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Tasmania's toothless watchdog

A comparison of the Tasmanian and NSW anti-corruption watchdogs

The Tasmanian Integrity Commission (IC) has design flaws that render it less effective than the NSW ICAC. Between 2012 and 2016, NSW ICAC held 28 public hearings, referred 76 people for prosecution and made 123 findings of corrupt. Tasmania's IC scored zero on these measures and has never held a full inquiry

Discussion paper

Hannah Aulby

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

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Executive Summary

The Tasmanian Integrity Commission (Tasmanian IC) has major design flaws that render it far less effective than the NSW Independent Commission Against Corruption (NSW ICAC) in exposing systemic corruption.

The NSW ICAC makes more findings of corrupt conduct, refers more cases for prosecution, holds more public inquiries, and tackles systemic corruption cases of public significance. Over the observed period, 2012-2016, the NSW ICAC made corrupt conduct findings against 123

people, referred 76 people for prosecution, held 28 public inquiries, and investigated cases involving complex networks of corruption within the public sector.

The Tasmanian IC has never held a full inquiry using all of its investigative powers under the Integrity Tribunal meaning that it made no misconduct findings, held no public hearings, and only tackled cases involving one or two public sector employees. The Tasmanian IC has not held an investigation into the ongoing allegations of undue influence of the gambling industry on governance in Tasmania, and limitations on its jurisdiction mean that it is unlikely it would have been able to investigate the conduct of the Federal Group employees involved in allegations of bribery during the 1972 elections.¹

Differences in the design of each body impact their respective effectiveness, including the threshold to begin investigations, definition of corrupt conduct within the legislation and the conduct of public inquiries. NSW ICAC can begin investigations and inquiries using its full powers at the discretion of the Commissioner.

Cases the Tasmanian Integrity Commission did not investigate

Alleged conflict of interest of former mining minister: The Tasmanian IC has not investigated allegations that former mining minister Adam Brooks had a conflict of interest between his public position and ownership of mining consultancy Maintenance Systems Solutions.

Influence of gambling industry on policy making: The Tasmanian IC has not investigated allegations that the gambling industry has unduly influenced policy making and governance in Tasmania.

¹ ABC, 2018, *New allegations about collapse of 1972 Tasmanian government*, 7.30 Report, ; and Boyce, 2017, *Losing streak: how Tasmania was gamed by the gambling industry*, Redback Books, Melbourne.

The Tasmanian IC has to conduct a long process of assessments, reports, minor investigations and reports to the Board before it can begin a full inquiry. The requirement that complaints be made in writing in an approved form means that had the NSW ICAC investigation into Eddie Obeid occurred in Tasmania it would not have ever got started, as this began with an anonymous phone call. As the Tasmanian IC has to date not held a full inquiry under the Integrity Tribunal, it seems clear that this process is not effective.

The Tasmanian IC also has restrictions on its jurisdiction that mean it can only investigate public officers, and is limited in investigating parliamentarians. It does not have the jurisdiction to investigate matters involving proceedings in Parliament,

meaning it could not have investigated allegations that Human Services Minister Jacqui Petrusma misled Parliament in relation to the safety of children under the care of Safe Pathways.²

The report compares the legislative design of each body as well as their respective effectiveness in exposing systemic corruption.

Tasmanian Integrity Commission case studies

Conflict of interest of health managers: The Tasmanian IC investigated allegations that two senior health managers in the North West Area Health Service used their position to unfairly provide employment for family members.

Alleged favouritism of TasTAFE executives: The Tasmanian IC investigated allegations that the TasTAFE Chief Executive Officer gave favourable treatment, promotions, and working conditions to another senior executive on the basis of their shared background and family connections.

² Baines, 2017, *Tasmania's child safety minister Jacqui Petrusma accused of misleading Parliament over Safe Pathways assurances*, ABC, 17th July 2017

Table 2: Comparison of state anti-corruption commissions, 2012–2016

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

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

* Note: SA ICAC does not have the power to hold public hearings, and was only operational in 2013

Introduction

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

Public distrust of federal government is growing, with a recent poll by The Australia Institute finding 85% of Australians believe there is corruption in federal politics.³

At a State level, recent polling in the electorate of Bass found 85% support for giving the Tasmanian Integrity Commission stronger powers and more resources.⁴

This report compares the design and effectiveness of the NSW and Tasmanian anti-corruption commissions, and distils the key design features that are critical to a commission's success.

It finds that key features, including the threshold to begin investigations, the definition of corrupt conduct and the ability to conduct public hearings in the course of investigations, render the NSW ICAC far more effective than the Tasmanian IC.

