

ICAC Bill compared to the Recommendations of the Martin Report

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| 1. | <p>The structure of the NT Anti-Corruption Commission follow the model established in South Australia in which:</p> <ul style="list-style-type: none"> The Commission is headed by the Commissioner. An Office for Public Integrity, acting under the overall supervision and direction of the Commissioner, receives and assesses complaints in public administration and makes recommendations to the Commissioner as to whether and by whom complaints and reports should be investigated. In substance the Office provides the administrative, operational and legal support for the Commissioner. <p>Further information: Pages 160-61, paras [306-311].</p> | <p><i>Followed in principle</i></p> <ul style="list-style-type: none"> Part 2 of the Bill, commencing at clause 15, establishes the Independent Commissioner Against Corruption (ICAC). The role of the ICAC is to investigate corruption and ensure that there are no gaps in the integrity regime for dealing with improper conduct more broadly. The ICAC is supported by staff who are not subject to external direction, as set out in Part 7, Division 2, commencing at clause 120. These staff effectively comprise the ICAC's Office and will perform the functions of the Office for Public Integrity specified in Recommendation 1 of the Martin Report. A consequential amendment will provide that the ICAC's Office is listed as an Agency in Schedule 1 of the <i>Public Sector Employment and Management Act</i>, ensuring it must be treated as a separate entity in the Administrative Arrangements Orders. The ICAC will be CEO of the Agency as a result of this consequential amendment. It can be noted that as a matter of practical reality, the South Australian ICAC and the Office for Public Integrity work so closely together they effectively function as one body. Given the size and resources of the Territory, it is appropriate that the ICAC's Office be a single body presided over by the ICAC. It should also be noted, as explained below, that a single office is a logical consequence of having a full time Commissioner based in the NT as opposed to the Recommendation of a part time Commissioner (see Recommendations 4 and 5). |
| 2. | <p>The <i>Public Interest Disclosure Act</i> (NT) be repealed and the Office of Public Interest Disclosures be absorbed into the NT Anti-Corruption Commission as the Office for Public Integrity with, broadly speaking,</p> | <p><i>Followed.</i></p> <ul style="list-style-type: none"> Part 9 of the Bill, commencing at clause 155, repeals the <i>Public Interest Disclosure Act</i>, and includes transitional provisions to transfer outstanding investigations and functions of the Office of Public Interest Disclosures (PID) to the ICAC. Clause 16 defines the functions of the ICAC. They are consistent with the functions and objectives of the Office of Public Integrity and the ICAC as defined in sections |

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| | <p>the same functions and objectives as the Office for Public Integrity in South Australia.</p> <p>Further information: Page 160, para [306-307].</p> | <p>3 and 17 of the <i>Independent Commissioner Against Corruption Act 2012</i> (SA). Essentially the OPI's functions relate to receiving and assessing reports about improper conduct, preparing recommendations for the ICAC to approve referring or investigating, and providing directions or guidance to public bodies as appropriate. The ICAC's staff will perform all these functions under the direction of the ICAC.</p> <ul style="list-style-type: none"> • The transfer of PID staff to the ICAC is an administrative matter that can be handled under existing legislation, and so is not specifically provided for by the Bill. |
| 3. | <p>The Freedom of Information and Privacy functions of the Office of Public Interest Disclosures be transferred to the Ombudsman.</p> <p>Further information: Pages 160-61, paras [308-310].</p> | <p><i>Non-legislative response required. Exact measures taken to implement this Recommendation will be subject to existing appointments, and corporate considerations such as the availability of premises for co-location.</i></p> <p>The functions of the Office Commissioner of Public Interest Disclosures and those of the Information Commissioner are separate statutory legal roles –performed, at this time, by the same person with a combined office. Currently, the Administrative Arrangements Order provides that the PID Office and the Office of the Information Commissioner, sit under the Department of Attorney-General and Justice for financial and corporate purposes. Once the PID Act is repealed, the PID Commissioner's office will no longer exist, so the appointee will by default only hold the role of Information Commissioner.</p> <p>The recommendation can be implemented by moving the Office of the Information Commissioner from the Department of the Attorney-General and Justice to the Ombudsman for the purposes of the Administrative Arrangements Order, and/or making corporate arrangements for the two offices to be co-located and share resources. The resources of the Information Commissioner will transfer to the Ombudsman to enable it to deliver this function. .</p> <p>Some minor consequential amendments may be developed to clarify any issues arising as a result of the Ombudsman's office performing two statutory roles.</p> |

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| 4. | <p>The Hon Bruce Lander QC, Independent Commissioner Against Corruption in South Australia, be employed as the first head of the Commission, with the title Commissioner.</p> <p>Further information: Pages 155-59, paras [290-305].</p> | <p><i>Recommendation not implemented in the legislation, and may not be implemented.</i></p> <p>The appointment of the ICAC will be by means of a process similar to a judicial appointments panel. The independent panel will select someone on based on merit (and in accordance with the eligibility criteria specified in the Bill). The Government’s preference is that the appointee will be a full-time Commissioner who will be present in the Territory and so able to manage the ICAC’s Office</p> <p>This is one of the two recommendations that the Government has not committed to implementing in principle.</p> |
| 5. | <p>Mr Lander be appointed on a part-time basis for two years with a view to reporting to the Assembly within two years outlining operations in that period and providing recommendations for the future operation of the NT Anti-Corruption Commission.</p> <p>Further information: Pages 156-58, paras [293-300].</p> | <p><i>Recommendation not implemented in the legislation, and may not be implemented.</i></p> <p>As stated above, appointment of the ICAC will be done by an independent panel. .</p> <p>This is one of the two recommendations that the Government has not committed to implementing in principle.</p> |
| 6. | <p>The NT Anti-Corruption Commission be an Agency with a Chief Executive Officer appointed at the ECO5 level, replacing the ECO2 position currently occupied by the Commissioner for Public Interest Disclosures.</p> | <p><i>Followed in principle, subject to the usual process of assessing the level of a position of this nature by an independent consultant with expertise in evaluating the appropriate level for public sector appointments.</i></p> <p>As stated, the ICAC will be CEO of the ICAC’s Office and remunerated at an appropriate rate, particularly noting the extraordinary duties, responsibilities, and powers of the position.</p> <p>Historically, the statutory role of the PID Commissioner was added to 2009 roles of the Information Commissioner – so, at least notionally, some of the funding for the position is Information Act funding. . It is possible that the ICAC would create a Deputy</p> |

