

Still toothless

Jurisdictional, funding and secrecy issues in the Integrity Commission Tasmania

Tasmania's Integrity Commission is weak and is losing public trust. It has never held a public hearing. It has run fewer investigations than any other state's integrity body. It has the second lowest per capita budget. It has only ever referred two people for prosecution, the lowest number of any state. Tasmania's Commission needs broader jurisdiction, public hearings, and more funding.

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Summary

The Integrity Commission Tasmania is failing in its mission to ensure public confidence that misconduct is being appropriately dealt with in the state's public sector. Australia Institute research has found that nearly one in two (48.5%) Tasmanians distrust the Commission's ability to uncover and prevent misconduct in public administration. Significant reform is needed for the Commission to once again have public confidence that it can prevent and investigate misconduct.

This has been evident since at least 2016, when an Independent Review of the Commission recommended 55 changes to improve the body. Only six of these recommendations have been adopted. Implementing these recommendations would be a good place to start in strengthening the Commission.

The Commission has a limited jurisdiction. It cannot investigate matters covered by parliamentary privilege and can only investigate public officers. The definition of public officers is particularly limited and has resulted in complaints about the last two state elections not being investigated. Along with limited resourcing, this may contribute to the relatively low number of investigations completed. All other integrity bodies in Australia have completed between 3.6 and 12.4 times as many investigations per year as Tasmania's Commission.

The Commission has never held a public inquiry or public hearing. This culture of secrecy is in contrast to other integrity bodies around Australia, particularly NSW, where regular public hearings have been important in exposing high-profile cases of misconduct. The recent investigation into allegations of misconduct by the Work Health and Safety Regulator, Government Ministers and ministerial staff provides an example of why public hearings are important. Despite there being no findings of misconduct, the Commission did identify a number of high-risk areas, a public perception that misconduct had occurred, and that the case was a lesson for public officers.

Despite a recent modest increase in funding, the Commission's budget remains the second lowest in Australia on a per capita basis.

This report draws on recommendations of the National Integrity Committee, a group of prominent judges and lawyers convened by The Australia Institute. The report compares the Commission with other integrity bodies around Australia. Tasmania performs poorly by comparison across a range of measures including the number of investigations launched and completed, the number of public hearings, and the number of referrals for prosecution (see table below). This is despite many other jurisdictions' integrity bodies being established more recently than Tasmania's. We conclude the reasons for this, and Tasmanians' lack of confidence in their integrity body, are likely to lie in the limited jurisdiction, transparency and resourcing of the Commission.

The Australia Institute recommends that:

1. The recommendations from the 2016 Independent Review of the Integrity Commission Act 2009 be implemented.
2. The Commission's jurisdiction be expanded to enable the investigation of any person that adversely affects or could adversely affect, directly or indirectly, the honest or impartial exercise of public administration.
3. The Commission undergo structural and cultural changes so that its design is improved and existing powers, including holding full inquiries with public hearings, are utilised.
4. The Commission be adequately funded.

Table 1: Comparison of Australian anti-corruption agencies (2012-2021)

	NSW	Vic	QLD	WA	SA	Tas	ACT	NT
Established	1988	2011	2001	2004	2013	2010	2019	2018
Jurisdiction	Broad	Limited	Broad	Limited	Limited	Limited	Broad	Limited
Investigations commenced	384	193	403	479	346	37	21	70
Public inquiries	42	8	3	5	0*	0	0	0
Private examinations	1064	373 days	226 days	239	72	0	11	66
Investigations reports made public	44	15	7	77	3	17	0	7
Referrals for prosecution	136	85	139	85	50	2	0	3
Prevention recommendations	294	276	616	195	87	29	0	71
Budget	\$31.9 m	\$54 m	\$64.1 m	\$28.1 m	\$14.1 m	\$3.4m	\$6.2 m	\$6.8 m
Budget per capita	\$3.90	\$8.08	\$12.37	\$10.53	\$7.94	\$6.30	\$14.35	\$27.76
Staff (FTE)	108	196.1	335	116.2	66.7	15.5	13.4	31
Staff per million people	13.2	29.4	64.6	43.6	37.7	28.6	31.1	125.8

Source: Annual reports of the Australian anti-corruption bodies from 2012 to 2021 and state government 2021-22 budgets.