³ Polling reported in Farr, 17th January 2017, *Overwhelming majority believes polities are corrupt*, <http://www.news.com.au/finance/work/leaders/overwhelming-majority-believes-polities-are-corrupt/news-story/0f181019b1f1dcdd1485e262f5419b13>

⁴ <http://tai.org.au/content/voters-across-political-spectrum-want-greater-accountability-tasmanian-politicians>

History of the Tasmanian IC and the NSW ICAC

NSW INDEPENDENT COMMISSION AGAINST CORRUPTION

The New South Wales Parliament passed the *Independent Commission Against Corruption Act 1988* (NSW) (ICAC Act) in 1988, in response to growing public concern about corruption among government ministers, the judiciary and at senior levels of the police force. The NSW ICAC was then established in March 1989.⁵ It remained relatively unchanged in its functioning until a High Court challenge to the NSW ICAC's jurisdiction began in December 2014. The case, *Independent Commission Against Corruption v Cunneen & Ors*, considered whether the NSW ICAC had acted outside its jurisdiction by investigating allegations that Margaret Cunneen, a NSW Crown Prosecutor, had engaged in corrupt conduct contrary to the ICAC Act. It was alleged that Ms Cunneen had adversely affected the behaviour of a police officer in an interaction between her daughter-in-law and the police officer.

The High Court found that the NSW ICAC had overreached in its interpretation of the definition of corrupt conduct, specifically in its understanding of the scope of the phrase 'adversely affect' the official function of a public official. The court limited the interpretation of 'corrupt conduct' in the ICAC Act to conduct that adversely affects the 'probity of the exercise of an official function by a public official', rather than the 'efficacy' of that function.⁶ In effect, the decision means that the NSW ICAC can only investigate cases where the conduct of a third-party results in a public official acting dishonestly. The NSW government responded to the High Court's findings through its own review of the NSW ICAC, led by former Chief Justice of the High Court Murray Gleeson AC and Bruce McClintock SC. In 2015 the recommendations of the review were accepted by NSW Parliament, including an expansion of the definition of corrupt conduct to further focus on fraud, collusive tendering and dishonest use of public money in public administration. The review found no need to limit the definition of

⁵ History, NSW ICAC, accessed 8th March 2017, <http://www.icac.nsw.gov.au/about-the-icac/overview/history>

⁶ High Court, *Judgement, Case S302/2014, Independent Commission Against Corruption vs Cunneen & Ors*, http://www.hcourt.gov.au/cases/case_s302-2014

corrupt conduct as it found that this issue had already been resolved by the High Court.⁷

The operation of the NSW ICAC was altered once again in 2016 with the enactment of the *Independent Commission Against Corruption Amendment Act 2016* (NSW). This Act significantly altered the structure and governance of the NSW ICAC. According to the then NSW ICAC Commissioner Megan Latham, the Act ‘effectively strips the Commission of the authority of a “Chief Commissioner”, and vests significant operational decisions and powers in each of the three commissioners which may be exercised independently of each other.’⁸ The Act caused the premature termination of the tenure of the Chief Commissioner, without meeting the legislated requirements for this termination, and according to former NSW ICAC Commissioners and the former NSW Director of Public Prosecutions (DPP), threatens the independence of future commissioners as they may fear similar political intervention.⁹ These changes were made without consultation with the Parliamentary ICAC Committee, or ICAC Commissioners or staff.¹⁰

Former NSW DPP Nicholas Cowdery said that this ‘appeared to be nothing more than a device to remove the commissioner, cloaked in some other reforms that were probably unnecessary.’ He followed that he was ‘concerned with the principle of independence of the commissioner, akin to judicial independence, enshrined in the legislation... independence is essential to the effective exercise of the commission's powers.’¹¹ Former NSW ICAC Commissioner David Ipp said that ‘The government has shown that, despite what is in the legislation, if it wants to, it will get rid of any ICAC commissioner if they don't like what they're doing.’¹²

⁷ *Report, Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption*, 30th July 2015

⁸ *Statement regarding the Independent Commission Against Corruption Amendment Bill 2016*, 15th November 2016, <http://www.icac.nsw.gov.au/media-centre/media-releases/article/5051>

⁹ See Nicholls et al, November 2016, *ICAC Chief's resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html> and Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

¹⁰ Ibid.

¹¹ Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

¹² Nicholls et al, November 2016, *ICAC Chief's resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html>

TASMANIAN INTEGRITY COMMISSION

The Tasmanian Integrity Commission was established on the 1st October 2010 by the Integrity Commission Act 2009. This was in response to a cross party inquiry in 2009 into the ethical conduct of public representatives. David Bartlett, Labor premier from 2008 to 2011, commenced the inquiry and established the Integrity Commission in response to its findings.

