Issues Paper—Australian Public Sector Integrity frameworks

Select Committee on an Independent Integrity Commission

March 2017

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Resolution of appointment

At its meeting on Thursday, 15 December 2016, the Assembly passed the following resolution:

"That:

1. a select committee be established to inquire into the most effective and efficient model of an independent integrity commission for the ACT and that the committee make recommendations on the appropriateness of adapting models operating in other similarly-sized jurisdictions, as well as:
2. the personnel structure of the commission to ensure the appropriate carriage of workload;
3. governance and funding that delivers independence;
4. the powers available to a commission;
5. the educative functions of a commission;
6. issues regarding retrospectivity, including human rights, and the timeframes around which former actions can be assessed;
7. the relationship between any commission and existing accountability and transparency mechanisms and bodies in the ACT; and
8. any other relevant matter;
9. the select committee shall consist of the following number of members, composed of:
10. two Members to be nominated by the Government;
11. two Members to be nominated by the Opposition;
12. one Member to be nominated by the Crossbench; and
13. the Chair shall be a Crossbench member;
14. the select committee be provided with necessary staff, facilities and resources;
15. the select committee to report by the end of August 2017;
16. if the Assembly is not sitting when the committee has completed its inquiry, the committee may send its report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publishing and circulation;
17. the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders; and
18. nominations for membership of the committee be notified in writing to the Speaker within two hours following conclusion of the debate on the matter." [[1]](#footnote-1)

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# Introduction

This Issues Paper considers part 1[[2]](#footnote-2) of the Select Committee’s Resolution of Appointment.

The Paper in particular, considers the question of what would be ‘the most effective and efficient model’ by reviewing present arrangements in other Australian jurisdictions.

* + - * 1. Call for written submissions

The Committee has released this issues paper to assist individuals and organisations to prepare submissions to its inquiry. Submitters should not feel that they can only comment on matters raised in the issues paper. The Committee wishes to receive information and comment on issues which submitters consider relevant to the inquiry’s terms of reference (T of R).

Further information on preparing and lodging submissions is set out at **Appendix A**.

The Committee notes for the information of submitters—that it has a broad public interest mandate and is not in a position to determine the rights and wrongs of individual cases. The Committee process is not a forum to resolve issues pertaining solely to individual cases or grievances but is a forum to explore the general matters of principle, policy or public administration relevant to the T of R. Individual cases will only be considered to the extent that they may assist the Committee with the general matters of principle, policy or public administration relevant to the T of R.

* + - * 1. Framework for comparative analysis

While the Committee does not have a particular view at this time about the powers or features that an integrity commission for the ACT might have, as an initial criteria, the Paper employs a list of possible powers and features for integrity commissions set out by Prenzler and Faulkner in their paper, ‘Towards a Model Public Sector Integrity Commission’ (2010) which, in their terms, would constitute ‘A Model Commission’.[[3]](#footnote-3)

Prenzler and Faulkner are of the view that these features are:

...core elements of evolving institutional arrangements internationally and in Australia. They can be seen in their most mature form in police integrity agencies – such as the Northern Ireland Police Ombudsman, established 2000, or the Independent Police Complaints Commission for England and Wales, established in 2004 (Prenzler, 2009:153-172). But they are also evident in agencies with a wider brief across the public sector, such as the landmark Hong Kong Independent Commission to Combat Corruption, established in 1974 (Scott, Carstairs and Roots, 1988).

Prenzler and Faulkner propose that a Model Commission would have the capacity to:

Conduct own motion investigations

Require attendance and answers to questions

Hold public hearings

Apply for warrants to search properties and seize evidence

Engage in covert tactics — including listening devices, optical surveillance, undercover agents and targeted integrity tests

Directly investigate the most serious and intermediate matters

Make disciplinary decisions and manage a mediation program

Conduct research and risk reviews aimed at improving procedures and preventing misconduct

Engage in public sector ethics training

Prosecute complainants who are patently vexatious

Account for its work using a variety of performance measures, including stakeholder satisfaction, prosecution outcomes and case study reports.[[4]](#footnote-4)

Further, in addition to possible powers and features for public sector integrity commissions, is coverage—government officers, the public service, police, judges and politicians. In a broad sense, decisions about coverage can be assisted by defining the concept of a ‘public official’.

A 1989 report by the Assembly’s Standing Committee on Public Accounts considering the establishment of an independent advisory committee against corruption recommended that:

"Public official" is to include all persons receiving a salary, wages or other payment from the ACT Government Service, its statutory authorities, agencies or boards. It should also include public office holders who receive no payment as the office holder could be in a position of influence.

It is also essential that members of the ACT Legislative Assembly be specifically included in the definition of public official. Although included by virtue of receiving payments from the ACT public monies, an explicit reference in the legislation will reinforce the comprehensive nature of the legislation.[[5]](#footnote-5)

* + - * 1. Structure of the Issues Paper

Prior to considering a comparative analysis of legislative frameworks across jurisdictions, chapter two provides an overview of integrity arrangements in Australia, including the ACT.

The Paper then proceeds by looking in turn at each of the legislative frameworks in jurisdictions that presently have a designated integrity body or commission, considering whether acts creating such commissions provide for the features identified by Prenzler and Faulkner (each with a designated chapter).

Each jurisdiction is considered in turn against each of Prenzler and Faulkner’s desirable characteristics, in chronological order of legislation enacted, starting in each case with New South Wales and finishing with South Australia.

In addition, the Paper also seeks to identify any useful legislative features in Australian jurisdictions which may not have been anticipated by Prenzler and Faulkner in 2010.

Some recommended reading that may be of interest is listed at **Appendix B**.

# Integrity frameworks—Overview

This chapter provides an overview of integrity arrangements in Australia, with particular emphasis on the present arrangements in the ACT. It also provides comment on integrity framework design and choice.

* 1. Commonwealth—federal

Calls for the establishment of an independent integrity body at the Commonwealth level can be traced back to when the first tranche of state based bodies were being established. More recently, there have been renewed calls for the establishment of such a body by some politicians, parliamentary committees, academics and non-government organisations.

In 2016, Transparency International Australia repeated its calls for the establishment of independent integrity agency at the Commonwealth level[[6]](#footnote-6) with the release of an issues paper advancing that:

...the Australian Government should establish a broad-based federal anti-corruption agency.[[7]](#footnote-7)

The Interim report of the Senate Select Committee on the Establishment of a National Integrity Commission (May 2016), whilst noting shortcomings in the existing integrity framework, as well as risks and challenges, recommended that the Government support research into potential anti-corruption systems appropriate for Australia.[[8]](#footnote-8)

The current integrity framework in the Commonwealth consists of a multi-agency approach to prevent and respond to corruption within or affecting the public sector. The major integrity entities include the:

* Australian Commission for Law Enforcement and Integrity (ACLEI)—ACLEI is one of the major integrity entities that form part of the Commonwealth’s multi-agency approach to respond to and combat corruption within or affecting the public sector. Its role is to detect and investigate law enforcement-related corruption issues. ACLEI’s jurisdiction includes the Australian Federal Police (including ACT Policing) and the Australian Crime Commission;
* Australian Public Service (APS) Commission—the Commission’s role includes promoting integrity in the APS and investigating misconduct; and
* Australian Federal Police (AFP)—the AFP is tasked with preventing, detecting and investigating serious corruption that may constitute an offence under Commonwealth law. The AFP also has an internal investigations unit known as AFP Professional Standards or ‘PRS’ under Part V of the *Australian Federal Police Act 1979*. This unit undertakes investigations of AFP conduct and corruption issues and has a range of investigatory powers.
	1. State and Territory frameworks

All Australian states now have designated independent integrity agencies/bodies each with their own enabling legislation. The establishment of these bodies can be organised into two tranches:

* + - * 1. Established post 1980
* NSW Independent Commission Against Corruption (ICAC)—established 1988
* Queensland Crime and Corruption Commission (Qld CCC)—established 1989
* Western Australia Corruption and Crime Commission (WA CCC)—established 2004
	+ - * 1. Established after 2010
* Tasmanian Integrity Commission (IC)—established 2010
* Victorian Independent Broadbased Anti-corruption Commission (IBAC)—established 2010
* SA Independent Commission Against Corruption (ICAC)—established 2012

With regard to the Northern Territory—on 26 August 2015, the Legislative Assembly of the Northern Territory resolved to establish an Anti-Corruption Integrity and Misconduct Commission. On 14 December 2015, Mr Brian Martin AO QC was appointed to inquire and report to the Administrator of the Northern Territory on the establishment of an independent anti-corruption body having regard to, but not limited to, the considerations set out in the Schedule. His report was handed to the Administrator on 27 May 2016 and was tabled in the Legislative Assembly of the Northern Territory on 27 June 2016 in accordance with the Inquiries Act.[[9]](#footnote-9)

On 25 October 2016, in a statement in the Northern Territory Legislative Assembly regarding the establishment of an Independent Commission Against Corruption (ICAC), the Attorney-General and Minister for Justice indicated that a:

...draft Bill to establish the ICAC will be prepared and available for public comment by the first half of 2017, with the aim to introduce a final Bill in the second half of 2017.[[10]](#footnote-10)

In considering the State based integrity bodies—the following points are important:

* with regard to jurisdiction—all have coverage over the public sector but not the private sector (though the extent of jurisdiction varies);
* all, aside from the Qld CCC, have investigative, preventive and educational functions;
* all possess coercive powers similar to Royal Commissions;
* each is overseen by a parliamentary committee;
* an overriding theme in the establishment of these bodies was the restoration and maintenance of trust in government and public administration; and
* all, with the exception of the SA ICAC, were established following revelations of corruption; a perception that corruption was going unchallenged; or identification of significant failings or gaps within existing integrity frameworks. The SA ICAC was established as a pre-emptive measure and safeguard.[[11]](#footnote-11)
	1. Australian Capital Territory

The current integrity framework in the Australian Capital Territory also consists of a multi-agency approach to prevent and respond to corruption within or affecting the public sector and the parliamentary sphere. A summary of the ACT Public Sector and Parliamentary Integrity framework is detailed at Figure 2.2.

With regard to policing, the Framework for the delivery of policing services to the Territory is unique in Australia as all other jurisdictions have their own police services. This framework derives historically from the AFP’s provision of policing services in the ACT prior to self- government in 1988.[[12]](#footnote-12) The components of the Framework for the funding and delivery of policing services to the ACT community is summarised in Figure 2.1.

Effectively, the funding and delivery of policing services in the ACT mean that the arrangements to prevent and respond to corruption in the Commonwealth sphere apply to ACT Policing, that is, ACLEI covers AFP employees including ACT Policing.

This coverage in relation to ACT Policing is supplemented by the AFP’s internal investigations unit known as AFP Professional Standards or ‘PRS’ under Part V of the Australian Federal Police Act 1979. This unit undertakes investigations of AFP conduct and corruption issues and has a range of investigatory powers. Further, with regard to powers to engage in covert tactics, the AFP (including ACT Policing) is subject to covert tactics including integrity testing.

Figure 2.1—Components of the framework for the funding and delivery of policing services to the ACT community[[13]](#footnote-13) Figure 2.2—ACT Public Sector and Parliamentary Integrity framework Calls for the establishment of an integrity body in the ACT

**Policing services in the ACT are provided through an overarching Policing Arrangement and associated annual Purchase Agreement**



**Five year Policing Arrangement**

In the form of an intergovernmental agreement provides for the provision of policing services to the ACT—an agreement between two jurisdictions to pursue a mutually agreed outcome.

[noting the current arrangement for the period 2016–17 is 12 months]



**Associated annual Purchase Agreement**

In the form of a services agreement sets out the outcomes to be achieved, KPIs and costs for providing the services. It specifies output classes including all the goods and services to be purchased by the ACT Government from the AFP through the direct police budget appropriation.

***Public Interest Disclosure Act 2012***

Provides support and protection to people making disclosures about corruption and misconduct within government.

**ACT Ombudsman**—primary focus on resolution of complaints brought to it by individuals. Has significant investigatory powers and can conduct own motion investigations through which it may uncover systemic issues. Conducts investigations in private and cannot investigate MLAs.

**Public Sector Standards Commissioner (PSSC)**—includes: promoting integrity in the ACT Public Service (ACTPS) and investigating misconduct

**ACT Auditor-General**—financial and performance auditing role. Performance audits examining aspects of the efficiency, effectiveness and economy of government performance can be similar in scope to systemic inquiries undertaken by the Ombudsman.

**ACT Policing**

**AFP Professional Standards—**internal investigations unit—established under Part V of the *Australian Federal Police Act 1979*. This unit undertakes investigations of AFP conduct and corruption issues and has a range of investigatory powers.

**Australian Commission for Law Enforcement and Integrity (ACLEI)—**ACLEI’s role is to detect and investigate law enforcement-related corruption issues. The role of the Integrity Commissioner, who is supported by ACLEI, is to detect, investigate and prevent corruption in the Australian Criminal Intelligence Commission (including the Australian Crime Commission and the former CrimTrac Agency); the Australian Federal Police (including ACT Policing); the Australian Transaction Reporting and Analysis Centre (AUSTRAC), prescribed aspects of the Department of Agriculture and Water Resources; the Department of Immigration and Border Protection (including the Australian Border Force); the former National Crime Authority, and any other Australian Government agency that is prescribed by regulation under the Law *Enforcement Integrity Commissioner Act 2006*.

**Public Sector integrity component**

**Parliamentary oversight mechanisms:** including question time and parliamentary committees and other forms of oversight/scrutiny

**Parliamentary integrity component**

Debate on integrity commission bodies often includes discussion of parliamentary standards and ethics—that includes a code of conduct that covers all members of parliament, an independent parliamentary ethics adviser and a parliamentary integrity commissioner to investigate breaches of such a code.

**Assembly Ethics and Integrity Adviser—Provision of advice (Resolution 64)**

(1) Advise Members of the Legislative Assembly, when asked to do so by that Member, on ethical issues concerning-the-exercise of his or her role as a Member (including the use of entitlements and potential conflicts of interest).

(2) Giving advice that is consistent with any code of conduct or other guidelines adopted by the Assembly, but does not include the provision of any legal advice.

**ACT Public Sector and Parliamentary Integrity Framework**

**Assembly Commissioner for Standards**—is to investigate matters referred by the Speaker in relation to complaints against Members or from the Deputy Speaker in relation to complaints against the Speaker.

 *Complaint jurisdiction*—compliance with the Members’ Code of Conduct or the rules relating to the registration or declaration of interests.

Members of the public, members of the ACT Public Service and Members of the Assembly may make a complaint to the Speaker about a Member’s compliance with the Members’ Code of Conduct or the rules relating to the registration or declaration of interests.

As to calls for the establishment of an independent integrity body in the ACT, debate in the Territory, until recently has been limited.

In 2001—the Standing Committee on Justice and Community Safety, in its consideration of the Commission for Integrity in Government Bill 1999 found that the arrangements proposed in the Bill for the establishment of a designated integrity body were ‘more complex than necessary and would possibly not be cost-effective’.[[14]](#footnote-14) However, the Committee identified the need for further work in the ACT to counter corruption and integrity in the behaviour of public officials. Accordingly, the Committee recommended that:

...the Government, in consultation with the Auditor-General, develop a model for a new function which provides for both (1) the investigation of complaints about behaviour lacking integrity and (2) an educative and preventative role in relation to behaviour lacking integrity.[[15]](#footnote-15)

In 1989—specifically, 1 June, the seventh sitting day of the First Assembly, a member of the Residents Rally[[16]](#footnote-16) moved the ‘early establishment of an independent advisory committee against corruption’ comprised of community and government members, with powers established by statute and responsible to the ACT Attorney-General. The Member argued that ‘there is sufficient evidence of partiality and insider trading within the administration the establishment of a commission against corruption.’ The Assembly resolved, following amendments proposed by an opposition member[[17]](#footnote-17) that ‘the composition, terms of reference and powers of the advisory committee’ be considered by the Standing Committee on Public Accounts.[[18]](#footnote-18)

The Public Accounts Committee’s report on the matter was presented on 14 December 1989.[[19]](#footnote-19) The report discussed existing checks and balances and the form of the proposed body (including the need for the body, and its functions and advisory role). The report also outlined key features of the proposed advisory committee—including the structure of the body, its membership, the definition of ‘corrupt conduct’, the range of ‘public officials’ to be covered, complaints and allegations, the protections to be offered in the proposed legislation), confidentiality, the duty to report, accountability, the resources to be provided to the proposed body and the future review of its operations. The Public Accounts Committee made 23 recommendations on the aforementioned matters.[[20]](#footnote-20)

The Government tabled its response in December 1990. In its response, the Government agreed to the vast majority of the Committee’s recommendations and indicated that there were only two significant differences between the Committee’s recommendations and the Government’s response.[[21]](#footnote-21)

On 27 November 1991,  the member of the Residents Rally initially proposing the establishment an independent advisory committee against corruption [[22]](#footnote-22)presented the Public Corruption Bill 1991 to the Legislative Assembly, however the Bill lapsed on polling day for the 1992 General Election (14 February 1992). The Bill was for 'An Act to establish a Committee to receive information relating to allegations of corruption of public officials and public authorities and to refer that information to investigative agencies'.

* 1. Jurisdiction/scope of an integrity body

As noted previously, a common element amongst the established State based integrity bodies—is that all have coverage over the public sector but not the private sector (though the extent of jurisdiction with regard to public sector coverage varies).

For example, the Queensland CCC and WA CCC have an integrated model that includes policing and public sector agencies. In NSW, its integrity body does not cover policing, as a separate body—the Police Integrity Commission has responsibility for policing.

