



Introduction

Under s 24(1)(e) of the *Integrity Commission Act 2009* (the Act), the Joint Standing Committee on Integrity (the Committee) is required to review the functions, powers and operations of the Integrity Commission (the Commission), at the expiration of the period of three years, and to table in both houses of Parliament a report regarding any action that should be taken in relation to the Act or the functions, powers and operations of the Commission.

On 15 October 2013 the Commission provided a submission to the Committee to assist in the review (the first submission). The first submission has been made public by the Committee.

The Committee called for written submissions addressing the terms of review in late 2013/early 2014. Shortly afterwards the Committee resolved to suspend the review until after a new Committee had been constituted following the state general election. The new Committee has renewed the call for written submissions.

Given the length of time and events since the Commission's first submission, the Commission considers it appropriate to provide a further written submission to the Committee. This submission primarily deals with issues concerning the functions, powers and operations of integrity entities in the last twelve months. Where necessary in order to understand context in relation to the Commission, names of principal officers, public authorities, or subject officers have been included.

If the Committee determines to publish this submission, we request that the names of the complainants set out in Tables 1 and 2 be redacted.

Previous recommendations

In the first submission the Commission made 3 recommendations as set out below:

Recommendation 1

The Commission recommends that the identified technical issues in relation to the *Integrity Commission Act 2009* which have already been considered by the Joint Standing Committee and supported in principle, under the s 13(c) report of the Board in April 2013, be referred to the Minister for Justice for amendment to the Act as soon as possible.

Recommendation 2

The Commission recommends that the remaining identified technical issues in relation to the *Integrity Commission Act 2009* as identified in the response from the Joint Standing Committee to the s 13(c) report of the Board be considered and supported by the Committee for amendment of the Act as soon as possible.

Recommendation 3

The Commission recommends that the six essential policy issues identified in its submission at Chapter Nine, specifically:

- a. mandatory notifications of serious misconduct;
- b. the broadening of the Commission's ability to publish reports, including tabling reports in both houses of Parliament outside of sitting periods;
- c. the extension of the discretion to apply confidentiality around the Commission's investigative functions;
- d. the independence of the Commission to engage appropriate legal services;
- e. the Commission's status as a law enforcement agency; and
- f. clarifying the interaction between the Commission and public authorities' investigations of breaches of code of conduct, particularly Employment Direction 5

be supported in principle by the Committee for amendment to the Act (where necessary) as soon as possible.

The most recent tabled report of the Commission, *Report No 1 of 2014*, concerning senior health managers, is a good case study which highlights the importance of the six essential policy issues in recommendation 3.

Since the first submission there has been progress with respect to the Commission's status as an enforcement agency.¹

'Enforcement agency' status Telecommunications (Interception and Access) Act 1979

The *Telecommunications (Interception and Access) Act 1979* (Cwth)(TIAA) sets out the circumstances in which it is lawful for interception agencies to intercept and access communications (passing over a telecommunications system) and also authorises the disclosure by carriers of telecommunications data to enforcement agencies.

¹ Refer to Volume 1, para 9.5 of the first submission for further background information.

Interception agencies include those State agencies declared by the Commonwealth Attorney-General (A-G) as eligible to be an interception agency under s 34 of the TIAA. The Integrity Commission is not a declared interception agency.

Enforcement agencies means those listed in the TIAA as an enforcement agency under s 5(1) of the TIAA. This includes all Commonwealth and State police forces and interstate integrity/anti-corruption agencies or bodies prescribed by regulations (s 5(1)(k)) or any body whose functions include administering a law imposing a pecuniary penalty or administering a law relating to the protection of the public revenue (s 5(1)(n)).

The Commonwealth Attorney-General's Department (AGD) recommends to the Commonwealth A-G whether an agency should be listed as an enforcement agency in the TIAA or in the regulations. The other variety of enforcement agency is determined as such by its functions of administering a law imposing a penalty or protecting public revenue. AGD has a practice of 'vetting' agencies who consider that they are an enforcement agency by virtue of their functions.

Enforcement agencies can obtain telecommunications data from a carrier. This is information about the process of a communication, not its content (it includes for example the sending and receiving parties, the time, date and duration of a communication). All enforcement agencies can access 'historical data' and 'criminal law-enforcement agencies' (the police/integrity agencies and any agency listed in regulations) can access prospective data. The threshold for access is that it is reasonably necessary to enforce the relevant law or protect the public revenue. An enforcement agency can also obtain stored communications (typically referred emails and text messages, but may include images or video).

