

24th July 2017

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To the Policy and Research division,

The Australia Institute welcomes the opportunity to make a submission on the NT Independent Commission Against Corruption draft legislation. Please accept our recent research reports, *Shining light on corruption* and *Queensland watchdog asleep at the gate*, as appendices to this submission.



The reports make the following findings in relation to the design of anti-corruption commissions:

- Public hearings are critical to the success of anti-corruption commissions investigating and exposing corruption and misconduct
- The Queensland CCC is far less effective than the NSW ICAC as a result of differences in design, particularly the broad jurisdiction of NSW ICAC and the inclusion of public hearings in its investigations
- The NSW ICAC Act 1988 allows the ICAC Commissioner to decide to hold a public hearing at his/her discretion. This is more effective than other states, such as Victoria, where there is a more stringent legislated test
- NSW ICAC has also been more effective because of its broad jurisdiction and coercive powers of a Royal Commission

We support the draft NT ICAC legislation in its broad jurisdiction and inclusion of public hearings in its investigations.

We urge the committee to read the attached reports and take note of the lessons from NSW, where a wide definition of corrupt conduct and regular public hearings have led to its success in investigating and exposing systemic corrupt conduct.

Best regards,

Hannah

Hannah Aulby

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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

July 2017

ABOUT THE AUSTRALIA INSTITUTE

The Australia Institute is an independent public policy think tank based in Canberra. It is funded by donations from philanthropic trusts and individuals and commissioned research. Since its launch in 1994, the Institute has carried out highly influential research on a broad range of economic, social and environmental issues.

OUR PHILOSOPHY

As we begin the 21st century, new dilemmas confront our society and our planet. Unprecedented levels of consumption co-exist with extreme poverty. Through new technology we are more connected than we have ever been, yet civic engagement is declining. Environmental neglect continues despite heightened ecological awareness. A better balance is urgently needed.

The Australia Institute's directors, staff and supporters represent a broad range of views and priorities. What unites us is a belief that through a combination of research and creativity we can promote new solutions and ways of thinking.

OUR PURPOSE - 'RESEARCH THAT MATTERS'

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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>

Table of Contents

Summary.....	1
Table of Contents	3
Introduction.....	4
The role of anti-corruption commissions	5
Exposing corruption.....	5
Investigating Corruption.....	6
Shining a light on misconduct.....	7
Public hearings in anti-corruption investigations in Australia	9
Public trust.....	11
Trust in Government	11
Discussion and Recommendations.....	13

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 not 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

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

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

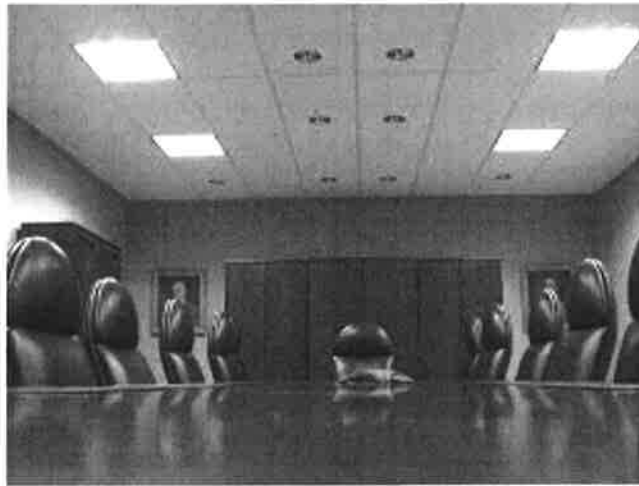
There is currently very little independent oversight of government at a federal level in Australia. Public trust of government is at a record low. The overwhelming majority of Australians want a federal ICAC set up, and 78% want one with public hearings.

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.





The **Australia Institute**

Research that matters.

Queensland watchdog asleep at the gate

A comparison of the Queensland and NSW anti-corruption commissions

*The Queensland CCC has major design flaws that
render it far less effective than the NSW ICAC,
leading to fewer corrupt conduct findings and
minimal public exposure of systemic corruption*

Discussion paper

Hannah Aulby

March 2017

ABOUT THE AUSTRALIA INSTITUTE

The Australia Institute is an independent public policy think tank based in Canberra. It is funded by donations from philanthropic trusts and individuals and commissioned research. Since its launch in 1994, the Institute has carried out highly influential research on a broad range of economic, social and environmental issues.

