

Submission: Giving Our Watchdog Teeth

Response to the Tasmanian Integrity Commission Act Legislative Reform Discussion Paper

Tasmania's Integrity Commission is weak and is losing public trust. It has never held a public hearing. It cannot investigate politicians' conduct during election campaigns, nor can it investigate corrupt conduct of third parties seeking to influence public administration. It has the second lowest per capita budget of a state/territory commission. It has only ever referred two people for prosecution, the lowest number for any state. Tasmania's Commission needs public hearings, more publicly released reports and more funding. Its jurisdiction needs to expand to include Members of Parliament during election periods, corrupt conduct of third parties and matters covered by Parliamentary privilege.

Submission

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Acknowledgement of Country

The Australia Institute Tasmania acknowledges that Trouwana/lutruwita/Tasmania was taken forcibly and unethically and that palawa and pakana people continue to suffer the consequences of this today. The Institute offers respect to palawa and pakana Elders past and present and recognises that Aboriginal and Torres Strait Islander sovereignty was never ceded. Our work seeks to be respectful of and acknowledge First Nations perspectives, culture, language and history.

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Summary

The Tasmanian Integrity Commission (the Commission) was established in 2009 with the aim of improving the standard of conduct by public authorities in lutruwita/Tasmania, as well as giving the public confidence that where misconduct occurs that it will be dealt with. Five years after it began operating, there was an independent review into the Commission, conducted by former Chief Justice of the Supreme Court, William Cox AC. Now, six years on from the release of the Review, only six of the 55 recommendations have been implemented, despite commitments from the Government to implement the majority of remaining recommendations.

In this context, the Australia Institute Tasmania (the Institute) welcomes the Tasmanian Government's commitment to implementing a number of the recommendations from the Cox Review Report in the next stage of legislative reform. The remaining recommendations which are the subject of Tasmanian Government's *Integrity Commission Act 2009 (the Act) – Legislative Reform Discussion Paper* should also be included in this tranche of amendments. The Institute commends the Government for also committing to implementing solutions to issues raised since the Cox Review Report, including disclosure of official secrets and unauthorised access to computer offences.

Whilst these changes are a welcome improvement, they alone will not make the Commission the watchdog with teeth that the Tasmanian public want and deserve. Australia Institute research found that nearly one in two (48.5%) Tasmanians distrust the Commission's ability to uncover and prevent misconduct in public administration.

And is it any wonder? Australia Institute research found the Commission's limited jurisdiction has seen it unable to investigate the Tasmanian Premier, third parties or conduct covered by Parliamentary privilege. The Commission has never held a public inquiry, unlike its interstate counterparts. More than half of the Commission's reports have not been released to the public. It is currently the second lowest funded integrity body in the nation.

The Act's definition of misconduct limits the people and circumstances that can be investigated by the Commission. Its definition of misconduct does not currently include 'corrupt conduct' of third parties seeking to influence public administration.

To give the Commission the strength it needs, the Australia Institute Tasmania recommends that:

- the majority of the Cox Review Report recommendations be legislated as a matter of priority. At the same time, the issues raised since the Cox Review Report, including disclosure of official secrets and unauthorised access to computer offences, should be addressed.

- the jurisdiction of the Commission be expanded to include members of Parliament during an election period and all others exercising statutory functions or powers of public officers.
- an expanded definition of corrupt conduct be legislated, to allow the Commission to investigate corrupt conduct of people beyond public officers.
- the jurisdiction of the Commission be expanded by removing references to Parliamentary privilege from the *Integrity Commission Act 2009* (the Act).
- the Act require that the Board must turn its mind to holding an inquiry or releasing a report publicly, and consider a number of factors when doing so, including the benefit to the investigation, public interest and reputational damage. Barriers to releasing investigation reports publicly should also be removed.
- the funding of the Commission be increased in the next state budgets so that it can keep pace with its interstate counterparts.

Introduction

Established in 2009, the Tasmanian Integrity Commission (the Commission) was given the aim of improving the standard of conduct by public authorities in lutruwita/Tasmania, as well as giving the public confidence that where misconduct occurs that it will be dealt with.¹

An Independent Review of the Act (the Cox Review Report) was completed in 2016 by former Chief Justice of the Supreme Court of Tasmania, William Cox AC, after five years of operation, and recommended 55 improvements.² The Hodgman Liberal Government accepted 50 of the recommendations, implementing six of these in 2017.³ Whilst the Government promised to implement its response to the remaining recommendations in late 2017, no further legislative amendments have been made.⁴

The Australia Institute's report, *Still toothless: Jurisdictional, funding and secrecy issues in the Integrity Commission Tasmania*, released in February 2022, showed the Commission had a limited jurisdiction, resulting in its inability to investigate even the Premier.⁵ The Commission has never held a public inquiry, unlike its interstate counterparts, who regularly open investigations to the public. More than half of the Commission's reports have not been released to the public. The Commission is the second worst funded integrity body in the nation.