Note (*): South Australia's ICAC is not permitted to hold public examinations relating to corruption in public administration. It is permitted to hold public inquiries in other circumstances, and has done so once: an evaluation of the practices, policies and procedures of the regulatory arm of SafeWork SA.¹

¹ *Independent Commission Against Corruption Act 2012 (SA) ss 7(4)(a), 7(5)(a)*, <https://www.legislation.sa.gov.au/lz/path=%2FC%2FA%2FINDEPENDENT%20COMMISSION%20AGAINST%20CORRUPTION%20ACT%202012>

Introduction

Recent events have brought government integrity issues to prominence in Tasmania, with ministers and MPs resigning over a range of issues, including allegations of conflicts of interest.² Even before the recent controversies, integrity issues were resonating with Tasmanians from all sides of politics. Australia Institute polling in 2021 showed 90% of voters in Bass and Braddon support boosting integrity and accountability measures, including a federal anti-corruption watchdog.³

While Australia still lacks a federal integrity body, the Integrity Commission Tasmania was established over a decade ago. The Commission aims to improve public officers' standards of conduct and enhance public confidence that where misconduct does occur it is appropriately dealt with.⁴ It aims to do this by educating public officers on integrity issues, investigating allegations of misconduct and making findings and recommendations where misconduct has occurred.⁵

Unfortunately, the Tasmanian public appears to be losing faith in the state's Integrity Commission. In 2021, Australia Institute research found that nearly one in two (48.5%) Tasmanians distrusted the Commission's ability to uncover and prevent misconduct in public administration.⁶ This research suggests that whilst Tasmanians believed in the need for a Commission, many no longer trust its ability to get results.

This seems to show a decline in trust compared to the Community Perceptions Surveys that were conducted every two years between 2011 and 2019 to capture information about the Commission's first decade of operation.⁷ The surveys assessed the perceptions and attitudes of the community regarding the standards of conduct and propriety in the Tasmania public sector and awareness of the Commission's role and functions. While the data for the 2019 Community Perceptions Survey is not available, between 2011 and 2017, the surveys found strong and increasing awareness of the role and functions of the Commission, from 78% in 2011 to 82% in 2017. Surveys also demonstrated strong agreement with the need for a Commission, from 89% in 2013 to 93% in 2017. These figures show awareness of and support for the Commission's work preventing and investigating misconduct in the public service.

² Baker (2022) *Jane Howlett's word may be good enough for the Premier, but is it enough for the Tasmanian people?*, <https://www.abc.net.au/news/2022-03-04/premier-supports-former-minister-jane-howlett/100879838>

³ Australia Institute (2021) *Polling Bass & Lyons: Landslide Support for Key Integrity and Accountability Measures*, <https://australiainstitute.org.au/post/polling-bass-lyons-landslide-support-for-key-integrity-and-accountability-measures/>

⁴ Integrity Commission Act 2009 (Tas) s3(2).

⁵ *Ibid* s3(3).

⁶ Australia Institute (2021) *Tasmanian Distrust Tasmanian Integrity Commission Highlights Need for Reform*, <https://australiainstitute.org.au/post/tasmanian-distrust-tasmanian-integrity-commission-highlights-need-for-reform/>

⁷ Integrity Commission Tasmania (2019) *2018-2019 Annual Report*, p. 25, https://www.integrity.tas.gov.au/__data/assets/pdf_file/0006/546738/Integrity-Commission-Annual-Report-2018-19.pdf,

Some factors contributing to this decline in public perception are likely to be the inability of the Commission to investigate wrongdoing in the last two state elections. The Commission was unable to investigate Premier Peter Gutwein's handling of the preselection, support and resignation of Adam Brooks because it was outside the scope of its jurisdiction.⁸ And the Commission's investigation of the 2018 election campaign was discontinued despite concerns the poll was influenced by a flood of anonymous donations.⁹

These events followed a 2016 Independent Review of the *Integrity Commission Act 2009*, five years after the Commission began operation.¹⁰ Despite the Government supporting almost all of the 55 recommendations, only six have been adopted.

In this context, it is time for Tasmania to look at how other states and territories are dealing with integrity issues. All states and territories have a similar integrity or anti-corruption body.¹¹ The Western Australian, New South Wales and Queensland agencies were created three decades ago and the South Australian, Victorian and Tasmanian entities were established between 2010 and 2013. The Northern Territory and Australian Capital Territory commissions were created most recently, in 2018 and 2019 respectively.

State and Territory integrity agencies all have differing functions, powers and legislation governing their operation. Some have coercive powers requiring witnesses to answer questions while others do not. Most have the power to conduct public hearings. Resourcing varies greatly between jurisdictions.

This report compares the Integrity Commission Tasmania with its equivalents in other jurisdictions and draws on the best-practice model described in the *Principles for Integrity Commissions*, developed by the National Integrity Committee, a group of retired, independent judges advocating for a strong national integrity commission. It finds the jurisdiction of Tasmania's Commission is more limited, that it operates more secretly, and that its funding is lower than commissions in other jurisdictions. We recommend that the recommendations from the Independent Review of the *Integrity Commission Act 2009* be implemented; that the Commission's jurisdiction be expanded; more public hearings be held; and the Commission be better funded in order to strengthen public trust in the Commission's ability to detect and uncover misconduct in public administration.