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| | | role that might ‘replace’ the PID Commissioner’s role at an ECO2 or similar level, but the precise structure of the ICAC’s Office will be subject to the views of the person appointed as ICAC by the Independent Panel, and the level subject to the standard job evaluation system process. The Bill does not seek to lock the ICAC into a particular staffing structure, allowing the ICAC to adopt a structure that meets evolving needs and available expertise and resources. |
| 7. | <p>Provision be made for the appointment of a Deputy Commissioner to act as Commissioner during any period for which there is no person appointed as Commissioner or the Commissioner is absent from, or unable to discharge, official duties.</p> <p>Further information: Page 170, paras [327-329].</p> | <p><i>Followed (in principle)</i></p> <p>Provision is made for a person to be appointed as an Acting ICAC during absences of the Commissioner (see clause 118). Whether this person also holds a role entitled ‘Deputy ICAC’ within the structure of the ICAC’s Office is a question for the ICAC. The Bill enables a flexible response to adapt to evolving needs and available expertise and resources. There is no need to create a statutory position of Deputy ICAC.</p> |
| 8. | <p>The Commissioner be an independent statutory officer appointed by the Administrator for a maximum term of five-years and be eligible for re-appointment once only for an additional term for up to five-years.</p> <p>Further information: Annexure 13, pages 557-59.</p> | <p><i>Followed.</i></p> <p>Clause 112 provides that the ICAC is appointed for five years and optionally for a further five year period.</p> |
| 9. | <p>The appointment process include:</p> <ul style="list-style-type: none"> • A panel such as the Judicial Appointments Panel making recommendations, regarding the appointment, to a bipartisan Standing Committee of the Assembly. • The Standing Committee making a recommendation to the Administrator. | <p><i>Non-legislative response required, and subject to decisions of the Legislative Assembly.</i></p> <p>The Judicial Appointments Panel is not provided for in statute but is rather an unlegislated protocol. Currently, there is no Standing Committee of the Assembly that exists for this purpose. The Government has approved referring this issue to the Legislative Assembly. It is impractical for this recommendation to be implemented as part of the legislation. However, clause 110(2) requires approval of</p> |

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| | <ul style="list-style-type: none"> The Standing Committee possessing the power of veto with provision for resolving any deadlock. <p>Further information: Pages 144-45, paras [270-73].</p> | <p>the Legislative Assembly to appoint a person as the ICAC. Whether the Legislative Assembly determines it will establish and follow the recommendations of a bipartisan Committee is a matter for the Legislative Assembly.</p> |
| 10. | <p>In order to be qualified for appointment as Commissioner the person must be a former Judge of a Supreme Court or the Federal or High Court, or be a legal practitioner of not less than ten years standing. No age restriction should apply.</p> <p>Further information: Annexure 13, page 559.</p> | <p>Followed.</p> <p>Clause 111 specifies the eligibility requirements for the ICAC and includes all the matters specified in this Recommendation.</p> |
| 11. | <p>The Commissioner should not hold commission as a Judicial Officer or be a Member of the Legislative Assembly.</p> <p>Further information: Page 143, para [264].</p> | <p>Followed.</p> <p>Clause 111 includes the eligibility requirements specified in this Recommendation. It additionally imposes requirements that the appointee not have significant recent political affiliations, some of which are drawn from the <i>Public Interest Disclosure Act</i>, and some which go further, in view of the ICAC’s role investigating breaches of the <i>Electoral Act</i>, and the conduct of MLAs and Ministerial advisors.</p> |
| 12. | <p>The jurisdiction of the NT Anti-Corruption Commission be confined to investigating conduct in the administration of public affairs, but to include conduct that might amount to an offence against the <i>Electoral Act</i> (NT):</p> <ul style="list-style-type: none"> Ordinarily the investigative role of the Commissioner be concentrated upon corruption conduct. | <p>Followed in substance, subject to changes of wording for clarity and to include some kinds of improper conduct not contemplated in the Recommendation (notably anti-democratic conduct includes electoral offences under the Local Government Act).</p> <p>The definitions of improper conduct focus on conduct sufficiently connected to the administration of public affairs. Clause 16(2) requires the ICAC to concentrate on investigating ‘corrupt conduct’ (see clause 10), and ‘serious anti-democratic conduct’ (see clause 13) which refers to electoral offences. Clause 16(2) also provides that</p> |

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| | <ul style="list-style-type: none"> • In the absence of good reason, conduct falling short of corrupt conduct and amounting to misconduct of maladministration be referred to the relevant agency for investigation and report to the Commissioner. • Corrupt conduct, misconduct and maladministration be defined as set out in paras [149 and 159] of this Report. • The Commissioner be permitted to investigate an offence that is not corruption in public administration (an incidental offence) which is discovered in the course of investigation properly undertaken and may be connected with or part of a course of activity involving the commission of corruption in public administration. <p>Further information: Pages 153-54, paras [283-86].</p> | <p>other kinds of improper conduct should be referred unless there is a good reason for the ICAC to deal with the matter. The referral scheme is set out at Part 3 Division 4, commencing at clause 23.</p> <p>Corrupt conduct, misconduct, and ‘unsatisfactory conduct’ (a modernised term for maladministration) are defined at clauses 10, 11, and 12, and closely parallel the content of the definitions referred to by Martin in this Recommendation, though not all of the exact wording.</p> <p>The precise wording used in the Bill breaks down the different kinds of conduct more clearly into separate, identifiable elements. Wording has been chosen to be consistent throughout the provisions, to ensure the definitions fully cover the field of corruption and improper conduct, and to be conceptually aligned with extended liability concepts in the <i>Criminal Code</i>. Clauses 8 and 9 are also important for defining the precise scope of the ICAC’s temporal and geographic jurisdiction, and contemplate improper conduct impacting the Territory may occur physically outside of the jurisdiction using contemporary and future electronic methods.</p> <p>The wording that the High Court found the NSW ICAC misinterpreted in the <i>Cunneen</i> case has not been used (see <i>Independent Commissioner Against Corruption Act 1988</i> (NSW) s 8(1)), since its meaning is ambiguous without recourse to the High Court decision. However, the intent of that definition as interpreted by the High Court has been reframed using the concepts of ‘breach of public interest’ and ‘connection with public affairs’, which are both defined in clause 4 of the Bill. These terms inherently incorporate a test of ‘probity’ of a public officer performing official functions. The word ‘probity’ does not appear in the NSW wording, but is a concept the High Court found is implicit in the NSW wording in the <i>Cunneen</i> case by looking at the provision in context and the overall intent of that Act.</p> |

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| | | <p>Anti-democratic conduct has been defined to include not only offences against the <i>Electoral Act</i>, but electoral offences under the <i>Local Government Act</i>. Consistent with inheriting responsibility for the whistleblower protection scheme, the ICAC also has jurisdiction to investigate offences under the Bill itself, which notably include acts of retaliation against whistleblowers.</p> <p>The Commissioner’s general power to investigate a matter that is improper conduct is set out at clause 29, and includes incidental matters at subclause (3).</p> |
| 13. | <p>The jurisdiction of the NT Anti-Corruption Commission extend to investigating any person for corruption, misconduct or maladministration in public administration or for offences under the <i>Electoral Act</i> (NT).</p> <p>Further information: Pages 108-115, paras [165-187].</p> | <p><i>Followed in principle.</i></p> <p>As detailed above, the Commissioner’s jurisdiction extends to all kinds of improper conduct, which is an umbrella term defined at clause 9 to include corruption, misconduct, unsatisfactory conduct (maladministration), and anti-democratic conduct (electoral offences).</p> <p>The ICAC also has the jurisdiction to investigate offences against this Bill, as these will often inherently involve very sensitive information, including disclosing the identity of a whistleblower or a matter presently under investigation.</p> <p>The meaning of anti-democratic conduct as defined by clause 13 varies slightly from the Recommendation, in that it has been extended to include offences against the <i>Local Government Act</i>, but also that it excludes some minor electoral offences that are not considered to be matters that should be a focus of the ICAC. In particular, to fall within the jurisdiction of the ICAC the alleged conduct must be of a kind defined by clause 13(b). This reflects the fact that the <i>Electoral Act</i> includes some minor matters such as an individual defacing their ballot paper, and it is preferable for the ICAC to direct its resources to more systemic issues that are aimed at deliberate, widespread subversion of democratic processes.</p> |