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Table of Contents

Executive Summary	2
Introduction.....	3
History of the CCC and the ICAC.....	4
NSW Independent Commission against Corruption	4
Queensland Crime and Corruption Commission.....	4
Design features—how many teeth?.....	8
Key points of difference	10
Official misconduct.....	10
Threshold of corrupt conduct investigations	10
Public hearings.....	11
Comparing impact – do they bite?	12
Case Studies.....	15
NSW ICAC Case studies.....	15
Operation Spicer.....	15
Operation Credo	15
Operation Acacia and Jasper	15
Queensland CCC Case studies	16
Timesheet fraud	16
Driver licence fraud	16
Academic research fraud.....	16
Cases the CCC did not investigate: Acland Stage 3 and Sibelco	17
Discussion and Recommendations.....	18

Executive Summary

The Queensland Crime and Corruption Commission (Queensland CCC) has major design flaws that render it far less effective than the NSW Independent Commission Against Corruption (NSW ICAC) in exposing systemic corruption. The NSW ICAC makes more findings of corrupt conduct, holds more public inquiries, and tackles systemic corruption cases of public significance. Over the observed period the NSW ICAC made corrupt conduct findings against 123 people, held 28 public inquiries, and investigated cases involving complex networks of corruption within the public sector. The Queensland CCC made corrupt conduct findings against 37 people, held no public hearings, and tackled cases involving one or two public sector employees involved in minor fraud. Differences in the design of each body impact their respective effectiveness, including the definition of corrupt conduct within the legislation and the conduct of public inquiries.

The report compares the legislative design of each body as well as their respective effectiveness in exposing systemic corruption. As well as differences in design, the report finds that the Queensland CCC has been conservative in its interpretation of the Queensland Crime and Corruption Act, which again has led to it having less impact.

The report makes the following recommendations:

Recommendation #1: The Palaszczuk Government should reintroduce the official misconduct function of the Queensland CCC, and adopt the design features of the NSW ICAC that make it effective – namely public hearings and a wider definition of corrupt conduct to encompass conduct that is non-criminal.

Recommendation #2: The Baird Government should reinstate and protect the jurisdiction and independence of the NSW ICAC and its Commissioners.

Recommendation #3: The federal government should create a federal Independent Commission Against Corruption based on the NSW model, particularly the definition of corrupt conduct and legislated public hearings as the norm.

Introduction

Each state and territory, apart from the ACT, has an anti-corruption commission. These bodies vary in design features and effectiveness, but in essence are designed to expose corruption and provide independent oversight of government. Currently there is no federal anti-corruption commission, or indeed any effective mechanism to ensure scrutiny of our federal parliamentarians or other federal public officials.

Public distrust of federal government is growing, with a recent poll by the Australia Institute finding 85% of Australians believe there is corruption in federal politics. In addition, there is overwhelming public support for a federal ICAC, with the same poll finding over 82% of respondents supportive.¹

To design an effective federal anti-corruption watchdog ‘with teeth’ it is important to look at the experience of state based anti-corruption commissions. This report compares the design and effectiveness of the NSW and Queensland anti-corruption commissions, and distils the key design features that are critical to a commission’s success.

It finds that key features, including the definition of corrupt conduct and the ability to conduct public hearings in the course of investigations, render the NSW ICAC far more effective than the Queensland CCC. It also finds that challenges to the NSW ICAC’s jurisdiction impacted its effectiveness, a trend that looks likely to continue following the attacks in 2016 on the NSW ICAC Chief Commissioner’s independence.

