

Different breeds of watchdog

Designing a federal corruption watchdog with teeth

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On the 28th October 2018, the crossbench announced their intention to pursue the establishment of a National Integrity Commission, a federal anti-corruption watchdog. This briefing note summarises the case for a National Integrity Commission and makes recommendations for its design based on lessons learned from state corruption commissions.

SUMMARY

A National Integrity Commission is needed to investigate and expose corruption and misconduct in our federal government and public sector. Currently there are significant gaps in the jurisdiction and investigative powers of the federal agencies responsible for scrutinising the public sector and government. No federal agency has the power to investigate corrupt conduct as state-based commissions do, which includes any behaviour that affects the honest and impartial exercise of public office. No agency can investigate misconduct of MPs, ministers or the judiciary. The agencies that do have strong investigative powers, such as the Australian Federal Police, can only use them when investigating criminal charges. No agency holds regular public hearings, meaning that corruption and misconduct is not properly exposed to the public.¹

The design of a National Integrity Commission is critical to ensure its success in investigating and exposing corruption. The Australia Institute's National Integrity Committee of former judges and corruption fighters has considered the lessons from our state corruption commissions and published six design principles as a benchmark for the establishment of a National Integrity Commission.

¹ Aulby (2017) *The case for a federal corruption watchdog*, <http://www.tai.org.au/content/case-federal-corruption-watchdog-icac-needed-fill-gaps-our-integrity-system>

There are differences in the design and the effectiveness of the existing state-based anti-corruption commissions in Australia. Design features such as broad jurisdiction to investigate any conduct that may affect the impartial exercise of public office, and strong investigative powers contribute to NSW ICAC being the most effective state anti-corruption agency. Regular public hearings make NSW ICAC more effective in exposing corruption to the public. These design features have led to NSW ICAC being the most effective of the state bodies, despite receiving less revenue than the other large state agencies.

WATCHDOG WITH TEETH

Table 1: Comparison of state anti-corruption commissions, 2012–2017

Body	Investigations commenced	Public inquiries	Private examinations	Investigation reports made public	Referrals for prosecution	Prevention recommendations
NSW ICAC	290	30	721 examinations	32	96	117
Qld CCC	293	2	36 days	1	33	165
WA CCC	250	5	52 examinations over 136 days	33	52	93
SA ICAC	219	N/A	36	2	21	14
Vic IBAC	90	5	Data not available	11	11	47 in 2016-17 [^]
Tas IC	14	0	0	5	0	21

Sources: Annual reports of NSW ICAC, Qld CCC, Vic IBAC, SA ICAC, WA CCC and Tas IC

Note: SA ICAC does not have the ability to hold public hearings, and was operational from 2013 onwards.

[^] 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.

STATE DESIGN DIFFERENCES

New South Wales

- New South Wales' Independent Commission Against Corruption (NSW ICAC) is the only state corruption commission that regularly holds public hearings as part of its investigations.
- NSW ICAC is the only state agency that can make findings of corrupt conduct.²
- NSW ICAC has held 30 public hearings, 721 private examinations, and referred 76 people for prosecution over the past 4 years.³
- NSW ICAC is more effective as a result of its broad jurisdiction, regular public hearings and strong investigative powers. It can hold public hearings if the Commissioner deems it to be in the public interest. It can investigate any behaviour that may adversely affect the impartial or honest exercise of public office.⁴

Queensland

- Queensland's Crime and Corruption Commission (Qld CCC) has referred half as many people for prosecution as NSW ICAC despite receiving twice as much funding (\$213 million between 2012 and 2016, compared to NSW ICAC's \$104 million).⁵
- Qld CCC is limited in holding regular public hearings as the *Crime and Corruption Commission Act 2011* (Qld) states 'in general hearings will be not be in public'.⁶ Until it held a public hearing into the political financing of local government elections earlier this year, the Qld CCC had not held a public hearing since 2009.
- Qld CCC is limited to investigating corruption or misconduct that would, if proven, be a criminal offence or grounds for terminating services or someone holding an appointment.⁷
- Qld CCC cannot make findings of corrupt conduct.

² *Independent Commission Against Corruption Act 1988* (NSW)

³ NSW ICAC Annual Reports 2012-2016

⁴ *Independent Commission Against Corruption Act 1988* (NSW)

⁵ *Crime and Corruption Commission Act 2001* (Qld)

⁶ *Crime and Corruption Commission Act 2001* (Qld)

⁷ *Crime and Corruption Commission Act 2001* (Qld)

South Australia

- South Australia's Independent Commission Against Corruption (SA ICAC) is the only state anti-corruption agency that cannot open corruption investigation hearings to the public.⁸
- SA ICAC can only investigate corruption that is a criminal offense against specified act, or misconduct and maladministration if it is deemed serious or systemic.⁹
- SA ICAC cannot override parliamentary privilege, meaning members of parliament are likely to be protected from ICAC's investigative powers.
- SA ICAC is not properly resourced. Since its inception the SA ICAC has received only \$26.33 million in funding.¹⁰

Victoria

- Victoria's Independent Broad-based Anti-corruption Commission (Vic IBAC) can only investigate once it has a reasonable suspicion that a criminal offence has been committed.
- Vic IBAC can only hold public hearings if it can prove that there are exceptional circumstances and reputations will not be damaged.¹¹
- Vic IBAC has a larger budget than NSW ICAC (receiving \$118 million in funding between 2012-16, compared to NSW ICAC's \$104 million) but has made only 11 referrals for prosecution, compared to 96 from NSW.¹²

⁸ *Independent Commission Against Corruption Act 2012 (SA)*

⁹ *Independent Commission Against Corruption Act 2012 (SA)*

¹⁰ SA ICAC Annual Reports 2013-16

¹¹ *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)*

¹² Vic IBAC Annual Reports 2012-2016

RECOMMENDATIONS

Taking into account the lessons from state corruption commissions, The Australia Institute's National Integrity Committee has published six design principles as a benchmark for the establishment of a National Integrity Commission.

The National Integrity Committee's [Principles for Designing a National Integrity Commission](#) are:

1. That the Commission is an independent statutory body that is provided with the required resourcing to enable it to promote integrity and accountability and to enable it to prevent, investigate and expose corruption.
2. That the Commission has a broad jurisdiction, including the ability to investigate any conduct of any person that adversely affects or could adversely affect, directly or indirectly, the honest or impartial exercise of public administration, if the Commissioner deems the conduct to be serious or systemic.
3. That the Commission be granted the investigative powers of a Royal Commission to undertake its work, to be executed at the discretion of the Commissioner.
4. That the Commission may hold a public inquiry providing it is satisfied that opening the inquiry to the public will make the investigation to which the inquiry relates more effective, and would be in the public interest.
5. That the Commission be governed by one Chief Commissioner and two Deputy Commissioners, appointed by the Minister on recommendations from a bipartisan Parliamentary committee. The Chief Commissioner is to be appointed for fixed non-renewable 5 year terms, and must be a judge or a retired judge or be qualified for appointment as a judge.
6. That the Commission be empowered to make findings of fact, to be referred to a well-resourced and specialised unit within the DPP for consideration for prosecution.

Building on this framework, the National Integrity Committee has also published a [Design Blueprint](#) and an [Implementation Plan](#) for a National Integrity Commission, which cover in more detail aspects of design necessary to ensure a strong and effective watchdog.