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| 14. | <p>The NT Anti-Corruption Commission possess a broad educative function.</p> <p>Further information: Pages 158 & 167-68, paras [299 & 320].</p> | <p><i>Followed.</i></p> <p>The ICAC’s functions are broadly defined at clause 16, and specifically include ‘developing and delivering education and training’. The ICAC also has audit and review powers (clauses 21 and 103), offers advice and recommendations (clauses 16 and 53), and issues directions and guidelines (clauses 20, 93, and 126), and maintains a website with public information (clause 127).</p> |
| 15. | <p>Specific provision be made in the NT Commission legislation recognising the importance of judicial independence and giving direction as to who may undertake an investigation relating to the conduct of a judicial officer.</p> <p>Further information: Page 111, paras [175-76].</p> | <p><i>Followed.</i></p> <p>Clause 16 states the ICAC should refer matters less than corrupt conduct to the appropriate body unless there is good reason not to refer. Clause 23 specifies appropriate limited bodies who may receive a referral of an allegation of improper conduct by a judicial officer. In determining whether there is good reason, Schedule 1 requires the ICAC to have regard to ‘the separation of powers, including the independence of the judiciary’ at cl. 2(d) of that Schedule, and to prioritise resources most effectively including by ‘referring matters to another entity’ at cl. 4(g) of that Schedule.</p> <p>The ICAC is an appropriate person to investigate corrupt conduct, including of a judicial officer, and it is presumed that the ICAC would only delegate such an investigation to an appropriately skilled and qualified investigator. The ICAC of course retains oversight of the actions of its investigators.</p> |
| 16. | <p>Judicial independence and parliamentary privilege be maintained. In particular with respect to parliamentary privilege, the boundaries between the powers of the NT Anti-Corruption Commission and parliamentary privilege be clearly defined.</p> | <p><i>Followed in principle, and subject to accommodating other recommendations and rationales in the Martin Report.</i></p> <p>As set out above, judicial independence has been maintained to the maximum extent possible consistent with an ICAC being able to investigate corruption by judicial officers. Judicial officers are prescribed independent entities (see cl 4) when</p> |

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| | <p>Further information: Page 111, paras [175-76].</p> | <p>they are referred allegations of improper conduct by a judicial officer. The ICAC can investigate corrupt conduct by a judicial officer, but will not be auditing the courts or considering lower level allegations such as alleged incompetence in relation to judicial officers exercising their judicial functions.</p> <p>Parliamentary privilege is preserved by clause 80. Specific processes that recognise the fundamental significance of parliamentary privilege while providing processes to deal with items that might be subject to disputed claims of privilege have been set out at Part 5 Division 2, commencing at clause 81. The Bill avoids imposing requirements that might interfere with parliamentary privilege, although it does:</p> <ul style="list-style-type: none"> - require MLAs to table reports within specified periods of time (a provision common in legislation); and - allow the Supreme Court to determine whether a disputed claim of parliamentary privilege has been correctly made as a matter of fact and law, consistent with the function of the judiciary in the Constitution. <p>Schedule 1 requires the ICAC to have regard to the public interest in ‘the separation of powers, including the independence of the judiciary and the Legislative Assembly’s right to control its own affairs’.</p> <p>The ICAC has the ability to publicly request that the Legislative Assembly consider authorising the publication of or disclosure to the ICAC of an item that may be restricted under parliamentary privilege, at cl 52(2)(g). Depending on the nature of the item and the privilege, this may be able to be done via a process in the Standing Orders (eg. releasing a confidential committee document), or may be the kind of inherently privileged matter that the Legislative Assembly has no power to disclose except through passing legislation (eg. releasing confidential communications between and MLA and a constituent for the purpose of preparing for the business of the Assembly).</p> |

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| | | <p>The Martin Report suggests:</p> <ul style="list-style-type: none"> - the ICAC could adopt any MOU between Police and the Department of the Legislative Assembly that could then be adopted by the ICAC, particularly in terms of accessing the precincts of the Legislative Assembly and executing searches. Such an MOU does not yet exist, but there are models the ICAC can adopt from other jurisdictions, and the ICAC will need to negotiate its own procedures with the Legislative Assembly in any event; - a Register of Interests which MLAs are required to complete will be made available to the ICAC on request. This will be implemented as a consequential amendment to the <i>Legislative Assembly (Disclosure of Interest) Act</i> (NT), using section 122 of the <i>Independent Commissioner Against Corruption Act 1988</i> (NSW) as a reference; - the Speaker be obligated to provide a report to the ICAC on the outcome of a referral. Giving the ICAC the power to compel such a report would be an unprecedented incursion into parliamentary privilege, and hence not consistent with the overall Recommendation to maintain parliamentary privilege. Further, the Speaker is unlikely to personally conduct such an investigation and will not necessarily be best placed to report back on the progress of action taken. However, the Bill in practice will place such an obligation on the Speaker and the Legislative Assembly generally because the ICAC can publicly report on referrals made, leaving the Legislative Assembly to explain what has happened to the referral. The ICAC also has the power to subsequently investigate a matter it has referred, which it could do if it felt the matter had not been adequately dealt with. Together this scheme meets the objective of ensuring matters concerning MLAs are investigated and dealt with appropriately (which was the rationale given for imposing an ‘obligation’ on the Speaker to report to the ICAC on the outcome of the referral), but while also maintaining parliamentary privilege. |

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| 17. | <p>The privilege against self-incrimination be abrogated for Commission purposes but provisions be included concerning subsequent use of evidence obtained in the face of a claim of privilege.</p> <p>Further information: Pages 199-200, paras [414-16].</p> | <p><i>Followed.</i></p> <p>Clause 78(4) abrogates the privilege against self-incrimination, and clauses 79 and 56 specify the subsequent use that may be made of the evidence in civil, criminal, and disciplinary proceedings, and in the ICAC’s own public reports.</p> |
| 18. | <p>Legal professional privilege and public interest immunity be maintained.</p> <p>Further information: Pages 201-202 & 206, paras [417-22 & 434-35].</p> | <p><i>Followed by means of aligning with current laws of the Territory.</i></p> <p>Client legal privilege (legal professional privilege) is a reasonable excuse to refuse or fail to give evidence to the ICAC as specified in clause 77. However, clause 76(1)(c) provides that the Territory Government or a public body itself cannot claim this privilege. This variation on the Recommendation is consistent with how client legal privilege is treated under comparable regimes in the Territory, including under the <i>Public Interest Disclosure Act</i> and the <i>Ombudsman Act</i>. The ICAC has the power to scrutinise the actions of public officers who are lawyers providing legal advice so it is appropriate this evidence be made available where it is relevant. However, if the evidence is not needed to support a finding of improper conduct (eg. it does not actually reveal corruption), the ICAC must not make that information available to the public. There is no reason to expose the Territory’s interests to disadvantage unless an overriding consideration is present, such as the evidence reveals corruption.</p> <p>Public interest immunity has been implemented in a codified form in clause 76. This codification is modelled on an approach in the <i>Public Interest Disclosure Act</i>, and guarantees a wider range of documents are available to the ICAC without legal argument. Documents that would clearly be inaccessible to the ICAC if the common</p> |