⁸ Humphries (2021) *Adam Brooks saga also a question of judgement of Premier Peter Gutwein*, <https://www.abc.net.au/news/2021-05-14/adam-brooks-controversy-far-from-over-for-tasmanian-liberals/100140558>

⁹ Baker (2021) *Integrity Commission drops probe into 2018 election funding after Tasmanian Liberals' legal pushback*, <https://www.abc.net.au/news/2021-06-22/integrity-commission-dropped-2018-tas-election-probe/100230212>

¹⁰ Cox (2016) *Independent Review of the Integrity Commission Act 2009*, https://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

¹¹ For more information on the integrity bodies around Australia, see National Integrity Committee (2018) *National Integrity Commission Papers*, <https://australiainstitute.org.au/report/national-integrity-commission-papers/>

Independent review of the Integrity Commission Act

An Independent Review of the *Integrity Commission Act 2009* was completed after five years of operation, in 2016, by former Chief Justice of the Supreme Court of Tasmania, William Cox AC.¹² The review aimed to strengthen the ability of the Act to achieve its objectives. Former Chief Justice Cox made 55 recommendations: 29 relating to the operation of the Commission and its powers; one on the operation of the Parliamentary Standards Commissioner; one on the operation of the Parliamentary Joint Committee; one regarding the effectiveness of the Act; four relating to improving ethical conduct and public confidence; and 19 on technicalities.

The State Government supported 47 of the recommendations made, 18 with further comment, and rejected eight.¹³ The recommendations not supported by the Tasmanian Government related largely to jurisdiction. The Commission supported 38 of the Independent Review's recommendations, 12 in-principle, and had a differing view about five recommendations.¹⁴ Their differing views about five of the recommendations related mainly to referrals. The Commission stated that it was committed to "work[ing] constructively with the Government to implement the balance of the endorsed changes to the Integrity Commission Act".¹⁵ The Commission continues to work with the Department of Justice on the next set of amendments.

Only six of the recommendations suggesting amendments to the *Integrity Commission Act 2009* (Tas) have been implemented.¹⁶ These amendments related largely to the governance of the Commission. The Government promised to implement its response to the remaining recommendations in late 2017, but no further legislative amendments have been made.¹⁷

¹² Cox (2016) *Independent Review of the Integrity Commission Act 2009*, https://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

¹³ Tasmanian Government (2016) *Tasmanian Government Response: Independent Review of the Integrity Commission Act 2009*, https://www.integrity.tas.gov.au/__data/assets/pdf_file/0015/532122/Response-to-recommendations-of-the-Independent-Reviewer_Tasmanian-Government_2016.pdf

¹⁴ Integrity Commission Tasmania (2016) *Integrity Commission response to recommendations of the Independent Reviewer*, https://www.integrity.tas.gov.au/__data/assets/pdf_file/0014/532121/Response-to-recommendations-of-the-Independent-Reviewer_Integrity-Commission_2016.pdf

¹⁵ Integrity Commission Tasmania (2017) *2016-2017 Annual Report*, https://www.integrity.tas.gov.au/__data/assets/pdf_file/0010/472897/Integrity-Commission_Annual-Report_2016-17.pdf, p. 17

¹⁶ *Integrity Commission Amendment Act 2017* (Tas).

¹⁷ Goodwin (2017) *Integrity Commission Amendment Bill 2017 Fact Sheet*, https://www.parliament.tas.gov.au/Bills/Bills2017/pdf/notes/28_of_2017-Fact%20Sheet.pdf

Principles for integrity commissions

Principles for successful and effective anti-corruption agencies are now well recognised given the long-term operation of such agencies around Australia. In 2017 the National Integrity Committee published *Principles for designing a National Integrity Commission*.¹⁸ The National Integrity Committee is an independent group of former judges advocating the need for a strong national integrity commission.¹⁹

The principles for a successful and effective anti-corruption commission include that the Commission:

1. is independent of Government with adequate resources to undertake its work;
2. has a broad jurisdiction to investigate conduct which could adversely affect the honest or impartial exercise of public administration;
3. has the powers of a Royal Commission to be executed at the discretion of the Commission;
4. has the power to conduct a public inquiry if in the public interest to do so;
5. be governed with independent oversight including a Chief Commissioner and two Deputy Commissioners, appointed by the Minister on recommendations from a bipartisan Parliamentary committee; and
6. is empowered to make findings of fact or corrupt conduct and be able to refer these to a well-resourced unit of the Director of Public Prosecutions.

Beyond being an important guide for the design of a National Integrity Committee, these principles are a good guide for all anti-corruption commissions, including the Tasmanian Commission. In the sections below, we expand on three of these principles in relation to the Commission: jurisdiction, transparency through the undertaking of public inquiries and resourcing.

