



The **Australia Institute**

Research that matters.

Shining light on corruption

The power of open and transparent
anti-corruption investigations

Corruption and misconduct happen behind closed doors. A national integrity commission must open those doors and shed light on corruption through public hearings.

Hannah Aulby

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Level 1, Endeavour House, 1 Franklin St
Canberra, ACT 2601
Tel: (02) 61300530
Email: mail@tai.org.au
Website: www.tai.org.au

Summary

A national integrity commission will not be as effective in exposing or investigating corruption unless it holds public hearings. 80 per cent of Australians support establishing a national integrity commission, and 78 per cent support establishing one with public hearings.¹

Evidence from Australian state based anti-corruption commissions show that the ability to hold public hearings have been critical to their success. Bodies that have regular public hearings as part of their investigations, such as NSW ICAC, are much more effective in investigating and exposing systemic corruption compared to those that do not hold regular public hearings, such as South Australia, Queensland and Victoria.

Anti-corruption commissioners across Australia have recognised the power of public hearings. SA ICAC Commissioner Bruce Lander, who is currently the only commissioner who is not able to open hearings, has made a recommendation to the SA State Government to allow the commission to hold public hearings to ensure transparency.² Victorian IBAC Commissioner Stephen O'Bryan QC has said that openly examining cases of alleged serious corruption and misconduct in public hearings has encouraged and empowered people to come forward and report suspected wrongdoing.³ Former assistant NSW ICAC Commissioner Anthony Whealy QC has said "there are many people out there in the public arena who will have information that's very important to the investigation. If you conduct the investigation behind closed doors, they never hear of it and the valuable information they have will be lost."⁴

¹ Australia Institute polling, reported in McClymont, 2017, *Voters want federal ICAC, poll shows*, SMH 9th April 2017, <http://www.smh.com.au/national/overwhelming-majority-of-voters-want-a-federal-icac-poll-reveals-20170409-qvh6nu.html>

² MacLennan, 2016, *ICAC Commissioner Bruce Lander pushes for public hearings to ensure transparency*, ABC, 31st October 2016, <http://www.abc.net.au/news/2016-10-31/icac-commissioner-bruce-lander-wants-public-hearings-in-sa/7980960>

³ IBAC, 2016, *IBAC sheds light on serious corruption in its third year*, Media release, 14th September 2016, <http://www.ibac.vic.gov.au/media-releases/article/ibac-shines-light-on-serious-corruption-in-its-third-year>

⁴ <http://www.abc.net.au/news/2016-05-12/icac-inspector-david-levine-calls-for-end-to-public-hearings/7409126>

Table 1: Public hearings and outcomes 1st July 2012 – 30th June 2016

Body	Public hearings	Corrupt conduct findings	People referred to DPP	Findings against MPs and ministers
NSW ICAC	28	123	76	12
WA CCC	3	n/a	47	0
Qld CCC	0	n/a	32	0
SA ICAC*	n/a	n/a	16	0
Vic IBAC	4	n/a	6	0
Tas IC	0	n/a	0	0

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

*Note SA ICAC does not have the power to hold public hearings

The ability to hold public hearings provides a transparent, timely and accessible form for an anti-corruption commission to expose corruption. In NSW, the commissioner can decide to open investigation hearings to the public if it is in the public interest to do so. As the role of anti-corruption commissions is to investigate and expose corruption, and much of the content of investigations comes out in hearings, denying public access to hearings threatens the proper function of the commission. Public hearings lead to more witnesses coming forward with information, and allow the public to hold their representatives to account. Former NSW ICAC Commissioner David Ipp QC has said that “Its main function is exposing corruption; this cannot be done without public hearings.”⁵

The Australia Institute recommends establishing a national integrity commission, with the power to hold regular public hearings, a broad definition of corrupt conduct and a low threshold for commencing investigations.

⁵ Gerathy, 2016, *ICAC inspector calls for end to public hearings to stop ‘trashing of reputations’*, ABC, 12th May 2016, <http://www.abc.net.au/news/2016-05-12/icac-inspector-david-levine-calls-for-end-to-public-hearings/7409126>

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Introduction

There is overwhelming public support for establishing a national integrity commission with public hearings.

Public hearings allow anti-corruption commissions to fulfil their core functions of investigating and exposing corruption. Witnesses coming forward with evidence in public hearings have been critical in progressing many investigations in NSW.⁶ Without public exposure of the content and outcomes of corruption investigations, those found to have engaged in corrupt conduct will not publicly be held to account. Former NSW ICAC Commissioner David Ipp QC has said that “Its main function is exposing corruption; this cannot be done without public hearings.”⁷

Table 2: Polling results – do you support or oppose setting up a national ICAC?