These shortfalls have led to the Tasmanian public losing faith in the 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

The Australia Institute Tasmania welcomes the Tasmanian Government's move to address these issues with the *Integrity Commission Act 2009* (the Act) – Legislative Reform

¹ *Integrity Commission Act 2009* (Tas) s. 3

² 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

³ Tasmanian Government (2009) *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; Integrity Commission Amendment Bill 2017 (Tas)

⁴ 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

⁵ Carr and Hay (2022) *Still toothless*, p. 10, <https://australiainstitute.org.au/report/still-toothless/>,

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/>

Discussion Paper (Discussion Paper).⁷ However, it must be noted that the long and technical discussion paper is not the most accessible document to support public comment. A fact sheet, similar to that provided during the consultation on Electoral Act Review: Electoral Amendment Bill 2019, could have assisted the public in contributing to this process.

⁷ Tasmanian Government (2022) *Integrity Commission Act 2009 Legislative Reform Discussion Paper*, justice.tas.gov.au/__data/assets/pdf_file/0008/667178/Integrity-Commission-Legislative-Reform-Discussion-Paper-July-2022.pdf

Cox Review Report

The Australia Institute Tasmania commends the Tasmanian Government for its commitment to address a number of the Cox Review's recommendations in the next tranche of legislative reforms. These include recommendations 8, 10, 12(b) and 21–25, which aim to improve the operation of the Commission and exercise of its powers; 30, regarding the operation of the Parliamentary Standards Commissioner; 31, on the operation of the Joint Committee; 32, in regards to the effectiveness of order and regulations; and 38, 39, 41–47, 50, 51 and 54, which largely aim to improve the technical operation of the Act.⁸ This tranche should be implemented as a matter of priority.

The consultation needed to implement the non-legislative reforms contained in recommendations 13, 29 and 44, which relate to investigations, prevention, education and technicalities regarding the operation of the Act, should also be done as a matter of priority, in order to include these recommendations in the next tranche of reforms.⁹

The Institute welcomes the Tasmanian Government's support of recommendations 7, 9, 11, 12(a), 14–16, 18–20, which seek to improve the Commission's operation and exercise of powers; 26–28 on investigations; and 40, 48–50, 52, 53 and 55 on technicalities of the operation of the Act.¹⁰ The results of the consultation on these amendments should be implemented with the next tranche of legislative reforms.

The Institute disagrees with the Government's rejection of recommendations 34, 37 and 50, regarding, respectively, improving ethical conduct, the definition of a public officer and technical amendments.¹¹ These amendments should also be made in the next tranche of legislative reforms, in accordance with the recommendations of the Cox Review.

The Institute supports the Government's rejection of recommendation 17 and agree it is important for the Commission to be able to refer matters to the Director of Public Prosecutors for its advice and consideration.¹² Similarly, the Government's rejection of recommendation 35 ensures that data in the *Telecommunications (Interception and Access) Act 1979* (Cth) is only used by the Government in cases of national security and serious criminal matters.¹³

⁸ Tasmanian Government (2022) *Integrity Commission Act 2009 Legislative Reform Discussion Paper*, p. 26–40, justice.tas.gov.au/__data/assets/pdf_file/0008/667178/Integrity-Commission-Legislative-Reform-Discussion-Paper-July-2022.pdf

⁹ *Ibid*, p. 41

¹⁰ *Ibid*, p. 6–20

¹¹ *Ibid*, p. 42 and 44

¹² *Ibid*, p. 41

¹³ *Ibid*, p. 43

The Institute disagrees with recommendation 33 from the Cox Review report, to not include corrupt conduct in the Act. This will be discussed further in the following section of this submission regarding jurisdiction.

Matters raised since the Cox Review

GENERAL ISSUES RELATING TO THE ACT

The Institute supports points 11–12 being implemented in the next tranche of legislative reforms. These will assist improved functioning of the Commission.¹⁴

DISCLOSURE OF OFFICIAL SECRETS AND UNAUTHORISED ACCESS TO A COMPUTER OFFENCES

The Institute supports the Commission’s recommendation in its own-motion investigation report on the need for legislative review of the offences relating to serious information abuse.¹⁵ This should be addressed in the next tranche of legislation, as planned.