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| | | <p>law version of public interest immunity were implemented have been restricted as a class. In particular:</p> <ul style="list-style-type: none"> - in accordance with the Westminster tradition and consistent with other jurisdictions and the Martin Report’s recommendations, Cabinet documents cannot be obtained, however: <ul style="list-style-type: none"> o this does not exclude communications with Ministers unless the communications relate to Cabinet business; o the test is framed so that documents cannot be excluded by simply wheeling them into a Cabinet meeting – the information must be about the decisions, proceedings, or deliberations of Cabinet; - confidential communications among Australian governments cannot be obtained, as this risks intruding on the activities of the Commonwealth and other jurisdictions. |
| 19. | <p>The NT Anti-Corruption Commission be empowered to institute investigations following complaint or report by any person or on its own motion.</p> <p>Further information: Page 115, para [188].</p> | <p><i>Followed.</i></p> <p>Clause 29 provides the power to commence an investigation, which does not require a report or complaint to have been made in order to initiate an investigation. Clause 29 does set a threshold test that requires there be some evidentiary basis to commence an investigation, namely that the ICAC ‘has, or is aware of, information that, if true, would tend to show that improper conduct has occurred, is occurring or is at risk of occurring’. This threshold test has been framed to avoid requiring premature assessments of the credibility of informational sources, but to nevertheless require a reasonable scope and basis of the investigation to be identified, which in turn will form the basis for the appropriate exercise of the ICAC’s considerable coercive powers. In order to ensure the ICAC has a reasonable opportunity to obtain the evidence to satisfy this test, the following clauses are relevant:</p> |

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| | | <ul style="list-style-type: none"> - Clause 20 will deliver relevant information to the ICAC by means of a mandatory reporting scheme; - Clause 21 enables the ICAC to conduct random audits and reviews of the practices, policies, or procedures of public bodies and public officers; - Clause 22 gives the ICAC a power to conduct preliminary inquiries to receive evidence; - Part 4, commencing at clause 63 gives the ICAC some general information gathering powers that can be exercised for audits and preliminary inquiries, as well as investigations, notably the power to enter non-residential premises of public bodies and public officers, search such premises, and to require public bodies and public officers to answer questions and produce information and things. Clause 71 also allows an ICAC to require information provided to be verified by statutory declaration. - The whistleblower protection scheme in Part 6 will remove disincentives for people to voluntarily report corruption and other improper conduct. |
| 20. | <p>Complaints and reports be made only to the Office for Public Integrity and not directly to the Commissioner.</p> <p>Further information: Page 162, para [314].</p> | <p><i>Followed in principle.</i></p> <p>As discussed in relation to Recommendations 1-5, because there will be a full time ICAC supported by the ICAC’s Office, the processes for complaint will be an administrative matter to be determined by the ICAC.</p> <p>The ICAC has the power under cl 122 to delegate the powers to receive and handle complaints to appropriate staff, enabling this Recommendation to be implemented in practice.</p> |
| 21. | <p>The Office for Public Integrity not be a “one-stop shop” for complaints. For example, persons should remain free to make complaints to the Ombudsman, the Police or Heads of Public Sector Agencies.</p> <p>Further information: Pages 426-427.</p> | <p><i>Followed.</i></p> <p>The only existing body that the ICAC replaces is the Public Interest Disclosure Commissioner in accordance with Recommendation 2. In order to preserve the jurisdiction of the remaining existing investigation bodies to carry on their functions, they are treated as ‘independent entities’ that are not subject to the ICAC’s direction</p> |

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| | | <p>once a matter has been referred (see particularly clauses 4 and 26). It is presumed that the Ombudsman will continue to provide the majority of oversight of Police, which is reflected in the referral entities for complaints about Police in clause 23 and clause 4(3), although the ICAC also has jurisdiction over police misconduct when it is serious enough to amount to corruption, or if the ICAC otherwise has good reason not to refer a matter. Clause 90 reflects that voluntary reports of improper conduct can be protected under the whistleblower protection scheme if they are made to a range of persons or bodies, including those specified in this Recommendation.</p> |
| 22. | <p>Legislation not require that a complaint or report be verified on oath or be made in writing. These matters be left to administrative decisions by the Commissioner.</p> <p>Further information: Pages 178-179, paras [356-59].</p> | <p>Followed.</p> <p>Clause 90(3) provides that a report can be made orally or in writing, and even anonymously. It is not required the complaint be made on oath. The ICAC has the power to require verification by statutory declaration at clause 71, and to determine the process for mandatory reporting at clause 20.</p> |
| 23. | <p>Appropriate provisions be put in place to ensure protection of complainants or persons making reports, for example, protection from reprisals and victimisation.</p> <p>Further information: Pages 180-181, paras [361-66].</p> | <p>Followed.</p> <p>Part 6 of the Bill provides a comprehensive whistleblower protection scheme, which has been developed after public consultation and review of the existing scheme in the <i>Public Interest Disclosure Act</i>. While the scheme is in many ways similar to the scheme in the repealed Act, it includes the following improvements:</p> <ul style="list-style-type: none"> - limiting costs for whistleblowers who seek compensation for retaliations; - provisions which enable keeping the identity of a whistleblower confidential in court processes; - giving the ICAC responsibility to provide public bodies with guidelines to protect whistleblowers and audit compliance; - clearer delineation of the respective responsibilities to of public bodies, the ICAC, and whistleblowers (note particularly clauses 88, 95 and Schedule 2); and |

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| | | <p>- technical improvements to the offences of retaliation, including to better handle retaliation alleged to be appropriate employment action.</p> <p>In addition, equivalent powers to section 50 of the <i>Independent Commissioner Against Corruption Act 1988</i> (NSW) have been implemented, as suggested by the Martin Report, by means of clauses 104 and 109. These clauses empower the ICAC to direct public bodies and public officers to take or refrain from taking specific actions in order to protect a whistleblower.</p> |
| 24. | <p>Significant penalties be prescribed for false or misleading complaints and for contempt of or obstructing and failing to comply with directions given by the NT Anti-Corruption Commission.</p> <p>Further information: Page 179, para [358].</p> | <p>Followed.</p> <p>The Bill provides a typical suite of offences for a body of this nature with typically substantial penalties, including a mix of strict liability offences (which are easier to prove but with lower penalties) and offences that require intention / recklessness to be proved (which, if made out, carry higher penalties).</p> <p>Major offences with substantial maximum penalties of 2yrs imprisonment or a fine of 400 penalty units (currently \$61,600) are:</p> <ul style="list-style-type: none"> - CI 148 – obstruction of authorised officer; - CI 74 – obstruction of the ICAC in relation to a direction issued under cl 74; - CI 149 – misleading information; - CI 140-142 – unauthorised disclosure of confidential information. <p>Strict liability offences with penalties of 100 penalty units (currently \$15 400) are:</p> <ul style="list-style-type: none"> - CI 68 – failure to comply with direction during search on premises; - CI 69 – contravening a retention notice; - CI 143 – failure to comply with requirement for information or items during investigation; - CI 144 failing to comply with notice to attend or give evidence at examination or public inquiry; |