The Liberal Party were elected to State Government in 2014 under Premier Will Hodgman. The Integrity Commission's funding was cut by twenty per cent and an attempt was made to cut its investigative function.¹³ In response, the Commission's Chief Executive Diane Merryfull told media that the State Government was trying to shut down the commission.¹⁴

Independent Reviewer, former Chief Justice of the Supreme Court of Tasmania, William Cox AC QC completed the Commission's first five year review in 2016. The Review made 55 recommendations, including a number that encouraged more efficiency in the operation of the commission. To date only the first six recommendations were implemented by State Government under the *Integrity Commission Amendment Act 2017*.¹⁵ In one important area, the amendment act went further than the review recommended and implemented changes that threaten the independence of the Chief Commissioner. The amendment inserted a number of provisions that allow the Chief Commissioner to be suspended, including "if the Governor is satisfied that the person has engaged in misbehaviour that brings the office of Chief Commissioner into disrepute".¹⁶

¹³ ABC, 2014, *Tasmania's anti-corruption watchdog faces funding cuts*, 30th May 2014, <http://www.abc.net.au/news/2014-05-30/anti-corruption-watchdog-fears-funding-cuts/5490182> and ABC, 2014, *Integrity Commission's Diane Merryfull says Tas Government trying to shut down watchdog*, 30th September 2014, <http://www.abc.net.au/news/2014-09-30/integrity/5778840>

¹⁴ ABC, 2014, *Integrity Commission's Diane Merryfull says Tas Government trying to shut down watchdog*, 30th September 2014, <http://www.abc.net.au/news/2014-09-30/integrity/5778840>

¹⁵ Hansard, second reading, <http://www.parliament.tas.gov.au/ParliamentSearch/isysquery/1ffd6575-16bb-41e1-9e12-bfff6497e705/5/doc/>

¹⁶ *Integrity Commission Amendment Act 2017* (Tas)

Design features—how many teeth?

By comparing the *Independent Commission Against Corruption Act 1988* (NSW) and its 2016 amendments, with the *Integrity Commission Act* (Tas) and its 2017 amendments, key design features of both bodies have been outlined in the table below.

Table 1: Comparison of NSW ICAC and Tasmanian IC design features.

	NSW ICAC	Tas IC
Independence of Commissioner	2016 amendment appoints 3 commissioners each with similar power to act on behalf of the Commission, thereby ending the former independent decision making of the Commissioner. ¹⁷ The 2016 amendment also terminated the tenure of the Commissioner before the end of her legislated 5 year term.	2017 amendments provide for a range of mechanisms for suspending the Commissioner, including for “misbehaviour”. No legislated fixed term, leaving the Commissioner’s position vulnerable to political interference.
Definition of corrupt conduct	Any conduct of any person, whether or not a public official, that adversely affects, or could adversely affect, either directly or indirectly, the impartial or honest exercise of official functions <i>Full definition provided below</i>	Limited to conduct of public officers, and excludes any conduct in relation to the proceedings of parliament <i>Full definition provided below</i>
Investigative powers	Full investigative powers of a Royal Commission, including coercive powers, search warrants, public and private hearings, and make findings	Limited powers during assessment and investigation, including power to obtain information and search premises. The ability to hold hearings, cross examine witnesses and make findings is only available

¹⁷ See Nicholls et al, November 2016, *ICAC Chief’s resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html> and Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

		during an Integrity Tribunal inquiry, which has never been held
Indirect jurisdiction	Includes third parties, though limited by Cunneen decision ¹⁸	Does not include third parties
General functions	Corruption prevention, investigating and exposing corruption	Referral, assessment and investigation of complaints, Integrity Tribunal for inquiries
Public hearings	Under 1988 Act, the Commission could conduct public hearings if it deemed them in the public interest.	Hearings of the Integrity Tribunal are generally to be in public, though commission assessments and investigations are not able to hold hearings. The Integrity Tribunal has never held an inquiry.
Private hearings	Can begin private hearings during preliminary investigation	Can only hold private hearings in an Integrity Tribunal inquiry, once the Commissioner has decided to close hearing to the public
Cross examination	Can cross examine in public hearings	Can only cross examine in Integrity Tribunal hearing, which has never occurred
Ability to begin inquiry	Decision to begin preliminary investigation and full inquiry is at the discretion of the Commissioner	Initial assessment, then investigation, then inquiry under Integrity Tribunal with sign off required by CEO at each stage and Board at final stage

Source: *Integrity Commission Act 2009 (Tas)*, *Integrity Commission Amendment Act 2017 (Tas)*; *Independent Commission Against Corruption Act 1988 (NSW)*, *Independent Commission Against Corruption Amendment Act 2016 (NSW)*

KEY POINTS OF DIFFERENCE

As seen in the above table, there are a number of key differences in the design of the Tasmanian and NSW anti-corruption bodies, namely in the definition of corrupt conduct, investigative powers, and process to begin investigations. The key differences are expanded upon below.