As to the bifurcated system that operates in NSW, Prenzler and Faulkner have commented:

New South Wales is unique in having an ICAC and a separate Police Integrity Commission. During the Wood Inquiry the ICAC argued it lacked the resources and full range of powers to properly uncover police misconduct. However, Commissioner Wood (1996:chapter 5) held the view that policing in New South Wales carried a high risk profile for misconduct to the extent that a dedicated police anticorruption commission was required. The bifurcated system has strong support in New South Wales and there is no imperative for amalgamation. There might be some efficiency gains from amalgamation but the important point is that the current system provides coverage of the public sector by agencies with royal commission powers.[[23]](#footnote-23)

Further, as noted earlier, in addition to desirable powers and features for a public sector integrity commission, is its coverage—government officers, the public service, police, judges and politicians. In a broad sense, decisions about coverage can be assisted by defining the concept of a ‘public official’.

A 1989 report by the Assembly’s Standing Committee on Public Accounts considering the establishment of an independent advisory committee against corruption recommended that a ‘public official’ be defined as:

...including members of the ACT Legislative Assembly, all employees of the ACT Government Service, its agencies, authorities and boards and all public office holders regardless of whether such persons receive salary, wages or expenses; and the definition of public official is to extend to any other public officials who in the future become part of the ACT's jurisdiction.[[24]](#footnote-24)

* 1. Integrity framework design and choice

Integrity framework design and choice is a fundamental question for jurisdictional decision making relating to the adequacy and scope of integrity capacity to prevent and respond to corruption.

As briefly touched on in this chapter—a diversity of institutional arrangements exists in Australian jurisdictions with regard to integrity frameworks. These can be classified broadly into frameworks that utilise a multiagency approach and those which have established a designated integrity body.

Further, the impetus for jurisdictional change can also be classified broadly into action following revelations of corruption; a perception that corruption was going unchallenged; identification of significant failings or gaps within the existing integrity framework; or as a pre-emptive measure and safeguard.

The salient point for consideration is that choices about integrity frameworks are more complex than how issues may be portrayed in the media or the political imperatives at the time but instead that:

...through careful deliberation, it may be possible to identify new or different institutional options, rather than presuming that the answer lies simply in copying a particular institution from another jurisdiction.[[25]](#footnote-25)

These deliberations, according to Brown and Head (2004) should be guided by careful consideration of the following eight intersecting matters:

* Public versus less public approaches;
* Internal versus external review;
* Reactive versus proactive inquiries;
* Agency-specific versus sector wide review;
* Limited versus expansive jurisdictions;
* Misconduct versus maladministration;
* Investigation versus research and policy; and
* Who guards the guards?.[[26]](#footnote-26)

Brown and Head (2004) also emphasise that whilst institutional design and choice is fundamental to the functioning of an integrity system, it is only one part of the equation, in that:

...nations and governments can sometimes ***appear*** to have all the necessary institutions and processes in place to pursue integrity and control corruption, but their actual capacity to do so may *[be]* limited or non-existent. Further, while we may assume that the cornerstones of integrity systems might be particular institutions or laws, some key integrity capacities may reside elsewhere – such as in social structures, cultural values and education systems.[[27]](#footnote-27)

# Conduct own motion investigations

* 1. Introduction

‘Own motion investigations’ are those which investigatory bodies can set in train under their own initiative. Alternatives would include: statutory settings that allowed such bodies to investigate only in response to complaints; or in connection with referrals from other bodies or the legislature. A capacity to conduct own motion investigations would describe a more active role for an integrity commission and increase its independence reducing requirement to rely on other bodies for triggers for investigations.

Prenzler and Faulkner state in relation to own motion investigations that:

This is a standard power for integrity commissions and widely seen as an important means of exposing hidden or ‘victimless’ corruption and preventing the escalation of corruption (Parliament of the Commonwealth of Australia 2009:32, Parliament of Tasmania 2009:2, Appendix 4). Proponents of integrity commissions appear to hold to a consensus position in favour of own motion powers, whereas opponents tend to be silent on the issue. A 2001 survey of integrity agencies found that the agencies that lacked own motion powers — mainly Ombudsmen — claimed they needed the power to adequately address suspected misconduct and support public conﬁdence (Prenzler and Lewis 2005).[[28]](#footnote-28)

* 1. New South Wales

The *Independent Commission Against Corruption Act 1988* (NSW), at Section 13, ‘Principle functions’, among other things, provides that a principle function of the Independent Commission Against Corruption is:

(a) to investigate any allegation or complaint that, or any circumstances which in the Commission’s opinion imply that:

(i) corrupt conduct, or

(ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or

(iii) conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur.[[29]](#footnote-29)

* + - * 1. Conclusion

It would not be open to the Independent Commission Against Corruption to conduct own motion investigations if it were limited to investigations arising from an ‘allegation or complaint’.

However the Act, in providing for the Commission to investigate in ‘any circumstances’ which in the Commission’s opinion ‘imply’ wrongdoing, clearly provides for own motion investigations by the Commission.

* 1. Queensland

As noted by Prenzler and Faulkner, a notable characteristic of the Crime and Corruption Commission in Queensland is that *Crime and Corruption Act 2001* (Qld) empowers and requires it to act in relation to both corruption,[[30]](#footnote-30) and ‘major crime’.[[31]](#footnote-31)

In relation to corruption, Section 35, ‘How commission performs its corruption functions’, provides that the Commission ‘performs its corruption functions’ by, among other things:

* ‘dealing with complaints about corrupt conduct, by itself or in cooperation with a unit of public administration’;[[32]](#footnote-32) and
* ‘investigating and otherwise dealing with, on its own initiative, the incidence, or particular cases, of corruption throughout the State’.[[33]](#footnote-33)

In relation to organised crime, under the *Crime and Corruption Act 2001* (Qld), the Crime and Corruption Commission receives references for investigations in relation to criminal matters from the *Crime Reference Committee* created by Section 274 of the Act.[[34]](#footnote-34) Section 26, ‘How commission performs its crime function’ provides that the Commission ‘performs its crime function by … investigating major crime referred to it, under division 2, by the reference committee’.[[35]](#footnote-35) Section 27, ‘Referrals to commission’, and following sections, set out the mechanisms by which the Committee may do this.[[36]](#footnote-36)

Membership of the Crime Reference Committee is provided for under Section 278 of the Act, and consists of:

* ‘the senior executive officer (crime), who is the chairperson of the reference committee’;
* ‘the chairperson of the commission’;
* ‘the commissioner of police’;
* ‘the principal commissioner under the *Family and Child Commission Act 2014*’;
* ‘subject to subsection (1A), the chief executive officer of the Australian Crime Commission’;
* ‘subject to subsection (1B), the senior executive officer (corruption)’;
* ‘2 persons appointed by the Governor in Council as community representatives (each of whom is an appointed member), of whom 1 at least must have a demonstrated interest in civil liberties and 1 at least must be a female’.[[37]](#footnote-37)

The positions of senior executive officer (crime) and senior executive officer (corruption) are created by Section 245 of the Act, ‘Senior officers’, as officers of the Crime and Corruption Commission.[[38]](#footnote-38)

* + - * 1. Conclusion

In relation to corruption matters, then, the Crime and Corruption Commission is clearly empowered and required by the *Crime and Corruption Act 2001* (Qld) to conduct own motion investigations.

In relation to major and organised crime matters, the Commission receives referrals from the Crime References Committee. While the Crime Reference Committee has a distinctive personality under the *Crime and Corruption Act 2001* (Qld), its Chair and one other member are employees of the Crime and Corruption Commission, and can be considered something akin to the Board of the Integrity Commission in Tasmania.

 If this is the case, then references from the Crime References Committee to the Crime and Corruption Commission could be considered to initiate, for all intents and purposes, ‘own motion investigations’.

* 1. Western Australia

The *Corruption, Crime and Misconduct Act 2003* (WA), at Section 18, ‘Serious misconduct function’, provides that the Corruption and Crime Commission performs its function ‘to ensure that an allegation about, or information or matter involving, serious misconduct is dealt with in an appropriate way’,[[39]](#footnote-39) among other things, by ‘investigation whether serious misconduct’—

(i) has or may have occurred; or

 (ii) is or may be occurring; or

 (iii) is or may be about to occur; or

 (iv) is likely to occur;

 —‘regardless of whether or not there has been an allegation of serious misconduct’.[[40]](#footnote-40)

Another sub-section provides that the Commission performs its function (stated above), by ‘receiving and initiating allegations of serious misconduct’.[[41]](#footnote-41)

A further sub-section provides that the Commission performs its function by:

...investigating or taking other action in relation to allegations and matters related to serious misconduct if it is appropriate to do so, or referring the allegations or matters to independent agencies or appropriate authorities so that they can take action themselves or in cooperation with the Commission.[[42]](#footnote-42)

* + - * 1. Conclusion

In the provisions noted above the *Corruption, Crime and Misconduct Act 2003* (WA) appears to confer powers and obligations on the Corruption and Crime Commission to conduct own motion investigations.

* 1. Tasmania

The Tasmanian Integrity Commission is created by the provisions of the *Integrity Commission Act 2009* (Tas).[[43]](#footnote-43)

In the *Integrity Commission Act 2009* (Tas)*,* Section 8, ‘Functions and powers of Integrity Commission’, provides that the Commission may ‘on its own initiative, initiate an investigation into any matter related to misconduct’.[[44]](#footnote-44)

Other relevant provisions in this section provide that:

* the Commission may ‘investigate any complaint by itself or in cooperation with a public authority, the Commissioner of Police, the DPP or other person that the Integrity Commission considers appropriate’,[[45]](#footnote-45) and that
* the Commission may ‘refer complaints or any potential breaches of the law to the Commissioner of Police, the DPP or other person that the Integrity Commission considers appropriate for action’. [[46]](#footnote-46)

Section 45, ‘Own motion investigations’, sets out mechanisms and constraints on Own motion investigations by the Commission. In particular, this section provides that the Board of the Integrity Commission, as created and defined in Division 2 of the Act:

...may determine that an investigator be appointed to conduct an investigation on its own motion in respect of any matter that is relevant to the achievement of the objectives of this Act in relation to misconduct.[[47]](#footnote-47)

This may take place in instances ‘including but not limited to’ set out in subsections below, such as ‘an investigation into misconduct by a public officer’,[[48]](#footnote-48) or ‘an investigation into misconduct or serious misconduct generally’.[[49]](#footnote-49)

This section provides that the decision-maker responsible for initiating such inquiries is the Board of the Integrity Commission, as provided for in Division 2 of the Act.

Division 2, ‘Police misconduct’, defines the Commission’s powers and responsibilities in relation to police misconduct. Section 89, ‘Own motion investigations’, provides that the Commission ‘that is relevant to police misconduct’, again ‘including but not limited to’ instances set out in its subsections.[[50]](#footnote-50)

Section 8, ‘Functions and powers of Integrity Commission’ provides that the Commission may also:

* ‘deal with any matter referred to it by the Joint Committee’, [[51]](#footnote-51) this being the ’Joint Standing Committee on Integrity established under section 23’;[[52]](#footnote-52)
* ‘assume responsibility for, and complete, an investigation into misconduct commenced by a public authority or integrity entity if the Integrity Commission considers that action to be appropriate’ having regard to the principles set out in section 9, ‘Principles of operation of Integrity Commission’.[[53]](#footnote-53)
	+ - * 1. Conclusion

In light of the above, the statutory framework in Tasmania appears to provide powers for the Integrity Commission to conduct own motion investigations.

* 1. Victoria

The Victorian Broad-based Anti-Corruption Commission (IBAC) is created by the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic).[[54]](#footnote-54)

Section 60, ‘Conducting investigations about corrupt conduct’, provides that the IBAC can initiate such an investigation, ‘on its own motion’, and lists other ways investigations can be initiated.[[55]](#footnote-55)

Similarly, in Section 64, ‘Conducting investigations about police personnel conduct’, also provides that such investigations may be done on the IBAC’s ‘own motion’, and in other ways.[[56]](#footnote-56)

* + - * 1. Conclusion

The *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) clearly provides the IBAC with powers to conduct own motion investigations.

* 1. South Australia

The *Independent Commission Against Corruption Act 2012* (SA), at Section 17, ‘Functions and objectives’,[[57]](#footnote-57) creates an Office for Public Integrity (OPI) responsible to the Independent Commissioner Against Corruption (ICAC) created at Section 7, ‘Functions’.[[58]](#footnote-58)

Section 7 provides that a function of the Independent Commissioner Against Corruption, among others, is to:

(a) to identify corruption in public administration and to—

 (i) investigate and refer it for prosecution; or

 (ii) refer it to a law enforcement agency for investigation and prosecution.[[59]](#footnote-59)

Section 17 provides that the functions and objectives of the OPI are to:

(a) receive and assess complaints about public administration from members of the public;

 (b) receive and assess reports about corruption, misconduct and maladministration in public administration from inquiry agencies, public authorities and public officers;

 (c) refer complaints and reports to inquiry agencies, public authorities and public officers in circumstances approved by the Commissioner or make recommendations to the Commissioner in relation to complaints and reports;

 (ca) give directions or guidance to public authorities in circumstances approved by the Commissioner;

 (d) perform other functions assigned to the Office by the Commissioner.[[60]](#footnote-60)

* + - * 1. Conclusion

The *Independent Commission Against Corruption Act 2012* (SA) empowers and requires the Independent Commissioner Against Corruption to ‘identify’ corruption and ‘investigate and refer it for prosecution’, or refer it to a law enforcement agency.[[61]](#footnote-61)

This appears to provide the Commissioner with the power to initiate own motion inquiries. While the functions and powers set out for the OPI appear largely to be complaint-driven, Section 17(d), ‘perform other functions assigned to the Office by the Commissioner’, would allow the OPI to participate in own motion inquiries at the direction of the Commissioner.

# Require attendance and answers to questions

* 1. Introduction

Powers to require attendance and compel answers to questions provide investigatory bodies with significant inquisitorial powers. Without those powers people being investigated would have the power to refuse to attend or respond to questions, which would reduce the efficacy of inquiries and increase the time required to complete them.

* 1. New South Wales

The *Independent Commission Against Corruption Act 1988* (NSW), at Section 86, ‘Failure to attend etc’, provides that:

(1) A person summoned to attend or appearing before the Commission at a compulsory examination or public inquiry shall not, without reasonable excuse, fail:

(a) to attend before the Commission in accordance with the summons, or

(b) to be sworn or to make an affirmation, or

(c) to answer any question relevant to an investigation put to the person by the Commissioner or other person presiding at the compulsory examination or public inquiry, or

(d) to produce any document or other thing in the person’s custody or control which the person is required by the summons or by the person presiding to produce.[[62]](#footnote-62)

The maximum penalty provided for is ’20 penalty units or imprisonment for 2 years, or both’.[[63]](#footnote-63)

* + - * 1. Conclusion

Section 86 of the *Independent Commission Against Corruption Act 1988* (NSW) clearly provides the Independent Commission Against Corruption with powers to require attendance and answers to question.

* 1. Queensland

As noted above, the *Crime and Corruption Act 2001* (Qld) empowers and requires the Crime and Corruption Commissioner to investigate both corruption and ‘major crime’.

In relation to corruption matters, Section 75, ‘Notice to discover information’, provides that the *Chairperson*[[64]](#footnote-64) of the Crime and Corruption Commission may ‘by notice (notice to discover) given to the person, require the person, within the reasonable time and in the way stated in the notice, to give an identified commission officer’: [[65]](#footnote-65)

* ‘an oral or written statement of information of a stated type relevant to the investigation or operation that is in the person’s possession’; or
* ‘a stated document or other stated thing, or a copy of a stated document, relevant to the investigation or operation that is in the person’s possession’; or
* ‘all documents of a stated type, or copies of documents of the stated type, containing information relevant to the investigation or operation that are in the person’s possession’.[[66]](#footnote-66)

Section 75 also provides that:

The chairperson may require the person to give an oral statement of information under oath and a written statement of information by way of statutory declaration.[[67]](#footnote-67)

In relation to major crime matters, the same wording is used to provide powers under Section 72, ‘Power to require information or documents’.[[68]](#footnote-68) Penalties—up to 85 penalty units or 1 year’s imprisonment— are provided for instances where persons do not comply with such a notice.[[69]](#footnote-69)

* + - * 1. Conclusion

The *Crime and Corruption Act 2001* (Qld) clearly provides the Crime and Corruption Commission with powers to require attendance and answers to questions.

Means to ensure compliance with such directions is provided by the power to require statements under oath or by statutory declaration, in the case of corruption matters,[[70]](#footnote-70) or by penalties provided for under the Act.[[71]](#footnote-71)

* 1. Western Australia

The *Corruption, Crime and Misconduct Act 2003* (WA), at Section 96, ‘Power to summon witnesses to attend and produce things’, provides that the Corruption and Crime Commission ‘may issue a signed summons and cause it to be served on the person to whom it is addressed’,[[72]](#footnote-72) and that the summons ‘may require the person to whom it is addressed to attend before the Commission at an examination, at a time and place specified in the summons, and then and there to’:

(a) give evidence; or

(b) produce any record or other thing in the person’s custody or control that is described in the summons; or

 (c) do both of those things.[[73]](#footnote-73)

* + - * 1. Conclusion

In view of the provisions considered above, it is clear that *Corruption, Crime and Misconduct Act 2003* (WA) provides the Corruption and Crime Commission with powers and responsibilities to ‘require attendance and answers to questions’.