EXPANDING JURISDICTION

The Commission needs a broader jurisdiction to fulfil its aim of ensuring ethical conduct of public officers, as well as enhancing public confidence that it is doing so.¹⁶

Public officers

In the six years since the Cox Review Report was released, it has become evident that jurisdiction of the Commission needs to be expanded. In light of this, the Institute urges the Government to reconsider its rejection of recommendation 37 from the Cox Report, that the definition of public officer in section 6(1) of the Act be amended. Cox recommended that the definition include “volunteers and officers exercising statutory functions or powers”.

This was made particularly clear after the 2021 complaint to the Commission by the Tasmanian Greens regarding Premier Peter Gutwein’s handling of the preselection, support, and resignation of Adam Brooks as the candidate for Braddon in the 2021 state election.¹⁷

¹⁴ Tasmanian Government (2022) *Integrity Commission Act 2009 Legislative Reform Discussion Paper*, p. 21–22, justice.tas.gov.au/__data/assets/pdf_file/0008/667178/Integrity-Commission-Legislative-Reform-Discussion-Paper-July-2022.pdf

¹⁵ *Ibid*, p. 23–25

¹⁶ National Integrity Committee (2017) *Principles for designing a National Integrity Commission*, p. 3, <https://australiainstitute.org.au/report/principles-for-designing-a-national-integrity-commission/>

¹⁷ 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>

During his last term in parliament, Brooks resigned after an Integrity Commission report showed that he had misused his business email account.¹⁸ Despite this, Brooks was endorsed by the Premier as the Liberal candidate for Braddon in the state election.

During the election period, it was revealed that Brooks was under investigation by Tasmanian 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. Brooks continued to receive the support of the Premier, eventually resigning of his own volition one day after being elected.

The Commission was unable to investigate Mr Gutwein's handling of this situation because the Act only allows it to investigate public officers.¹⁹ 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. This is despite the fact that the Premier and Ministers continue in their roles and are subject to the Ministerial Code of Conduct once Parliament has been dissolved. The Institute welcomes the Government's recognition of this issue in its Discussion Paper.²⁰

Section 6(1) of the Act should be amended to state that members of Parliament – including the Premier and Ministers – remain public officers during an election period. It should also be amended, in line with recommendation 37 from the Cox Review Report, to include “volunteers and officers exercising statutory functions or powers”.²¹

Corruption and third parties

Tasmania's definition of misconduct limits the Commission's jurisdiction, in terms of the people and circumstances that can be investigated by the Commission. Importantly, the Tasmanian Commission can only investigate public officers. This limited jurisdiction means

¹⁸ Humphries (2019) *Tasmanian Liberal Adam Brooks resigns after damning Integrity Commission report*, <https://www.abc.net.au/news/2019-02-11/adam-brooks-resigns-from-parliament-tasmanian-government-says/10798968>

¹⁹ *Integrity Commission Act 2009* (Tas), s. 4(1)

²⁰ Tasmanian Government (2022) *Integrity Commission Act 2009 Legislative Reform Discussion Paper*, p. 23, justice.tas.gov.au/__data/assets/pdf_file/0008/667178/Integrity-Commission-Legislative-Reform-Discussion-Paper-July-2022.pdf

²¹ Cox (2016) *Independent Review of the Integrity Commission Act 2009*, p. 45, 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

that it cannot investigate third parties – even third parties that are intrinsically linked with the political process, such as political parties or lobbyists.²²

The Tasmanian Commission’s jurisdiction is limited when compared to other Australian integrity bodies, leaving Tasmanians with poorer protection against corruption than their interstate counterparts. All other integrity bodies in Australia can investigate corrupt conduct, and there have been numerous findings of corruption by these bodies.

This is assisted by their broad definition of corruption – the NSW, Queensland and ACT integrity bodies can investigate any conduct of any person that could affect the impartial or honest exercise of public administration.²³ Whilst the ACT Commission is still in its infancy, the broad jurisdictions of the NSW and Queensland integrity bodies has allowed them to investigate a broad range of conduct committed by people who are not public officials.²⁴ For example, the Eddie Obeid and Ian Macdonald case could not have been investigated without this broad jurisdiction, as it involved business and union officials who are not public officers.