¹⁸ Watson, 2017, *The Darkest Corners*, Accountability and the Law conference paper, The Australia Institute

Definition of corrupt conduct

The jurisdiction of NSW ICAC provided by the definition of corrupt conduct is broad. It allows the Commission to investigate any person, whether or not they are a public official, whose conduct adversely affects the honest exercise of public office. It also includes breaches of public trust, official misconduct, dishonestly using public funds for private benefit, and a long list of matters that could be involved. Any conspiracy or attempt to engage in corrupt conduct is also included.

The key section of the definition from the NSW ICAC Act is provided below:

(1) Corrupt conduct is:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
 - (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
 - (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
 - (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.
- (2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:
- (a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),
 - (b) bribery,
 - (c) blackmail,
 - (d) obtaining or offering secret commissions,
 - (e) fraud,
 - (f) theft,
 - (g) perverting the course of justice,
 - (h) embezzlement,
 - (i) election bribery,
 - (j) election funding offences,
 - (k) election fraud,
 - (l) treating,
 - (m) tax evasion,
 - (n) revenue evasion,
 - (o) currency violations,
 - (p) illegal drug dealings,
 - (q) illegal gambling,
 - (r) obtaining financial benefit by vice engaged in by others,
 - (s) bankruptcy and company violations,
 - (t) harbouring criminals,
 - (u) forgery,
 - (v) treason or other offences against the Sovereign,
 - (w) homicide or violence,

- (x) matters of the same or a similar nature to any listed above,
- (y) any conspiracy or attempt in relation to any of the above.¹⁹

2015 additions:

- (a) collusive tendering;
- (b) fraud in or in relation to applications for licences, permits or clearances under statutes designed to protect health and safety or designed to facilitate the management and commercial exploitation of resources;
- (c) dishonestly obtaining or assisting or benefiting from the payment or application of public funds or the disposition of public assets for private advantage;
- (d) defrauding the revenue;
- (e) fraudulently obtaining or retaining employment as a public official

In contrast, the Tasmanian definition is narrower in its jurisdiction. It is limited to solely investigating the conduct of public officers. The Act provides a specific list of who is defined as a public officer, which includes people employed by the Parliament of Tasmania, in Ministers' or MPs' offices, government departments, the police service, a state owned company, local government or any other body funded by public money. It limits the ability to investigate parliamentarians, and anyone not a public officer.

The Tasmanian IC is limited in its ability to investigate parliamentarians by the definition of misconduct, and by the protections of parliamentary privilege. The protection of parliamentary privilege means that parliamentarians are immune from investigation requests for information or documents. The definition of misconduct provides that the Tasmanian IC cannot investigate conduct that is connected with a proceeding in Parliament. This is broadly defined as *'all words spoken or acts done in the course of, or for the purposes of or incidental to, the transacting of the business of a House of Parliament or of a committee...'*²⁰

This restriction means that the Tasmanian IC would not have been able to investigate allegations that Human Services Minister Jacquie Petrusma misled Parliament in relation to the safety of children being cared for by Safe Pathways.²¹

The Tasmanian IC cannot investigate anyone that is not a public officer. For example, this means that it cannot investigate an industry representative aiming to unduly influence the decisions of a public servant or parliamentarian. This restriction means that it is unlikely that the Tasmanian IC would have been able to investigate the

¹⁹ *Independent Commission Against Corruption Act 1988* (NSW)

²⁰ *Integrity Commission Act 2009* (Tas)

²¹ Baines, 2017, *Tasmania's child safety minister Jacquie Petrusma accused of misleading Parliament over Safe Pathways assurances*, ABC, 17th July 2017

conduct of employees of Federal Group that were involved in the bribery allegations surrounding the 1972 elections recently exposed by the 7.30 Report.²²

It also does not have indirect jurisdiction, for example to investigate collusion between two business people aiming to secure lucrative contracts by misleading the government.²³

misconduct means –

(a) conduct, or an attempt to engage in conduct, of or by a public officer that is or involves –

(i) a breach of a code of conduct applicable to the public officer; or

(ii) the performance of the public officer's functions or the exercise of the public officer's powers, in a way that is dishonest or improper; or

(iii) a misuse of information or material acquired in or in connection with the performance of the public officer's functions or exercise of the public officer's powers; or

(iv) a misuse of public resources in connection with the performance of the public officer's functions or the exercise of the public officer's powers; or

(b) conduct, or an attempt to engage in conduct, of or by any public officer that adversely affects, or could adversely affect, directly or indirectly, the honest and proper performance of functions or exercise of powers of another public officer –

but does not include conduct, or an attempt to engage in conduct, by a public officer in connection with a proceeding in Parliament;²⁴