* 1. Tasmania

In the *Integrity Commission Act 2009* (Tas)*,* Section 47, ‘Conduct of investigation’, sets out powers of the Integrity Commission’s investigators, as would be available under Commission inquiries, including under own motion inquiries. These include a power for the investigator to ‘require or direct’ a person:

* ‘to provide the investigator or any person assisting the investigator with any information or explanation that the investigator requires’;[[74]](#footnote-74)
* ‘to attend and give evidence before the investigator or any person assisting the investigator’;[[75]](#footnote-75) or
* ‘to produce to the investigator or any person assisting the investigator any record, information, material or thing in the custody or possession or under the control of a person’.[[76]](#footnote-76)

The Commission’s investigator may ‘require or direct’ that:

* ‘the information, explanation or answers to questions be given orally or in writing, as the investigator requires’;[[77]](#footnote-77) and that
* ‘the information, explanation or answers to questions be verified or the person give an oath or affirmation that the information or evidence the person has given is true’.[[78]](#footnote-78)
	+ - * 1. Conclusion

In light of the above, it appears that the statutory framework in Tasmania provides the Integrity Commission with powers to require attendance and answers to questions.

* 1. Victoria

The *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), at Section 120, ‘Witness summons’, provides that:

(1) For the purposes of an investigation, the IBAC may issue the following witness summonses to a person—

 (a) a summons to attend the IBAC to give evidence at an examination at a specified time and place on a specified date;

 (b) a summons to attend at a specified time and place on a specified date to produce documents or other things to the IBAC;

 (c) a summons to attend an examination at a specified time and place on a specified date before the IBAC to give evidence and produce documents or other things.[[79]](#footnote-79)

Other sub-sections of Section 120 provide for constraints and conditions on when the IBAC may issue witness summonses.[[80]](#footnote-80)

* + - * 1. Conclusion

The *Independent Broad-based Anti-corruption Commission Act 2011* clearly provides the IBAC with powers to require attendance and compel answers to questions.

* 1. South Australia

The *Independent Commission Against Corruption Act 2012* (SA) provides for examinations in Schedule 2, ‘Examination and production of documents and other things’.

Schedule 2, Clause 1, ‘Interpretation’, provided that ‘examiner’ means:

(a) the Commissioner; or

 (b) the Deputy Commissioner; or

 (c) an examiner appointed by the Commissioner.[[81]](#footnote-81)

Schedule 2, Clause 4, ‘Power to summon witnesses and take evidence’, provides that:

An examiner may summon a person to appear before the examiner at an examination to give evidence and to produce such documents or other things (if any) as are referred to in the summons. [[82]](#footnote-82)

The power of the examiner to require attendance and answer questions is enforceable under Schedule 2, Clause 8, ‘Failure of witnesses to attend and answer questions’ provides among other things that a person summoned to appear who fails—

* to attend;[[83]](#footnote-83)
* to make an oath or affirmation; [[84]](#footnote-84)
* to answer question put by the examiner; [[85]](#footnote-85) or
* to produce a document that required by summons [[86]](#footnote-86)—

—is liable for penalties up to a maximum penalty of a $20,000 fine or ‘imprisonment for 4 years’.

* + - * 1. Conclusion

The *Independent Commission Against Corruption Act 2012* (SA) appears to provide powers for the Independent Commissioner Against Corruption or the Office for Public Integrity, acting under the Commissioner’s direction, to require attendance and answer questions.

# Hold public hearings

* 1. Introduction

Powers to hold public hearings increase the standing and investigatory power of investigatory bodies by placing their proceedings in the public domain. One aspect of the importance of public hearings is that it supports public confidence in investigatory bodies, and in processes intended to reduce, control and punish misconduct in relevant areas. A second, additional, aspect is that public hearings contribute to the respect and perhaps dread that people engaged in misconduct would feel if they were subject to an investigation by an investigatory body.

This represents what may be termed a ‘moral’ dimension of sanctions available to an investigatory body. This paper uses ‘moral dimension’ or ‘moral effect’ to refer to effects other than those arising from formal prosecution, where for example potential loss of reputation as a result of airing details of misconduct may serve to discourage wrong-doing. In this way, public hearings and similar may act as a deterrent to misconduct, in addition to the that provided by the threat of formal sanctions under the criminal justice system which may arise from proceedings of integrity commissions.

* 1. New South Wales

The *Independent Commission Against Corruption Act 1988* (NSW), at Section 31, ‘Public inquiries’, provides that:

For the purposes of an investigation, the Commission may, if it is satisfied that it is in the public interest to do so, conduct a public inquiry.[[87]](#footnote-87)

The Act goes on to provide that:

(2) Without limiting the factors that it may take into account in determining whether or not it is in the public interest to conduct a public inquiry, the Commission is to consider the following:

(a) the benefit of exposing to the public, and making it aware, of corrupt conduct,

(b) the seriousness of the allegation or complaint being investigated,

(c) any risk of undue prejudice to a person’s reputation (including prejudice that might arise from not holding an inquiry),

(d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned. [[88]](#footnote-88)

* + - * 1. Conclusion

The *Independent Commission Against Corruption Act 1988* (NSW) clearly provides the Independent Commission Against Corruption with powers to hold public hearings.

* 1. Queensland

Section 176 of the *Crime and Corruption Act 2001* (Qld) provides that the Crime and Corruption Commission ‘may hold hearings’.[[89]](#footnote-89)

While Section 177, ‘Whether hearings are to be open or closed’ initially states that ‘Generally a hearing is not open to the public’,[[90]](#footnote-90) subsequent sub-sections provide tests on the basis of which the Crime and Corruption Commission should determine whether in any particular circumstance there is a public interest argument in favour of the hearing being public,[[91]](#footnote-91) and whether holding a public hearing would either:

* ‘be unfair to a person or contrary to the public interest’; [[92]](#footnote-92) or
* ‘threaten the security of a protected person or the integrity of the witness protection program or other witness protection activities of the commission’.[[93]](#footnote-93)

Further, the Act provides that the Commission must consider whether ‘closing the hearing to the public would be unfair to a person or contrary to the public interest’. [[94]](#footnote-94)

* + - * 1. Conclusion

The *Crime and Corruption Act 2001* (Qld) clearly provides powers for the Crime and Corruption Commission to hold public hearings, but also discourages it.

As for the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) the apparent favouring of private hearings[[95]](#footnote-95) is likely to be a product of approaches to legislative drafting rather than a clear indication of a leaning toward private proceedings. Further research into the practice of the Crime and Corruption Commission is needed to see how these provisions are expressed.

* 1. Western Australia

The *Corruption, Crime and Misconduct Act 2003* (WA) provides in Section 139, ‘Examination to be private unless otherwise ordered’ that:

Except as provided in section 140, an examination is not open to the public.[[96]](#footnote-96)

Section 140, ‘Public examination, when allowed’, provides that:

(1) This section does not apply to an organised crime examination.

 (2) The Commission may open an examination to the public if, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it considers that it is in the public interest to do so.

 (3) A decision to open an examination to the public may be made at any time before or during the examination.

 (4) If the Commission decides to open an examination to the public, the Commission may close the examination for a particular purpose.[[97]](#footnote-97)

* + - * 1. Conclusion

As for other Acts considered in this paper, the manner in which the *Corruption, Crime and Misconduct Act 2003* (WA) is drafted leads to an initial statement that ‘examinations’ or hearings will be held in private unless the Commission directs otherwise. As noted, this is a mechanism of statutory drafting that essentially states, in a way that is more complete than would otherwise be the case, that hearings are only public on the express direction of the Commission.

This is consonant with the imperative that the confidentiality of proceedings is thus preserved unless otherwise directed. This is explicitly provided for in Section 139(4), which states that a ‘person must not be present at an examination, or part of an examination, that is not open to the public unless the person is entitled to be present by reason of an order’, with strong penalties: imprisonment for 3 years and a fine of $60,000.[[98]](#footnote-98)

* 1. Tasmania

In the *Integrity Commission Act 2009* (Tas),under Section 60 of the Act:

If the Board determines that an inquiry be conducted, the Chief Commissioner is to convene an Integrity Tribunal for the purpose of conducting that inquiry.[[99]](#footnote-99)

One of the actions an Integrity Tribunal may take is to ‘hold hearings’.[[100]](#footnote-100) Section 76, ‘Hearings of Integrity Tribunal’, together with Schedule 6, ‘Provisions in Respect of Hearings of Integrity Tribunal’, together provide that hearings of the Tribunal be ‘open to the public’, although with the proviso that the Tribunal may:

* ‘make an order that the hearing be closed to the public’;[[101]](#footnote-101)
* ‘make an order excluding any person from the hearing’; [[102]](#footnote-102)
* ‘make an order prohibiting the reporting or other disclosure of all or any of the proceedings at the hearing or prohibiting the reporting or other disclosure of particular information in respect of the hearing’;[[103]](#footnote-103) and that
* ‘the Integrity Tribunal may determine who, other than the parties or their representative, may be present before it at any stage of the proceedings’.[[104]](#footnote-104)
	+ - * 1. Conclusion

In light of the above, the statutory framework in Tasmania appears to provide the Integrity Commission with powers to hold public hearings.

* 1. Victoria

The *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), at Section 115, ‘Power to hold examinations’, provides powers to the IBAC to hold ‘examinations’, which appear to have a similar meaning to ‘hearings’ in other legislation.[[105]](#footnote-105)

Notably, the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), at Section 117, ‘Examinations generally to be held in private’, on the face of it appears to set private examinations as a default setting.[[106]](#footnote-106)

However, the IBAC may make examinations open to the public if ‘the IBAC considers on reasonable grounds’ that:

* there are exceptional circumstances; [[107]](#footnote-107) and
* it is in the public interest to hold a public examination; [[108]](#footnote-108) and
* a public examination can be held without causing unreasonable damage to a person's reputation, safety or wellbeing. [[109]](#footnote-109)

Other parts of this section provide, at S 117(4), factors the IBAC ‘may take into account’ in ‘determining whether or not it is in the public interest to hold a public examination’, including but not limited to:

* whether the corrupt conduct or the police personnel conduct being investigated is related to an individual and was an isolated incident or systemic in nature; [[110]](#footnote-110)
* the benefit of exposing to the public, and making it aware of, corrupt conduct or police personnel misconduct; and [[111]](#footnote-111)
* in the case of police personnel conduct investigations, the seriousness of the matter being investigated. [[112]](#footnote-112)
	+ - * 1. Conclusion

While the title of *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), Section 117 may appear to favour private over public proceedings, it may be that this is simply an impression given by a common approach taken in legislative drafting for the sake of completeness. In this instance, if it were the case, it would amount to the Act saying ‘the IBAC can only hold public hearings if and only if these factors are present’. Further research is needed to ascertain whether the Act in fact favours proceedings in private.

* 1. South Australia

The *Independent Commission Against Corruption Act 2012* (SA), Section 7, ‘Functions’, provides among other things that:

The Commissioner is to perform his or her functions in a manner that—

 (a) is as open and accountable as is practicable, while recognising, in particular, that—

 (i) examinations relating to corruption in public administration must be conducted in private … [[113]](#footnote-113)

Under the same section, the Act provides that the Commissioner ‘may conduct a public inquiry’, but only in relation to the Commissioner’s specific functions:

* ‘to evaluate the practices, policies and procedures of inquiry agencies and public authorities with a view to advancing comprehensive and effective systems for preventing or minimising corruption, misconduct and maladministration in public administration’;[[114]](#footnote-114) and
* ‘to conduct or facilitate the conduct of educational programs designed to prevent or minimise corruption, misconduct and maladministration in public administration’.[[115]](#footnote-115)
	+ - * 1. Conclusion

Unlike other Acts considered in this paper, the *Independent Commission Against Corruption Act 2012* (SA) appears to ‘lean’ toward private hearings for investigations conducted under the Act. In this case this does not appear to be an artefact of legislative drafting, but a substantive characteristic of the Act.

# Warrants to search properties and seize evidence

* 1. Introduction

The power proposed by Prenzler and Faulkner to ‘apply for search warrants and seize evidence’ provide a significant element in the powers of investigatory bodies. Similar to powers to compel witnesses to appear and respond to questions, such powers prevent investigations from being halted or impeded as a result of a refusal by people under investigation to provide materials relevant to an investigation.

* 1. New South Wales

The *Independent Commission Against Corruption Act 1988* (NSW), at Section 40, ‘Search warrants’, provides that:

(1) An authorised officer to whom an application is made under subsection (4) may issue a search warrant if satisfied that there are reasonable grounds for doing so.

(2) The Commissioner, on application made to the Commissioner under subsection (4), may issue a search warrant if the Commissioner thinks fit in the circumstances and if satisfied that there are reasonable grounds for doing so.

(3) Search warrants should, as far as practicable, be issued by authorised officers, but nothing in this subsection affects the discretion of the Commissioner to issue them.

(4) An officer of the Commission may apply to an authorised officer or the Commissioner for a search warrant if the officer has reasonable grounds for believing that there is in or on any premises a document or other thing connected with any matter that is being investigated under this Act or that such a document or other thing may, within the next following 72 hours, be brought into or onto the premises.[[116]](#footnote-116)

The Act, at Section 3, ‘Definitions’, provides that ‘authorised officer’ has ‘the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), which is:

(a) a Magistrate or a Children’s Magistrate, or

(b) a registrar of the Local Court, or

(c) an employee of the Attorney General’s Department authorised by the Attorney General as an authorised officer for the purposes of this Act either personally or as the holder of a specified office.[[117]](#footnote-117)

The Act, at Section 41, ‘Authority conferred by warrant’, provides among other things that:

(1) A search warrant authorises any member of the NSW Police Force, or any other person, named in the warrant:

 (a) to enter the premises, and

 (b) to search the premises for documents or other things connected with any matter that is being investigated under this Act, and

 (c) to seize any such documents or other things found in or on the premises and deliver them to the Commission.[[118]](#footnote-118)

* + - * 1. Conclusion

The *Independent Commission Against Corruption Act 1988* (NSW) clearly provides powers to the Independent Commission Against Corruption to provide or apply for search warrants and execute them, and to seize documents ‘or other things’.[[119]](#footnote-119)

The power provided in Section 40 of the Act for the Independent Commissioner Against Corruption to issue search warrants, or for his or her officers to obtain them through more conventional channels (that is, a judicial officer), is shared by his or her counterpart in South Australia.

* 1. Queensland

The *Crime and Corruption Act 2001* (Qld) provides powers to apply for and execute search warrants under Chapter 3, ‘Powers’, Part 2. ‘Search warrants generally’.[[120]](#footnote-120)

To seek a search warrant, the Act provides that the Crime and Corruption Commission must apply ‘to a magistrate or Supreme Court judge’.[[121]](#footnote-121)

Chapter 3, Part 4, ‘Searching persons’, extends these powers to personal searching and sets out constraints for such searches.[[122]](#footnote-122) Section 88A specifically provides search warrant powers in relation to ‘information stored electronically’, and Section 88B provides powers to allow access to electronically stored information after devices are seized.[[123]](#footnote-123)

Chapter 3, Part 5, ‘Seizing property’, sets out powers and constraints in relation to seizure of evidence. The Act sets out separate provisions for a crime investigation,[[124]](#footnote-124) ‘confiscation related investigation’,[[125]](#footnote-125) or a corruption investigation.[[126]](#footnote-126) A significant difference is that in the case of confiscation related and corruption investigations the Act provides for limits to such powers for privileged documents.[[127]](#footnote-127)

Section 92, ‘Powers under search warrants’, provides a wide range of powers potentially to be exercised while the Commission is executing a search warrant including, among other things:

* the ‘power to dig up land’;[[128]](#footnote-128)
* ‘power to muster, hold and inspect any animal the officer reasonably suspects may be evidence of the commission of the unlawful activity’;[[129]](#footnote-129) and the
* ‘power to remove wall or ceiling linings or floors of a building, or panels of a vehicle’.[[130]](#footnote-130)

In addition, Chapter 3, Part 3, ‘Search of place to prevent loss of evidence’ provides a mechanism for authorised officers of the Commission to ‘enter the place and exercise search warrant powers … at the place as if they were conferred under a search warrant’.[[131]](#footnote-131)After such an action, under Section 97, ‘Post-search approval‘, the authorised commission officer must apply to a magistrate in writing for an order approving the search’, that is, a *post-search approval order* under the terms of the Act.[[132]](#footnote-132)

* + - * 1. Conclusion

The *Crime and Corruption Act 2001* (Qld) makes extensive provision for search warrants to be applied for and executed by the Crime and Corruption Commission.

* 1. Western Australia

The *Corruption, Crime and Misconduct Act 2003* (WA), at Section 101, ‘Search warrants, issue and effect of’, provides among other things that:

If a judge of the Supreme Court is satisfied, on the application of the Commission, that there are reasonable grounds for suspecting that there may be relevant material in or on particular premises, the judge may issue a search warrant authorising a named officer of the Commission or named officers of the Commission —

 (a) to enter and search the premises; and

 (b) where the premises comprise a vehicle, vessel, aircraft or the like, to stop and detain and give directions as to the movement of the same.[[133]](#footnote-133)

* + - * 1. Conclusion

The *Corruption, Crime and Misconduct Act 2003* (WA) provides for the Corruption and Crime Commission to apply for and execute search warrants and seize evidence under the authority of such warrants.

* 1. Tasmania

In the *Integrity Commission Act 2009* (Tas), Section 50, ‘Search warrants’, provides that for the purposes of conducting an investigation ‘an investigator may apply to a magistrate for a warrant to enter premises’.[[134]](#footnote-134)

Section 52, ‘Powers of investigator while on premises’ provides, among other things:

* ‘to take possession of any record, information, material or thing and retain it for as long as may be necessary to examine it to determine its evidentiary value’;[[135]](#footnote-135)
* ‘to make copies of any record, information, material or thing or any part of any record, information, material or thing’; [[136]](#footnote-136) and
* ‘to seize and take away any record, information, material or thing or any part of any record, information, material or thing’. [[137]](#footnote-137)

Another subsection provides similar powers to investigators with respect to ‘any computer or other equipment that the investigator suspects on reasonable grounds may contain any record, information, material or thing’.[[138]](#footnote-138)

* + - * 1. Conclusion

The statutory framework in Tasmania appears to provide the Integrity Commission with powers to apply for warrants to search properties and seize evidence.