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| | | <ul style="list-style-type: none"> - CI 145 – failing to comply with direction of ICAC at examination or public inquiry; - CI 146 - contravening direction regarding whistleblowers. <p>In addition, as part of the compliance framework, the ICAC is empowered to investigate any offence in this Bill using its coercive powers, and for coercively obtained evidence to be used against the person in a criminal or civil proceeding. A framework of similar offences, penalties, and investigation regime has been used in the <i>Public Interest Disclosure Act</i>, which has experienced excellent compliance with the exercise of the powers these offences are designed to support.</p> |
| 25. | <p>Appropriate provisions be put in place with respect to confidentiality of complaints and reports, including the identity of complainants or persons making reports, subsequent investigations and information gathered in the course of investigations. To the extent necessary and appropriate these provisions should specifically exclude the operation of the rules of natural justice.</p> <p>Further information: Pages 186-191, paras [382-391].</p> | <p>Followed.</p> <ul style="list-style-type: none"> • Part 6 provides the whistleblower protection scheme. • Clauses 140-142 provide offences in relation to the confidentiality of complaints, including the power for the ICAC to impose a non-disclosure direction. The offences require even independent entities to take particular care with information about the identity of complainants when carrying out an investigation as a result of information obtained under this Bill; • Clause 88 requires the Bill to be administered according to principles of whistleblower protection including ‘wherever possible, the identity of a protected person should be kept confidential, as anonymity is the best protection of a person from retaliation’; • Clause 25 explicitly provides that the ICAC is under no obligation to disclose the original source of information to a referral entity when a matter is referred; • The ICAC generally conducts examination of witnesses in private (clause 33) and can close parts of a public inquiry or issue non-publication directions (clause 44); • The ICAC has the power to issue a direction to protect complainants (clause 104) and the Supreme Court has a power of review (clauses 105-106), and these clauses make specific provision to vary the typical adversarial rules of |

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| | | <p>natural justice where this would be appropriate and necessary to protect a whistleblower or the ICAC’s investigations.</p> |
| 26. | <p>Senior public officers, Police Officers, Members of the Legislative Assembly, Local Government Councillors and Local Government Chief Executive Officers be required to report to the NT Anti-Corruption Commission any matter reasonably suspected of involving corruption in public administration or serious or systemic misconduct or maladministration in public administration.</p> <p>Further information: Page 182, paras [367-69].</p> | <p><i>Followed in principle.</i></p> <p>Clause 20 of the Bill requires the ICAC to issue directions and guidelines governing reporting to the ICAC of improper conduct. These guidelines can require that improper conduct be reported and must be issued within six months. The exact requirements of the scheme are left to the discretion of the ICAC.</p> <p>There is the capacity to, for example, require reports of corruption from all officers or employees of a certain public body regardless of seniority, and to have tailored definitions of what constitutes a ‘senior public officer’ for particular public bodies. (For example, is a teacher a ‘senior public officer’ for the Department of Education, or is the definition to be restricted to ‘principals’, or to executive managers of the Department?) These are definitions that would be impractical to comprehensively resolve for all public bodies in the legislation itself. Giving the ICAC the discretion to set and modify who is required to report also enables the guidelines to be reviewed and changed to address underreporting, or to deal with an overwhelming influx of reports of insufficiently serious matters.</p> |

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| | | Schedule 1 notes that a factor for the ICAC’s consideration is the public interest in ‘persons in positions of seniority or power in the public sector exhibiting behaviour commensurate with their position’ and ‘public officers and public bodies taking responsibility for ensuring improper conduct is detected and dealt with appropriately.’ |
| 27. | <p>The Commissioner develops guidelines for the assistance of those to whom the mandatory reporting provisions apply.</p> <p>Further information: Page 182, paras [367-69].</p> | <p><i>Followed.</i></p> <p>Clause 20 implements this recommendation.</p> |
| 28. | <p>No time limit be imposed with respect to receiving complaints about corruption, but consideration be given to imposing a limitation in respect of less-serious matters which are properly classified as maladministration.</p> <p>Further information: Pages 183-185, paras [370-381].</p> | <p><i>Followed.</i></p> <p>No time limit is imposed with respect to receiving voluntary or mandatory reports of improper conduct.</p> <p>Clause 8(2)(a) gives the ICAC retrospective jurisdiction to look at matters that occurred before this Bill commences as an Act. The ICAC has a general discretion to consider what matters it prioritises, and section 16(2) provides that it would usually not itself investigated less serious matters. In view of this general discretion, and the discretion the ICAC has to shape the mandatory reporting requirements, no time limitation has been imposed in the legislation.</p> |

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| 29. | <p>If a time limit is imposed, notwithstanding that a matter is outside the time limit, the Commissioner possess a wide discretion to accept the complaint or report and to investigate if the Commissioner is of the view that it is in the public interest to do so.</p> <p>Further information: Pages 183-185, paras [370-381].</p> | <p><i>Not applicable.</i></p> <p>As no time limit is imposed, this Recommendation is consequently not applicable. However, it is noted that the ICAC has a broad discretion in carrying out its functions, as discussed below.</p> |
| 30. | <p>The Commissioner possess a wide and unfettered discretion to:</p> <ul style="list-style-type: none"> • Accept or reject a complaint or report. • Undertake an investigation or refer a matter to an agency for that purpose. • Give directions to an agency as to the conduct of an investigation. • Take back an investigation from an agency. • Cease an investigation and either dismiss the complaint or report or refer it to an agency. • Direct an agency to undertake further investigation and give directions in that regard. • Generally alter a course of action according to information received in order to meet changing circumstances. <p>Further information: Page 185, paras [378-79].</p> | <p><i>Followed.</i></p> <p>Clause 16 defines the ICAC’s functions broadly, and includes ‘dealing with’ matters, not just investigating and referring matters. Appropriate responses to improper conduct include delivering advice and recommendations as well as investigations and referrals. Subclause (4) provides that, subject to this Act, the ICAC may perform the ICAC’s functions in any manner the ICAC considers appropriate.</p> <p>Clause 18 requires the ICAC to have regard to a range of considerations in carrying out its functions, notably the factors in Schedule 1, which include the requirement to consider the need to target public resources most effectively by ‘declining to investigate matters as appropriate’ and a range of alternatives to investigation to deal with improper conduct where appropriate.</p> <p>Clause 19 provides that the ICAC is not subject to the direction of any persons about the priority given to matters or the way the ICAC performs functions under this Act. Clause 61 provides that the ICAC cannot be compelled by a court to commence or discontinue an investigation, and cannot be compelled to refer or not refer a matter, or to make (or not make) any kind of report.</p> |

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| | | <p>Clause 23 gives the ICAC the discretion to refer an investigation, and when that investigation is referred to an Agency or other public body that is not an independent entity, the ICAC has powers under clause 26 to direct the referral entity as to how it should deal with the matter. At clause 28 the ICAC has the power to withdraw a referral or direct a referral entity to suspend dealing with a matter. Clause 29(2)(b) confirms that even if the ICAC has referred a matter to an independent entity, the ICAC can still commence its own investigation. This may become appropriate, for example, if the ICAC is not satisfied that an independent entity has adequately investigated or otherwise dealt with all aspects of a referred matter (although the ICAC would presumably refer to Schedule 1 and take into account the extent to which a matter has already been investigated).</p> <p>The limitations on directing independent entities are consistent with implementing other recommendations, particularly Recommendations 15, 16, and 21.</p> <p>Schedule 1 (see 4(k)) includes the factor ‘generally altering a course of action according to information received in order to meet changing circumstances’).</p> <p>The ICAC has a further power at clause 74 to direct a public body or officer to refrain from taking action that the ICAC believes on reasonable ground would be likely to obstruct the ICAC performing its functions or prejudice a future investigation.</p> |
| 31. | <p>The Commissioner and other members of the NT Anti-Corruption Commission not be under obligation to complete a register of pecuniary interests and personal or political associations, but be under a legislative duty to avoid actual or perceived conflicts of interest. Legislative direction may be appropriate for</p> | <p><i>Followed.</i></p> <p>Clause 18 read together with Schedule 1 provides that the ICAC is under a duty to have regard to the public interest in ‘acting and being seen to act fairly and impartially’, which necessarily involves avoiding actual and perceived conflicts of interest.</p> <p>Clause 117 provides that the ICAC may be suspended and a process initiated which can result in termination if the ICAC engages in corrupt conduct, which includes</p> |