¹ 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>

History of the CCC and the ICAC

NSW INDEPENDENT COMMISSION AGAINST CORRUPTION

The New South Wales Parliament passed the *Independent Commission Against Corruption Act 1988 (NSW) (ICAC Act)* in 1988, in response to growing public concern about corruption among government ministers, the judiciary and at senior levels of the police force. The NSW ICAC was then established in March 1989.² It remained relatively unchanged in its functioning until a High Court challenge to the NSW ICAC's jurisdiction began in December 2014. The case, *Independent Commission Against Corruption vs Cunneen & Ors*, considered whether the NSW ICAC had acted outside its jurisdiction by investigating allegations that Margaret Cunneen, a NSW Crown Prosecutor, had engaged in corrupt conduct contrary to the ICAC Act. It was alleged that Ms Cunneen had adversely affected the behaviour of a police officer in an interaction between her daughter in law and the police officer.

The High Court found that the NSW ICAC had overreached in its interpretation of the definition of corrupt conduct, specifically in its understanding of the scope of the phrase 'adversely affect' the official function of a public official. The court limited the interpretation of 'corrupt conduct' in the ICAC Act to conduct that adversely affects the 'probity of the exercise of an official function by a public official', rather than the 'efficacy' of that function.³ In effect, the decision means that the NSW ICAC can only investigate cases where the conduct of a third-party results in a public official acting dishonestly. The NSW government responded to the High Court's findings through its own review of the NSW ICAC, led by former Chief Justice of the High Court Murray Gleeson AC and Bruce McClintock SC. In 2015 the recommendations of the review were accepted by NSW Parliament, including an expansion of the definition of corrupt conduct to further focus on fraud, collusive tendering and dishonest use of public money in public administration. The review found no need to limit the definition of

² History, NSW ICAC, accessed 8th March 2017, <http://www.icac.nsw.gov.au/about-the-icac/overview/history>

³ High Court, *Judgement, Case S302/2014, Independent Commission Against Corruption vs Cunneen & Ors*, http://www.hcourt.gov.au/cases/case_s302-2014

corrupt conduct as it found that this issue had already been resolved by the High Court.⁴

The operation of the NSW ICAC was altered once again in 2016 with the enactment of the *Independent Commission Against Corruption Amendment Act 2016* (NSW). This Act significantly altered the structure and governance of the NSW ICAC. According to the then NSW ICAC Commissioner Megan Latham, the Act 'effectively strips the Commission of the authority of a "Chief Commissioner", and vests significant operational decisions and powers in each of the three commissioners which may be exercised independently of each other.'⁵ The Act caused the premature termination of the tenure of the Chief Commissioner, without meeting the legislated requirements for this termination, and according to former NSW ICAC Commissioners and the former NSW Director of Public Prosecutions (DPP), threatens the independence of future commissioners as they may fear similar political intervention.⁶ These changes were made without consultation with the Parliamentary ICAC Committee, or ICAC Commissioners or staff.⁷

Former NSW DPP Nicholas Cowdery said that this 'appeared to be nothing more than a device to remove the commissioner, cloaked in some other reforms that were probably unnecessary.' He followed that he was 'concerned with the principle of independence of the commissioner, akin to judicial independence, enshrined in the legislation... independence is essential to the effective exercise of the commission's powers.'⁸ Former NSW ICAC Commissioner David Ipp said that 'The government has shown that, despite what is in the legislation, if it wants to, it will get rid of any ICAC commissioner if they don't like what they're doing.'⁹

⁴ *Report, Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption*, 30th July 2015

⁵ *Statement regarding the Independent Commission Against Corruption Amendment Bill 2016*, 15th November 2016, <http://www.icac.nsw.gov.au/media-centre/media-releases/article/5051>

⁶ See Nicholls et al, November 2016, *ICAC Chief's resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html> and Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

⁷ Ibid.