* 1. Victoria

The *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), at Division 4, ‘Search warrant powers’, provides access to search warrants to the IBAC, by way of an application by an ‘authorised officer’ of the IBAC to ‘a Judge of the Supreme Court’.[[139]](#footnote-139) This requires the written authorisation of the IBAC Commissioner, [[140]](#footnote-140) except in certain circumstances where he or she may delegate such powers to another officer.[[141]](#footnote-141)

Such search warrants may authorise ‘any person named in the warrant’[[142]](#footnote-142) to, among other things:

* to enter and search the premises or vehicle, vessel or aircraft named or described in the search warrant and inspect any document or thing at those premises or on or in that vehicle, vessel or aircraft; and
* to make a copy of any document relevant, or that the person reasonably considers may be relevant, to the investigation; and
* to take possession of any document or other thing that the person considers relevant to the investigation. [[143]](#footnote-143)

The remaining sections of Division 4 then go on to provide constraints, powers, and procedures for IBAC in relation to search warrants and their execution.

* + - * 1. Conclusion

The *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) clearly provides the IBAC with powers in connection with search warrants.

* 1. South Australia

The *Independent Commission Against Corruption Act 2012* (SA), at Section 31, ‘Enter and search powers under warrant’, provides that:

The Commissioner may, on application by an investigator or on his or her own initiative, issue a warrant authorising an investigator or a police officer to enter and search—

 (a) a place occupied or used by an inquiry agency, public authority or public officer; or

 (b) a vehicle owned or used by an inquiry agency, public authority or public officer.[[144]](#footnote-144)

A subsection provides that search warrants may also be obtained by way of application by an investigator to a judge of the Supreme Court.[[145]](#footnote-145)

A further subsection provides that in the course of executing such a warrant, an investigator may:

...seize and retain anything that the investigator or police officer reasonably suspects has been used in, or may constitute evidence of, a prescribed offence, or issue a retention order in respect of such a thing requiring that it not be removed or interfered with without the approval of an investigator.[[146]](#footnote-146)

* + - * 1. Conclusion

The *Independent Commission Against Corruption Act 2012* (SA) clearly provides powers to support obtaining and executing search warrants and to seize documents.

Distinctive among the acts considered here is the power of the Independent Commissioner Against Corruption to issue search warrants in his own right, in addition to search warrants being available by way of application to a judge of the Supreme Court, as in other jurisdictions.

# Engage in covert tactics

* 1. Introduction

Prenzler and Faulkner’s fifth desirable feature for integrity commissions, in full, is the power to ‘engage in covert tactics — including listening devices, optical surveillance, undercover agents and targeted integrity tests’.[[147]](#footnote-147)

Powers for investigatory bodies to engage in covert investigatory processes support the capacity of investigatory bodies to gain evidence of misconduct by reducing the likelihood that persons under investigation will be alerted to the fact that they are under investigation, and that they might alter their behaviour so as to elude detection or punishment.

Further, the allusion to ‘targeted integrity tests’ appears to contemplate the use of sting operations to flush out matters which could then be addressed by integrity commissions.

As is the case for powers to compel witnesses, search premises, and seize materials, such powers provide investigatory bodies with a capacity to conduct investigations independently of other entities with investigatory powers, such as the Courts and the police, and thus contribute to the strength and the independence of such bodies.

* 1. New South Wales

The *Independent Commission Against Corruption Act 1988* (NSW), at Section 19, ‘Incidental powers’, provides that:

* ‘The Commission has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of its functions, and any specific powers conferred on the Commission by this Act shall not be taken to limit by implication the generality of this section’; and that
* ‘The Commission or an officer of the Commission may seek the issue of a warrant under the *Surveillance Devices Act 2007’*.[[148]](#footnote-148)
	+ - * 1. Conclusion

The *Independent Commission Against Corruption Act 1988* (NSW) appears to provide a broad scope of action, and to make specific provision for surveillance activities, by the Commission Against Corruption.

Some other acts considered in this paper—such as the *Corruption, Crime and Misconduct Act 2003* (WA), and the *Crime and Corruption Act 2001* (Qld)— make specific provision for covert operations of the kind indicated by Prenzler and Faulkner.

While the *Independent Commission Against Corruption Act 1988* (NSW) does not refer to undercover operations or integrity testing, the Act does not appear to preclude such activity, and further research is needed to ascertain the Commission’s practice in this regard.

* 1. Queensland

The *Crime and Corruption Act 2001* (Qld) provides, in Part 7, for ‘Covert searches for crime investigations’. [[149]](#footnote-149) Section 152, ‘What covert search warrant must state’, provides that a covert search warrant must, among other things, state that:

...that a stated commission officer, or any commission officer, may, with reasonable help and force, enter the place, covertly or by subterfuge and exercise covert search powers under the warrant.[[150]](#footnote-150)

Section 155, ‘Powers under covert search warrant’ provides, for an officer of the Crime and Corruption Commission, the:

...power to enter the place stated in the warrant (the relevant place), covertly or through subterfuge, as often as is reasonably necessary for the purposes of the warrant and stay at the place for the time reasonably necessary.[[151]](#footnote-151)

However, these provisions are available only in relation to the Commission’s responsibilities for investigation ‘major crime’ matters.

In relation to the Commission’s obligation to investigate corruption there are other arrangements.

Section 121, ‘Surveillance warrant applications’, provides that if ‘the chairperson [of the Commission] reasonably believes a person has been, is, or is likely to be, involved in corruption being investigated by the commission’,[[152]](#footnote-152) then an ‘authorised commission officer may, with the chairperson’s approval, apply to a Supreme Court judge for a warrant (surveillance warrant) authorising the use of a surveillance device’. [[153]](#footnote-153)

Powers potentially arising from such warrants are set out in Section 128, ‘Power under surveillance warrants’, and these include the:

(a) power to enter a stated place or class of place, covertly or through subterfuge, to install a surveillance device;

(b) power to install and use a surveillance device to intercept and record private conversations;

(c) power to remove a thing to another place to install a surveillance device in the thing;

(d) power to use an assistant to translate or interpret conversations intercepted under the warrant;

(e) power to take electricity for using a surveillance device;

(f) power to use reasonable force—

(i) to enter a place to install a surveillance device; or

(ii) to install a surveillance device;

(g) power to use 1 or more surveillance devices in the same place;

(h) power to pass through, over, under or along a place to get to the place where the surveillance device is to be used.[[154]](#footnote-154)

Part 6A, ‘Controlled operations and controlled activities for corruption offences’, also provides powers for the Crime and Corruption Commission to engage in covert operations. The object of this part, set out in Section 132, ‘Object of pt 6A’, is to ‘ensure the effective investigation of corruption offences by, among other things:

...enabling particular commission officers to approve the conduct of controlled operations that may involve particular commission officers and others engaging in activities that may be unlawful as part of the investigation of a suspected corruption offence.[[155]](#footnote-155)

Further relevant provision is made in Section 36, ‘Complaining about corruption’, where one of the examples for subsection (3), ‘A person may also give information or matter involving corruption to the commission’, includes examples one of which is ‘information obtained through telephone interception or a covert operation’.[[156]](#footnote-156)

* + - * 1. Conclusion

The *Crime and Corruption Act 2001* (Qld) appears to provide extensive powers for covert operations to the Crime and Corruption Commission in connection with investigations into both ‘major crime’ and corruption. The provisions considered above would appear to provide, subject to applications for such warrants as may be required, authorisation for Prenzler and Faulkner’s ‘listening devices, optical surveillance, undercover agents and targeted integrity tests’.[[157]](#footnote-157)

* 1. Western Australia

The *Corruption, Crime and Misconduct Act 2003* (WA) provides for covert operations in a number of instances.

Part 4, Division 5, ‘Controlled operations’, provides among other things for the Commission to conduct ‘controlled operations’, in relation specifically to investigations of organised crime, employing police officers to obtain evidence, arrest ‘any person involved in criminal activity’, or frustrate ‘criminal activity’, and ‘involves or may involve a controlled activity’.[[158]](#footnote-158)

Part 6, ‘Powers’, provides powers which the Corruption and Crime Commission which are not specifically limited to the Commission’s corruption or organised crime functions, but the sections in this part appear framed to reflect its work in relation to corruption.

In Section 119, ‘Terms used’, a ‘controlled activity’ is defined as ‘an activity for which a person would, but for section 128, be criminally responsible’.[[159]](#footnote-159)

Section 128, ‘Protection from criminal responsibility for acts in authorised operation’, provides that:

Despite any written or other law, a participant who engages in an activity in an authorised operation in the course of, and for the purposes of the operation, is not, if engaging in that activity is an offence, criminally responsible for the offence, if —

 (a) the activity is authorised by, and is engaged in accordance with, the authority for the operation; and

 (b) in the case of a controlled operation, the activity meets the requirements of section 130.[[160]](#footnote-160)

Section 130 provides for ‘Requirements to be met to obtain protection from criminal responsibility or indemnity’.[[161]](#footnote-161)

At Section 103, ‘Assumed identity approval, grant of’, the Act provides that:

The Commission may grant an approval (an assumed identity approval) for the acquisition and use of an assumed identity by an officer of the Commission. [[162]](#footnote-162)

Section 64, the *Corruption, Crime and Misconduct Act 2003* (WA) provides that:

The Commission may under section 123 grant an authority for a police officer to conduct an integrity testing programme as if the police officer were an officer of the Commission.[[163]](#footnote-163)

Section 123, ‘Integrity testing programme, grant of authority to conduct’, provides among other things that:

The Commission may grant an authority for an officer of the Commission or another person to conduct a programme (an integrity testing programme) to test the integrity of any particular public officer or class of public officers.[[164]](#footnote-164)

It also provides that:

An integrity testing programme may involve an act or omission (by a person who is participating in the programme) that offers a public officer whose integrity is being tested the opportunity to engage in behaviour, whether lawful or unlawful, in contravention of the principles of integrity required of a public officer.[[165]](#footnote-165)

In relation to ‘listening devices’ and ‘optical surveillance’, the *Corruption, Crime and Misconduct Act 2003* (WA) provides that the Corruption and Crime Commission must report to Parliament on, among other things, ‘the number of warrants and emergency authorisations issued to officers of the Commission under the *Surveillance Devices Act 1998*’,[[166]](#footnote-166) and ‘the number of warrants issued to the Commission under the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth’.[[167]](#footnote-167)

The *Surveillance Devices Act 1998* (WA) makes provision for ‘use, installation and maintenance’ of ‘listening devices’,[[168]](#footnote-168) ‘optical surveillance devices’;[[169]](#footnote-169) and ‘tracking devices’.[[170]](#footnote-170)

* + - * 1. Conclusion

The *Corruption, Crime and Misconduct Act 2003* (WA), together with other relevant legislation, appears to provide the Corruption and Crime Commission with powers to act covertly, including integrity testing, controlled operations, and a range of surveillance devices, including in listening, optical and tracking operations. Some of these powers are limited to particular facets of the Commission’s work, while others have more general application across its corruption and organised crime functions.

* 1. Tasmania

In the *Integrity Commission Act 2009* (Tas), Section 53, ‘Application for use of surveillance device, provides in the context of an investigation that:

In the case of a complaint of serious misconduct, an investigator with the approval of the chief executive officer may apply for a warrant under Part 2 of the Police Powers (Surveillance Devices) Act 2006 as if the investigator were a law enforcement officer within the meaning of that Act and a reference in that Part to a relevant offence were read as a reference to misconduct.[[171]](#footnote-171)

Section 75, ‘Application for use of a surveillance device’, sets out the same powers in relation to an inquiry by an Integrity Tribunal.[[172]](#footnote-172)

* + - * 1. Conclusion

The statutory framework in Tasmania appears to provide the Integrity Commission with explicit powers to engage in covert tactics to the extent of employing listening devices and optical surveillance. It is less clear whether the Integrity Commission is empowered to employ undercover agents and ‘targeted integrity tests’. These are not explicitly provided for in the *Integrity Commission Act 2009* (Tas), but may be available to the Integrity Commission by virtue of other conventions, structures or legislation.

* 1. Victoria

On the face of it, the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) does not appear to explicitly provide for ‘covert tactics’.

However, the Act in a number of places assumes that ‘secret investigative methods’ may be used by the IBAC, and provides a means for preventing information about such methods being released.[[173]](#footnote-173)

Authority for such methods may be provided by elements of Section 15, ‘Functions of the IBAC’. Among other things, this section provides that the IBAC has functions to:

* ‘to identify, expose and investigate serious corrupt conduct’;
* ‘to identify, expose and investigate police personnel misconduct’; and
* ‘to assess police personnel conduct’.[[174]](#footnote-174)

The Act asserts these powers without qualification. It also provides that the IBAC has, among other things, the function:

‘to receive information, conduct research and collect intelligence, and to use that information, research and intelligence in support of investigations’.[[175]](#footnote-175)

These may be sufficient authority for the ‘secret investigative methods’ contemplated and protected in other parts of the Act.

* + - * 1. Conclusion

It appears that the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) envisages that the IBAC will have access to and employ ‘covert tactics’.

While as noted the Act does not specifically identify the covert methods named by Prenzler and Faulkner, it is clear that the Act makes provision for them in some way. The impression that these methods are open to the IBAC is if anything strengthened by other provisions, such as those providing for the use of ‘defensive equipment’ and ‘firearms’ by IBAC,[[176]](#footnote-176) which appears to create the IBAC, in some sense, as an additional police force with similar powers and methods.

* 1. South Australia

The *Independent Commission Against Corruption Act 2012* (SA) does not appear specifically to authorise covert tactics.

However a consideration of relevant acts amended by the Act shows that such powers are available. For example, an entry under the heading ‘Legislation amended by principal Act’, shows that the *Criminal Investigation (Covert Operations) Act 2009* (SA) was amended by the Act.[[177]](#footnote-177)

Consideration of the *Criminal Investigation (Covert Operations) Act 2009* (SA) shows that a significant amendment in this instance was to add the Independent Commissioner Against Corruption as one of the types of ‘chief officer’ of law enforcement agencies for the purposes of the Act,[[178]](#footnote-178) and that chief officers of law enforcement agencies can, under Section 6 of the Act, provide an authority for a ‘law enforcement officer’ of his or her agency to ‘acquire’ and ‘use’ an ‘assumed identity’.[[179]](#footnote-179)

A similar amendment created the Commissioner as a ‘chief officer’ for the purposes of the *Listening and Surveillance Devices Act 1972* (SA), although in this instance the chief officer (that is, the Commissioner), provides ‘written approval’ for an officer of his or her agency to apply to a judge of the Supreme Court for a warrant to authorise such activity.[[180]](#footnote-180)

* + - * 1. Conclusion

It appears that while the *Independent Commission Against Corruption Act 2012* (SA) does not directly or specifically provide for ‘covert tactics’ these are provided for, under the authority of the Independent Commissioner Against Corruption, in other South Australian acts. In functional terms this provides similar powers to those which, in other jurisdictions, are provided for in acts creating integrity commissions.

# Directly investigate the most serious and intermediate matters

* 1. Introduction

Powers to directly investigate most serious and intermediate matters also go to establishing investigatory bodies as independent entities with powers in their own right, rather than obliging them to, for example, conduct initial investigations which would then be passed on to other bodies for a more complete investigation. Such powers may support the independence and prestige of investigatory bodies, and thus contribute to their ‘moral force’ in discouraging misconduct.

Risks could also attach to such powers if an integrity commission were perceived to exceed the intentions of the enabling legislation, as generally understood, or if such proceedings were not afforded the kinds of protections, checks and balances which are attached to conventional judicial proceedings.

* 1. New South Wales

The *Independent Commission Against Corruption Act 1988* (NSW) provides, at Section 12A, ‘Serious corrupt conduct and systemic corrupt conduct’, that:

In exercising its functions, the Commission is, as far as practicable, to direct its attention to serious corrupt conduct and systemic corrupt conduct and is to take into account the responsibility and role other public authorities and public officials have in the prevention of corrupt conduct.[[181]](#footnote-181)

As noted above, at Section 13, ‘Principal functions’, provides among other things that a principle function of the Independent Commission Against Corruption is:

(a) to investigate any allegation or complaint that, or any circumstances which in the Commission’s opinion imply that:

 (i) corrupt conduct, or

 (ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or

 (iii) conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur.[[182]](#footnote-182)

Section 53, ‘Referral of matter’, provides among other things that:

The Commission may, before or after investigating a matter (whether or not the investigation is completed, and whether or not the Commission has made any findings), refer the matter for investigation or other action to any person or body considered by the Commission to be appropriate in the circumstances.[[183]](#footnote-183)

Section 52 also provides that:

The person or body to whom a matter is referred is called in this Part a “relevant authority”.[[184]](#footnote-184)

* + - * 1. Conclusion

The *Independent Commission Against Corruption Act 1988* (NSW) provides a clear indication, in Section 12A, that the Independent Commission Against Corruption will deal with ‘serious’ and ‘systemic’ corrupt conduct as a matter of priority.

Moreover, under the terms of the Act the Independent Commission Against Corruption retains the initiative and a discretion over whether it will investigate, or investigate further. This is the case whether the Commission is initiating or proceeding with an investigation or considering whether it will refer an investigation to ‘a relevant authority’.