JURISDICTION

The National Integrity Committee recommends that an integrity body have a broad jurisdiction and, in some respects, Tasmania's Commission has reasonably broad reach. It can consider misconduct by a public officer and decide whether to investigate.²⁰ The Commission can also begin an investigation on its own initiative.²¹ Misconduct can include various types of actions, including: a breach of a code of conduct (e.g. the Tasmanian

¹⁸ National Integrity Committee (2017) *Principles for designing a National Integrity Commission*, <https://australiainstitute.org.au/report/principles-for-designing-a-national-integrity-commission/>, p. 2-8

¹⁹ For more details on the National Integrity Committee, see <https://australiainstitute.org.au/expert/national-integrity-committee/>

²⁰ *Integrity Commission Act 2009* (Tas), s 8(f) and (i)

²¹ *Integrity Commission Act 2009* (Tas), s 8(j).

Government's Code of Conduct);²² behaving dishonestly or improperly; misusing information or resources; or interfering with another public officer's exercise of their powers.²³

However, the Commission is limited in two important respects:

- (1) the types of people that it can investigate, and
- (2) it is not able to investigate matters protected by parliamentary privilege.

The Commission can only investigate certain people, including public servants and members of Parliament, specified as public officers in the *Integrity Commission Act 2009*.²⁴ This jurisdiction is limited when compared to most other Australian integrity bodies, which can investigate any conduct of any person that could affect the impartial or honest exercise of public administration.²⁵ The Commission's limited jurisdiction means that, unlike other states' integrity bodies, it cannot investigate third parties – even third parties that are intrinsically linked with the political process, such as political parties.

The implications of this go even further - once the Tasmanian Parliament is dissolved ahead of each election, MPs are then outside of the Commission's jurisdiction. This includes ministers and even the Premier during the election period, discussed further below.

The Commission cannot investigate conduct that occurred during parliamentary proceedings and is protected by parliamentary privilege.²⁶ The effects of this are potentially far-reaching, as it results in the Commission not being able to investigate conduct that is connected with a proceeding in Parliament and limits evidence that could otherwise be used in investigations. The only other jurisdiction which retains parliamentary privilege as a bar to investigations is South Australia.²⁷

Ministers not within jurisdiction while Parliament dissolved

Last year, the Tasmanian Greens made a complaint to the Commission, urging them to investigate Premier Peter Gutwein's handling of the preselection, support, and resignation of Adam Brooks as the candidate for Braddon in the 2021 state election.

²² Tasmanian Government (2021) *Code of Conduct for Ministers*, https://www.dpac.tas.gov.au/__data/assets/pdf_file/0016/53503/Code_of_Conduct_for_Ministers_-_May_2021.pdf

²³ *Ibid*, s 4.

²⁴ *Integrity Commission Act 2009* (Tas), s 4(1).

²⁵ The National Integrity Committee (2018) *The jurisdiction of a National Integrity Commission*, <https://australiainstitute.org.au/wp-content/uploads/2020/12/National-Integrity-Commission-Design-Blueprint-Part-1-Jurisdiction.pdf>

²⁶ *Ibid*, s 4(1); National Integrity Committee (2018) *The jurisdiction of a National Integrity Commission*, <https://australiainstitute.org.au/wp-content/uploads/2020/12/National-Integrity-Commission-Design-Blueprint-Part-1-Jurisdiction.pdf>, p. 2

²⁷ National Integrity Committee (2018) *The jurisdiction of a National Integrity Commission*, <https://australiainstitute.org.au/wp-content/uploads/2020/12/National-Integrity-Commission-Design-Blueprint-Part-1-Jurisdiction.pdf>, p. 2

During his last term in Government, Brooks had resigned his ministry after misleading a parliamentary committee about the misuse of his business email account.²⁸ Despite this, Brooks was endorsed by the Premier as the Liberal candidate for Braddon in the state election.

In the election period, it was revealed that Brooks was under investigation by Tasmania Police over ammunition storage offences. He was subsequently charged with unlawful possession of a weapon and explosives in Queensland and had allegedly used fake identities on online dating sites to form relationships with women.²⁹ Brooks continued to receive the support of the Premier, eventually resigning of his own volition one day after being declared elected.

The Commission was unable to investigate Mr Gutwein's handling of this situation because its governing legislation only allows it to investigate public officers. Once elections have been called, the Premier and all other elected representatives are no longer members of Parliament and are therefore no longer public officers.

Similarly, the Commission could not investigate a separate complaint made against the Liberal Party, after \$150,000 worth of flyers promoting the Liberal Party were ordered using parliamentary funds before the election was called.³⁰ The party could not be investigated because the alleged conduct was not committed by a natural person, it is not a public authority, and its employees are not public officers.

PUBLIC HEARINGS

The National Integrity Committee states that public hearings are important because they help to expose misconduct to the public, thereby increasing public trust.³¹ Public hearings can also make investigations more effective by encouraging witnesses to come forward. Further, they help to educate the public sector and community about prevention and the impacts of misconduct, acting as a deterrent. When hearings are conducted in public, it increases transparency and ensures that they are fair. This reduces the need for coercive methods of information gathering, which usually occur behind closed doors.