	Total	Male	Female	LNP	ALP	Greens	PHON	Other	Undec
Total support	80%	84%	77%	84%	76%	83%	82%	82%	71%
Total oppose	7%	9%	6%	8%	9%	4%	7%	2%	4%
Don't know / not sure	12%	7%	17%	8%	14%	13%	11%	16%	25%

Source: Australia Institute polling, March 2017, <http://tai.org.au/content/support-federal-icac-poll>

Table 3: Polling results – if there was a national ICAC, should its hearing generally be:

	Total	Male	Female	LNP	ALP	Greens	PHON	Other	Undec
Open to the public?	78%	82%	74%	75%	76%	76%	88%	81%	72%
Held in private?	11%	10%	11%	14%	11%	13%	4%	4%	7%
Don't know / not sure	12%	9%	15%	10%	13%	11%	8%	15%	21%

Source: Australia Institute polling, March 2017, <http://tai.org.au/content/support-federal-icac-poll>

This paper presents the evidence from state based anti-corruption commissions and concludes that public hearings are critical to exposing and investigating systemic corrupt conduct. It also outlines the ways in which public hearings support anti-corruption investigations and build public trust in government.

⁶ Gerathy, 2016, *ICAC inspector calls for end to public hearings to stop ‘trashing of reputations’*, ABC, 12th May 2016, <http://www.abc.net.au/news/2016-05-12/icac-inspector-david-levine-calls-for-end-to-public-hearings/7409126>

⁷ Ibid.

The role of anti-corruption commissions

The role of anti-corruption commissions is to investigate and expose corruption. Public hearings are critical to fulfilling both of these roles. Apart from investigation reports, public hearings are the only way an anti-corruption commission can expose corruption investigations to members of the public. They also make the investigations themselves more effective, as members of the public can come forward with information about a case. At the end of an investigation that is held openly and transparently, the public may also oversee that the findings of the investigation are acted upon. This public scrutiny of investigation outcomes is lost if investigations and findings are hidden from public view, behind closed doors in private hearings.

EXPOSING CORRUPTION

An ICAC has two main tools to expose corruption: investigation reports and public hearings.

Reports on investigations are usually tabled in Parliament at the end of an investigation when findings have been finalised. As well as leaving large discretion to the author of such report as to what evidence to leave in and what to leave out, reports are often tabled months or even years after an investigation has finished. They also require journalists and members of the public to sift through hundreds of pages of legal document, providing a barrier to full transparency.⁸

In comparison, public hearings provide a transparent, timely and accessible form for an ICAC to expose corruption. They open the doors and shed light on corruption, and give the public confidence that investigations are carried out fairly and in the public interest. They allow members of the public to hear for themselves the allegations and evidence, and see how ICAC investigations work.

⁸ See, for example, NSW ICAC 2016, *Report – Investigation into NSW Liberal Party electoral funding for the 2011 state election campaign and other matters*, a 172 page report tabled 2 years after the investigation was finalised, <http://www.icac.nsw.gov.au/component/investigations/article/5031?Itemid=4196>

As the role of anti-corruption commissions is to investigate and expose corruption, and much of the content of investigations comes out in hearings, the requirement to close hearings from public view threatens the proper function of the commission. Former NSW ICAC Commissioner David Ipp QC has said that “Its main function is exposing corruption; this cannot be done without public hearings.”⁹

INVESTIGATING CORRUPTION

According to former and current state commissioners in NSW and Victoria, many investigations at a state level would not have been successful without members of the public coming forward with additional evidence at public hearings.¹⁰ And in South Australia, where the ICAC cannot hold public hearings, the commissioner has recommended the state government to allow open hearings for greater transparency.¹¹

SA ICAC Commissioner Bruce Lander, who is currently the only commissioner not able to open hearings, has made a recommendation to the SA State Government to allow the commission to hold public hearings so that the public can see that investigations are conducted fairly and in the public interest.¹² Victorian IBAC Commissioner Stephen O’Bryan QC has said that openly examining cases of alleged serious corruption and misconduct in public hearings has encouraged and empowered people to come forward and report suspected wrongdoing.¹³ Former assistant NSW ICAC Commissioner Anthony Whealy QC has said “there are many people out there in the public arena who will have information that's very important to the investigation. If

⁹ Gerathy, 2016, *ICAC inspector calls for end to public hearings to stop ‘trashing of reputations’*, ABC, 12th May 2016, <http://www.abc.net.au/news/2016-05-12/icac-inspector-david-levine-calls-for-end-to-public-hearings/7409126>