This indicates that the Commission is able directly to ‘investigate the most serious and intermediate matters’.

* 1. Queensland

The *Crime and Corruption Act 2001* (Qld), at Section 34, ‘Principles for performing corruption functions’, provides, among other things, under the subsection ‘Public interest’ that:

...the commission should exercise its power to deal with particular cases of corruption when it is appropriate having primary regard to the following—

• the capacity of, and the resources available to, a unit of public administration to effectively deal with the corruption

• the nature and seriousness of the corruption, particularly if there is reason to believe that corruption is prevalent or systemic within a unit of public administration

• any likely increase in public confidence in having the corruption dealt with by the commission directly.[[185]](#footnote-185)

* + - * 1. Conclusion

The *Crime and Corruption Act 2001* (Qld), at Section 34, would appear to provide the Crime and Corruption Commission with powers to ‘directly investigate the most serious and intermediate matters’.[[186]](#footnote-186)

On the other hand, as noted by Prenzler and Faulkner,[[187]](#footnote-187) the previous subsection, ‘Devolution’, expresses the imperative that:

...subject to the cooperation and public interest principles and the capacity of the unit of public administration, action to prevent and deal with corruption in a unit of public administration should generally happen within the unit.[[188]](#footnote-188)

As noted by Prenzler and Faulkner, this part of the Act has caused some controversy, including in perceptions that devolution is ‘akin to a jury system, wherein the entirety of the jury is made up of family and friends of the accused’.[[189]](#footnote-189) These concerns may be exacerbated by advice that the former Crime and Misconduct Commission (CMC), precursor to the Crime and Corruption Commission, operating under the ‘devolution’ provisions, investigated ‘less than two percent’ of the approximately three-and-a-half thousand complaints it receives each year’.[[190]](#footnote-190)

These factors make it difficult to make a clear finding about the Commission’s practice in relation to powers to ‘directly investigate the most serious and intermediate matters’,[[191]](#footnote-191) and further research is required.

* 1. Western Australia

The *Corruption, Crime and Misconduct Act 2003* (WA), at Section 22, ‘Assessments and opinions as to occurrence of serious misconduct’, provides that:

Regardless of whether or not there has been an allegation of serious misconduct, the Commission may make assessments and form opinions as to whether serious misconduct—

 (a) has or may have occurred; or

 (b) is or may be occurring; or

 (c) is or may be about to occur; or

 (d) is likely to occur. [[192]](#footnote-192)

Section 33, ‘Decision on further action on allegation’, provides that ‘having made an assessment of an allegation the Commission may decide to’:

(a) investigate or take action without the involvement of any other independent agency or appropriate authority; or

 (b) investigate or take action in cooperation with an independent agency or appropriate authority; or

 (c) refer the allegation to an independent agency or appropriate authority for action; or

 (d) take no action. [[193]](#footnote-193)

Section 34, ‘Matters to be considered in deciding who should take action’, provides among other things that:

Without limiting the matters to which the Commission may have regard when deciding whether or not to make a decision under section 33(1)(c), the Commission is to have regard to the following—

 (a) the seniority of any public officer to whom the allegation relates;

 (b) the nature of the serious misconduct that—

 (i) has or may have occurred; or

 (ii) is or may be occurring; or

 (iii) is or may be about to occur; or

 (iv) is likely to occur;

 (c) the need for there to be an independent investigation rather than an investigation by a public authority with which any public officer to whom the allegation relates is connected by membership or employment or in any other respect. [[194]](#footnote-194)

* + - * 1. Conclusion

As for other legislation considered in this paper, the *Corruption, Crime and Misconduct Act 2003* (WA) provides the Corruption and Crime Commission with powers and obligations directly to investigate serious matters; the means to refer matters to other entities; and criteria on which to base decisions in this regard.

It would appear that the *Corruption, Crime and Misconduct Act 2003* (WA) meets Prenzler and Faulkner’s requirement, however further research is necessary to ascertain the Corruption and Crime Commission’s approach to such matters in practice.

* 1. Tasmania

In the *Integrity Commission Act 2009* (Tas), Section 8, ‘Functions and powers of Integrity Commission’, provides that the Integrity Commission may ‘receive and assess complaints or information relating to matters involving misconduct’ or ‘on its own initiative, initiate an investigation into any matter related to misconduct’. Further, under its prescribed function and powers, the Commission may:

* ‘refer complaints to a relevant public authority, integrity entity or Parliamentary integrity entity for action’; [[195]](#footnote-195)
* ‘refer complaints or any potential breaches of the law to the Commissioner of Police, the DPP or other person that the Integrity Commission considers appropriate for action’; [[196]](#footnote-196)
* ‘investigate any complaint by itself or in cooperation with a public authority, the Commissioner of Police, the DPP or other person that the Integrity Commission considers appropriate’; [[197]](#footnote-197) or
* ‘assume responsibility for, and complete, an investigation into misconduct commenced by a public authority or integrity entity if the Integrity Commission considers that action to be appropriate having regard to the principles set out in section 9’ (‘Principles of operation of Integrity Commission’).[[198]](#footnote-198)
	+ - * 1. Conclusion

The statutory framework in Tasmania appears to provide the Integrity Commission with powers to directly investigate the most serious and intermediate matters.

In addition, there are mechanisms provided in the *Integrity Commission Act 2009* (Tas) which would allow the Integrity Commission to refer matters to other bodies, providing it with a measure of discretion about which matters it will deal with directly or refer elsewhere. This could provide the Commission with the ability to manage its workload and to prioritise more serious investigations, which would appear to be those most relevant to the work of the Commission as framed by the *Integrity Commission Act 2009* (Tas).

* 1. Victoria

The *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), in Section 8, ‘Objects of Act’, states that one object of the Act is to ‘provide for the identification, investigation and exposure of … serious corrupt conduct and … police personnel misconduct’.[[199]](#footnote-199)

At Section 15, ‘Functions of the IBAC’, states that the IBAC has functions:

* to identify, expose and investigate serious corrupt conduct;
* to identify, expose and investigate police personnel misconduct;
* to assess police personnel conduct.[[200]](#footnote-200)

Other provisions in this section, among other things, provide the IBAC with functions to ‘hold examinations’,[[201]](#footnote-201) and to ‘investigate any of those complaints that it may investigate in accordance with … its corrupt conduct investigative functions; or … its police personnel conduct investigative functions’, or alternatively ‘to refer the complaints to other persons or bodies to investigate’ or ‘to dismiss the complaints’.[[202]](#footnote-202)

* + - * 1. Conclusion

Given the focus in Section 8 on ‘serious corrupt conduct’, (and the functions and powers provided for in Section 15) the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) provides to the IBAC with respect to investigations and examinations, the Act appears clearly to provide the IBAC with powers to ‘directly investigate the most serious and intermediate matters’.[[203]](#footnote-203)

As noted above in connection with the Act, the availability of firearms and defensive equipment under Part 5 reinforces the impression that the Act contemplates that the IBAC will deal directly with serious matters.

* 1. South Australia

As noted above, *Independent Commission Against Corruption Act 2012* (SA) provides the Independent Commissioner Against Corruption with functions, among others:

(a) to identify corruption in public administration and to—

 (i) investigate and refer it for prosecution; or

 (ii) refer it to a law enforcement agency for investigation and prosecution.[[204]](#footnote-204)

Section 23, ‘Assessment’, subsection 1, provides in connection with the Office of Public Integrity, that:

On receipt by the Office of a complaint or report, the matter must be assessed as to whether—

 (a) it raises a potential issue of corruption in public administration that could be the subject of a prosecution; or

 (b) it raises a potential issue of misconduct or maladministration in public administration; or

 (c) it raises some other issue that should be referred to an inquiry agency, public authority or public officer; or

 (d) it is trivial, vexatious or frivolous, it has previously been dealt with by an inquiry agency or public authority and there is no reason to reexamine it or there is other good reason why no action should be taken in respect of it, and a determination made as to whether or not action should be taken to refer the matter or to make recommendations to the Commissioner.[[205]](#footnote-205)

The following subsection provides that:

The Commissioner may also assess, or require the Office to assess, according to the criteria set out in subsection (1), any other matter identified by the Commissioner acting on his or her own initiative or by the Commissioner or the Office in the course of performing functions under this or any other Act.[[206]](#footnote-206)

* + - * 1. Conclusion

These provisions of the *Independent Commission Against Corruption Act 2012* (SA), in combination, appear to provide the Independent Commissioner Against Corruption and the Office of Public Integrity with powers to directly ‘investigate the most serious and intermediate matters’.

The *Independent Commission Against Corruption Act 2012* (SA) does not qualify or categorise levels of seriousness for incidents of misconduct or corruption, unlike some other acts considered in this paper, and this would seem to provide a broader discretion and scope of action to the Independent Commissioner Against Corruption. Further research is necessary to confirm the Commissioner’s scope of action in practice.

# Make disciplinary decisions and manage a mediation program

* 1. Introduction

Powers to make disciplinary decisions and manage a mediation program would provide investigatory bodies with additional and alternative means of dealing with people considered to have been engaged in misconduct, and people alleging misconduct, beyond those provided by the criminal justice system.

One argument in favour of such powers is the suggestion that that it is advantageous to have a flexibility of responses available to investigatory bodies.

Another is that it may be useful to provide a third alternative to entirely ‘moral’ sanctions in terms of findings of wrongdoing alone, on one hand, and the fines, imprisonment or court orders available under criminal justice, on the other.

Associated with these two arguments is a possible view that providing for flexible and less severe responses than those provided under the criminal justice system could create conditions in which the integrity process is used more often, and that greater power is given to ‘moral’ sanctions by virtue of the availability of other ‘solutions’.

As for other measures considered here, such powers could also contribute to the standing and prestige of investigatory bodies, which could enhance their reputation and ‘moral force’, thus making an intangible contribution to the wider effort of discouraging misconduct.

In part, the question hinges on whether investigatory bodies have powers to provide some kind of response or remedy where there is perceived misconduct, or whether they are obliged to refer matters to other forums, such as the Courts, in order to bring matters to a conclusion.

In connection with such powers, Prenzler and Faulkner state that:

A standard feature of anticorruption commissions in Australia is that they do not have the power to take disciplinary action against holders of public office when they believe disciplinary action is warranted. Nor do they have the power to prosecute criminal matters, although in some instances they might be able to prosecute intermediate matters before a misconduct tribunal. The issue has generated surprisingly little debate, but it lies behind widespread disillusionment when individuals found by a commission to have engaged in misconduct are ‘let off’ with little or no consequence …[[207]](#footnote-207)

Prenzler and Faulkner go on to state that:

The problem might in part be solved by granting commissions summary jurisdiction over disciplinary matters — including the power to ﬁne, demote and sack public servants; and to make ﬁndings of unethical conduct against politicians; subject to an appeals process. Commissions have also been frustrated with delays by public prosecutors (Committee on the ICAC 2008:2) and one option is to allow them to independently prosecute matters in the courts following excessive delays. [[208]](#footnote-208)

* 1. New South Wales

The *Independent Commission Against Corruption Act 1988* (NSW) provides, at Section 114A, ‘Disciplinary proceedings—taking action based on finding of corrupt conduct’ among other things that:

(1) This section applies if a finding is made by the Commission in a report under section 74 that a public official has engaged, or has attempted to engage, in corrupt conduct.

 (2) Disciplinary proceedings in connection with the employment of the public official may be taken by the employer of the public official on the ground of the conduct of the public official on which the finding was based.

(3) The person or body determining the disciplinary proceedings:

(a) is not required to further investigate whether that conduct occurred, and

(b) may take any disciplinary or other action against the public official of a kind that the person or body may otherwise take in disciplinary proceedings against any such public official, and

(c) is to give the public official an opportunity to make a submission in relation to any proposed disciplinary or other action.[[209]](#footnote-209)

* + - * 1. Conclusion

As for other acts considered in this paper, *Independent Commission Against Corruption Act 1988* (NSW) sets out a model in which the Independent Commission Against Corruption makes findings and recommendations regarding misconduct and relevant agencies take disciplinary action. Section 114A makes the division of responsibilities clear in this respect.

* 1. Queensland

The *Crime and Corruption Act 2001* (Qld) makes provision for disciplinary action against persons found to have engaged in corrupt conduct.

Section 219C, ‘Jurisdiction’, provides that QCAT (Queensland Civil and Administrative Tribunal) ‘has jurisdiction to conduct disciplinary proceedings’.[[210]](#footnote-210) Section 219D provides that:

An allegation of corrupt conduct against a prescribed person may only be heard and decided by QCAT.[[211]](#footnote-211)

Section 219DA provides that:

To remove any doubt, it is declared that QCAT may hear and decide, or continue to hear and decide, an allegation of corrupt conduct brought against a prescribed person defined in section 50(4), definition prescribed person, paragraph (a)(ii) or (b)(ii), despite the person’s employment or appointment having ended—

(a) before or during the QCAT hearing; or

(b) after the hearing and before QCAT makes its decision.[[212]](#footnote-212)

Section 219l, ‘Powers for corrupt conduct’, provides that:

(1) QCAT may, on a finding of corrupt conduct being proved against a prescribed person, order that the prescribed person—

(a) be dismissed; or

(b) be reduced in rank or salary level; or

(c) forfeit, or have deferred, a salary increment or increase to which the prescribed person would ordinarily be entitled; or

(d) be fined a stated amount that is to be deducted from—

(i) the person’s periodic salary payment in an amount not more than an amount equal to the value of 2 penalty units per payment; or

(ii) the person’s monetary entitlements, other than superannuation entitlements, on termination of the person’s service.

(2) In deciding the amount for subsection (1)(d)(ii), QCAT may have regard to the value of any gain to the prescribed person from the person’s corrupt conduct.[[213]](#footnote-213)

* + - * 1. Conclusion

It appears that the *Crime and Corruption Act 2001* (Qld) provides authority for the Crime and Corruption Commission take disciplinary action, but only by way of initiating proceedings in QCAT. Clearly, the limitation of jurisdiction to QCAT would not apply if criminal proceedings were initiated as a result of a Commission investigation, in which case under Section 49, ‘Reports about complaints dealt with by the commission’, the commission ‘may report on the investigation’, among other things, to:

...the director of public prosecutions, or other appropriate prosecuting authority, for the purposes of any prosecution proceedings the director or other authority considers warranted.[[214]](#footnote-214)

Matters can also be referred to the Director of Public Prosecutions by the parliamentary committee which has oversight over the Commission,[[215]](#footnote-215) or the parliamentary commissioner who has oversight over the Commission.[[216]](#footnote-216)

There are no references to ‘mediation’ or conciliation in the *Crime and Corruption Act 2001* (Qld), and this does not appear to be a power the Act provides to the Commission. Further research is needed to ascertain the Commission’s practice in this regard.

* 1. Western Australia

The *Corruption, Crime and Misconduct Act 2003* (WA), in Section 43, ‘Recommendations by Commission’, provides that the Corruption and Crime Commission may:

(a) make recommendations as to whether consideration should or should not be given to —

 (i) the prosecution of particular persons; and

 (ii) the taking of disciplinary action against particular persons; and

 (b) make recommendations for the taking of other action that the Commission considers should be taken in relation to the subject matter of its assessments or opinions or the results of its investigations.

Section 40, ‘Commission’s monitoring role of appropriate authorities’, provides that ‘if action recommended by the Commission … has not been taken, or any action has not been taken within the time recommended … the reasons for not so taking the action’, [[217]](#footnote-217) a ‘report must be given to the Commission in writing’.[[218]](#footnote-218)

Elsewhere, such as in Section 45K, ‘Public Sector Commissioner may report breach of duty to report or notify’, there are references to ‘a person or body that has the power to take disciplinary action against the person’ in relation to misconduct (in this case).[[219]](#footnote-219)

* + - * 1. Conclusion

The model set out in the *Corruption, Crime and Misconduct Act 2003* (WA) is that the Corruption and Crime Commission will make recommendations regarding disciplinary action, and that other authorised officers—in general the officers to whom persons found to have engaged in misconduct report—will carry out disciplinary action.

In these terms, it appears that the *Corruption, Crime and Misconduct Act 2003* (WA) does make ‘disciplinary decisions’ in the sense of making recommendations, but not in the sense of making binding decisions with direct effect on those found to have engaged in misconduct.

The *Corruption, Crime and Misconduct Act 2003* (WA) does not refer to mediation or conciliation, and this appears not to be part of the role the Act describes for the Corruption and Crime Commission.

* 1. Tasmania

The *Integrity Commission Act 2009* (Tas), provides for two main avenues where the Commission deems that there is a case to answer regarding misconduct: first, investigations[[220]](#footnote-220) and, second, proceedings of an Integrity Tribunal.[[221]](#footnote-221) Either or both of these avenues may be employed in any particular instance.

In either case, the process provided for in the *Integrity Commission Act 2009* appears to be exclusively inquisitorial, leading either to a report—in the case of an investigation[[222]](#footnote-222)—or a determination, as a conclusion to proceedings of an Integrity Tribunal.[[223]](#footnote-223)

Under the terms of the Act, outcomes closer to the imperatives of making ‘disciplinary decisions’ and managing ‘a mediation program’ are only possible to the extent that:

* ‘the principal officer of the relevant public authority’, the ‘public officer who is the subject of the complaint’ or ‘any other person who in the chief executive officer's opinion has a special interest in the report’ may be given an opportunity to comment on the draft of an investigation report;[[224]](#footnote-224) or,
* Under Section 57, ‘Report of the investigation’, that the chief executive officer of the Integrity Commission may recommend that ‘the complaint, the report of any findings and any other information obtained in the conduct of the investigation be referred’ to:
* ‘the principal officer of the relevant public authority for action’; [[225]](#footnote-225) or
* ‘an appropriate integrity entity for action’; [[226]](#footnote-226) or
* ‘an appropriate Parliamentary integrity entity’. [[227]](#footnote-227)
	+ - * 1. Conclusion

The statutory framework in Tasmania appears not to provide the Integrity Commission with powers directly to make disciplinary decisions and manage a mediation program. The *Integrity Commission Act 2009* (Tas) does not appear to provide the Integrity Commission with powers to make disciplinary decisions. Further consideration of the work of the Integrity Commission is necessary to gauge whether the Commission does or does not engage in ‘mediation programs’.