⁸ Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

⁹ Nicholls et al, November 2016, *ICAC Chief's resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html>

QUEENSLAND CRIME AND CORRUPTION COMMISSION

In 1987 a far-reaching commission of inquiry began in Queensland under the leadership of Tony Fitzgerald QC in response to media reports of corruption in the police service. The Fitzgerald Inquiry lasted 2 years and made over 100 recommendations, including the establishment of an anti-corruption body named the Criminal Justice Commission.¹⁰

The Criminal Justice Commission investigated police and public service misconduct and major crime until 1997 when its crime function was given to the Queensland Crime Commission. In 2001 the *Crime and Misconduct Act 2001* (QLD) merged the functions again under the Crime and Misconduct Commission.¹¹

The Crime and Misconduct Commission operated unchanged until 2014, when the *Crime and Misconduct and Other Legislation Amendment Act 2014* (QLD) introduced by Premier Campbell Newman retrospectively changed the *Crime and Misconduct Act 2001* (QLD) to the *Crime and Corruption Act 2001* (QLD).¹² These amendments stripped the commission of its corruption prevention and official misconduct investigation functions, and required Ministerial approval to undertake research in certain areas. It also changed the management structure of the CCC, giving more power to the CEO, and required complaints to be made via statutory declaration with penalties for complaints deemed vexatious.¹³

The Palaszczuk Government came to power in 2015 after making election promises to restore the full integrity of the Queensland CCC, and hold a public inquiry into political donations with the full powers of a royal commission. The *Crime and Corruption Amendment Act 2015* (QLD) restores the Queensland CCC's corruption prevention function, removes the requirement for Ministerial approval prior to research, and removes the need for complaints to be made via statutory declaration. It also reinstates the former management structure of the CCC.¹⁴ It does not, however, deal with the more critical issue of reinstating the official misconduct investigative function

¹⁰ See <http://www.ccc.qld.gov.au/about-the-ccc/the-fitzgerald-inquiry> and <http://www.ccc.qld.gov.au/about-the-ccc/history>

¹¹ *History, Crime and Corruption Commission*, accessed 8th March 2017, <http://www.ccc.qld.gov.au/about-the-ccc/history>

¹² *Changes to the Crime and Misconduct Act 2001 and the RTI Act*, Office of the Information Commissioner, 1st July 2014, <https://www.oic.qld.gov.au/about/news/changes-to-the-crime-and-misconduct-act-2001-and-the-rti-act>

¹³ *Crime and Misconduct and Other Legislation Amendment Act 2014*

¹⁴ *The Crime and Corruption Amendment Act 2015*

of the CCC, leaving it unable to investigate many issues of public sector and parliamentary misconduct. This leaves a key election promise unfulfilled.¹⁵

¹⁵ *Greasing the Wheels*, 2016, The Australia Institute,
http://www.tai.org.au/sites/default/files/P266%20Greasing%20the%20Wheels%20160726_0.pdf

Design features—how many teeth?

By comparing the *Independent Commission Against Corruption Act 1988* (NSW) and its 2016 amendments, with the *Crime and Corruption Act 2001* (QLD) and its 2014 and 2015 amendments, key design features of both bodies have been outlined in the table below.

Figure 1: Comparison of NSW ICAC and Queensland CCC design features.

	NSW ICAC	QLD CCC
Appointment of Commissioner	Appointed by Governor, with support of bipartisan committee	Nominated by Minister, with support of bipartisan committee
Independence of Commissioner	2016 Act appoints 3 commissioners each with similar power to act on behalf of the Commission, thereby ending the former independent decision making of the Commissioner ¹⁶ The 2016 Act also terminated the tenure of the Commissioner before the end of her legislated 5 year term	2015 Act restores the 2011 model of separation between the CEO and the chairperson, and the 5 member commission
Definition of corrupt conduct	Corruption that would, if proven, be a criminal offence, a disciplinary offence or grounds for dismissal Includes focus on public administration including collusive tendering, fraud in applying for licences, dishonestly benefitting from public money for	Corruption that would, if proven, be a criminal offence or grounds for dismissal

¹⁶ See Nicholls et al, November 2016, *ICAC Chief's resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html> and Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

	private advantage, defrauding revenue, fraudulently obtaining employment as a public official	
Official misconduct	Includes in definition of corrupt conduct	Removed in 2014 amendments
Third parties	Includes third parties	Includes third parties
General functions	Corruption prevention, investigating and exposing corruption	Crime, corruption prevention and exposure
Public hearings	Under 1988 Act, the Commission could conduct public hearings if it deemed them in the public interest. The 2016 Act requires agreement between Assistant Commissioner and Chief Commissioner to hold a public hearing, and procedural guidelines to be tabled in Parliament	General rule that hearings are not open to the public
Ability to undertake investigations	Decision at commissions discretion, with final decision with Commissioner	Requires 'evidence' of criminal corruption required before investigation ¹⁷
Complaints	Anyone can make one	Anyone can make one
Parliamentary committee	Bipartisan committee	Bipartisan committee