When an enforcement agency has obtained telecommunications data under an authorisation, the data can only be 'on-disclosed' for certain purposes including to enforce the criminal law, to enforce a law imposing a pecuniary penalty, or to protect the public revenue.

In late 2013, following the commencement of the Independent Commission Against Corruption in South Australia (noting many of the similarities to Tasmania), the Commission sought approval from the AGD to be accepted as an 'enforcement agency' to allow access to historical data only. To access prospective data would require the Commission to be prescribed in the regulations and would require a formal request by the relevant Tasmanian Minister.

AGD undertook a review of the Commission's functions and objectives under the Act and, on 6 March 2014, agreed that the Commission could be considered an enforcement agency by virtue of its functions.

The Commission may thus only access historical and stored telecommunications data, and always subject to the threshold requirements for access.



Between the date of approval and the date of this submission, the Commission has not made any applications for access to historical and stored telecommunications data.

Complaints made to the Committee about the Commission

As reported publicly in the Committee's Annual Report 2013, the Committee continues to receive representations from citizens of Tasmania detailing their 'negative experiences in dealing with the Commission'. Such complaints are made to the Committee in the apparent expectation that the Committee has powers or functions enabling it to independently investigate or revisit cases and recommend a specific remedy.

The process to date has been for the Committee to receive the representation, and forward it to the Commission for consideration of the issues raised. The Commission has responded on each occasion to the Committee but recognises the powers and functions of the Committee in this respect are limited by the legislation. The first submission noted the interstate processes with respect to Parliamentary Inspectors/Inspectorates who have a primary function to deal with complaints about the various integrity entities.² In view of the complaints made about the Commission (noting the Commission may not be aware of all complaints), the Committee may wish to explore in greater detail, the issue of 'who watches the watchers'.

The representations forwarded to the Commission by the Committee, since October 2010, are set out in **Table 1**. **Table 2** is from the register of complaints about individual officers, maintained by the Commission.³

² *Submission of the Integrity Commission*, October 2013, Chapter 3, Volume 1 and see Appendix 3, Volume 2.

³ Table 2 does not include information in relation to complainants who disagree with the determination of the Commission to dismiss their complaint.



Table 1: Complaints to the Committee about the Commission 2010-2014

TABLE 1 REDACTED



TABLE 1 REDACTED

Table 2: Complaints made to the Commission 2010-2014

TABLE 2 REDACTED



TABLE 2 REDACTED



With respect to **Table 1**, the Commission is not aware of any other complaints about its operations that have been raised formally with the Committee, outside of submissions which might be made through the three year review process.

Overwhelmingly, the complaints made to the Committee, (that the Commission is aware of), are from complainants unhappy with the way that the Commission has dealt with their complaint: mainly, that it was not investigated by the Commission or further information sought. None of the complaints made to the Committee that we are aware of are about excessive use of the Commission's powers, nor are they from subject officers.

Similar observations can be made with respect to complaints made to the Commission other than those in 2014. The complaints in 2014 arose out of the DHHS investigation as tabled in Parliament in May 2014. Some of the concerns raised go to the legislative framework which establishes the Commission, and some arise out of the investigative process. The concerns were genuinely raised and the Commission reflected seriously on them.

Fundamentally, and despite any differences in legislation in various jurisdictions, the manner in which the Commission treats complaints, complainants and witnesses is no different to other interstate integrity entities. For example IBAC does not normally provide reasons regarding its decision to a complainant.⁴

Integrity entities do not function to resolve a person's complaint or provide personal redress. The primary function is to investigate and prevent misconduct/corruption. A consequence of that is that the complainant may not be aware, or advised, of the outcome of recommendations made by the Commission to principal officers or public authorities. For example, in respect of the matter referred to at number 4 of Table 1, the Commission conducted a thorough audit of the investigation undertaken by the public authority to which their complaint had been referred. The Commission was satisfied with the investigation undertaken by the relevant department, but the detail of the audit was not made available to a complainant to 'resolve' the complaint.

The Commission's use of its coercive powers and conduct of interviews is consistent with procedures and processes used by similar integrity entities, subject to jurisdictional differences. The extent of similar powers has been widely explored by courts interstate.⁵

The Commission is aware of the sensitivities around 'watching the watcher', particularly with respect to the use of coercive powers. Some of the lessons learned from interstate integrity entities in recent years may assist the Committee in this area.

Lessons learned from interstate integrity entities

Since the Commission commenced operating in 2010, there have been significant developments in the integrity entity jurisdiction interstate. The first submission set out some of the background of the various integrity entities interstate.⁶ Building on that information, the Commission considers there to be important lessons from developments in the last few years.

