IBAC's investigation.<sup>6</sup>

In 2008 the NSW ICAC published eight reports on Operation Monto, a large investigation into allegations of fraud and bribery in relation to procurement in the state's rail authority, Railcorp. It found widespread corruption in the procurement process, with many Railcorp employees being found to be soliciting bribes from tenderers for contracts. It uncovered over \$19 million in inappropriately awarded contracts. This investigation included eight public inquiries that resulted in 40 corruption prevention findings and 12 people being convicted.<sup>7</sup>

## Referrals for prosecution

Of the state integrity commissions, the NSW ICAC and the WA CCC made the most referrals for prosecution over the observed period. The vast majority of these resulted in convictions.

From 2012-2017, the WA CCC recommended 706 charges to the DPP. Of these, 700 were convicted and 6 acquitted. Over this period, 7 people were acquitted after being referred for prosecution from NSW ICAC, and 57 people charged.<sup>8</sup>

### *Examples of cases resulting in acquittals*

A small number of cases are prosecuted and result in acquittals. This does not necessarily mean that the corrupt conduct did not occur, but that legally it did not constitute a proven criminal offence. It may also mean that the onus of proof required in a court was not met, the rules of evidence led to critical information being withheld from court, time limits on prosecutions had lapsed, or the person under investigation exploited a legal technicality.

The definitions of corrupt conduct and misconduct across state corruption commissions are much broader than conduct resulting in criminal offences and include behavior that adversely affects the impartial exercise of public administration or is a breach of public trust. This aligns with the public's expectation that its public representatives will act in the public interest.

---

<sup>6</sup> Charles (2016) *Submission to the NSW Parliamentary ICAC Committee on the Report of the ICAC Inspector*

<sup>7</sup> NSW ICAC (2009) *Annual Report*; NSW ICAC (2009) *Operation Monto – recommendations for prosecutions and updates*, <http://www.icac.nsw.gov.au/component/ investigations/article/2467?Itemid=4196>

<sup>8</sup> NSW ICAC and WA CCC, *Annual Reports, 2012-2017*; and NSW ICAC (2017), *Prosecution outcomes table*, 23<sup>rd</sup> February 2017

In addition to having a broader jurisdiction to investigate conduct beyond criminal offences, state integrity commissions also have a lower onus of proof than the courts. In the court of law a judge or jury must make a decision based on legally admissible evidence that satisfies the court of conviction of a crime 'beyond reasonable doubt'.

Some legislation includes time limits for offences to be prosecuted. Breaches of the *Local Government Electoral Act 2011* investigated and exposed by the Queensland CCC in 2017 were not referred for prosecution as the conduct occurred outside the allowable time period for prosecution.<sup>9</sup>

The examples below from the WA CCC show cases that resulted in acquittals in court, but comprised conduct that was and should have been exposed by integrity commissions under their definitions of corrupt conduct. Brian Burke, former WA premier, was convicted in 2010 of giving false evidence to the WA CCC.<sup>10</sup> A number of other charges resulted in acquittals. However the investigations into Brian Burke's conduct as a lobbyist revealed cases of misconduct that were exposed in the public interest, including:

- Brian Burke implored Environment Minister Norm Marlborough to accept a recommendation for an appointment to the South West Development Commission, while Mr Burke was working as a lobbyist for Canal Rocks whose development required approval<sup>11</sup>
- Mr Burke aided Canal Rocks to financially support the campaigns of candidates in the council election that were supportive of Canal Rocks development. Financial support to the campaigns was hidden through the use of an unconnected organization, thereby breaching electoral funding disclosure laws<sup>12</sup>
- Mr Burke lobbied Resources Minister John Bowler to prioritise the interests of Precious Metals, Mr Burke's client, in its attempt to obtain BHP Billiton's mining tenement, including by deferring a decision to terminate Precious Metal's application<sup>13</sup>

---

<sup>9</sup> Qld CCC (2017) *Operation Belcarra* p 14-15

<sup>10</sup> Weber (2010) *Former WA Premier Brian Burke convicted*, <http://www.abc.net.au/pm/content/2010/s2862888.htm>

<sup>11</sup> WA CCC (2007) *Report on the Investigation of Alleged Public Sector Misconduct linked to the Smiths Beach Development at Yallingup*

<sup>12</sup> Ibid

<sup>13</sup> WA CCC (2009) *Report on the investigation of alleged public sector misconduct in connection with the activities of lobbyists and other persons – a Ministerial decision in relation to applications for a mining tenement at Yeelirrie*