Investigative powers

NSW ICAC has the full investigative powers of a Royal Commission, including:²⁵

- Power to obtain information including to compel production of document, statement of information or other thing at a specified time and place
- Power to enter public premises at any time
- Search warrant for private premises can be provided by Commissioner
- Conduct private compulsory examinations if in the public interest to do so
- Conduct public inquiries, if in the public interest to do so
- Examination and cross-examination
- Require attendance at hearings including the production of evidence, information, document or thing

²² ABC, 2018, *New allegations about collapse of 1972 Tasmanian government*, 7.30 Report, <http://www.abc.net.au/7.30/new-allegation-about-collapse-of-1972-tasmanian/9359246>

²³ Watson, 2017, *The Darkest Corners*, Accountability and the Law conference paper, The Australia Institute

²⁴ *Integrity Commission Act 2009* (Tas)

²⁵ *Independent Commission Against Corruption 1988* (NSW)

- Apply for a warrant for arrest of witness if they fail to appear before examination
- Apply for use of surveillance devices
- Claims to protection by privilege not accepted
- Make findings of corrupt conduct

Importantly, the NSW ICAC Act also provides for the incidental power to do all things necessary to exercise its function so that it is not limited by the list above.

The investigative powers of the Tasmanian IC are more limited. Full powers can only be used under an Integrity Tribunal inquiry, which to date has never been held. This means that the power to hold public hearings has not yet been used, and investigations have been limited to obtaining information and searching premises. The power to make findings of misconduct is also limited to Integrity Tribunal inquiries, and has not yet been exercised.

Even under an Integrity Tribunal inquiry all information and evidence may be protected by professional privilege, which means that parliamentarians and lawyers may hide all necessary information. This is critical to NSW ICAC's success, as all information required of Parliamentarians and lawyers is made available. In an inquiry, searching premises is also more restricted than in NSW, as applications for search warrants must be made to the magistrate rather than the ICAC Commissioner.

Public hearings

The Tasmanian IC can only hold public hearings once the investigation has reached a full inquiry under the Integrity Tribunal, which has not yet occurred. Tasmanian IC pre-inquiry investigations cannot hold any hearings, whether public or private. This means it cannot cross examine witnesses. This contrasts with NSW ICAC that uses public and private hearings in preliminary investigations and full inquiries. The NSW ICAC Act says that the Commission can decide to hold a public hearing if it considers it to be in the public interest. From 2012-2016, NSW ICAC held 28 public hearings, and many more private hearings.

As the role of anti-corruption commissions is to investigate and expose corruption, and much of the content of investigations comes out in hearings, the act of hiding hearings from public view threatens the proper function of the commission. Integrity commissions assist in building public trust in government, particularly when hearings are held in public view. Australia Institute polling shows that 85% of people believe

public trust in parliament would increase with a federal ICAC with public hearings, but that without public hearings 57% of people said public trust would fall.²⁶

Anti-corruption commissioners across Australia have recognised the power of public hearings. SA ICAC Commissioner Bruce Lander, who is currently the only commissioner who is not able to open hearings, has made a recommendation to the SA State Government to allow the commission to hold public hearings to ensure transparency.²⁷ Victorian IBAC Commissioner Stephen O'Bryan QC has said that openly examining cases of alleged serious corruption and misconduct in public hearings has encouraged and empowered people to come forward and report suspected wrongdoing.²⁸ Former assistant NSW ICAC Commissioner Anthony Whealy QC has said "there are many people out there in the public arena who will have information that's very important to the investigation. If you conduct the investigation behind closed doors, they never hear of it and the valuable information they have will be lost."²⁹ Former NSW ICAC Commissioner David Ipp QC has said that "Its main function is exposing corruption; this cannot be done without public hearings."³⁰

As outlined by former judge and adviser to the design of Victoria's IBAC, Stephen Charles AO QC, public hearings also lead to immediate improvements in governance, and attract fresh leads to potential corrupt conduct. "Operation Ord, which exposed corrupt conduct at the Department of Education & Training, showed the community what was happening, lead to immediate action by the Department to prevent any recurrence and was followed by many complaints to IBAC about other possibly corrupt conduct at the Department, and elsewhere."³¹

²⁶ The Australia Institute, 2017, *Polling – National ICAC*, December 2017, <http://www.tai.org.au/content/polling-%E2%80%93-national-icac>

²⁷ MacLennan, 2016, *ICAC Commissioner Bruce Lander pushes for public hearings to ensure transparency*, ABC, 31st October 2016, <http://www.abc.net.au/news/2016-10-31/icac-commissioner-bruce-lander-wants-public-hearings-in-sa/7980960>