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| | <p>consequences to follow if the existence of a conflict of interest is established.</p> <p>Further information: Pages 215-16, paras [458-461].</p> | <p>conduct that amounts to ‘failure to manage adequately an actual or perceived conflict of interest’ that is connected to public affairs.</p> <p>The ICAC is subject to the oversight of the Inspector, who may make recommendations to the ICAC regarding whether the ICAC has complied with the Bill, and failure to implement those recommendations may result in the Inspector reporting the issue to the Legislative Assembly. In addition, the Inspector may refer a matter to a law enforcement agency, or recommend to the ICAC Minister that an Acting ICAC be appointed to investigate the ICAC in accordance with clause 118(2). Clause 118(2) requires this appointee to be someone who is not and has never been a public officer within the meaning of the Bill (and so, in practical terms, someone external to the Territory public service and its interests).</p> <p>No obligation on the ICAC to keep a register of interests, although the ICAC may conduct ‘suitability checks’ on staff in accordance with clause 123, which may involve exploring actual or potential conflicts of interest. It is likely the ICAC would retain relevant information in order to meet any queries of the Inspector as to actual or potential conflicts of interest, but recording the information in a ‘register’ is not required.</p> |
| 32. | <p>The Commissioner not be bound by the rules of evidence.</p> <p>Further information: Pages 212-214, para [451].</p> | <p><i>Followed.</i></p> <p>Clause 57 provides that the ICAC is not bound by the rules of evidence.</p> |

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| 33. | <p>The NT Commission legislation not include a general provision requiring the Commissioner to observe the rules of natural justice or procedural fairness (leaving the common law to operate in conjunction with the provisions recommended in the next paragraph).</p> <p>Further information: Pages 194-195, paras [401-03].</p> | <p><i>Followed.</i></p> <p>No such general provision is included.</p> |
| 34. | <p>The following provisions be enacted in order to ensure fairness to persons publicly affected by investigations:</p> <ul style="list-style-type: none"> • In a public inquiry in which allegations adverse to a person or body are aired, that person or body be provided with a reasonable opportunity to respond to the allegations both in public submissions and the presentation of evidence. • If the NT Anti-Corruption Commission proposes to include in a report to a Standing Committee, the Assembly or a Public Sector Agency any comment adverse to any person or body, the Commission give the person or body a reasonable opportunity to respond to the substance of the matter adverse to the person or body and include in the report the principal features of the response of the person or body to the adverse matter. <p>Further information: Pages 194-195, paras [401-03].</p> | <p><i>Followed.</i></p> <p>Clause 41 provides a right to respond to adverse allegations at a public inquiry, if these allegations could reasonably affect the ICAC’s findings on the subject matter of the inquiry. The ICAC has a broad discretion to permit persons or bodies to appear at a public inquiry, to make submissions, and to question witnesses. These provisions, read in light of the common law requirements of procedural fairness, will ensure that relevant persons or bodies are provided with a reasonable opportunity to respond to adverse allegations.</p> <p>Where the ICAC proposes to make an adverse finding about a person or body in an investigation report or public inquiry report, the ICAC must give the person or body reasonable opportunity to respond to the adverse material and include a fair representation of the response in the report (cl 47 and 49). This is distinct from preparing a brief of evidence under cl 48, where there is no right of response, given the nature and purpose of such a brief.</p> |

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| 35. | <p>Inquiries be conducted in private unless the Commissioner is satisfied it is in the public interest to conduct a public inquiry:</p> <ul style="list-style-type: none"> • The legislation state that possible prejudice to a future prosecution is a factor tending against holding a public inquiry. • Legislative guidance be provided in terms of those found in s31 (2) of the Independent Commission against Corruption Act 1988 (NSW). • The factors to be considered include undue hardship likely to be caused to any person if a public inquiry is conducted. <p>Further information: Pages 117-129, paras [193-219].</p> | <p><i>Followed.</i></p> <p>Clause 18 requires the ICAC to act in the public interest and in accordance with Schedule 1. Schedule 1 requires, the ICAC to have regard to:</p> <ul style="list-style-type: none"> - the public interest in not interfering with an individual’s rights, privileges or privacy, beyond what is reasonably necessary to carry out the ICAC’s functions effectively; - avoiding prejudice to current and possible future prosecutions; - the impact to investigations by law enforcement agencies and current and possible future legal proceedings; and - that matters should be dealt with by the ICAC in private unless it is in the public interest to do otherwise. <p>Schedule 1 requires the ICAC to give due consideration to a range of factors when determining whether to deal with matters publicly, including ‘the risk that a person may suffer undue hardship, including undue prejudice to the person’s reputation’.</p> <p>Schedule 1 includes factors identified in section 31(2) of the <i>Independent Commission Against Corruption Act 1988</i> (NSW).</p> <p>Clause 33 provides that examinations must be held in private. Clause 37 provides for public inquiries where this is appropriate. Clause 44 allows for the ICAC to direct that parts of a public inquiry to be held in private, to exclude a person from the inquiry or part of the inquiry, and to prohibit or restrict publication of certain aspects of a public inquiry.</p> |

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| 36. | <p>In conducting a public inquiry the Commissioner be able to suppress information and documents and the identity of witnesses and persons publicly identified if it is in the public interest to do so or if publicity would cause undue hardship to any person.</p> <p>Further information: Pages 117-130, paras [193-227].</p> | <p><i>Followed.</i></p> <p>This Recommendation is dealt with in Clause 44 read together with clause 18 and Schedule 1.</p> |
| 37. | <p>Broadly speaking, the Commissioner be given the following powers:</p> <ul style="list-style-type: none"> • Entry, search and seizure powers without warrant with respect to public premises or premises used by public persons or entities other than residential premises. • To require productions of statements, documents or other things. • To obtain search warrants in respect of private or residential premises or motor vehicles or ships or other forms of conveyance. • To seek warrants under surveillance and telecommunications legislation. • To seek authorisation to conduct unlawful activities and assume false identities. • To require attendance at a hearing and the giving of evidence under oath or affirmation (coupled with appropriate sanctions for noncompliance and contempt). | <p><i>Followed, subject to maintaining parliamentary privilege as required by Recommendation 16.</i></p> <ul style="list-style-type: none"> • Entry, search and seizure powers without warrant with respect to public premises or premises used by public persons or entities other than residential premises. (Clause 63) • To require productions of statements, documents or other things. (Clauses 68, 71, and 72) • To obtain search warrants in respect of private or residential premises or motor vehicles or ships or other forms of conveyance. (Clauses 65 and 66). • To seek warrants under surveillance and telecommunications legislation. (This will be effected with consequential amendments to <i>Surveillance Devices Act</i> and to <i>Telecommunications (Interception) Northern Territory Act</i>. The consequential amendment provisions are still in the process of being drafted). • To seek authorisation to conduct unlawful activities and assume false identities. (This will be effected by the consequential amendments to <i>Police (Special Investigative and Other Powers) Act</i>. The consequential amendment provisions are still in the process of being drafted.) |