* 1. Victoria

In the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), provisions to empower the IBAC to make disciplinary decisions are dealt with in Part 7, ‘Recommendations, Actions and Reports’.

Section 159, ‘Recommendations’, provides that the IBAC ‘may at any time make recommendations in relation to a matter arising out of an investigation about any action that the IBAC considers should be taken to one or more of the following’—

* the relevant principal officer;
* the responsible Minister;
* the Premier.[[228]](#footnote-228)

Importantly, this section also provides that the IBAC ‘may require a person … who has received a recommendation under subsection (1) to give a report to the IBAC, within a reasonable specified time, stating:

* whether or not he or she has taken, or intends to take, action recommended by the IBAC; and
* if the person has not taken the recommended action, or does not intend to take the recommended action, the reason for not taking or intending to take the action.[[229]](#footnote-229)

Similar provisions are made in relation to the responsibility held by IBAC for oversight of police.[[230]](#footnote-230)

In a further support to the powers and independence of the IBAC, Section 162, ‘Special reports’, provides among other things that:

The IBAC may at any time cause a report to be transmitted to each House of the Parliament on any matter relating to the performance of its duties and functions.[[231]](#footnote-231)

Although this power is subject to various constraints, regarding privacy of persons among other things, it provides a potentially powerful instrument of ‘moral persuasion’ in that is appears open to the IBAC to publicly note, in Parliament, that those to whom recommendations have been made have not complied.[[232]](#footnote-232)

In relation to powers to conduct ‘mediation programs’, the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), in Section 64, ‘Conducting investigations about police personnel conduct’, provides that the IBAC ‘may attempt to resolve a police personnel conduct complaint under section 52 in relation to police personnel conduct by conciliation’.[[233]](#footnote-233) It also provides that the IBAC must notify the Chief Commissioner of Police of such a proposal before commencing, and notify the Chief Commissioner of the results of such conciliation.[[234]](#footnote-234)

* + - * 1. Conclusion

The *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) provides for the IBAC to have relatively strong powers in relation to making recommendations and achieving a response to them. This, coupled with the power to table reports in Parliament on matters at its discretion, is formidable. However it does not amount to providing to the IBAC the power to make disciplinary decisions, and it does not appear to be the case that the IBAC has powers to prosecute cases directly.

In connection with ‘mediation programs’, the IBAC appears to be provided with a power to undertake conciliation, which appears to correspond to a mediation power, but with the significant limitation that this only applies in relation to police matters.

* 1. South Australia

The *Independent Commission Against Corruption Act 2012* (SA), usefully, provides a definition of ‘disciplinary action’ at Section 4, ‘Interpretation’, where it is stated that:

...disciplinary action includes any process for termination of employment or dismissal from office.[[235]](#footnote-235)

Section 36, ‘Prosecutions and disciplinary action’ provides that:

(1) On completing an investigation or at any time during an investigation (whether relating to a potential issue of corruption in public administration or of misconduct or maladministration in public administration), the Commissioner may do either or both of the following:

 (a) refer a matter to the relevant law enforcement agency for further investigation and potential prosecution;

 (b) refer a matter to a public authority for further investigation and potential disciplinary action against a public officer for whom the authority is responsible.[[236]](#footnote-236)

* + - * 1. Conclusion

The *Independent Commission Against Corruption Act 2012* (SA) provides for two avenues arising from an investigation by the Independent Commissioner Against Corruption and/or the Office of Public Integrity: it can be referred to a law enforcement agency or referred to a public authority for investigation and ‘potential disciplinary action’, or both.

It appears that the Commissioner does not have powers to make disciplinary decisions. Further, there are no references to mediation in the *Independent Commission Against Corruption Act 2012* (SA).

# Conduct research and risk reviews

* 1. Introduction

Prenzler and Faulkner’s eighth desirable feature for integrity commissions is a power to ‘conduct research and risk reviews aimed at improving procedures and preventing misconduct’.[[237]](#footnote-237)

Such powers would appear to be consistent with the design of other statutory bodies, such as the Victorian Sentencing Advisory Council and the ACT Human Rights Commission, where such bodies are expected not only to address problems in their ambit as they emerge, but to gather, process and present information about activity in their ambit and to make policy proposals about how to improve compliance and policy settings overall.

Put simply, this is system-level work which is intended to compliment powers to respond to failures of compliance in particular instances, and—hopefully—to improve culture, so as to exert downward pressure on compliance failures.

* 1. New South Wales

The *Independent Commission Against Corruption Act 1988* (NSW) provides, at Section 13, ‘Principal functions’, among other things that principal functions of the Independent Commission Against Corruption include:

* ‘to advise public authorities or public officials of changes in practices or procedures compatible with the effective exercise of their functions that the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt conduct and to promote the integrity and good repute of public administration’;
* ‘to educate and advise public authorities, public officials and the community on strategies to combat corrupt conduct and to promote the integrity and good repute of public administration’;
* ‘to educate and disseminate information to the public on the detrimental effects of corrupt conduct and on the importance of maintaining the integrity and good repute of public administration’;
* ‘to enlist and foster public support in combating corrupt conduct and in promoting the integrity and good repute of public administration’; and
* ‘to develop, arrange, supervise, participate in or conduct such educational or advisory programs as may be described in a reference made to the Commission by both Houses of Parliament’. [[238]](#footnote-238)

Section 13 also provides that other principal functions of the Commission, among other things, are:

* ‘to co-operate with public authorities and public officials in reviewing laws, practices and procedures with a view to reducing the likelihood of the occurrence of corrupt conduct and to promoting the integrity and good repute of public administration’;[[239]](#footnote-239) and
* ‘examine the laws governing, and the practices and procedures of, public authorities and public officials, in order to facilitate the discovery of corrupt conduct and to secure the revision of methods of work or procedures which, in the opinion of the Commission, may be conducive to corrupt conduct’.[[240]](#footnote-240)
	+ - * 1. Conclusion

The *Independent Commission Against Corruption Act 1988* (NSW) does not make reference to a ‘research’ function for the Independent Commission Against Corruption, but the principal functions set out above presuppose research activity by the Commission—that is, fulfilling these obligations effectively would *entail*  effective research activity by the Commission.

Similarly, the principal functions indicated above for the Commission to examine laws, practices and procedures of public authorities and officials, ‘with a view to reducing the likelihood of the occurrence of corrupt conduct’ and ‘to facilitate the discovery of corrupt conduct’, is closely akin to Prenzler and Faulkner’s ‘risk review’.

* 1. Queensland

The *Crime and Corruption Act 2001* (Qld) provides, in Section 52, ‘Research functions’, that:

(1) The commission has the following functions—

(a) to undertake research to support the proper performance of its functions;

(b) to undertake research into the incidence and prevention

of criminal activity;

(c) to undertake research into any other matter relating to the administration of criminal justice or relating to corruption referred to the commission by the Minister;

(d) to undertake research into any other matter relevant to any of its functions.

(2) Without limiting subsection (1)(a), the commission may undertake research into—

(a) police service methods of operations; and

(b) police powers and the use of police powers; and

(c) law enforcement by police; and

(d) the continuous improvement of the police service.[[241]](#footnote-241)

Section 53, ‘Intelligence functions’, provides that:

The commission has the following functions (its intelligence functions)—

(a) to undertake intelligence activities, including specific intelligence operations authorised by the reference committee, to support the proper performance of its functions;

(b) to hold intelligence function hearings;

(c) to analyse the intelligence data collected to support its functions;

(d) to minimise unnecessary duplication of intelligence data;

(e) to ensure that intelligence data collected and held to support its functions is appropriate for the proper performance of its functions.[[242]](#footnote-242)

In addition, Section 24, ‘How the commission performs its prevention function’, provides among other things that ‘the commission performs the function by … analysing systems used within units of public administration to prevent corruption’.[[243]](#footnote-243)

* + - * 1. Conclusion

In these provisions the *Crime and Corruption Act 2001* (Qld) appears to provide sufficient powers to the Crime and Corruption Commission to conduct ‘research and risk reviews aimed at improving procedures and preventing misconduct’. Further research is needed to ascertain the extent of the Commission’s practice in this regard.

* 1. Western Australia

In relation to ‘serious misconduct’, the *Corruption, Crime and Misconduct Act 2003* (WA), at Section 18, ‘Serious misconduct function’, provides among other things that:

As an aspect of the serious misconduct function, the Commission may help public authorities to prevent serious misconduct by doing the following —

 (a) analysing the information it gathers in performing the serious misconduct function, including the intelligence gathered in support of investigations into serious misconduct; *[and]*

 (b) analysing systems used within public authorities to prevent serious misconduct.[[244]](#footnote-244)

In relation to ‘minor misconduct’, the *Corruption, Crime and Misconduct Act 2003* (WA), at Section 45A, ‘Prevention and education function’, provides that it is ‘a function of the Public Sector Commissioner (the *prevention and education function*) to help to prevent misconduct’.[[245]](#footnote-245)

Subsection 45(2) provides that among other things the Public Sector Commissioner fulfils that function by:

* ‘analysing the information the Public Sector Commissioner gathers in performing functions under this Act and any other Act, including the information gathered in support of inquiries’ the Commissioner makes under Part 4A, Division 2, ‘Minor misconduct’;[[246]](#footnote-246) and
* ‘generally increasing the capacity of public authorities to prevent and combat misconduct by providing advice and training to those authorities and, if asked, to other entities’. [[247]](#footnote-247)

A further subsection provides that:

In performing the prevention and education function, the Public Sector Commissioner is to be supported by the Commission, other independent agencies and appropriate authorities.[[248]](#footnote-248)

* + - * 1. Conclusion

The *Corruption, Crime and Misconduct Act 2003* (WA) provides for a research function for the Corruption and Crime Commission in connection with ‘serious misconduct’. In connection with ‘minor misconduct’, that function is performed by the Public Sector Commissioner rather than the Corruption and Crime Commission.

This appears consistent with the requirement proposed by Prenzler and Faulkner in this respect.

* 1. Tasmania

The *Integrity Commission Act 2009* (Tas) appears to provide powers and responsibilities for the Integrity Commission to ‘conduct research’ and perform ‘risk reviews’.

In relation to research, Section 31, ‘Education, preventative and advisory functions’ provides, among other things, that the Integrity Commission has powers and obligations to ‘undertake research into matters related to ethical conduct and investigatory processes’.[[249]](#footnote-249)

In relation to ‘risk reviews’, while the *Integrity Commission Act 2009* (Tas) does not employ this form of words, Section 31 also provides, among other things, that the Integrity Commission has a function:

* ‘to review and make recommendations about practices, procedures and standards in relation to conduct, propriety and ethics in public authorities and to evaluate their application within those authorities’;[[250]](#footnote-250) and to
* ‘to evaluate the adequacy of systems and procedures in public authorities for ensuring compliance with relevant codes of conduct’.[[251]](#footnote-251)

This would appear to provide the Commission with both the power and the obligation to perform actions that appear to correspond with the term ‘risk review’.

* + - * 1. Conclusion

Section 31 of the Act provides powers and the obligation for the Integrity Commission to conduct research and also to perform a function recognisable as a ‘risk review’. Further research on the operation of the Integrity Commission is necessary to determine the extent to which this is part of the Commission’s operations in practice.

* 1. Victoria

The *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), in Section 15, ‘Functions of the IBAC’, provides that its functions, among other things, includes ‘to examine systems and practices in the public sector and public sector legislation’.[[252]](#footnote-252)

The scope of this provision would appear to be supported by Section 16, ‘Powers of the IBAC’, which provides that:

The IBAC has power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to, the achievement of the objects of this Act and the performance of its duties and functions.[[253]](#footnote-253)

With regard to research, the Act provides in Section 7, as noted above, that the BAC holds a function ‘to receive information, conduct research and collect intelligence, and to use that information, research and intelligence in support of investigations’.[[254]](#footnote-254)

* + - * 1. Conclusion

The power and obligation for the IBAC to ‘examine systems and practices in the public sector and public sector legislation’, coupled with the assertion of powers in Section 16, would appear to provide the IBAC with such authority as may be necessary to perform ‘risk reviews’.

In relation to research, the wording of Section 7 could appear to constrain the role of research in the work of the IBAC only to research which is done ‘in support of investigations’.

Further research is necessary to ascertain how, and to what extent, a research function for the IBAC is expressed in practice.

* 1. South Australia

The *Independent Commission Against Corruption Act 2012* (SA), in Section 7, ‘Functions’, provides that the Independent Commissioner Against Corruption has the function:

...to evaluate the practices, policies and procedures of inquiry agencies and public authorities with a view to advancing comprehensive and effective systems for preventing or minimising corruption, misconduct and maladministration in public administration.[[255]](#footnote-255)

As noted above, in Section 17, ‘Functions and objectives’, the Act provides for complaint-driven functions for the Office of Public Integrity, aside from the function ‘to perform other functions assigned to the Office by the Commissioner’.[[256]](#footnote-256)

* + - * 1. Conclusion

Although the *Independent Commission Against Corruption Act 2012* (SA) does not specifically refer to ‘research’ or ‘risk reviews’, it appears to confer on the Independent Commissioner Against Corruption a broad power to research and review the operations of public agencies in terms of any potential for ‘corruption, misconduct and maladministration’. [[257]](#footnote-257)

Under the direction of the Commissioner, the Act would seem to empower the Office of Public Integrity to participate in such activities. Further research is needed to ascertain practice in this area.

# Engage in public sector ethics training

* 1. Introduction

As noted in the previous chapter, Prenzler and Faulkner’s expectation that integrity commissions ‘engage in public sector ethics training’ is consistent with the contemporary expectation that statutory bodies responsible for compliance will perform an educational role so as to exert downward pressure on compliance failures. This stems from a recognition of the importance of cultural factors in achieving acceptable levels of compliance in any particular domain.

* 1. New South Wales

As noted above, the *Independent Commission Against Corruption Act 1988* (NSW), at Section 13, ‘Principal functions’, among other things provides that the Independent Commission Against Corruption will have functions:

* ‘to educate and advise public authorities, public officials and the community on strategies to combat corrupt conduct and to promote the integrity and good repute of public administration’; and
* ‘to educate and disseminate information to the public on the detrimental effects of corrupt conduct and on the importance of maintaining the integrity and good repute of public administration’.[[258]](#footnote-258)
	+ - * 1. Conclusion

The *Independent Commission Against Corruption Act 1988* (NSW) clearly provides that the Independent Commission Against Corruption has educative functions.

* 1. Queensland

The *Crime and Corruption Act 2001* (Qld), at Section 24, ‘How the commission performs its prevention function’, provides among other things that ‘the commission performs the function by … generally increasing the capacity of units of public administration to prevent corruption by providing advice and training to the units and, if asked, to other entities’.[[259]](#footnote-259)

* + - * 1. Conclusion

It would appear that the *Crime and Corruption Act 2001* (Qld) empowers and requires the Crime and Corruption Commission to engage in public sector ethics training.

* 1. Western Australia

The *Corruption, Crime and Misconduct Act 2003* (WA), at Section 18, ‘Serious misconduct function’, provides that as ‘an aspect of the serious misconduct function’, ‘the Commission may help public authorities to prevent serious misconduct by, among other things:

...generally increasing the capacity of public authorities to prevent serious misconduct by providing advice and training to those authorities and, if asked, to other entities.[[260]](#footnote-260)

Section 21AA, ‘Prevention and education function: police misconduct’, provides a similar function for the Commission in relation to a function ‘to help prevent police misconduct’.[[261]](#footnote-261)

Section 45A, ‘Prevention and education function’, also provides a similar function for the Public Sector Commissioner in relation to a role to ‘help to prevent misconduct’.[[262]](#footnote-262)

* + - * 1. Conclusion

The *Corruption, Crime and Misconduct Act 2003* (WA) appears to provide powers and obligations to conduct education activities with a view to preventing misconduct. As noted above, these are provided to the Corruption and Crime Commission with respect to public sector and police misconduct, and to the Public Sector Commissioner with respect to public sector misconduct.

* 1. Tasmania

As noted in the previous chapter, the *Integrity Commission Act 2009* (Tas), in Section 8, lists the functions of the Integrity Commission as including:

* ‘develop standards and codes of conduct to guide public officers in the conduct and performance of their duties’; [[263]](#footnote-263)
* ‘educate public officers and the public about integrity in public administration’; [[264]](#footnote-264) and
* ‘prepare guidelines and provide training to public officers on matters of conduct, propriety and ethics’. [[265]](#footnote-265)

In addition, these matters are provided for in the *Integrity Commission Act 2009* (Tas) in Section 32, ‘Public officers to be given education and training relating to ethical conduct’, which states that the ‘principal officer of a public authority is to ensure that public officers of the public authority are given appropriate education and training relating to ethical conduct’.[[266]](#footnote-266)

* + - * 1. Conclusion

The *Integrity Commission Act 2009* (Tas) unambiguously requires and empowers the Integrity Commission to engage in public sector ethics training, as well as other allied functions.