²⁸ IBAC, 2016, *IBAC sheds light on serious corruption in its third year*, Media release, 14th September 2016, <http://www.ibac.vic.gov.au/media-releases/article/ibac-shines-light-on-serious-corruption-in-its-third-year>

²⁹ <http://www.abc.net.au/news/2016-05-12/icac-inspector-david-levine-calls-for-end-to-public-hearings/7409126>

³⁰ Gerathy, 2016, *ICAC inspector calls for end to public hearings to stop 'trashing of reputations'*, ABC, 12th May 2016, <http://www.abc.net.au/news/2016-05-12/icac-inspector-david-levine-calls-for-end-to-public-hearings/7409126>

³¹ Charles, 2018, *Victoria's anti-corruption watchdog is still too weak*, <http://www.tai.org.au/sites/default/files/Briefing%20paper%20-%20IBAC%20Stephen%20Charles.pdf>

Process to begin inquiries

The NSW ICAC can begin preliminary investigations and full inquiries using all its investigative powers at the discretion of the Commissioner. The inquiry that resulted in the conviction of Eddie Obeid and Ian Macdonald began from an anonymous phone call, and it was only through the application of all investigative powers that the full network of corruption was uncovered.³²

The Tasmanian IC must go through a prolonged process before it can launch a full inquiry using all its investigative powers. The result of this is that the Tasmanian IC has never launched a full inquiry under the Integrity Tribunal.³³

A complaint must be made in writing in an approved form. This initial hurdle means that the Obeid investigation would never have got started if it was in Tasmania. Once the complaint is made the CEO may choose to dismiss it, refer it, recommend to the Premier that a commission of inquiry be established, or conduct an assessment. An assessment is done internally by an assessor using limited investigative powers including the powers to compel the production of documents and information. If the CEO decides it, the assessment will be followed by an investigation. The investigation is done by an investigator using the investigative powers described above, which do not include the power to hold hearings or make findings. The investigation report goes to the CEO and Board, and the Board makes the final decision to hold an inquiry using the full investigative powers of the Integrity Tribunal.

At each stage the CEO may notify the principal officer of the public authority being investigated or the public officer to whom the complaint relates. This includes giving a draft report of the investigation to the public officer or authority being investigated for their comment. This creates many opportunities for the public officer or authority under investigation to hide or destroy evidence, challenge the Commission in court, or apply to the court for an injunction.

At each stage the CEO may dismiss the complaint or refer it to another body. None of the stages or reasons behind decisions of the CEO or Board are made public. Investigation reports are made public only on occasion that they are tabled in parliament. The Tasmanian IC website shows that this occurs only once or twice a year.³⁴

³² Ibid.

³³ Tasmanian Integrity Commission Annual Report 2014-15

³⁴ Integrity Commission website, *Reports – Tabled reports*, http://www.integrity.tas.gov.au/reports_and_publications/reports accessed 16th January 2018

Independence of Commissioner

The independence of any anti-corruption or integrity commissioner is critical to ensuring they have the confidence to do their job without fear of political interference. Independence can be ensured by legislating the terms of the Commissioner's appointment, and ensuring any appointment is apolitical.

NSW ICAC has legislated five-year terms for the Commissioner, who can only be removed under a strict set up circumstances, including if they are charged with a serious crime, become bankrupt or die. Commissioners are appointed by a joint parliamentary committee after receiving a referral from the Minister. The joint committee has the power to veto the Minister's referral. This legislated independence was challenged in 2016 by the NSW Government's amendment that introduced three commissioners instead of one Chief Commissioner, prematurely ending the five-year term of the sitting Commissioner Megan Latham.³⁵

Commissioners in Tasmania are appointment on recommendation of the Minister after consultation with a joint committee. The Tasmanian IC Act does not have a legislated tenure for the Commissioner. The terms of employment are specified in each individual's contract rather than the legislation.³⁶ Amendments to the Tasmanian Integrity Commission Act in 2017 inserted a number of provisions that allow the Chief Commissioner to be suspended, including "if the Governor is satisfied that the person has engaged in misbehaviour that brings the office of Chief Commissioner into disrepute."³⁷ The amendment was in response to the five year review of the commission, but went further than review recommendations.³⁸ This threshold for suspension of the Commissioner is significantly lower than in the NSW ICAC Act and potentially threatens the independence of the Commissioner.

³⁵ See Nicholls et al, November 2016, *ICAC Chief's resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html> and Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

³⁶ *Integrity Commission Act 2009* (Tas)

³⁷ *Integrity Commission Amendment Act 2017* (Tas)

³⁸ Cox, 2016, *Report of the Independent Reviewer – Review of the Integrity Commission Act 2009*, http://www.integrityactreview.tas.gov.au/data/assets/pdf_file/0006/347649/Report_of_the_Independent_Review_of_the_Integrity_Commission_Act_2009_-_May_20162.PDF

Comparing impact - do they bite?