Source: Queensland Crime and Corruption Act 2011, Queensland Crime and Misconduct and Other Legislation Amendment Act 2014, Queensland Crime and Corruption Amendment Act 2015; NSW Independent Commission Against Corruption Act 1988, NSW Independent Commission Against Corruption Amendment Act 2016

¹⁷ As demonstrated by CCC response to Acland State 3 allegation, Queensland CCC, *Annual Report 2015-16* pg 42

KEY POINTS OF DIFFERENCE

As seen in the above table, there are a number of key differences in the design of the Queensland and NSW anti-corruption bodies, namely in the definition and threshold of corrupt conduct and the conduct of public hearings. The key differences are expanded upon below.

Official misconduct

Official misconduct is a critical term in the NSW ICAC Act that allows the NSW ICAC to pursue cases of breach of trust and fraud in public office. Many cases of public interest have been investigated under this term, which covers cases of breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition.¹⁸ The *Crime and Misconduct and Other Legislation Amendment Act 2014* (QLD) removes this term from the definition of corrupt conduct applicable to the Crime and Corruption Commission.¹⁹ The incoming Palaszczuk Government made an election promise in January 2015 to the Queensland public to reintroduce this function.²⁰ In March 2016 The Department of Justice and Attorney General published an issues paper on the issue but has not progressed to amending the legislation.

Threshold of corrupt conduct investigations

Each Act has a separate threshold to what pertains to corrupt conduct. The *Crime and Corruption 2001 Act* (QLD) states that conduct will only be seen as corrupt if it would, if proven, lead to a criminal offence or grounds for dismissal.²¹ In its application, the interpretation of this by the CCC is narrowed to focus on criminal offences, raising a concern that the CCC is focussing on cases that could be pursued by the judicial system, rather than fulfilling its role as investigating and exposing corruption. This is demonstrated by the CCC's decision not to investigate certain cases stating 'the assessment found insufficient evidence to support the allegations or to raise a reasonable suspicion of a criminal offence.'²² This response also places the onus of evidence on the complainant. It is further demonstrated on the CCC website in its statement that 'the performance of the official duties of a person elected to office

¹⁸ *New South Wales Independent Commission Against Corruption Act 1988*

¹⁹ *Queensland Crime and Misconduct and Other Legislation Amendment Act 2014*

²⁰ Department of Justice and Attorney General, 2016, 'Corrupt conduct' under the *Crime and Corruption Act 2011*, issues paper, <http://www.justice.qld.gov.au/corporate/community-consultation/community-consultation-activities/past-activities/corrupt-conduct-issues-paper>

²¹ *Queensland Crime and Corruption Act 2011*

²² Queensland CCC, *Annual Report 2015-16* pg 42

could not amount to corrupt conduct unless the conduct would, if proven, amount to a criminal offence.²³ The NSW ICAC Acts makes the same statement regarding criminal corruption but with an important addition – conduct can be seen as corrupt if it would result in a disciplinary offence. Disciplinary offence is defined as: any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.²⁴

Public hearings

The Queensland CCC Act states that ‘in general hearings will not be public’. This is in contrast to the NSW ICAC Act that says that the Commission can decide to hold a public hearing if it deems it to be in the public interest. In the interpretation and application of the legislation, the Queensland CCC has not held a public hearing since 2009, whereas the NSW ICAC holds 5-10 each year.²⁵ 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 act of hiding hearings from public view threatens the proper function of the commission. The other mechanism of exposing corruption is through commission reports on each investigation undertaken. The NSW ICAC publishes comprehensive and easily accessible reports on its investigations, as well as key pieces of evidence, on its website. There are no reports on investigations on the CCC website. The lack of transparency in corruption investigations in Queensland seriously limits their effectiveness in exposing corruption.