The Commission, in its submission to the Cox Review, asked Cox to consider whether it should investigate corruption, given calls within the community for it to do so. In deciding not to recommend that the Commission investigate corrupt conduct, Cox stated that:

“in the absence of any evidence of entrenched wrongdoing within the public sector, I see no reason to expand the kind of wrongful conduct that the Commission should target or to re-write its nomenclature as ‘corruption’.”²⁵

However, in the Commission’s submission to the Cox Review, it stated that:

“The Commission cannot, and does not at this point in time, take a position on whether systemic corruption does or does not exist in Tasmania. Given that the Commission does not have the powers or resources to conduct such investigations, this question is likely to remain unanswered.”²⁶

It cannot be known whether corrupt conduct is occurring in lutruwita/Tasmania if the Commission cannot investigate it. If corruption has been found in other states with integrity

²² The National Integrity Committee (2018) *The jurisdiction of a National Integrity Commission*, p. 7, <https://australiainstitute.org.au/wp-content/uploads/2020/12/National-Integrity-Commission-Design-Blueprint-Part-1-Jurisdiction.pdf>

²³ Carr and Hay (2022) *Still toothless*, p. 10, <https://australiainstitute.org.au/report/still-toothless/>

²⁴ The National Integrity Committee (2018) *The jurisdiction of a National Integrity Commission*, p. 4, <https://australiainstitute.org.au/wp-content/uploads/2020/12/National-Integrity-Commission-Design-Blueprint-Part-1-Jurisdiction.pdf>

²⁵ Cox (2016) *Independent Review of the Integrity Commission Act 2009*, p. 92, 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

²⁶ *Ibid*, p. 84

bodies who have the ability to investigate it, who is to say that it is not occurring in lutruwita/Tasmania, but has not been found because of the limitations of our integrity body?

In order to give Tasmanians the same level of protection from corruption as other jurisdictions around Australia, the Institute recommends that a definition of corrupt conduct in line with section 3 of the *Public Interest Disclosures Act 2002 (Tas)* be adopted, and that the Commission be given the power to investigate it. Section 3 reads:

Corrupt conduct means –

- (a) conduct of a person (whether or not a public officer) that adversely affects, or could adversely affect, either directly or indirectly, the honest performance of a public officer's or public body's functions; or
- (b) conduct of a public officer that amounts to the performance of any of his or her functions as a public officer dishonestly or with inappropriate partiality; or
- (c) conduct of a public officer, a former public officer or a public body that amounts to a breach of public trust; or
- (d) conduct of a public officer, a former public officer or a public body that amounts to the misuse of information or material acquired in the course of the performance of their functions as such (whether for the benefit of that person or body or otherwise); or
- (e) a conspiracy or attempt to engage in conduct referred to in paragraph (a) , (b) , (c) or (d).

This would have consequences for the remainder of the Act, which would need to be amended in several sections in order to incorporate this new definition.

Parliamentary privilege

The Commission's jurisdiction is further limited by its inability to investigate conduct that protected by Parliamentary privilege.²⁷ The effects of this are potentially far-reaching, as it results in the Commission not being able to investigate conduct that is connected to a

²⁷ *Integrity Commission Act 2009 (Tas)* s. 4(1); The National Integrity Committee (2018) *The jurisdiction of a National Integrity Commission*, p. 2, <https://australiainstitute.org.au/wp-content/uploads/2020/12/National-Integrity-Commission-Design-Blueprint-Part-1-Jurisdiction.pdf>

proceeding in Parliament. The only other jurisdiction in which has Parliamentary privilege is a bar to investigations is South Australia.²⁸

The Institute recommends that the Act be amended to remove the bar to the Commission investigating conduct protected by parliamentary proceedings:

- Remove from the definition of misconduct in section 4(1), “but does not include conduct, or an attempt to engage in conduct, by a public officer in connection with a proceeding in Parliament”.
- Remove from the definition of privilege in section 4(1)(c) “the privileges of the Parliament”.
- Remove section 100 of the Act.

BRINGING INTEGRITY TO THE PUBLIC

The need for confidentiality is no doubt necessary in the Commission’s investigations to protect complainants, as well as those accused of committing misconduct, from unnecessary government and public persecution. Without these protections, integrity bodies run the risk of being “kangaroo courts”, which cause significant reputational damage to an individual.

However, it is a significant barrier to enhancing public trust in the Commission’s ability to prevent and uncover misconduct – one of the main objects of the Act – that much of the Commission’s work is conducted behind closed doors.