* 1. Victoria

The *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) provides, in Section 7, ‘Functions of the IBAC’, that the IBAC has functions:

* ‘to assist the public sector to increase capacity to prevent corrupt conduct and police personnel misconduct by providing advice, training and education services’;
* ‘to provide information and education services to the community about the detrimental effects of corruption on public administration and ways in which to assist in preventing corrupt conduct’;
* ‘to provide information and education services to members of police personnel and the community about police personnel conduct, including the detrimental effects of police personnel misconduct and ways in which to assist in preventing police personnel misconduct’; and also
* ‘to publish information on ways to prevent corrupt conduct and police personnel misconduct’. [[267]](#footnote-267)
	+ - * 1. Conclusion

The *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) clearly provides the IBAC with functions to ‘engage in public sector ethics training’.

* 1. South Australia

The *Independent Commission Against Corruption Act 2012* (SA), at Section 7, ‘Functions’, provides to the Independent Commissioner Against Corruption the function:

...to conduct or facilitate the conduct of educational programs designed to prevent or minimise corruption, misconduct and maladministration in public administration.[[268]](#footnote-268)

* + - * 1. Conclusion

The *Independent Commission Against Corruption Act 2012* (SA) expressly provides to the Independent Commissioner Against Corruption the function of providing, in the words of Prenzler and Faulkner, ‘public sector ethics training’.[[269]](#footnote-269)

It also appears that it would be open to the Commissioner to direct the Office of Public Integrity to engage in such activities under the provisions of Section 17(d) of the Act.[[270]](#footnote-270)

# Prosecute complainants who are patently vexatious

* 1. Introduction

Arguments in favour of the power, proposed by Prenzler and Faulkner, for an integrity commission to ‘prosecute complainants who are patently vexatious’ could emphasise two arguments in favour of providing this power.

First, such a power could be seen as protective of an integrity commission’s resources. It can be assumed that any integrity commission will be faced by a complex environment consisting of greater and lesser forms of potential misconduct, and that such a body should have the power to protect and regulate its workload so as to maintain the effectiveness of the Commission.

A second imperative is to protect against misuse of an integrity commission—that is to use the integrity process maliciously to persecute or otherwise malign an individual or organisation, potentially in the absence of checks and balances that may exist when matters are pursued through the Courts.

In either case, the prestige and the effectiveness of an integrity commission are potentially at stake, and it appears advisable that such commissions have a capacity to avoid substantive investigation into all complaints in instances where there may be good cause to consider that their basis is questionable.

* 1. New South Wales

The *Independent Commission Against Corruption Act 1988* (NSW) provides, at Section 20, ‘Investigations generally’, that among other things:

 The Commission may, in considering whether or not to conduct, continue or discontinue an investigation (other than in relation to a matter referred by both Houses of Parliament), have regard to such matters as it thinks fit, including whether or not (in the Commission's opinion):

(a) the subject-matter of the investigation is trivial, or

(b) the conduct concerned occurred at too remote a time to justify investigation, or

(c) if the investigation was initiated as a result of a complaint, the complaint was frivolous, vexatious or not in good faith.[[271]](#footnote-271)

* + - * 1. Conclusion

As for a number of other acts considered in this paper, the *Independent Commission Against Corruption Act 1988* (NSW) does provide the Independent Commission Against Corruption with powers not to investigate a matter where it considers a complaint to be vexatious or made in bad faith, but does not provide the Commission with the power to declare a complainant vexatious.

* 1. Queensland

The *Crime and Corruption Act 2001* (Qld), at S 216A. ‘Other improper complaints’, that a ‘person commits an offence’ if the person makes a complaint to the commission:

(a) makes a complaint to the commission—

(i) vexatiously; or

(ii) not in good faith; or

(iii) primarily for a mischievous purpose; or

(iv) recklessly or maliciously; or

(b) counsels or procures another person to make a complaint to the commission as mentioned in paragraph (a).[[272]](#footnote-272)

The maximum penalty is ‘85 penalty units or 1 year’s imprisonment’. [[273]](#footnote-273)

* + - * 1. Conclusion

The *Crime and Corruption Act 2001* (Qld) clearly provides for prosecutions of vexatious complainants.

* 1. Western Australia

The *Corruption, Crime and Misconduct Act 2003* (WA) , in Section 18, ‘Serious misconduct function’, provides among other things that:

When the Commission is deciding whether further action for the purposes of this Act in relation to an allegation is warranted, the matters to which it may have regard include the following—

(a) the seriousness of the conduct or involvement to which the allegation relates;

(b) whether or not the allegation is frivolous or vexatious or is made in good faith.[[274]](#footnote-274)

Similar provision is made for the Public Sector Commissioner in relation to ‘minor misconduct’.[[275]](#footnote-275)

* + - * 1. Conclusion

As for some other Acts considered in this paper, the *Corruption, Crime and Misconduct Act 2003* (WA) appears not to provide the Corruption and Crime Commission with the power to declare a complainant ‘vexatious’, but provides the Commission with the power, as part of its considerations decision-making, not to progress an investigation if it considers if a complaint is vexatious or not ‘made in good faith’.

* 1. Tasmania

The *Integrity Commission Act 2009* (Tas), in Section 8, provides the Integrity Commission with a function to ‘receive and assess complaints or information relating to matters involving misconduct’.[[276]](#footnote-276)

More specifically, Section 36, ‘Dismissal of complaint’, provides that the ‘chief executive officer may dismiss a complaint for investigation if he or she considers’[[277]](#footnote-277) that:

* ‘it is frivolous or vexatious’;[[278]](#footnote-278)
* ‘it was not made in good faith’; [[279]](#footnote-279)
* ‘it lacks substance or credibility’; [[280]](#footnote-280)
* ‘it does not relate to the functions of the Integrity Commission’; [[281]](#footnote-281)
* ‘investigating the complaint would be an unjustifiable use of resources’; [[282]](#footnote-282)
* ‘it is not in the public interest for the Integrity Commission to investigate the complaint’; [[283]](#footnote-283)or
* ‘in the case of a complaint about misconduct occurring after the commencement of this section, if the complainant had had knowledge of the subject matter of the complaint for more than a year and fails to give a satisfactory explanation for the delay in making the complaint.’ [[284]](#footnote-284)
	+ - * 1. Conclusion

These provisions provide the Integrity Commission with the power to exercise discretion over the extent to which complaints may be investigated, and in that way provide protection both for the resources of the Commission and from the possibility that complaints may be used for purposes not contemplated by the Act. However they stop short of providing the power to prosecute vexatious complainants.

Nevertheless, it may be open to the Commission to provide a brief to the Director of Public Prosecutions, for example, for making false utterances, or making false declarations under oath, if information has been taken under oath.

If so, the question arises as to what further benefit such a power may confer on an integrity commission. It is noted that the *Supreme Court Act 1933*, at Section 67A, ‘Vexatious litigants’, defines ‘vexatious proceedings’ as those ‘the purpose of which is to harass or annoy, to cause delay or for some other ulterior purpose’,[[285]](#footnote-285) or ‘that lack reasonable grounds’. [[286]](#footnote-286)

In other legislation, in some jurisdictions, persons considered to initiate such proceedings may be declared ‘vexatious litigants’,[[287]](#footnote-287) with the result that:

* ‘the person, or a person acting in concert with the person, shall not institute or continue any proceedings or, for a declaration expressed to apply only in relation to a particular type of matter, proceedings of that type, without the leave of the court’; [[288]](#footnote-288) and
* ‘any proceedings pending at the time of the declaration or, for a declaration expressed to apply only in relation to a particular type of matter, proceedings of that type, are stayed subject to any order of the court in relation to those proceedings’.[[289]](#footnote-289)

Similar provisions are available in other jurisdictions, such as those made under the *Supreme Court Act 1970* (NSW) in Section 84,[[290]](#footnote-290) in connection with which the Court maintains a Vexatious Litigants Register.[[291]](#footnote-291)

The chief arguments in favour of such arrangements is that they not only preserve the time and other resources of the Court, and protect persons who may be the target of such proceeding, but also support the prestige and reputation of the Court.

When applied to the case of integrity commissions, all of these arguments may be applicable, but, in addition, such arrangements would add to the quasi-judicial nature of such bodies as that provided for under the *Integrity Commission Act 2009* (Tas), the ‘Integrity Tribunal’.[[292]](#footnote-292)

This paper refers to Integrity Tribunals as ‘quasi-judicial’ for two reasons. One is that an Integrity Tribunal is not referred to as a ‘court’ by the Act. The second reason is that while the Integrity Commission has powers to take evidence under oath, for example and, when it constitutes an ‘Integrity Tribunal’, to make ‘Determinations’ (S 61(1)), it is ‘not bound by the rules of law governing the admission of evidence’, as are courts, but ‘may inform itself of any matter in such manner as it thinks fit’ under Subsection 9(2) of the *Integrity Commission Act 2009* (Tas). The Integrity Commission’s *Annual Report 2015-16* clarified this by stating that:

The standard of proof used by Commission investigators when making factual findings is the civil standard; that is, on the balance of probabilities. This requires proof to ‘reasonable satisfaction’, as distinct from the criminal standard of proof ‘beyond reasonable doubt’.[[293]](#footnote-293)

Seen in this light, integrity tribunals would seem to be more similar to the civil jurisdiction of courts than to their criminal jurisdiction.

* 1. Victoria

The *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) provides, in a number of sections, that the IBAC ‘must not conduct an investigation’ where ‘the complaint or notification is frivolous or vexatious’.[[294]](#footnote-294) Else*where the Act provides that in relation to police matters t*he IBAC ‘may determine that a complaint or a notification … does not warrant investigation if it considers on reasonable grounds’, among other things, that ‘the complaint or notification is frivolous or vexatious’.[[295]](#footnote-295) A similar provision is made more generally—that is, not limited to police matters—in Section 67, ‘Complaints or notifications to the IBAC that do not warrant investigation’.[[296]](#footnote-296)

* + - * 1. Conclusion

As noted in the Tasmanian legislation above, such provisions allow the Integrity Commission—in this case the IBAC—not to proceed where there are reasonable grounds to believe that a complaint is vexatious. While this falls short of a power to prosecute vexatious complainants, it may be that there are other mechanisms which could be employed. Further research is needed to determine whether this is the case.

* 1. South Australia

The *Independent Commission Against Corruption Act 2012* (SA), at Section 23, ‘Assessment’, provides that one basis for decision-making on ‘whether or not action should be taken to refer [a complaint or report] or to make recommendations to the Commissioner’ is to consider whether the complaint or report is:

...is trivial, vexatious or frivolous, it has previously been dealt with by an inquiry agency or public authority and there is no reason to reexamine it or there is other good reason why no action should be taken in respect of it.[[297]](#footnote-297)

A similar provision is made in Section 24, ‘Action that may be taken’:

If a matter is assessed as trivial, vexatious or frivolous, the matter has previously been dealt with by an inquiry agency or public authority and there is no reason to reexamine the matter or there is other good reason why no action should be taken in respect of the matter, no action need be taken in respect of the matter.[[298]](#footnote-298)

It appears that no other reference is made to vexatious complaints or reports.

* + - * 1. Conclusion

As for a number of the acts considered in this paper, the *Independent Commission Against Corruption Act 2012* (SA) does not make specific provision for vexatious complainants to be prosecuted or scheduled. Rather, the Act simply provides for such considerations to be part of the decision-making process on whether further investigation or actions are warranted in connection with a particular complaint or report.

# Account for its work

* 1. Introduction

Prenzler and Faulkner’s eleventh desirable feature for integrity commissions is that such a commission should ‘account for its work using a variety of performance measures, including stakeholder satisfaction, prosecution outcomes and case study reports’.[[299]](#footnote-299)

* 1. New South Wales

The *Independent Commission Against Corruption Act 1988* (NSW) provides, at Section 76, ‘Annual reports’, among other things, that the Independent Commission Against Corruption ‘will include’:

(2) A report by the Commission under this section in relation to a year shall include the following:

(a) a description of the matters that were referred to the Commission,

(b) a description of the matters investigated by the Commission,

(ba) the following details with respect to matters investigated by the Commission:

(i) the time interval between the lodging of each complaint and the Commission deciding to

investigate the complaint,

(ii) the number of complaints commenced to be investigated but not finally dealt with during the year,

(iii) the average time taken to deal with complaints and the actual time taken to investigate any matter in respect of which a report is made,

(iv) the total number of compulsory examinations and public inquiries conducted during the year,

(v) the number of days spent during the year in conducting public inquiries,

(vi) the time interval between the completion of each public inquiry conducted during the year and the furnishing of a report on the matter,

(c) any recommendations for changes in the laws of the State, or for administrative action, that the Commission considers should be made as a result of the exercise of its functions,

(d) the general nature and extent of any information furnished under this Act by the Commission during the year to a law enforcement agency,

(e) the extent to which its investigations have resulted in prosecutions or disciplinary action in that year,

(f) the number of search warrants issued by authorised officers and the Commissioner respectively under this Act in that year,

(g) a description of its activities during that year in relation to its educating and advising functions.[[300]](#footnote-300)

The Independent Commission Against Corruption’s *Annual Report 2015-16* provides information on prosecution outcomes, among other ‘Key quantitative results for corruption exposure activities’,[[301]](#footnote-301) and ‘corruption prevention activities’, [[302]](#footnote-302) and presents case studies on the work of the Commission.[[303]](#footnote-303)

The Annual Report presents further information on performance against targets in the body of the report.[[304]](#footnote-304) In relation to stakeholder satisfaction, information is presented only on participant satisfaction with training and workshops conducted by the Commission.[[305]](#footnote-305)

* + - * 1. Conclusion

Of the acts considered in this paper, the *Independent Commission Against Corruption Act 1988* (NSW) is the most detailed and prescriptive with regard to reporting obligations for an integrity commission.

In practice, the Independent Commission Against Corruption’s *Annual Report 2015-16* provides further reporting, including reporting on prosecution outcomes, other performance indicators, and case studies.

* 1. Tasmania

The *Integrity Commission Act 2009* (Tas) appears not to make specific provision or obligations for the Integrity Commission to use the performance measures proposed by Prenzler and Faulkner.

However, the Integrity Commission’s *Annual Report 2015-16* reported against ‘key initiatives’ for the Commission listed in the 2015-16 Tasmanian budget and, more extensively, against ‘three key goals’ set out in the Commission’s Strategic Plan.[[306]](#footnote-306)

While the *Annual Report 2015-16* presented brief case study reports,[[307]](#footnote-307) and stakeholder satisfaction,[[308]](#footnote-308) it did not present information on prosecutions or prosecution outcomes.

This may be because matters under the Commission’s administration did not proceed to prosecution. Considering one example of an investigation outcome, the Commission made a finding with respect to two persons that:

...the Board is of the view that it is open to conclude on the evidence that [the person] engaged in misconduct within the meaning of the Integrity Commission Act in that [the person] failed to comply with the code of conduct applicable to her under the *State Service Act 2000* (the State Service Act).[[309]](#footnote-309)

However, despite such findings the report did not go on to present information about or consider prosecutions of these persons, and it may be that this is not a regular feature of the Commission’s work, although it is clearly contemplated under the provisions of the *Integrity Commission Act 2009*, which provides in Section 8 that one of the Commission’s functions is to ‘refer complaints or any potential breaches of the law to the Commissioner of Police, the DPP or other person that the Integrity Commission considers appropriate for action’.[[310]](#footnote-310)

* + - * 1. Conclusion

While the *Integrity Commission Act 2009* (Tas) does not specify performance measures consistent with those proposed by Prenzler and Faulkner, in practice the Integrity Commission reports against the kind of performance measures that are consistent with contemporary practice for public sector agencies. With regard to reporting on prosecutions, more research is needed to ascertain the Commission’s operational practice—that is, whether some of the Commission’s investigations give rise to—or are expected to give rise to—prosecutions in the Courts.

* 1. Victoria

The *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) provides, at Section 165, ‘Matters to be included in annual report’, that:

(1) The IBAC in its annual report for a financial year under Part 7 of the Financial Management Act 1994 must include—

 (a) the prescribed information relating to the performance of its duties and functions;

 (b) any recommendations for changes to any Act or law in force in Victoria or for specified administrative actions to be taken which the IBAC considers necessary as a result of the performance of its duties and functions;

 (c) a description of its activities in relation to the performance of its duties and functions.[[311]](#footnote-311)

While these provisions could support, but do not appear to oblige, the IBAC to employ ‘a variety of performance measures, including stakeholder satisfaction, prosecution outcomes and case study reports’, the IBAC *Annual Report 2015-16* quotes performance measures for IBAC from the 2015-2016 Victorian Budget. [[312]](#footnote-312) The *Annual Report 2015-16* also includes reporting on:

* stakeholder satisfaction;[[313]](#footnote-313)
* numbers and outcomes of recommendations made by IBAC; [[314]](#footnote-314)
* numbers of investigations commenced, finalised and open, and the average duration of investigations;[[315]](#footnote-315) and
* outcomes of investigations, including ‘criminal proceedings or brief of evidence to Office of Public Prosecutions’.[[316]](#footnote-316)
	+ - * 1. Conclusion

While the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) is not in itself specific about performance reporting, there are clearly other mechanisms—common to Victoria public sector agencies—which result in performance reporting for agencies in the Budget Papers.

In addition, the IBAC has adopted performance reporting measures in its annual reports. The element lacking in this instance from the prescriptions of Prenzler and Faulkner is that there are no case studies—not in the *Annual Report* and not on the IBAC website. Where such case studies are available they have been produced by the precursor to the IBAC, the OPI (Office of Police Integrity).[[317]](#footnote-317)

This may be an expression of the privacy constraints placed on the IBAC in sections of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic).[[318]](#footnote-318)

* 1. Queensland

The *Crime and Corruption Act 2001* (Qld) provides among other things, at Section 260, ‘Performance’, that:

 (1) The Minister has a responsibility to ensure that the commission operates to best practice standards.