¹⁰ <http://www.ibac.vic.gov.au/media-releases/article/ibac-shines-light-on-serious-corruption-in-its-third-year>, <http://www.abc.net.au/news/2016-05-12/icac-inspector-david-levine-calls-for-end-to-public-hearings/7409126>

¹¹ MacLennan, 2016, *ICAC Commissioner Bruce Lander pushes for public hearings to ensure transparency*, ABC, 31st October 2016, <http://www.abc.net.au/news/2016-10-31/icac-commissioner-bruce-lander-wants-public-hearings-in-sa/7980960>

¹² MacLennan, 2016, *ICAC Commissioner Bruce Lander pushes for public hearings to ensure transparency*, ABC, 31st October 2016, <http://www.abc.net.au/news/2016-10-31/icac-commissioner-bruce-lander-wants-public-hearings-in-sa/7980960>

¹³ IBAC, 2016, *IBAC sheds light on serious corruption in its third year*, Media release, 14th September 2016, <http://www.ibac.vic.gov.au/media-releases/article/ibac-shines-light-on-serious-corruption-in-its-third-year>

you conduct the investigation behind closed doors, they never hear of it and the valuable information they have will be lost."¹⁴

Many investigations in NSW that uncovered vast and complicated networks of systemic corruption began as minor allegations that grew with the help of hundreds of witnesses coming forward in public hearings. During Operation Jasper and Operation Acacia, investigations into the corrupt allocation of mining licences in NSW, the NSW ICAC saw 138 witnesses and in fact had to build a bigger room to hold the hearing.¹⁵ According to former NSW ICAC commissioner David Ipp, "the stark fact is that Operations Jasper and Acacia could not have been undertaken without it."¹⁶

SHINING A LIGHT ON MISCONDUCT

While serious cases of criminal behaviour should remain the priority of corruption commissions, exposing non-criminal corruption and misconduct are important functions of anti-corruption commissions.

Public hearings play a vital role in holding public officials to account for corrupt behaviour and misconduct.

Corruption in government may be criminal corruption, if it breaks a federal or state law, or may be corrupt conduct as defined by the Act that set up the anti-corruption commission. Former parliamentarians Eddie Obeid and Ian Macdonald have been jailed under criminal corruption cases prosecuted by the DPP as a result of NSW ICAC investigations.¹⁷

However corrupt conduct or misconduct as defined in anti-corruption commission acts is generally broader than conduct that would be an offence under state or federal law. Conduct such as fraud in office, election bribery, benefitting from the use of public money for private advantage, and any conduct that affects the honest and impartial

¹⁴ <http://www.abc.net.au/news/2016-05-12/icac-inspector-david-levine-calls-for-end-to-public-hearings/7409126>

¹⁵ NSW ICAC, 2013, *Annual Report 2012-13, Commissioner's foreword*, p 3, www.icac.nsw.gov.au/

¹⁶ Ibid.

¹⁷ See <http://www.smh.com.au/nsw/ian-macdonald-found-guilty-of-misconduct-in-public-office-20170307-gushfa.html> and <http://www.news.com.au/national/nsw-act/eddie-obeid-faces-jail-time-over-circular-quay-leases/news-story/09a3c8f2d85d084731f57d2ddf4fc70f>

exercise of public office, are examples of corrupt conduct as defined by anti-corruption commissions.¹⁸

Beyond this, there is behaviour that is inconsistent with our expectations of public officials acting on our behalf. This generally can be characterised as misconduct.

Public hearings allow thorough scrutiny of the behaviour of public officials. It is one of the few opportunities to shine the light of public scrutiny onto the culture of corrupt behaviour and misconduct.

Recent research has shown that there is often a high degree of connectedness between wealthy individuals and politicians, suggesting that a large amount of wealth is being created by windfall gains as a result of favourably treatment in highly regulated markets leading to windfall gains.¹⁹

Such behaviour leads to poor decision making and ultimately large loss to the Australian economy and community.

If this is the case, it is certainly a betrayal of the trust Australians place in their elected representatives and there is arguably a large public benefit in shining a light onto these practices including as a deterrent to such behaviour.

Much of the material uncovered in the NSW ICAC public hearings exposed exactly this kind of culture surrounding mining licences, property zoning and political donations.

The exposure through ICAC type public hearings is a highly accountable way of criticising this kind of behaviour, as the commission itself is open to intense media scrutiny.