²³ CCC, *What the CCC investigates*, accessed 9th March 2017,

<http://www.ccc.qld.gov.au/corruption/what-the-ccc-investigates>

²⁴ *New South Wales Independent Commission Against Corruption Act 1988*

²⁵ See <http://www.ccc.qld.gov.au/corruption/past-investigations/cmc-public-hearings/cmc-public-hearings> and NSW ICAC Results table page 7

Comparing impact - do they bite?

Figure 2 and Figure 3 below show results from each body over the period from 1st July 2012 to 30th June 2016.

This data has been compiled from NSW ICAC and Queensland CCC Annual Reports. The limited availability of results data from the Queensland CCC makes the analysis difficult. Another difficulty arises in that each commission measures slightly different factors, for example the Queensland CCC provides the number of people against whom disciplinary action was *recommended*, whereas the NSW ICAC measures the number of people against whom disciplinary action was *commenced*. For this reason we have focussed on the common elements of 'number of people subject to corrupt conduct findings' and 'number of public inquiries' as a basis for our analysis. The other data on NSW ICAC is provided for readers' interest.

The available data shows that the NSW ICAC is dramatically more effective in exposing corruption. With 5-10 public inquiries each year, NSW ICAC delivered corrupt conduct findings against 123 people over the observed period. The Queensland CCC held no public inquiries, and delivered corrupt conduct findings against 37 people.

Over the observed period, NSW ICAC had its strongest years in 2012-13 and 2013-14 with 56 and 41 people subject to serious corrupt conduct findings in those years.

The data also shows that these bodies have suffered in effectiveness as a result of recent amendments and political and judicial challenges. In 2014-15, the year the *Crime and Misconduct and Other Legislation Amendment Act 2014* (QLD) came into effect, the Queensland CCC received 1,534 less complaints than the year previous. It also finalised 16 less investigations than 2013-14, and recommended disciplinary action against only 6 people – 22 less than the year before.

In 2015-16 the Cunneen challenge against the NSW ICAC's jurisdiction began in the High Court. ICAC found 9 people subject to corrupt conduct findings that year, 8 less than the year before, and 24 less than 2013-14. Then Commissioner Megan Latham states in the Annual Report that 'The Commission commenced 10 full investigations this year; four fewer than last year, which reflects the interruption to the Commission's functions brought about by the uncertainty over jurisdiction.'²⁶ The results of the 2016 amendment act are yet to be seen.

²⁶ NSW ICAC, *Commissioners Foreword*, NSW ICAC Annual Report 2015-16

Figure 2: New South Wales ICAC results.

Measure	2015—16	2014—15	2013—14	2012—2013
Matters received	2,436	3,146	3,386	2,930
Preliminary investigations commenced	41	42	43	71
Full investigations commenced	10	14	10	22
Number of public inquiries	6	7	9	6
Number of public inquiry days	48	64	84	108
Number of compulsory examinations	65	127	203	257
Number of persons subject to serious corrupt conduct findings	9	17	41	56
Number of persons prosecuted	12	8	11	19
Number of persons against whom disciplinary action was commenced	0	1	3	4
Number of investigations finalized	58	51	63	87

Source: NSW ICAC Annual Reports 2012-2016.

Figure 3: Queensland CCC results.

Measure	2015—16	2014—15	2013—14	2012—2013
Complaints received	2974	2347	3881	4494
Number of people subject to corrupt findings	14	8	8	7
Number of people against whom disciplinary action was recommended	26	6	28	37
Investigations finalised	57	45	61	87
Number of public inquiries	0	0	0	0

Source: Queensland CCC Annual Reports 2012-2016.