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| | <ul style="list-style-type: none"> • To second staff from other agencies or to employ investigators or to delegate powers. • To require a public sector agency to refrain from taking action relating to a particular matter under investigation or to conduct a joint investigation with the Commissioner (SA s34 and WA s42). • To exercise the powers of a public sector agency (SA s36A). • Provided certain safeguards are implemented, to commence or continue an investigation notwithstanding the existence of other investigations or proceedings (NSW s18, 4 QLD s331 and VIC s70). • In referring a matter to a public sector agency, power to give directions and guidance with respect to the conduct of the matter (SA ss37 and 38 and WA s41) and to require the agency to provide a report as to the investigations undertaken and results. • To refer a complaint or report concerning a Member of the Legislative Assembly (MLA) to the Speaker (the legislation requiring the Speaker to provide a report to the Commissioner as to the investigations undertaken and results). • To evaluate the practices, policies and procedures of a public sector agency and to report to the Assembly with recommendations (SA ss40-42). • To request or recommend that a person be granted indemnity from prosecution (NSW s49). | <ul style="list-style-type: none"> • To require attendance at a hearing and the giving of evidence under oath or affirmation (coupled with appropriate sanctions for noncompliance and contempt). (Clauses 32, 39, 143, 144, 145, and 148). • To second staff from other agencies or to employ investigators or to delegate powers. (Clauses 120-122, and 128). • To require a public sector agency to refrain from taking action relating to a particular matter under investigation or to conduct a joint investigation with the Commissioner (SA s34 and WA s42). (Clauses 23, 26, 36, and 74). • To exercise the powers of a public sector agency (SA s36A). (This power in South Australia is used as a method of allocating the ICAC with the powers of the South Australian Ombudsman, rather than replicating those powers in the South Australian ICAC Bill. This recommendation has been implemented by providing that the NT ICAC has such powers directly provided for in the ICAC Bill.) • Provided certain safeguards are implemented, to commence or continue an investigation notwithstanding the existence of other investigations or proceedings (NSW s18, 4 QLD s331 and VIC s70). (Clause 29 and Schedule 1). • In referring a matter to a public sector agency, power to give directions and guidance with respect to the conduct of the matter (SA ss37 and 38 and WA s41) and to require the agency to provide a report as to the investigations undertaken and results. (Clause 26). • To refer a complaint or report concerning a Member of the Legislative Assembly (MLA) to the Speaker (the legislation requiring the Speaker to provide a report to the Commissioner as to the investigations undertaken and results). (Referrals are dealt with by clause 23. This dot point has been implemented in principle, as requiring such a report from the Speaker would be an unprecedented incursion into parliamentary privilege, and so does not sit easily with implementing Recommendation 16. The intent of this point is set out further in the body of the Martin Report, and is to ensure the public can have confidence that improper conduct of MLAs is investigated. The method of ensuring this occurs while |

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| | <ul style="list-style-type: none"> • To issue seizure and retention orders (SA ss31 and 32). • To apply to the Supreme Court for injunctions to restrain certain conduct (NSW s27, QLD s344, SA s35 and TAS s99). • To apply to the Supreme Court for an order that a person’s passport be delivered to the Commissioner (SA Schedule 2, s18). cl 58 – Order for surrender of passport • To request the Auditor-General to conduct an examination of accounts (SA s39). • To apply to dispose of seized property (NSW s48B). • To enlist the services of Police personnel to assist in the conduct of investigations and the provision of security for the Commissioner, Commission investigators and staff and witnesses in circumstances where the Commissioner believes on reasonable grounds that such assistance and protection is necessary. • To convey information to the Director of Public Prosecutions, Police or other relevant law enforcement agencies concerning proceeds of crime discovered in the course of an investigation, regardless of whether the information concerning the proceeds of crime was directly or indirectly relevant to the investigation. | <p>maintaining parliamentary privilege is detailed in the notes concerning Recommendation 16).</p> <ul style="list-style-type: none"> • To evaluate the practices, policies and procedures of a public sector agency and to report to the Assembly with recommendations (SA ss40-42). (Clauses 16, 21, 45, 46, 53, 55, 107, and 108). • To request or recommend that a person be granted indemnity from prosecution (NSW s49). (Clause 23(5)). • To issue seizure and retention orders (SA ss31 and 32). (Clauses 68-69, 72, and also note cl 153) • To apply to the Supreme Court for injunctions to restrain certain conduct (NSW s27, QLD s344, SA s35 and TAS s99). (Clauses 60 and 100). • To apply to the Supreme Court for an order that a person’s passport be delivered to the Commissioner (SA Schedule 2, s18). (Clause 59). • To request the Auditor-General to conduct an examination of accounts (SA s39). (While the Auditor-General is not specifically mentioned, clause 17, 21, 22, 23, and 36 would enable the ICAC to make this request). • To apply to dispose of seized property (NSW s48B). (Clause 153) • To enlist the services of Police personnel to assist in the conduct of investigations and the provision of security for the Commissioner, Commission investigators and staff and witnesses in circumstances where the Commissioner believes on reasonable grounds that such assistance and protection is necessary. (Clauses 109, 120-122, and 128). • To convey information to the Director of Public Prosecutions, Police or other relevant law enforcement agencies concerning proceeds of crime discovered in the course of an investigation, regardless of whether the information concerning the proceeds of crime was directly or indirectly relevant to the investigation. (Clauses 17, 23(5), 48, 79) |

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| | <p>Further information: Pages 210-212, paras [446-451].</p> | |
| 38. | <p>The Commissioner be able to report at any time to the Assembly and the Standing Committee concerning investigations and opinions.</p> <p>Further information: Pages 129-132, paras [220-227].</p> | <p><i>Followed in principle.</i></p> <p>The ICAC can make reports to the Legislative Assembly under clauses 45, 46, 47, 49, 51, and 55). The Bill provides these reports are made to the Speaker or the ICAC Minister as appropriate.</p> <p>Whether a Standing Committee is established to deal with tabled reports is a matter for the Legislative Assembly.</p> |
| 39. | <p>The Commissioner possess a discretion to report confidentially or to decline to report a matter which, in the opinion of the Commissioner, should remain confidential.</p> <p>Further information: Pages 117-130, paras [193-227].</p> | <p><i>Followed.</i></p> <p>All the ICAC’s reporting powers in Part 3 Division 7 are discretionary, and the ICAC has a broad discretion to carry out its functions in the manner it sees fit subject to the public interest (Clauses 17-19 and Schedule 1). Clause 61(c) provides that an injunction cannot be sought to compel the ICAC to provide a report. Clause 25(2) clarifies that the ICAC is under no obligation to disclose to a referral entity the original source of any information.</p> |