²⁸ Coulter (2018) *Tasmanian Liberal MP Adam Brooks's \$58k legal bill paid for by taxpayer, as email scandal deepens*, <https://www.abc.net.au/news/2018-11-28/adam-brooks-privileges-committee-over-email-scandal/10561856>

²⁹ Humphries (2021) *Adam Brooks saga also a question of judgement of Premier Peter Gutwein*, <https://www.abc.net.au/news/2021-05-14/adam-brooks-controversy-far-from-over-for-tasmanian-liberals/100140558>

³⁰ Killick (2021) *Labor hits out at Integrity Commission probe into poll material*, *The Mercury* (24/7/2021).

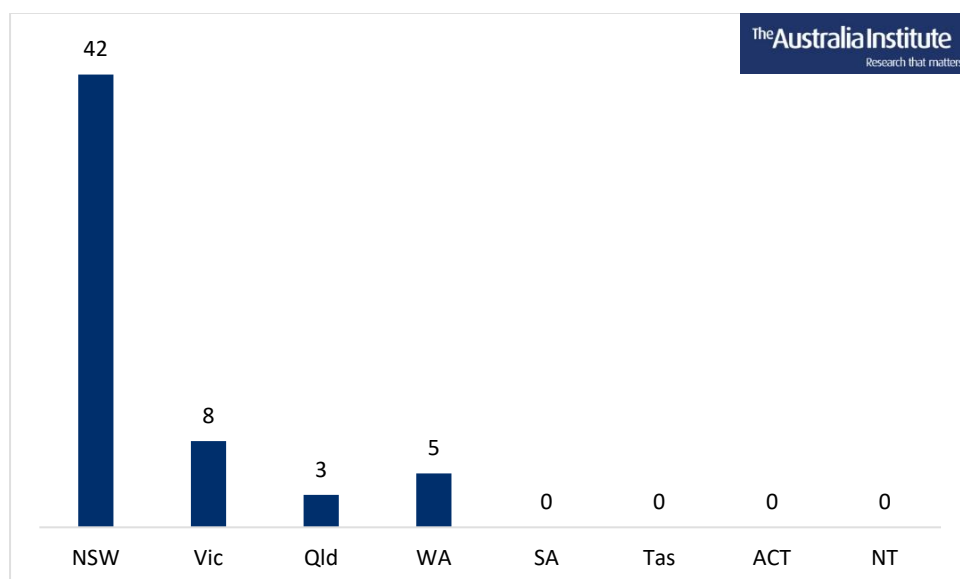
³¹ National Integrity Committee (2018) *Public hearings key to investigating and exposing corruption*, <https://australiainstitute.org.au/wp-content/uploads/2020/12/National-Integrity-Commission-Design-Blueprint-Part-3-Public-hearings.pdf>

The National Integrity Committee recommends the ability to open hearings to the public “in an investigation at the discretion of the Chief Commissioner, without any trigger or threshold”.³²

Tasmania’s Commission can only hold public hearings during specific types of investigations, called an inquiry, where an Integrity Tribunal has been convened.³³ Hearings can only be opened to the public where an order is made by the related Integrity Tribunal.³⁴

The Tasmanian Commission has never held a public inquiry or public hearing. The Commission’s culture of secrecy around investigations is in direct contrast to NSW, widely considered to be Australia’s best practice for accountability. The NSW Independent Commission Against Corruption (ICAC) regularly holds public inquiries. Public hearings were critical in uncovering the information needed for the successful misconduct investigation into Eddie Obeid and Ian Macdonald.³⁵ The Queensland, Western Australian and Victorian bodies have also held public hearings, quantified in Figure 1 below:

Figure 1: Number of public inquiries by Australian anti-corruption commissions 2012-2021



Source: Annual reports of the Australian anti-corruption bodies from 2012 to 2021 and state government 2021-22 budgets.

Figure 1 shows that like Tasmania, the ACT and NT integrity bodies have not held public inquiries. This is likely due to their recent establishment. Apart from the South Australian

³² National Integrity Committee (2017) *Principles for designing a National Integrity Commission*, <https://australiainstitute.org.au/wp-content/uploads/2020/12/Principles-for-designing-a-National-Integrity-Commission.pdf>, p. 5

³³ *Integrity Commission Act 2009* (Tas) s 61(2)(a).

³⁴ *Ibid*, schedule 6, s 1(1)

³⁵ National Integrity Committee (2018) *Public hearings key to investigating and exposing corruption*, <https://australiainstitute.org.au/wp-content/uploads/2020/12/National-Integrity-Commission-Design-Blueprint-Part-3-Public-hearings.pdf>, p. 5

integrity body, which is not permitted to hold public inquiries relating to corruption in public administration, the longer-running bodies have all held public inquiries.