What the data does not show is the content or topic of the investigations. For this reason case studies are provided below, showing that as well as delivering more findings of corrupt conduct the NSW ICAC has tackled much larger and systemic issues, often involving a complex web of people including parliamentarians. The case studies below show CCC cases such as academic research fraud result in the behaviour of one or two people being investigated, whereas the ICAC cases involve true 'systemic' corruption of networks within the public sector. The breakdown of allegations made to the Queensland CCC is indicative of this design flaw, with only 24 out of 6736 allegations made in 2015-16 being made on the conduct of parliamentarians, or 0.36%.²⁷

The data and case studies also do not cover the scale of these investigations. As an indication, 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.'²⁸

²⁷ CCC Corruption Allegations Data Dashboard 2015-16, <http://www.ccc.qld.gov.au/data-visualisation>

²⁸ NSW ICAC, *Annual Report 2012-13*

Case Studies

NSW ICAC CASE STUDIES

Operation Spicer

The NSW ICAC investigated allegations that during the 2011 state election, members of the NSW Liberal Party received political donations that were undeclared under the *Election Funding, Expenditure and Disclosures Act 1981 (NSW)*. Some donations were over the legislated cap, and others were solicited from banned donors including property developers. It also found that donations were channelled through associated entities including the Free Enterprise Foundation.²⁹

Operation Credo

The NSW ICAC is investigating allegations that people with financial interest in the company Australia Water Holdings were attempting to influence a lucrative deal with Sydney Water Corporation. Conduct includes claiming expenses from other business pursuits in a SWC claim, drawing from funds allocated to other purposes, and withholding information regarding Australia Water Holdings true financial position.³⁰

Operation Acacia and Jasper

The NSW ICAC conducted two investigations concerning the issuing of mining leases and licences involving former NSW Government ministers. Operation Jasper found that then Resources Minister Ian Macdonald accepted personal benefit from the Obeid family in return for decisions regarding the EOI process for mining licences and leases covering areas owned by the Obeid's. This case involved a network of people involved in corrupt conduct for financial gain.³¹ Operation Acacia found that Macdonald also

²⁹ *Operation Spicer*, NSW ICAC, <http://icac.nsw.gov.au/investigations/past-investigations/investigationdetail/220>

³⁰ *Operation Credo*, NSW ICAC, <https://www.icac.nsw.gov.au/investigations/current-investigations/investigationdetail/203>

³¹ NSW ICAC, *Annual Report 2012-13*

acted corruptly in the allocation of a mining licence to Dowles Creek Mining Pty Ltd, run by his 'mate' John Maitland, without tender and against departmental advice.³²

QUEENSLAND CCC CASE STUDIES

Timesheet fraud

The Queensland CCC investigated allegations of fraud in timesheets one Queensland Health employee. The employee was found guilty of dishonestly claiming \$40,000 of overtime.³³

Driver licence fraud

The Queensland CCC investigated allegations of fraudulent issuing and upgrading of driver licences by an employee of the Department of Transport. The employee was found guilty of fraudulently issuing or upgrading 57 licences for personal profit.³⁴

Academic research fraud

The Queensland CCC investigated allegations that a University of Queensland academic had fabricated research findings. The academic was alleged of publishing a research article based on this false data, and subsequently accepting research grant funding based on this article.³⁵

³² Nicholls, November 2014, *Former Labor Minister Ian Macdonald prosecuted over Doyles Creek mine deal*, <http://www.smh.com.au/nsw/former-labor-minister-ian-macdonald-prosecuted-over-doyles-creek-mine-deal-20141119-11qbch.html>

³³ Queensland CCC, *Past investigations – Timesheet fraud leads to criminal conviction*, <http://www.ccc.qld.gov.au/corruption/past-investigations/timesheet-fraud-leads-to-criminal-conviction>

³⁴ Queensland CCC, *Past investigations - CCC investigation into driver licence fraud*, <http://www.ccc.qld.gov.au/corruption/past-investigations/ccc-investigation-into-driver-licence-fraud-leads-to-multiple-arrests>

³⁵ Queensland CCC, *Past investigations – Research fraud*, <http://www.ccc.qld.gov.au/corruption/past-investigations/research-fraud>

Cases the CCC did not investigate

Acland Stage 3 – alleged improper influence in decision making through political donations