Public hearings

The Board of the Commission has the ability to convene an Integrity Tribunal, who conducts an investigation through an inquiry.²⁹ As part of this inquiry, the Integrity Tribunal can make an order to conduct public hearings.³⁰

Holding public hearings is an important way in which to increase public trust, as the investigation process is open for the public to see.³¹ Eighty-five per cent of Australians

²⁸ National Integrity Committee (2018) *The jurisdiction of a National Integrity Commission*, p. 2, <https://australiainstitute.org.au/wp-content/uploads/2020/12/National-Integrity-Commission-Design-Blueprint-Part-1-Jurisdiction.pdf>

²⁹ *Integrity Commission Act 2009* (Tas) s. 60 and 61(2)(a)

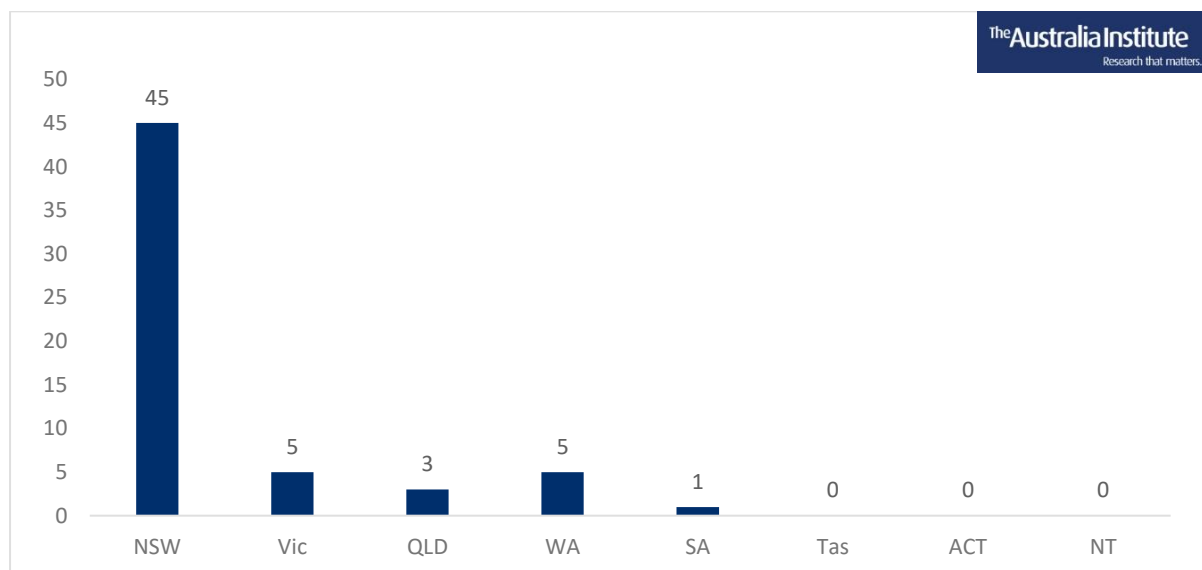
³⁰ *Ibid*, sch. 6, s. 1(1)

³¹ National Integrity Committee (2018) *Public hearings key to investigating and exposing corruption*, p. 2, <https://australiainstitute.org.au/wp-content/uploads/2020/12/National-Integrity-Commission-Design-Blueprint-Part-3-Public-hearings.pdf>

believe that public hearings increase public trust.³² Their public nature can also increase the veracity of the investigation by encouraging witness to come forward, as well as ensuring that the investigation is conducted fairly. This reduces the need for coercive methods of information gathering, which usually occur behind closed doors, ensuring that integrity bodies are not “star chambers”. They have the co-benefit of educating the public sector and community about prevention and the impacts of misconduct, acting as a deterrent.

Australia Institute research found that, unlike other integrity bodies around Australia, the Tasmanian Commission has never held an inquiry or public hearing.³³ This is in direct contrast to the NSW Independent Commission Against Corruption (ICAC) which regularly holds public inquiries and is considered a best practice body in terms of doing so. Public hearings were critical in uncovering the information needed for the successful misconduct investigation into Eddie Obeid and Ian Macdonald.³⁴ The Queensland, Western Australian, South Australian and Victorian bodies have all held public hearings, shown in Figure 1 below:

Figure 1: Number of public inquiries by Australian integrity bodies 2012–2021



Source: Annual reports of the Australian integrity bodies from 2012 to 2021.

Figure 1 shows that like lutruwita/Tasmania, the ACT and NT integrity bodies have not held public hearings. This is likely due to their recent establishment. The longer-running bodies have all held public hearings.

³² 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>

³³ Carr and Hay (2022) *Still toothless*, p. 12, <https://australiainstitute.org.au/report/still-toothless/>

³⁴ National Integrity Committee (2018) *Public hearings key to investigating and exposing corruption*, p. 5, <https://australiainstitute.org.au/wp-content/uploads/2020/12/National-Integrity-Commission-Design-Blueprint-Part-3-Public-hearings.pdf>

This raises the question, if a number of other integrity bodies around Australia have seen fit to hold inquiries and public hearings, why has the Commission not? It may be that the Commission believes that complaints are better investigated behind closed doors.