¹⁸ See for example, NSW Parliament, 1988, *Independent Commission Against Corruption Act 1988*

¹⁹ Martin, 2017, *Game of mates: how billionaires get rich at our expense*, Sydney Morning Herald, 28th May 2017, <http://www.smh.com.au/comment/game-of-mates-how-billionaires-get-rich-at-our-expense-20170526-gwe0dp.html>

Public hearings in anti-corruption investigations in Australia

Public hearings have a proven track record in anti-corruption investigations in Australia. The anti-corruption commission that holds regular public hearings, NSW ICAC, has been the most effective in exposing and investigating systemic corrupt conduct. Public hearings have also led to corruption being exposed in other states, including in Queensland CCC's first public hearing since 2009, which was held recently into allegations of corruption in local council elections.²⁰

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

*Note SA ICAC does not have the power to hold public hearings

Public hearings have been critical to NSW ICAC's success. Anti-corruption commissions refer cases to the Director of Public Prosecutions (DPP) when they are confident that criminal corruption has occurred. As shown in Table 1, NSW ICAC has been more effective than other bodies in referring corrupt conduct cases to the DPP, referring 29 more cases than WA CCC and 44 more cases than the Queensland CCC. It is the only commission to make findings against parliamentarians and ministers. Unlike other bodies, NSW ICAC is able to make corrupt conduct findings, making 123 over the past four years.

Public hearings have allowed NSW ICAC to delve deeper into complex webs of systemic corruption. As well as delivering more findings of corrupt conduct and referring more cases to the DPP, NSW ICAC has been more successful in tackling cases of large scale

²⁰ Burke, 2017, *Former Ipswich Mayor Paul Pisasale: from council to courtroom*, News.com.au 21st June 2017, <http://www.news.com.au/finance/work/leaders/former-ipswich-mayor-paul-pisasale-from-council-to-courtroom/news-story/eb4313bbb7bfc257da06eb168ab65108>

and systemic corruption, including ministers issuing corrupt mining licenses and major parties taking illegal donations.²¹

Public hearings and detailed reporting make the NSW ICAC more accountable than bodies that hold their investigations behind closed doors. They allow public scrutiny not just of public officials but of the commission itself. In the absence of these safeguards it is difficult to know whether investigations were thorough, fair or competent.

As an indication of the scale of public inquiries, the NSW ICAC 2012-13 Annual Report states that 'in the Operation Jasper segment of the public inquiry, 86 witnesses gave evidence, and there were more than 5,000 pages of transcript generated over the 45 days of the inquiry. The Operation Acacia segment ran for 37 days, 52 witnesses gave evidence, and there were over 3,500 pages of transcript produced.'²²

NSW ICAC can decide to hold a public hearing if the commissioner believes it to be in the public interest. This decision will be made after a series of private hearings. The other commissions have legislated criteria that must be met before a hearing is opened to the public. For example the Victorian IBAC must prove that it is in the public interest, that no unfair reputational risk will be caused, and that it is an unexceptional circumstance before opening a hearing.²³ As a result IBAC has had only 4 public hearings over the past four years.²⁴

As well as holding regular public hearings, other differences in the design of NSW ICAC make it more effective in exposing corruption. It has a wider definition of corrupt conduct, a lower threshold before it commences both preliminary and full investigations, and greater investigative powers. It can also make formal findings of corrupt conduct.²⁵

²¹ See for example, *Operation Spicer*, NSW ICAC, <http://icac.nsw.gov.au/investigations/past-investigations/investigationdetail/220>

²² NSW ICAC, *Annual Report 2012-13*

²³ Victorian Parliament, 2011, *Independent Broad-based Commission Against Corruption Act 2011*

²⁴ Victorian IBAC, Annual Reports 2012-2016

²⁵ NSW Parliament, 1988, *Independent Commission Against Corruption Act 1988*

Public trust

Anti-corruption commissions build public trust in government, by providing an independent oversight body where allegations of corruption and misconduct can be heard and investigated. This is critical at a time when public trust is at a record low in Australia. Recent polling by the Australia Institute found that 63% of respondents believed establishment of a national integrity commission would increase their trust in government.

Table 4: Polling results – if parliament established a federal ICAC, how do you think this would impact levels of trust in federal parliament amongst people like you?

	Total	Male	Female	LNP	Labor	Greens	PHON	Other	Undec
Total increase	63%	67%	59%	68%	61%	62%	60%	59%	45%
Total decrease	5%	4%	6%	4%	5%	8%	7%	2%	6%
No change	19%	21%	18%	19%	20%	16%	22%	18%	20%
Don't know / not sure	13%	9%	17%	9%	14%	13%	10%	21%	29%

Source: Australia Institute polling, March 2017, <http://tai.org.au/content/support-federal-icac-poll>

Anti-corruption commissions cannot, however, increase public trust if the public does not see that they are dealing with investigations openly and thoroughly. Corruption generally occurs because deals and interactions happen without proper accountability and oversight. If anti-corruption commissions themselves operate behind closed doors, an opportunity is missed to show the public that allegations of corruption are taken seriously.