Research by the Australia Institute found that 80.1% of Tasmanians believe that the Commission should undergo structural change so its design is improved and its existing powers utilised, including holding public hearings.³⁶ Further, 85% of Australians believe that public hearings increase public trust.³⁷

Case study: potential missed opportunity for a public hearing

In August 2021, the Commission reported on an investigation into two related allegations: firstly, that two Government Ministers and their staff had improperly influenced the former Work Health and Safety Regulator and CEO of WorkSafe Tasmania, Mark Cocker, and secondly, whether Mr Cocker, as Regulator, had improperly taken action against the Bob Brown Foundation, which was protesting forestry activity.³⁸

The investigation concerned the issuing of a notice on the Bob Brown Foundation, requiring it to stop protest activity throughout Tasmania because of workplace safety concerns. According to the Commission report, the nature of the notice, and public commentary and actions, led to perceptions that the Regulator had not acted with independence from the Government. Two complaints were made to the Commission which triggered the investigation. The investigation “covered a number of high misconduct risk areas, including contact between a lobbyist, Government and statutory officers”.³⁹

Over the previous two years, then leader of the group Support Tassie’s Timber People, Kelly Wilton, frequently wrote to the Regulator alleging safety issues at forestry protests. The allegations were also repeatedly raised with the Minister for Primary Industries and then Premier Hodgman. Initially, no action was taken by the Regulator, as he did not consider the allegations to be notifiable incidents under the *Work Health and Safety Act 2012* (Tas). Ms Wilton’s continued correspondence caused the Ministers’ office to raise the concerns with WorkSafe Tasmania. However, the Commission found that this was not unusual given her persistence, and that there was no evidence that Mr Cocker was pressured to issue the prohibition notice.

³⁶ Australia Institute (2021) *Polling: Good Government in Tasmania*, <https://australiainstitute.org.au/report/polling-good-government-in-tasmania/>

³⁷ Australia Institute (2017) *Polling – Trust and Federal ICAC*, <https://australiainstitute.org.au/wp-content/uploads/2020/12/Polling-brief-May-2017-Trust-and-ICAC.pdf>

³⁸ Integrity Commission Tasmania (2021) *Investigation into allegations of misconduct by the Work Health and Safety Regulator, Government Ministers and ministerial staff*, <https://www.integrity.tas.gov.au/about/news-and-events/2021/investigation-into-allegations-of-misconduct-by-the-regulator-and-ceo-of-worksafe-tasmania,-government-ministers-and-ministerial-staff>

³⁹ Integrity Commission Tasmania (2021) *Report of the Integrity Commission no. 1 of 2021*, <https://www.integrity.tas.gov.au/publications/publications/investigation-reports/2021/report-1-of-2022>, p. 3

The Commission found that “regardless of whether it was the best decision, there were legal and proper motives for the notice to be served” on the Foundation.⁴⁰ It found that no Government member, or ministerial staffer, pressured the Regulator to serve the notice.

Given that the investigation covered a number of high misconduct risk areas and there were public “perceptions that the Regulator had not acted with independence from the Government”, a public hearing could have increased public trust that the alleged misconduct was properly and extensively investigated in this circumstance.⁴¹ Further, given that this case “serves as a lesson for public officers” on how to conduct themselves, if a public hearing was held it could have increased education for public officers on how they should act.⁴²

RESOURCING

To be independent and fulfill its role without political interference, an integrity commission must have sufficient funding in order to undertake its functions. In 2014, the Tasmanian Commission’s funding was cut by 20%, leading the Commission’s then Chief Executive Director, Diane Merryful, to state that this cut would significantly hamper the Commission’s ability to prevent misconduct and investigate complaints of misconduct.⁴³ The Hon Murray Kellam AO, when finishing his term as Chief Commissioner, described the Commission’s lack of funding as a “significant obstacle” and which gave a “‘green light’ to corruption in the state”.⁴⁴

Even before this cut was made, the Commission received the lowest funding for a body of its kind in the nation. In the 2021 Tasmanian Budget this funding was restored, with a budget increase of \$670,000. Despite this, the Commission’s budget remains relatively low compared to other jurisdictions, at \$3.4 million for the 2021-22 financial year.⁴⁵ It has the second lowest budget in Australia on a per capita basis, as shown in Figure 2 below:

⁴⁰ Ibid.

⁴¹ Ibid

⁴² Ibid.