But this is contrary to public opinion. Research by the Australia Institute found that 80.1% of Tasmanians believe that the Commission should undergo change so that its existing powers are utilised, including by holding public hearings.³⁵

In deciding whether to hold an inquiry the Commission must, as it must when performing all its functions and powers, “ensure that action to prevent and respond to misconduct in a public authority is taken if the public authority has the capacity, and it is in the public interest, to do so”.³⁶

The Institute recommends that the Act be amended to clarify that the Board must turn its mind to whether an inquiry should be held in further an investigation. The Act should also specify that, determining whether to hold an inquiry, the Board must:

Without limiting the factors that it may take into account in determining whether or not it is in the public interest to conduct an inquiry, the Commission is to consider the following—

- (a) the likelihood of the exposure of evidence through the holding of an inquiry,
- (b) the benefit of exposing to the public, and making it aware, of misconduct,
- (c) the seriousness of the allegation or complaint being investigated,
- (d) any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry),
- (e) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.

The above is drawn from the *Independent Commission Against Corruption Act 1988* (NSW), which also requires ICAC to consider factors a–e when determining whether to hold a public inquiry.³⁷

In order to determine whether a hearing should be public, the Integrity Tribunal will then go through a secondary decision process already contained in the Act, which specifies that they must be “satisfied that the public interest in the reporting of that hearing or the publishing of that evidence is outweighed by any other consideration, including public security, privacy of personal or financial affairs or the right of any person to a fair trial.”³⁸

³⁵ Australia Institute (2021) *Polling: Good Government in Tasmania*, <https://australiainstitute.org.au/report/polling-good-government-in-tasmania/>

³⁶ *Integrity Commission Act 2009* (Tas) s. 9(1)(d)

³⁷ *Independent Commission Against Corruption Act 1988* (NSW) s. 31

³⁸ *Integrity Commission Act 2009* (Tas) sch. 6, s. 4

Public reports

Another method of creating public trust in the Commission's ability to investigate misconduct by public officers is to release investigation reports to the public. Of the 52 investigations commenced by the Commission between 2012 and the end of the 2020–21 financial year, only 17 investigation reports have been released.³⁹

Whilst the Commission has a culture of releasing reports publicly, given that there is no requirement to do so, barriers should be removed to ensure that this can be done more often. The Institute recommends that the Act be amended to require that the Board must turn its mind to releasing investigation reports to the public, taking into account a similar balancing of public interest and reputational damage as discussed above.

INCREASING RESOURCING

Adequate resourcing is necessary in order to ensure the Commission's independent and adequate prevention and investigation of misconduct by public officers.⁴⁰

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.⁴¹ 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".⁴² 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 \$670,000.⁴³ \$622,00 of this funding was allocated towards investing in misconduct prevention, education and oversight.⁴⁴ This funding was allocated so the Commission could deliver education to support sustainable cultural change in Tasmania's public sector, as well as providing additional investigative resources to deal with complaints and monitor compliance with integrity systems.

³⁹ Carr and Hay (2022) *Still toothless*, p. 16, <https://australiainstitute.org.au/report/still-toothless/>

⁴⁰ National Integrity Committee (2017) *Principles for designing a National Integrity Commission*, p. 2, <https://australiainstitute.org.au/report/principles-for-designing-a-national-integrity-commission/>

⁴¹ 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>

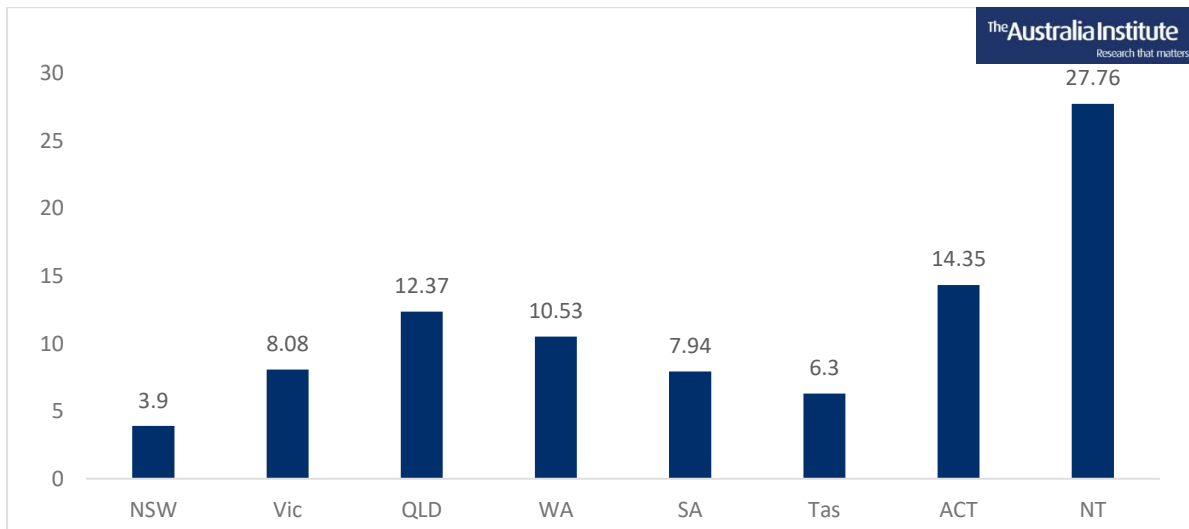
⁴² Day (2015) *Public servants getting away with misconduct, Tasmanian corruption watchdog chief Murray Kellam says*, <https://www.abc.net.au/news/2015-08-07/corruption-watchdog-chief-blasts-tasmanian-government/6680968>