TRUST IN GOVERNMENT

Australians do not trust government. Recent polls, studies and surveys show that trust in government is at a record low in Australia and still falling.²⁶ A study conducted by the University of Canberra in 2016 found only 5% of Australians trust government.²⁷ A similar study by the Australian National University in 2016 found that 74% of

²⁶ See Andrew Leigh, *Explaining distrust: Popular attitudes towards politicians in Australia and the United States*, in *The Prince's New Clothes: Why do Australians Dislike their Politicians?* edited by David Burchell and Andrew Leigh, UNSW Press, UNSW, Sydney, 2002, Chapter 2; and <http://www.abc.net.au/news/2016-06-24/trust-in-australian-political-system-at-lowest-level/7539706>

²⁷ <https://theconversation.com/now-for-the-big-question-who-do-you-trust-to-run-the-country-58723>

Australians think politicians are ‘too often interested in themselves’.²⁸ A recent poll commissioned by the Australia Institute revealed that 85% of respondents thought that there is corruption in federal politics.²⁹

Democracies require public trust in their institutions in order to function effectively. In establishing the NSW ICAC, which was the first in Australia, then Premier Nick Greiner stated, “Nothing is more destructive of democracy than a situation where the people lack confidence in those administrators and institutions that stand in a position of public trust. If a liberal and democratic society is to flourish we need to ensure that the credibility of public institutions is restored and safeguarded, and that community confidence in the integrity of public administration is preserved and justified.”³⁰

According to Tony Fitzgerald, “the obvious starting point [in regaining public trust] is an effective national anti-corruption organisation.”³¹ In his reading of the ICAC act in 1988, former Premier Nick Greiner said, “the people of this State will be confident in the integrity of their Government, and that they will have an institution where they can go to complain of corruption, feeling confident that their grievances will be investigated fearlessly and honestly.”³²

Public hearings are critical to rebuilding public trust. If anti-corruption commissions hold investigations in private, behind closed doors, then the public will not have confidence that investigations are carried out fairly and in the public interest. Indeed they may assume that hiding the investigation into corruption that was hidden in the public sector is a continuation of the same problem of secrecy and opaque decision making, or they may simply not know that anti-corruption commissions can and do seek to uncover corruption.

²⁸ <http://www.abc.net.au/news/2016-12-20/2016-australian-election-disaffected-study/8134508>

²⁹ Polling reported in Farr, 17th January 2017, Overwhelming majority believes polities are corrupt, <http://www.news.com.au/finance/work/leaders/overwhelming-majority-believes-polities-are-corrupt/news-story/0f181019b1f1dcdd1485e262f5419b13>

³⁰ Greiner, 1988, *Second reading speech of the ICAC Act*, excerpt from Hansard, NSW Legislative Assembly, 26th May 1988

³¹ Fitzgerald, 2017, *Politicians with a ‘winning at all costs’ mentality are damaging Australia*, Sydney Morning Herald 12th April 2017, <http://www.smh.com.au/comment/politicians-with-a-winning-at-all-costs-mentality-are-damaging-australia-20170411-gvif0c.html>

³² Greiner, 1988, *Second reading speech of the ICAC Act*, excerpt from Hansard, NSW Legislative Assembly, 26th May 1988

Discussion and Recommendations

There is currently very little independent oversight of government at a federal level in Australia. Public trust of government is at a record low. The overwhelming majority of Australians want a federal ICAC set up, and 78% want one with public hearings.

Public hearings aren't just popular, they are effective. NSW is the only state where public hearings are regularly held as part of their anti-corruption investigations. Compared to agencies in other states, the NSW ICAC has been more successful in exposing and investigating systemic corruption and misconduct. The NSW ICAC has made 123 findings of corrupt conduct, has referred 76 people to the DPP for prosecution and has made findings against 12 ministers and parliamentarians over the past four years.

The reason that public hearings have made NSW ICAC more effective is that they open up investigations to more witnesses, expose corrupt conduct publicly and allow the public to hold their representatives to account after investigations have finished.

The Australia Institute recommends establishing a national integrity commission, with the power to hold regular public hearings, a broad definition of corrupt conduct and a low threshold for commencing investigations.