“The Commission is yet to convene an Integrity Tribunal” – Tasmanian Integrity Commission Annual Report 2014-15³⁹

Table 2: Comparison of state anti-corruption commissions 2012 – 2016

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

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

* Note: SA ICAC does not have the power to hold public hearings, and was only operational from 2013

Table 2 above shows the results from integrity commissions around the country from 2012 to 2016. NSW ICAC is the most effective, referring more people for prosecution, increasing public trust by holding more public hearings, and making findings of corrupt conduct.

One core reason for the Tasmanian IC's low performance is that it has never used its full powers by holding an inquiry under the Integrity Tribunal. Investigations to date have not been able to hold hearings, either public or private, or make findings of misconduct. Hearings have been critical to the success of anti-corruption investigations in NSW and other states.

The available data shows that the NSW ICAC is dramatically more effective in exposing corruption. With 5-10 public hearings each year, NSW ICAC delivered corrupt conduct findings against 123 people and referred 76 people for prosecution over the observed period 2012-16. The Tasmanian IC did not launch any full inquiries during the period, and therefore did not make any misconduct findings or referrals for prosecution.

³⁹ Integrity Commission Annual Report 2014-15, page 27

What the data does not show is the content or topic of the investigations. For this reason case studies are provided below, showing that as well as delivering more findings of corrupt conduct the NSW ICAC has tackled much larger and systemic issues, often involving a complex web of people including parliamentarians. The case studies below show the Tasmanian IC tackle cases involving one or two public servants, whereas the ICAC cases involve true 'systemic' corruption of networks within the public sector and parliament.

The data and case studies also do not cover the scale of these investigations. As an indication, the NSW ICAC 2012-13 Annual Report states that 'in the Operation Jasper segment of the public inquiry, 86 witnesses gave evidence, and there were more than 5,000 pages of transcript generated over the 45 days of the inquiry. The Operation Acacia segment ran for 37 days, 52 witnesses gave evidence, and there were over 3,500 pages of transcript produced.'⁴⁰

⁴⁰ NSW ICAC, *Annual Report 2012-13*

Case Studies

NSW ICAC CASE STUDIES

Operation Spicer

The NSW ICAC investigated allegations that during the 2011 state election, members of the NSW Liberal Party received political donations that were undeclared under the *Election Funding, Expenditure and Disclosures Act 1981* (NSW). Some donations were over the legislated cap, and others were solicited from banned donors including property developers. It also found that donations were channelled through associated entities including the Free Enterprise Foundation.⁴¹

Operation Credo

The NSW ICAC is investigating allegations that people with financial interest in the company Australia Water Holdings were attempting to influence a lucrative deal with Sydney Water Corporation. Conduct includes claiming expenses from other business pursuits in a SWC claim, drawing from funds allocated to other purposes, and withholding information regarding Australia Water Holdings true financial position.⁴²

Operation Acacia and Jasper

The NSW ICAC conducted two investigations concerning the issuing of mining leases and licences involving former NSW Government ministers. Operation Jasper found that then Resources Minister Ian Macdonald accepted personal benefit from the Obeid family in return for decisions regarding the Expression of Interest process for mining licences and leases covering areas owned by the Obeid family. This case involved a network of people involved in corrupt conduct for financial gain.⁴³ Operation Acacia found that Macdonald also acted corruptly in the allocation of a mining licence to

⁴¹ *Operation Spicer*, NSW ICAC, <http://icac.nsw.gov.au/investigations/past-investigations/investigationdetail/220>

⁴² *Operation Credo*, NSW ICAC, <https://www.icac.nsw.gov.au/investigations/current-investigations/investigationdetail/203>

⁴³ NSW ICAC, *Annual Report 2012-13*

Dowles Creek Mining Pty Ltd, run by his 'mate' John Maitland, without tender and against departmental advice.⁴⁴

TASMANIAN IC CASE STUDIES

Conflict of interest of health managers

The Tasmanian IC investigated allegations that two senior health managers in the North West Area Health Service used their position to unfairly provide employment for family members. The investigation revealed that the two managers failed to comply with procurement policy and procedures.⁴⁵

Alleged favouritism of TasTAFE executives

The Tasmanian IC investigated allegations that the TasTAFE Chief Executive Officer gave favourable treatment, promotions, and working conditions to another senior executive on the basis of their shared background and family connections.⁴⁶