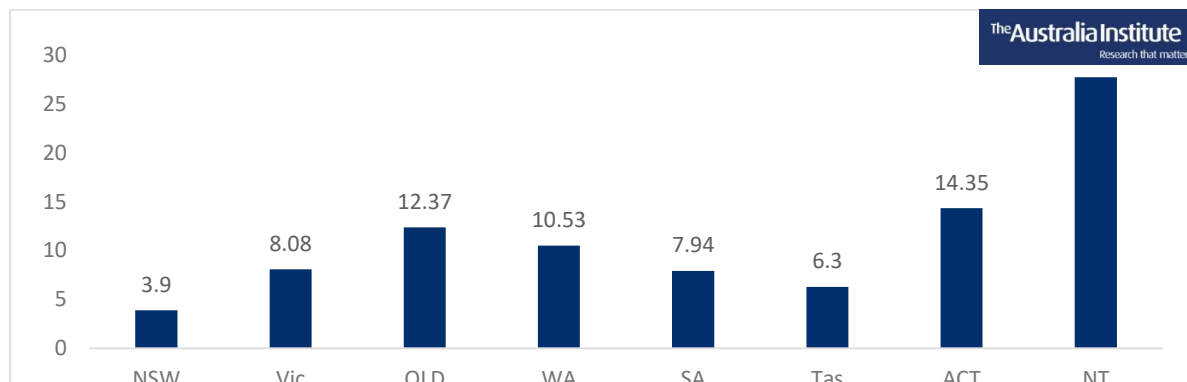
⁴³ ABC News (2014) *Tasmania's anti-corruption watchdog facing funding cuts*,

<https://www.abc.net.au/news/2014-05-30/anti-corruption-watchdog-fears-funding-cuts/5490182>

⁴⁴ Day (2015) *Public servants getting away with misconduct, Tasmanian corruption watchdog chief Murray Kellam says*, <https://www.abc.net.au/news/2015-08-07/corruption-watchdog-chief-blasts-tasmanian-government/6680968>

⁴⁵ Tasmanian Government (2021) *Government Services, Budget Paper No 2, Volume 2*, <https://www.treasury.tas.gov.au/Documents/2021-22-Budget-Paper-No-2-Volume-2.pdf>, p. 21

Figure 2: Budget per capita (dollars) for Australian anti-corruption commissions in 2021-22



Source: Annual reports of the Australian anti-corruption bodies from 2012 to 2021 and state government 2021-22 budgets.

Figure 2 above shows that only NSW budgets less for its integrity commission on a per capita basis. However, this should provide no comfort to Tasmanians – the NSW ICAC’s Chief Commissioner, Peter Hall, has said that the NSW ICAC is underfunded by \$2.4 million because of its dependence on the executive government for funding, and that more funding is needed in order for it to continue fighting corruption.⁴⁶ Most others states and territories have substantially larger budgets, on a per capita basis, than the Tasmanian Commission.

⁴⁶ NSW ICAC (2021) *Annual Report 2020-21*, <https://www.icac.nsw.gov.au/ArticleDocuments/617/ICAC%20Annual%20Report%202020-2021.pdf.aspx>, p. 5

Comparison of anti-corruption agencies

Comparing agencies in different jurisdictions is difficult and the quality of outcomes is subjective. There are no common, standardised reporting formats and data availability varies. However, based on the indicators below, Tasmania's Commission trails the rest of the country, as shown in Table 1:

Table 1: Comparison of Australian anti-corruption agencies (2012-2021)

	NSW	Vic	QLD	WA	SA	Tas	ACT	NT
Established	1988	2011	2001	2004	2013	2010	2019	2018
Jurisdiction⁴⁷	Broad	Limited	Broad	Limited	Limited	Limited	Broad	Limited
Investigations commenced	384	193	403	479	346	37	21	70
Public inquiries	42	8	3	5	0*	0	0	0
Private examinations	1064	373 days ⁴⁸	226 days ⁴⁹	239 ⁵⁰	72	0 ⁵¹	11	66
Investigations reports made public	44	15	7	77	3	17	0	7
Referrals for prosecution	136	85	139	85 ⁵²	50	2	0	3
Prevention recommendations	294	276	616	195	87	29	0	71
Budget⁵³	\$31.9 m	\$54 m	\$64.1 m	\$28.1 m	\$14.1 m	\$3.4m	\$6.2 m	\$6.8 m
Budget per capita	\$3.90	\$8.08	\$12.37	\$10.53	\$7.94	\$6.30	\$14.35	\$27.76
Staff (FTE)⁵⁴	108	196.1	335	116.2	66.7	15.5	13.4	31
Staff per million people	13.2	29.4	64.6	43.6	37.7	28.6	31.1	125.8

Source: Annual reports of the Australian anti-corruption bodies from 2012 to 2021 and state government 2021-22 budgets.

⁴⁷ For a detailed analysis of why the different bodies have different jurisdictions, see National Integrity Committee (2018) *The jurisdiction of a National Integrity Commission*, <https://australiainstitute.org.au/wp-content/uploads/2020/12/National-Integrity-Commission-Design-Blueprint-Part-1-Jurisdiction.pdf>

⁴⁸ Data recorded for 2014-19 and 2020-21.

⁴⁹ No data available for 2017-20.

⁵⁰ Note that there were 69 days of private examinations in 2020-21.

⁵¹ No data available for 2017-20.

⁵² No data available for 2017-18.

⁵³ For the year 2021-22.