(2) To help the Minister discharge that responsibility, the commission must report to the Minister, when and in the way required by the Minister, on the efficiency, effectiveness, economy and timeliness of the commission and its systems and processes, including operational processes.

(3) The report must be accompanied by any financial or other reports the Minister requires to enable the Minister to assess the efficiency, effectiveness, economy or timeliness of the commission, including, in particular, the timeliness with which the commission deals with complaints.

The *Crime and Corruption Act 2001* (Qld) is not prescriptive as to the specifics of how the Crime and Corruption Commission reports. The Commission’s *Annual Report 2015-16* presents some information on prosecutions,[[319]](#footnote-319) and a number of case studies.[[320]](#footnote-320)

* + - * 1. Conclusion

The *Crime and Corruption Act 2001* (Qld) appears to provide sufficient requirements and authority for the Crime and Corruption Commission to report against Prenzler and Faulkner’s proposed performance measures—‘including stakeholder satisfaction, prosecution outcomes and case study reports’, but in practice the Commission appears to employ only some of these measures in its most recent annual report. The Commission does, however, report against performance measures in the annual report.[[321]](#footnote-321)

The Commission’s *Annual Report 2015-16*, highlights the broad responsibilities of the Commission, which include the responsibilities for major crime and corruption provided for in the *Crime and Corruption Act 2001* (Qld) but also, for example, witness protection programs,[[322]](#footnote-322) and responsibility for investigation ‘crimes against vulnerable victims’.[[323]](#footnote-323)

Given that the *Crime and Corruption Act 2001* (Qld) also requires the Commission to investigate and otherwise act in relation to corruption in public sector entities and the police force, it may be open to question whether the Commission’s areas of responsibility are too broad to allow it to do any one thing well.

* 1. Western Australia

The *Corruption, Crime and Misconduct Act 2003* (WA) provides, in Section 91, ‘Annual report to Parliament’, specific directions as to the content of such a report by the Corruption and Crime Commission, including among other things:

...a description of the extent to which investigations carried out by the Commission have resulted in prosecutions of public officers or other persons or disciplinary action against public officers.[[324]](#footnote-324)

It also requires reporting on other matters, such as:

* ‘an evaluation of the response of appropriate authorities to recommendations made by the Commission ‘;[[325]](#footnote-325)
* ‘the number of search warrants issued to the Commission’; [[326]](#footnote-326) and
* ‘the number of approvals for the acquisition and use of an assumed identity given by the Commission’.[[327]](#footnote-327)

The Corruption and Crime Commission’s *Annual Report 2015-16* provided:

* a ‘Summary of key performance indicators’;[[328]](#footnote-328) and
* a number of case studies of matters dealt with by the Commission.[[329]](#footnote-329)

The *Annual Report* did not provide information on satisfaction surveys.

* 1. South Australia

The *Independent Commission Against Corruption Act 2012* (SA), at Section 45, ‘Commissioner’s annual report’, provides that the Independent Commissioner Against Corruption will prepare an annual report which will detail, among other things:

* ‘the number and general nature of complaints and reports received by the Office’;
* ‘the number and general nature of matters investigated by the Commissioner’;
* ‘the number of warrants issued by the Commissioner and by judges of the Supreme Court; and
* the number of examinations conducted.[[330]](#footnote-330)

The *ICAC (SA) and OPI Annual Report 2015-16* provided a ‘snapshot’ of the total number of complaints and reports, ‘issues identified’, ‘inquiry agency referrals’, and other matters.[[331]](#footnote-331) The *Annual Report* also provided a more detailed breakdown for operations of the Office for Public Integrity for such measures as the number and type of complaints, [[332]](#footnote-332) investigations,[[333]](#footnote-333) and referrals. [[334]](#footnote-334)

The *ICAC (SA) and OPI Annual Report 2015-16* did not present data on satisfaction surveys.

Case studies are made available on the web-site of the Independent Commissioner Against Corruption, but these are ‘fictitious’, intended for ‘educational purposes’.[[335]](#footnote-335)

* + - * 1. Conclusion

Prenzler and Faulkner suggest that integrity commissions should account for their work ‘using a variety of performance measures, including stakeholder satisfaction, prosecution outcomes and case study reports’.[[336]](#footnote-336)

In this case, the Independent Commissioner Against Corruption and Office for Public Integrity do not demonstrate that targets are set for performance measures or indicators, nor is data on stakeholder satisfaction presented. Prosecutions are referred to in the *ICAC (SA) and OPI Annual Report 2015-16*, but not the outcomes of prosecutions. As noted above, case studies are presented on the ICAC-OPI website, but they are fictional and do not represent actual cases.

In this instance, reporting by the Independent Commissioner Against Corruption and Office for Public Integrity is not specified in the *Independent Commission Against Corruption Act 2012* (SA) in a way that resembles Prenzler and Faulkner’s requirement, and reporting practice, evidenced in the *ICAC (SA) and OPI Annual Report 2015-16* alsodoes not meet that requirement.

# Conclusion

This issues paper has reviewed contemporary legislation which creates integrity commissions in each of the Australian state jurisdictions.

It will be noted that there are common elements amongst all of these legislative schemes for integrity commissions. There are also significant differences.

Oversight for such a commission is commonly provided for by a parliamentary committee. In some jurisdictions there is also a commissioner independent of the integrity commission who has a key role in such oversight. In Victoria this function is performed by an Integrity Commission which holds this responsibility in relation to a number of organisations which have integrity functions.

The Acts creating integrity commissions provide that such commissions will hold ‘examinations’ in connection with their investigations, and that people summonsed to appear must appear, must answer questions, or produce documents as stipulated by the summons. Acts considered here include those which provide significant penalties for not complying with such directions, such as South Australia (see above).

Some acts provide extensive scope of action to integrity commissions. An example is the authority for officers of the commission to use firearms and protective equipment as provided in Victoria (see above), which may encourage a perception that the integrity commission has been elevated into a kind of second police force.

Similarly, in some jurisdictions (such as Queensland, above) explicit powers are provided to authorise covert operations, including in some case specific provisions that limit the liability of officers engaged in such operations, including so-called ‘controlled operations’, where officers may be required to engage in conduct otherwise considered illegal, for the sake of a commission investigation. These powers are also similar to those of a police force.

 Interrelated questions of scope of action and responsibility form an important line of difference overall. In some jurisdictions integrity commissions are constituted by their acts specifically to address corruption and misconduct. In others the relevant commission also has a responsibility to investigate and respond to organised or ‘major’ crime. Relevant legislation may also make separate provision for responses to more or less serious misconduct, with different and distinct processes and players in either case, as in Queensland.

Arguments may be anticipated on both sides of the question as to whether integrity commissions should have such powers.

On one hand, a negative view may see it as useful to restrict the responsibilities of an integrity commission in order to enhance its work in a specific area (corruption and misconduct) and to sharpen public awareness of its profile and purpose.[[337]](#footnote-337)

On the other hand, a positive view may suggest that instances of corruption and misconduct, in practice, may frequently entail elements of organised or major crime, and that not to provide a comprehensive power to a commission could reduce its effectiveness, either by running the risk that matters could be investigated by two bodies (such as the commission and the police force) at the same time, thus reducing coordination and focus for the investigation, or by creating a situation where work is be duplicated and the distinctive role of the integrity commission is unclear. A further consideration is whether larger entities have the ability to maintain sufficient confidentiality to progress operational matters effectively.

These are all important considerations. Specific settings within the range depicted in this paper reflect balances and trade-offs in settings for integrity commissions of:

* independence against accountability;
* comprehensiveness of powers against specificity of purpose; and
* strength of a commission’s ability to serve its functions in its own right against duplications of other compliance systems.

Each of the arrangements made under the acts considered here can be plotted against these dimensions.

An example is arrangements for search warrants. In most jurisdictions the integrity commission must apply to a judicial officer independent of the commission. However in some jurisdictions (such as South Australia, see above) the integrity commissioner is him- or her-self able to provide such warrants.

The potential positive character of such arrangements is that they could provide for faster action by the integrity commission. Potential negative aspects are that they duplicate or make—to a limited extent—redundant the conventional process of applying to a judicial officer, which could be described as the ‘gold standard’ for warrant applications.

This shows that decisions on these arrangements inherently involve questions of accountability, operational effectiveness, and due process, all of which require careful consideration when determining legislative arrangements to support integrity commissions.

Shane Rattenbury MLA

Chair

27 March 2017

How to prepare and lodge a submission

**Preparing a submission**

Submissions may range from a short letter outlining your views on a particular topic to a much more substantial document covering a range of issues. Where possible, you should provide evidence, such as relevant data and documentation, to support your views.

The Committee has a broad public interest mandate and is not in a position to determine the rights and wrongs of individual cases. The Committee process is not a forum to resolve issues pertaining solely to individual cases or grievances but is a forum to explore the general matters of principle, policy or public administration relevant to the T of R. Individual cases will only be considered to the extent that they may assist the Committee with the general matters of principle, policy or public administration relevant to the T of R. The Committee will be confining its inquiry to the T of R.

**After your submission is received**

After your submission is received it will be referred to members of the Select Committee for consideration.

Once a committee receives a submission it becomes the property of the Committee and must not be published, or otherwise circulated, until it is authorised for publication.  Once authorised, the submission is posted on the Legislative Assembly website and is made publicly available.  This process is completed as soon as possible.  Once received by the Committee, the submission is covered by parliamentary privilege but any wider circulation, until the Committee has authorised the submission for publication, will not be protected by parliamentary privilege.  The Committee Secretary will advise you once the Committee has formally received the submission and authorised it for publication. It is noted that decisions about authorisation rest with the Committee.

 More information about making submissions and appearing before a committee is available at: <http://www.parliament.act.gov.au/__data/assets/word_doc/0006/431286/Witness-guide-2013-05-31-rev-final.doc>

Authorised submissions (uploaded to the Assembly website) will redact residential and personal email/phone contact details. Routine practice is for names of submitters to remain on submissions.

**In-confidence material**

Whilst the Committee prefers for all information to be on the public record, it may consider on an individual basis, the receipt of confidential submissions. Please contact the Committee Secretary for further information (details below).

**Privacy**

For privacy reasons, all personal details (for example, home and email address, signatures, and phone numbers) will be removed before they are published on the website.

**Technical tips**

The Committee prefers to receive typed submissions electronically, although handwritten submissions are acceptable. All submissions, including those sent electronically, must include a postal address and telephone contact number.

Track changes, editing marks, and hidden text should be removed from submissions.

**Guidelines to assist submitters**

Guidelines to assist individuals and organisations to make their submissions can be accessed via the Assembly's website at: <http://www.parliament.act.gov.au/__data/assets/word_doc/0006/431286/Witness-guide-2013-05-31-rev-final.doc>

Submitters are advised that it is completely within the discretion of the Committee to decide whether or not a person who has lodged a submission should be invited to appear as a witness.

**How to lodge a submission**

Submissions should be forwarded to:

The Secretary, Select Committee on an Independent Integrity Commission, Legislative Assembly for the ACT, GPO Box 1020, CANBERRA ACT 2601. E-mail: committees@parliament.act.gov.au

**Due date for submissions**

Written submission submissions should be lodged by COB Friday 19 May 2017.

**Further information**

For further information please refer to the [Committee homepage](http://www.parliament.act.gov.au/in-committees/select_committees/an-Independent-Integrity-Commission) or contact the Committee Secretary, Dr Andréa Cullen, on (02) 6205 0142.

Suggested further reading

* + - * 1. Jurisdictional enabling legislation—designated integrity bodies

**Queensland**—*Crime and Corruption Act 2001:*

[**http://www.austlii.edu.au/au/legis/qld/consol\_act/caca2001219/**](http://www.austlii.edu.au/au/legis/qld/consol_act/caca2001219/)

**NSW**—*Independent Commission Against Corruption Act 1988*:

<http://www.google.com.au/search?surl=1&ie=ISO-8859-1&hl=en-AU&source=hp&biw=&bih=&q=NSW%97Independent+Commission+Against+Corruption+Act+1988%3A+&gbv=1&oq=NSW%97Independent+Commission+Against+Corruption+Act+1988%3A+&gs_l=heirloom-hp.3...1695.1695.0.3028.1.1.0.0.0>

**WA**—*Corruption, Crime and Misconduct Act 2003*:

<http://www5.austlii.edu.au/au/legis/wa/consol_act/ccama2003330/>

**Tasmania**—*Integrity Commission Act 2009*:

<http://www.austlii.edu.au/cgi-bin/download.cgi/au/legis/tas/num_act/ica200967o2009304>

**Victoria**—*Independent Broad-based Anti-corruption Commission Act 2011*:

[http://www.legislation.vic.gov.au/Domino/Web\_Notes/LDMS/LTObject\_Store/LTObjSt7.nsf/DDE300B846EED9C7CA257616000A3571/808D6AEF9BF8EFA9CA257B6C0023E595/$FILE/11-66aa013%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt7.nsf/DDE300B846EED9C7CA257616000A3571/808D6AEF9BF8EFA9CA257B6C0023E595/%24FILE/11-66aa013%20authorised.pdf)

**South Australia**—*Independent Commission Against Corruption Act 2012*:

<http://www.austlii.edu.au/au/legis/sa/consol_act/icaca2012463/>

* + - * 1. Academic/practitioner reading

Tim Prenzler and Nicholas Faulkner, (2010) ‘Towards a Model Public Sector Integrity Commission’, *Australian Journal of Public Administration*, Vol. 69(3), pp. 251-262, and also available at: <http://www98.griffith.edu.au/dspace/handle/10072/36721>

Transparency International Australia. (2016), Anti-corruption agencies in Australia, position paper No. 3, January—available at:<http://transparency.org.au/wp-content/uploads/2016/01/PP3-Anti-Corruption-Agencies-Transparency-International-Australia-Jan-2016.pdf>

Transparency International (TI) and Griffith University. (2005) National Integrity Systems Assessment Final Report—available at: <http://www.transparency.org.nz/docs/2005/NIS%20Australia%202005.pdf>

Brown, A.J. and Head, B. (2004) ‘Ombudsman, corruption Commission or Police Integrity Authority? Choices for Institutional Capacity in Australia’s Integrity Systems’, Paper presented to the Australasian Political Studies Association Conference, University of Adelaide, 29 September to 1 October 2004, p. 3—available at: [https://www.adelaide.edu.au/apsa/docs\_papers/Others/Brown&Head.pdf](https://www.adelaide.edu.au/apsa/docs_papers/Others/Brown%26Head.pdf)

The Hon. Justice Michael Barker (2007), ‘Integrity in practice in the Public Sector’, President, State Administrative Tribunal of WA, Judge of the Supreme Court of WA, One of the Counsel who assisted the ‘WA Inc’ Royal Commission in 1991–92—available at: <http://www.sat.justice.wa.gov.au/_files/Barker_J_-_integrity_in_the_public_sector.pdf>

* + - * 1. Committee reports

ACT Legislative Assembly, Standing Committee on Justice and Community Safety. (2001), Report No. 18—The Commission for Integrity Bill 1999, August—available at:

<http://www.parliament.act.gov.au/__data/assets/pdf_file/0011/376787/J18intregrity.pdf>

Parliamentary Joint Select Committee on Ethical Conduct, *Public Office is Public Trust*,

Tasmania, 2009—available at: <http://www.integrity.tas.gov.au/__data/assets/pdf_file/0020/189110/Public_Office_is_Public_Trust_report.pdf>

* + - * 1. Other

IBAC. (2014) A review of integrity frameworks in Victorian public sector agencies, November—available at:

<http://www.ibac.vic.gov.au/docs/default-source/reviews/review-of-integrity-frameworks-research-paper.pdf>

IBAC—Community Consultation on IBAC, the Victorian Ombudsman and the Auditor-General—available at: <http://www.dpc.vic.gov.au/index.php/news-publications/ibac-discussion-paper>

Summary—changes to the IBAC Act—available at:

<http://www.ibac.vic.gov.au/docs/default-source/education-resources/summary-of-changes-to-the-ibac-act.pdf>

1. Legislative Assembly for the ACT, *Debates*, 15 December 2016, pp. 253–254. [↑](#footnote-ref-1)
2. (1) a select committee be established to inquire into the most effective and efficient model of an independent integrity commission for the ACT and that the committee make recommendations on the appropriateness of adapting models operating in other similarly-sized jurisdictions, as well as: (a) the personnel structure of the commission to ensure the appropriate carriage of workload;(b) governance and funding that delivers independence;(c) the powers available to a commission;(d) the educative functions of a commission;(e) issues regarding retrospectivity, including human rights, and the timeframes around which former actions can be assessed;(f) the relationship between any commission and existing accountability and transparency mechanisms and bodies in the ACT; and (g) any other relevant matter; [↑](#footnote-ref-2)
3. Tim Prenzler and Nicholas Faulkner, (2010) ‘Towards a Model Public Sector Integrity Commission’, *Australian Journal of Public Administration*, Vol. 69(3), pp. 251–262, and also available at: <http://www98.griffith.edu.au/dspace/handle/10072/36721> [↑](#footnote-ref-3)
4. Prenzler and Faulkner, (2010), p. 11. [↑](#footnote-ref-4)
5. ACT Legislative Assembly. (1989) *PAC Report on an independent advisory committee against corruption*, 14 December, p. 11. [↑](#footnote-ref-5)
6. Transparency International (TI) and Griffith University. (2005) *National Integrity Systems Assessment Final Report* [↑](#footnote-ref-6)
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