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| 40. | <p>The NT Anti-Corruption Commission not be given power to institute any prosecutions.</p> <p>Further information: Pages 214-215, paras [452-455].</p> | <p><i>Followed.</i></p> <p>The Bill does not give the ICAC the power to institute proceedings. The ICAC may refer matters to the DPP under clause 23 and provide a brief of evidence to another body for the purpose of pursuing prosecution or disciplinary action under clause 48.</p> |
| 41. | <p>Other than in respect of decisions to maintain confidentiality of material (see para [388]) and in respect of claims of privilege (see para [436]), no specific provision be made with respect to appeals or judicial review (leaving the current law with respect to judicial review of administrative bodies to apply).</p> <p>Further information: Pages 214-215, para [465].</p> | <p><i>Followed.</i></p> <p>Some specific processes have been included whereby recourse to the courts is provided for disputed claims of privilege, and in relation to disputes over directions to protect persons from retaliation in the whistleblower protection scheme, but the Bill includes no general statutory appeal process.</p> |
| 42. | <p>The NT Anti-Corruption Commission be given budgetary flexibility.</p> <p>Further information: Pages 214-215, paras [330-333].</p> | <p><i>This is an administrative matter. It is not dealt with in the Bill, though some safeguards are included.</i></p> <p>Established processes such as seeking a Treasurer’s Advance will provide the ICAC with budgetary flexibility.</p> <p>To provide some safeguards against underfunding, the ICAC will be listed by consequential amendment in Schedule 1 of the <i>Public Sector Employment and Management Act</i>, which ensures it must be treated as a separate Agency under the Administrative Arrangements Orders. In addition clause 45 enables the ICAC to make a general report (which is obliged to be tabled in the Legislative Assembly) on the matters that have seriously affected or may seriously affect the ability to perform the ICAC’s functions, including the adequacy of resources available to the ICAC.</p> |

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| 43. | <p>The NT Anti-Corruption Commission be empowered to undertake or seek security checks with respect to all staff and others retained to provide services.</p> <p>Further information: Page 173, para [339].</p> | <p><i>Followed.</i></p> <p>A comprehensive power to conduct suitability checks on staff and prospective staff is provided by clause 123. The checks can be general or in relation to a specific matter.</p> <p>The meaning of staff is defined broadly at clause 120 to include staff made available under arrangements, secondments, engaged under contract, or appointed as authorised officers.</p> |
| 44. | <p>With the agreement of the Commissioner of Police and the Director of Public Prosecutions and, if necessary, the Heads of Public Sector Agencies, the NT Anti-Corruption Commission be able to retain the services of persons such as IT experts, Police Officers and Prosecutors.</p> <p>Further information: Page 173, para [339].</p> | <p><i>Followed.</i></p> <p>Clauses 120-122, and 128 fulfil this recommendation. Arrangements can also be made to conduct joint investigations under clause 36. Appropriate information sharing arrangements can be created by virtue of clauses 24, 25, 27, 73, and 76.</p> |
| 45. | <p>Provision be made for appropriate protections and immunities for the Commissioner, staff and persons retained to provide services for the NT Anti-Corruption Commission; and for witnesses.</p> <p>Further information: Pages 173-174, paras [340-41].</p> | <p><i>Followed.</i></p> <p>Clause 76 and the whistleblower protection regime in Part 6 generally provides appropriate protections and immunities for witnesses.</p> <p>Clause 150 protects persons performing official functions under the Bill from civil or criminal liability. As per standard clauses of this nature, this does not affect the liability the Territory would otherwise have but for this clause. The liability of Police performing functions under the Bill is dealt with under Part VIIA of the <i>Police Administration Act</i>.</p> |

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| | | <p>Clauses 140-141 provide a suitable range of circumstances in which ICAC staff or witnesses are excused from liability for the offence of disclosing confidential information, for example to seek legal advice or assistance from a health practitioner, or simply for the purposes of administering the Bill.</p> |
| 46. | <p>The Commissioner be empowered to arrange physical and other protections for witnesses and staff.</p> <p>Further information: Pages 197-199, paras [411-13].</p> | <p><i>Followed.</i></p> <p>Clauses 104 and 109 provide the ICAC with these powers.</p> |
| 47. | <p>As in South Australia, a person be appointed on an annual basis to conduct a review of the operations of the NT Anti-Corruption Commission.</p> <p>Further information: Pages 174-175, paras [342-46].</p> | <p><i>Followed.</i></p> <p>Part 7 Division 4, commencing at clause 131, provides for the appointment of the Inspector, whose functions include conducting an annual evaluation of the ICAC at clause 133.</p> |
| 48. | <p>A bipartisan Standing Committee of the Assembly be established with appropriate oversight of the NT Anti-Corruption Commission.</p> <p>Further information: Pages 176-178, paras [346-355].</p> <p>cl 5 – Assembly Committee</p> | <p><i>This Recommendation is a matter for the Legislative Assembly to consider.</i></p> <p>Clause 5 contemplates that the Legislative Committee may want to designate a committee to receive reports and perform other functions in relation to the ICAC. Clause 51 currently provides a role for this Committee, and other provisions could be amended to provide a further role for the Committee if this is not to be handled by means of the Legislative Assembly’s own processes and procedures. The Inspector’s annual report is tabled in the Legislative Assembly in accordance with clause 134.</p> |

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| 49. | <p>Complaints against the Commissioner be dealt with by the person appointed to conduct the annual review.</p> <p>Further information: Page 178, para [355].</p> | <p><i>Followed.</i></p> <p>The Inspector receives complaints about the ICAC under clause 135. The ICAC is obliged to provide complaints it receives about its conduct to the Inspector in accordance with that clause. Clause 127 requires the ICAC to provide information on its website about how to make a complaint about the ICAC to the Inspector.</p> |
| 50. | <p>Provision be made for suspension and removal of the Commissioner.</p> <p>Further information: Page 218, paras [466-68].</p> | <p><i>Followed.</i></p> <p>The ICAC’s appointment is automatically terminated in the circumstances listed in clause 115, and a further suspension and termination procedure is provided by clause 117.</p> |
| 51. | <p>The Commissioner possess appropriate powers with respect to investigating complaints against staff of the NT Anti-Corruption Commission and others retained to provide services to the Commission and in relation to disciplinary and other matters concerning staff.</p> <p>Further information: Page 218, para [469].</p> | <p><i>Followed subject to practical issues concerning logistics and conflicts of interest.</i></p> <p>As the CEO of an Agency, the ICAC will have powers under the <i>Public Sector Employment and Management Act</i> with respect to disciplinary matters of staff.</p> <p>The ICAC and the ICAC’s staff are included within the definition of public officers in clause 14. However, in practical terms, the ICAC may not be in a position to fairly and impartially investigate the ICAC’s own team members for improper conduct under the Bill. Where the issue arises and cannot be dealt with by the ICAC or Inspector, an Acting ICAC can be appointed under clause 118(2).</p> |
| 52. | <p>Consideration be given to establishing a Commissioner for Standards to deal with less serious matters relating to Members of the Legislative Assembly.</p> | <p><i>This Recommendation is a matter for the Legislative Assembly.</i></p> <p>Less serious matters concerning Members of the Legislative Assembly are referred to the Speaker or Deputy Speaker under clause 23. Once referred, the Legislative</p> |

ICAC Bill Exposure Draft Explanatory Materials – Bill compared to Recommendations of the Martin Report

| No | Recommendation | Bill |
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| | Further information: Page 218, para [469]. | Assembly must determine how it will deal with them. It is open to the Legislative Assembly to establish a Commissioner of Standards. |