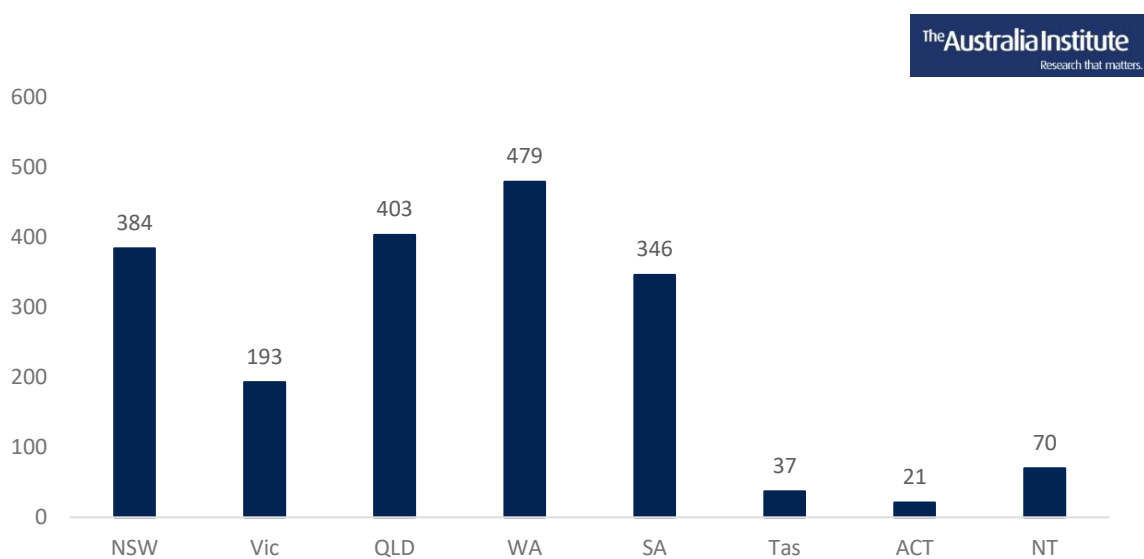
⁵⁴ For the year 2020-21.

Note (*): South Australia’s ICAC is not permitted to hold public examinations relating to corruption in public administration. It is permitted to hold public inquiries in other circumstances, and has done so once: an evaluation of the practices, policies and procedures of the regulatory arm of SafeWork SA.⁵⁵

Table 1 shows that Tasmania’s Commission performs worse on almost every indicator. It has never held a public inquiry, it may never have conducted a private examination, it has made just two referrals for prosecution and has made the least prevention recommendations of any jurisdiction aside from the ACT, with its recently established body.

Perhaps most tellingly, Table 1 shows that Tasmania’s Commission, established in 2010, has completed fewer investigations than all other commissions, again with the exception of the ACT. This is shown graphically in Figure 3 below:

Figure 3: Number of investigations by Australian anti-corruption commissions 2012-2021



Source: Annual reports of the Australian anti-corruption bodies from 2012 to 2021 and state government 2021-22 budgets.

Figure 3 shows that Tasmania’s Commission has made 37 investigations, compared to just 21 in the ACT. However, considering that the ACT commission was established in 2019 and Tasmania’s was established in 2010, the ACT Integrity Commission has conducted 2.2 times as many investigations per year as the Tasmanian Integrity Commission. All other commissions have undertaken between 3.6 to 12.4 times as many investigations per year as Tasmania.

⁵⁵ *Independent Commission Against Corruption Act 2012* (SA) ss 7(4)(a), 7(5)(a), <https://www.legislation.sa.gov.au/lz/path=%2FC%2FA%2FINDEPENDENT%20COMMISSION%20AGAINST%20CORRUPTION%20ACT%202012>

Conclusion and recommendations

The Commission is failing to achieve its objective of public confidence that misconduct by public officers will be appropriately investigated and dealt with.

Compared with equivalent anti-corruption commissions throughout Australia, the Commission:

- Has a narrow jurisdiction. It cannot investigate third parties and under some circumstances cannot even investigate Members of Parliament, including the Premier.
- Is far less transparent. It has never held a public hearing.
- Is poorly resourced, with a budget of just \$6.30 per person, compared to \$27.76 in the Northern Territory, \$12.37 in Queensland and \$7.94 in South Australia.
- Has launched fewer investigations than any other commission (other than the ACT, which only began operations in 2019).
- Has only referred 2 people for prosecution. The South Australian Integrity Commission has made 48 more referrals despite having three years less operating time.

To rebuild trust in government and its checks and balances, lutruwita/Tasmania needs a strong anti-corruption watchdog. The Australia Institute recommends that:

5. The recommendations from the Independent Review of the Integrity Commission Act 2009 be implemented.
6. The Commission's jurisdiction must be expanded to enable the investigation of any person that adversely affects or could adversely affect, directly or indirectly, the honest or impartial exercise of public administration.
7. The Commission must undergo structural and cultural changes so that its design is improved and existing powers, including holding full inquiries with public hearings, are utilised.
8. It must also be adequately funded, in order to ensure that it can do its job of fighting corruption in lutruwita/Tasmania.