Cases the Tasmanian IC did not investigate

Alleged conflict of interest of former mining minister

The Tasmanian IC has not investigated allegations that former mining minister Adam Brooks had a conflict of interest between his public position and ownership of mining consultancy Maintenance Systems Solutions.⁴⁷

⁴⁴ Nicholls, November 2014, *Former Labor Minister Ian Macdonald prosecuted over Doyles Creek mine deal*, <http://www.smh.com.au/nsw/former-labor-minister-ian-macdonald-prosecuted-over-doyles-creek-mine-deal-20141119-11qbch.html>

⁴⁵ Integrity Commission, 2014, *Report 1 of 2014 - An investigation into allegations of nepotism and conflict of interest by senior health managers*, http://www.integrity.tas.gov.au/reports_and_publications/reports

⁴⁶ Integrity Commission, 2017, *Report 2 of 2017 - An investigation into a complaint of an alleged conflict of interest against senior executive officers of TasTAFE*, http://www.integrity.tas.gov.au/reports_and_publications/reports

⁴⁷ ABC, 2016, *Adam Brooks: Tasmania's suspended Mining minister resigns*, 13th June 2016, <http://www.abc.net.au/news/2016-06-13/tasmanias-suspended-mining-minister-adam-brooks-resigns/7506556>

Influence of gambling industry on policy making

The Tasmanian IC has not investigated allegations that the gambling industry has unduly influenced policy making and governance in Tasmania, despite detailed allegations compiled by the 7.30 Report and author James Boyce suggesting gambling giant Federal Group exerting significant political influence over the distribution of contracts and approvals.⁴⁸

Holding private and public hearings has been critical to untangling the complex webs of corruption in New South Wales. Operation Jasper, exposing the corruption of Eddie Obeid among others, would not have been successful without hearings and cross examination. NSW ICAC Commissioner David Ipp AO QC, who oversaw this inquiry, has said that witnesses coming forward with new evidence at public hearings was critical to the investigation.⁴⁹

As described by independent MP Andrew Wilkie on the 7.30 Report, police investigations into the matter have not been sufficient. “I think it would be appropriate that there be some sort of royal commission or commission of inquiry because this is bigger now than just a police matter. This is about governance in Tasmania.”⁵⁰

⁴⁸ ABC, 2018, *New allegations about collapse of 1972 Tasmanian government*, 7.30 Report, <http://www.abc.net.au/7.30/new-allegation-about-collapse-of-1972-tasmanian/9359246>; and Boyce, 2017, *Losing streak: how Tasmania was gamed by the gambling industry*, Redback Books, Melbourne.

⁴⁹ Ipp, 2017, *Accountability and the Law – Anti-corruption Agencies in Australia*, Accountability and the Law Conference opening statement, The Australia Institute, <http://www.tai.org.au/content/accountability-and-law-anti-corruption-agencies-australia>

⁵⁰ ABC, 2018, *New allegations about collapse of 1972 Tasmanian government*, 7.30 Report, <http://www.abc.net.au/7.30/new-allegation-about-collapse-of-1972-tasmanian/9359246>

Conclusion

Tasmania's Integrity Commission is far less effective than NSW ICAC and its interstate counterparts. It has never held a full inquiry, meaning it has never used all of its investigative powers to expose corruption and misconduct in Tasmania. Its investigations do not hold hearings, public or private, and do not make findings. Often investigations focus on scenarios involving one or two public servants, rather than complex networks of systemic corruption, and it publishes one or two reports each year on its website, leaving the public in the dark about potential corruption and misconduct in Tasmania.

NSW ICAC, on the other hand, has successfully exposed corruption and misconduct at every level of public administration in the state. Between 2012 and 2016 it referred 76 people for prosecution, made 123 corrupt conduct findings and held 28 public hearings. It has investigated 12 Ministers and parliamentarians, including exposing the corrupt networks of former ministers Eddie Obeid and Ian Macdonald that resulted in millions of dollars of public money being misspent.

Design features lead to this difference in performance. NSW ICAC can use the full suite of investigative powers at the beginning of any investigation if the Commissioner decides it, whereas the Tasmanian IC has to go through a prolonged process including assessments, preliminary investigations, and multiple reports to the CEO and Board before it can progress to a full investigation. To date a full inquiry has not occurred, and the Tasmanian IC has not held private or public hearings or made any misconduct findings. NSW ICAC also has a broader jurisdiction than the Tasmanian IC, with the ability to investigate any person, whether or not they are a public official, whose conduct might affect the impartiality of public administration. The Tasmanian IC can only investigate public officers, excluding any industry figures or third parties aiming to unduly influence policy, and is limited in its investigation of parliamentarians.

Corruption has been exposed in every state that has a serious corruption watchdog. Corruption does not stop at state borders, but the investigation and exposure of it does.