An allegation was made to the CCC that New Hope Coal, the proponents of the Acland Stage 3 mine expansion, influenced the decision by the Newman Government to approve the expansion, after pledging pre-election not to approve it. The allegation included evidence that New Hope made significant political donations, gifts to senior government staff, and had a high level of access to senior LNP figures.³⁶ In stating its reason not to investigate, the CCC states in its 2015-16 Annual Report that ‘the assessment found insufficient evidence to support the allegations or to raise a reasonable suspicion of a criminal offence.’³⁷

Sibelco – alleged improper influence in decision making through political donations

An allegation was made to the CCC that Sibelco, a sand mining company operating on Stradbroke Island, influenced the decision by the Newman Government to extend the legislated closure of the sand mine from 2019 to 2035. The allegation included evidence of a \$91,000 mail out in Campbell Newman’s electorate prior to the election, a \$1 million pre-election campaign by Roland Pty Ltd paid for Sibelco, and a high level of access to senior LNP figures before and after the election. In responding to the allegation, the CCC stated ‘Our assessment is that while the allegation you have raised may, if proved, amount to suspected corrupt conduct, the assertion of favourable treatment for Sibelco and a connection between the donations by Sibelco and the recent legislative amendments is speculative.’³⁸

³⁶ ABC, *No evidence donations swayed former Newman government’s Acland mine decision, CCC says*, <http://www.abc.net.au/news/2015-12-05/ccc-clears-newman-government-donations-acland-mine/7004322>

³⁷ Queensland CCC, *Annual Report 2015-16* pg 42

³⁸ See Moore, 2014, *CCC says no inquiry into 2012 \$91,000 Sibelco sandmining ads*, <http://www.brisbanetimes.com.au/queensland/ccc-says-no-inquiry-into-2012-91000-sibelco-sandmining-ads-20141117-11ojor.html>, and The Australia Institute, 2016, *Greasing the Wheels*, <http://www.tai.org.au/content/greasing-wheels> pg 16

Discussion and Recommendations

The Queensland CCC has design flaws that make it dramatically less effective than the NSW ICAC.

A high threshold of requiring *evidence of criminal* corrupt conduct before commencing investigations undermines the purpose of the commission – to provide an independent investigative body separate to the courts to investigate and expose corruption. If a person had enough evidence to prove criminal conduct had occurred, the State could be expected to bring charges in a court of law.

The exclusion of official misconduct from the Crime and Misconduct Commission in 2014, and the creation of the Queensland CCC, severely limited the scope of corrupt conduct cases the Queensland CCC could investigate within the public service. Many corrupt conduct cases that the public expect an anti-corruption commissions to investigate are covered by this term, including breach of trust by a public official and fraud by a public official or parliamentarian in office.

An anti-corruption commission's main function is to expose corruption. By holding inquiries privately, and making its investigation reports hard to access, the Queensland CCC fails to provide the public with the opportunity to scrutinise the public sector and government.

The Palaszczuk Government made pre-election promises to strengthen the integrity of the Queensland CCC, implement the Fitzgerald Principles, and commence an inquiry into political donations with the powers of Royal Commission. These promises, particularly the reintroduction of the official misconduct role and the inquiry into political donations, have not been met.

Recommendation #1: The Palaszczuk Government should reintroduce the official misconduct function of the Queensland CCC, as well adopt the design features of the NSW ICAC that make it effective – namely public hearings and a wider definition of corrupt conduct to encompass conduct that is non-criminal.

The NSW ICAC's effectiveness suffered from questions arising in 2015 about its jurisdiction. The impact of the 2016 amendments has yet to be seen, but it can be presumed that the challenge to its governance structures and independence of the Commissioners will limit its ability to meet its prior success record. Statements by former Commissioners David Ipp, Anthony Whealy and former DPP Nicholas Cowdery support this assumption.

Recommendation #2: The Baird Government should reinstate and protect the jurisdiction and independence of the NSW ICAC and its Commissioners.

In the design of a federal ICAC, the lived experience of state anti-corruption commissions should serve as evidence of the effectiveness of certain models and legislative design.

Recommendation #3: The federal government should create a federal ICAC based on the NSW model, particularly the definition of corrupt conduct and legislated public hearings as the norm.