⁴³ Tasmanian Government (2021) *Government Services, Budget Paper No 2, Volume 2*, p. 21, <https://www.treasury.tas.gov.au/Documents/2021-22-Budget-Paper-No-2-Volume-2.pdf>

⁴⁴ *Ibid*, p. 20

Despite this, Australia Institute Tasmania research found that the Commission’s budget remained relatively low compared to other jurisdictions, at \$3.4 million for the 2021–22 financial year.⁴⁵ During the 2021–22 financial year, the Commission had the second lowest budget in Australia on a per capita basis, as shown in Figure 2 below:

Figure 2: Budget per capita (dollars) for Australian integrity bodies in 2021–22



Source: Annual reports of the Australian integrity bodies from 2012 to 2021 and state and territory governments’ 2021–22 budgets.

Figure 2 above shows that only the NSW’s integrity body was funded more poorly on a per capita basis. However, the NSW ICAC’s Chief Commissioner, Peter Hall, has said that the NSW ICAC is underfunded by \$2.4 million and that more funding is needed in order for it to continue fighting corruption.⁴⁶ Most others states and territories had substantially larger budgets, on a per capita basis, in the 2021–22 financial year than the Tasmanian Commission.

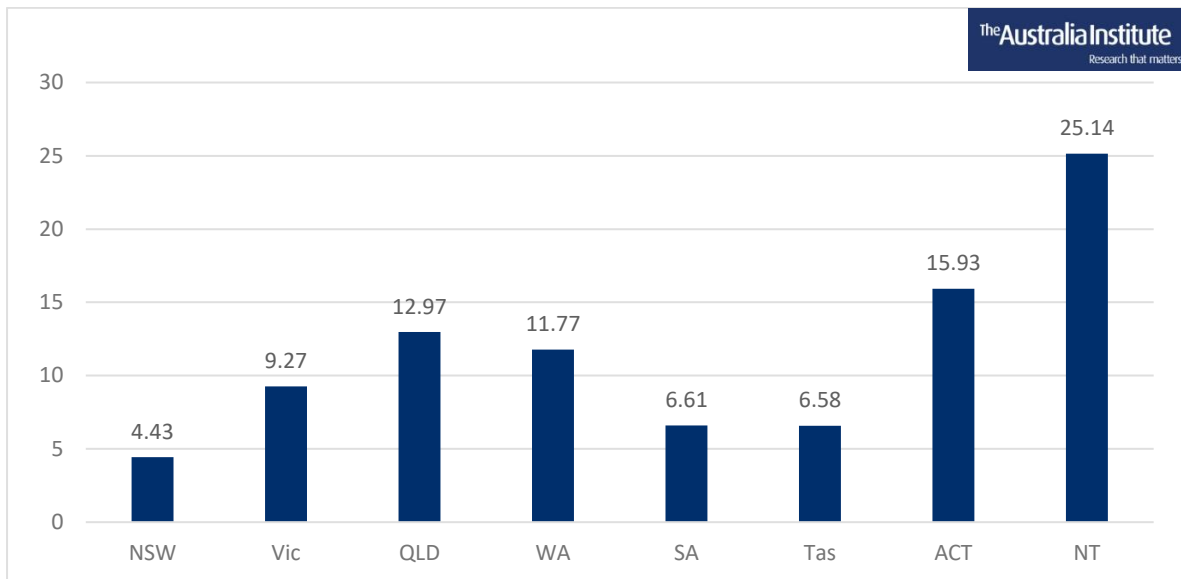
In the 2022–23 state budget, the Government allocated an additional \$225,000 of funding to the Commission to improve investigative demands and timeframes and to manage the State Government Lobbyist Register.⁴⁷ Despite this increase in funding, Figure 3, below, shows that the Commission is still the second-lowest funded integrity body in the nation, behind NSW.

⁴⁵ Carr and Hay (2022) *Still toothless*, p. 14, <https://australiainstitute.org.au/report/still-toothless/>

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

⁴⁷ Tasmanian Government (2022) *Government Services, Budget Paper No 2, Volume 2*, p. 32, <https://www.treasury.tas.gov.au/Documents/2022-23-Budget-Paper-No-2-Volume-2.pdf>

Figure 3: Budget per capita (dollars) for Australian integrity bodies in 2021–22



Source: State and territory governments' 2022–23 budgets.

Whilst this lack of funding is unable to be dealt with in the next tranche of legislation, the next state budget should provide an increase in funding to help the Commission expand its prevention and investigation of misconduct. Further, if the Commission is to investigate corrupt conduct, it must receive additional resources.⁴⁸ This funding should be increased in coming years to ensure the sustainable growth of the Commission.

⁴⁸ Cox (2016) *Independent Review of the Integrity Commission Act 2009*, p. 84, 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

Table 1: Comparison of Australian anti-corruption commissions 2012-2021

As analysed in our report *Still toothless*, this table contains data for key performance indicators of integrity commissions across the Australian states from 2012-2021. Data has been sourced from the annual reports of the Australian anti-corruption bodies from 2012 to 2021 and state government 2021-22 budgets. Note that there is no standardised reporting format and as such, data availability varies by year and jurisdiction.

	NSW	Vic	QLD	WA	SA	Tas	ACT	NT
Integrity Commission	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Established	1988	2011	2001	2004	2013	2010	2019	2018
Jurisdiction⁴⁹	Broad	Limited	Broad	Limited	Limited	Limited	Broad	Limited
Investigations commenced	384	193	403	479	346	52	21	70
Public inquiries	45	5 ⁵⁰	3	5	1	0	0	0
Private examinations	1064	373 days ⁵¹	226 days ⁵²	239 ⁵³	72	0 ⁵⁴	11	66
Investigations reports made public	44	15	7	77	3	17	0	7
Referrals for prosecution	136	85	139	85 ⁵⁵	50	2	0	3
Prevention recommendations	294	276	616	195	87	29	0	71
Budget⁵⁶	\$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)⁵⁷	108	196.1	335	116.2	66.7	15.5	13.4	31
Staff per 1 m people	13.2	29.4	64.6	43.6	37.7	28.6	31.1	125.8

⁴⁹ 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>

⁵⁰ Note that an additional public inquiry was undertaken by Independent Broad-based Anti-corruption Commission Parliamentary Committee in 2018.

⁵¹ Data recorded for 2014-19 and 2020-21.

⁵² No data available for 2017-20.

⁵³ Note that there were 69 days of private examinations in 2020-1.

⁵⁴ No data available for 2017-20.

⁵⁵ No data available for 2017-18.

⁵⁶ For the year 2021-22.

⁵⁷ For the year 2020-21.

Conclusion and recommendations

Nearly one in two (48.5%) Tasmanians distrust the Commission's ability to uncover and prevent misconduct in public administration. The Institute's research found that the Commission's limited jurisdiction has seen it unable to investigate the Tasmanian Premier. The Commission has never held a public inquiry. More than half of the Commission's reports have not been released to the public. It is the second lowest funded integrity body in the nation.

The Australia Institute welcomes the Tasmanian Government's commitment to finally progressing their commitment to implement a number of the recommendations from the Cox Review Report, as well as additional matters arising since its release, as a matter of priority.

But these changes alone will not make the Commission the watchdog with teeth that the Tasmanian public want and deserve. The Australia Institute Tasmania recommends:

1. That the majority of the Cox Review Report recommendations be legislated as a matter of priority. At the same time, the issues raised since the Cox Review Report, including disclosure of official secrets and unauthorised access to computer offences, should be addressed.
2. That the jurisdiction of the Commission be expanded by including members of Parliament during an election period and all others exercising statutory functions or powers of public officers.
3. That an expansive definition of corrupt conduct be legislated, to allow the Commission to investigate corrupt conduct of people beyond public officers.
4. That the jurisdiction of the Commission be expanded by removing references to Parliamentary privilege from the Act.
5. That barriers should be removed to releasing investigation reports publicly, and that the Board must turn its mind to holding an inquiry or releasing a report publicly, considering a number of factors when doing so, including the benefit to the investigation, public interest and reputational damage.
6. That the funding of the Commission be increased in the next state budgets so that it can keep pace with its interstate counterparts.

For more information, visit:

australiainstitute.org.au/research/topic/integrity-commissions