⁴ IBAC Annual Report 2012-13 <http://www.ibac.vic.gov.au/docs/default-source/ibac-annual-reports/ibac-annual-report-2012-13.pdf?sfvrsn=8>

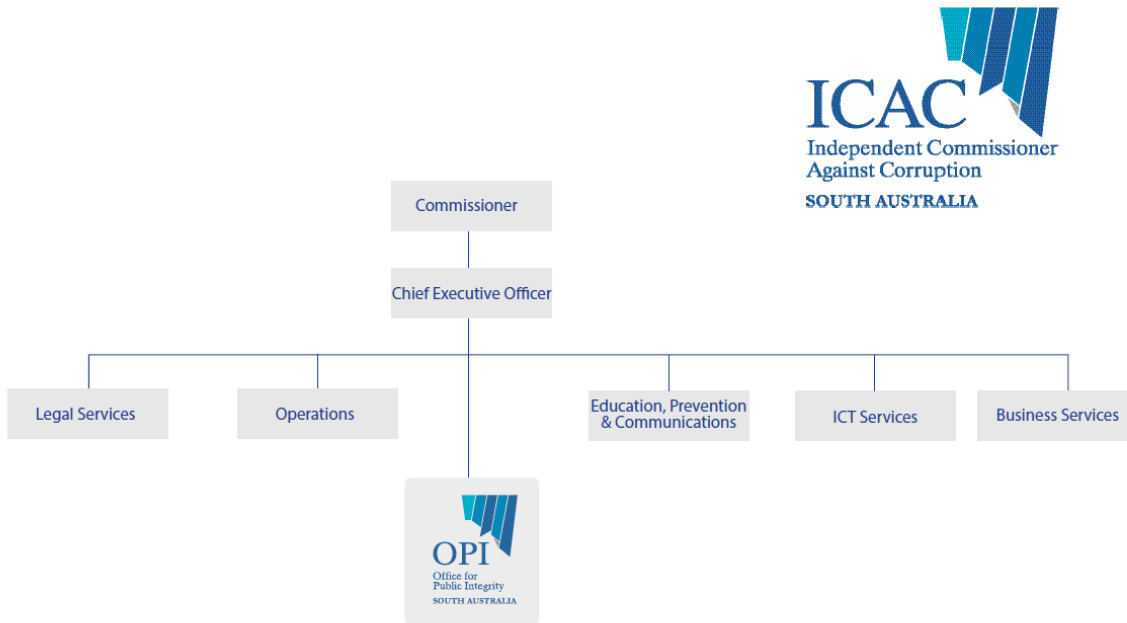
⁵ As has the breadth of the Commission's notices under s 47 – *West Tamar Council v Leonard and the Integrity Commission* [2012] TASSC 68.

⁶ Volume 1, Chapter One.

Independent Commissioner Against Corruption – South Australia

The Independent Commissioner Against Corruption (ICAC) in South Australia (SA) commenced in September 2013, and is the newest integrity entity. Its structure is similar to that of the Commission with a Commissioner, CEO and services including Education, Prevention and Communications and Operations, however it does not have a Board. Both the Commissioner and the CEO are full time.

Organisational Chart: ICAC SA⁷



A significant difference to Tasmania is that South Australia has established the Office for Public Integrity (OPI). The OPI is responsible to ICAC (the Commissioner) and receives the complaints and reports concerning misconduct, corruption and maladministration and assesses them. It is the OPI which makes a recommendation to the Commissioner about the action to be taken. The Commissioner is not bound by the recommendation, and determines whether corruption matters should be investigated by the ICAC or referred to the Police, the Police Ombudsman or another enforcement agency.

Misconduct matters or issues of maladministration may be referred to another agency or public authority or officer for investigation.

Accountability

From an accountability perspective, the South Australian Commissioner is not subject to the direction of any person in relation to any matter, including the way in which his/her functions are carried out, or the exercise of his/her powers or priority given to any particular matter. The Commissioner is required to table an annual report in Parliament. The South Australian Act

⁷ http://www.icac.sa.gov.au/sites/default/files/2014_03_31%20org%20chart%20website.pdf accessed 14 August 2014.

however is much more prescriptive about what must be included in the annual report, than the Act in Tasmania. It includes, for example:

- (i) the number and general nature of complaints and reports received by the Office; and
- (ii) the number and general nature of matters investigated by the Commissioner; and
- (iii) the number of warrants issued by the Commissioner and by judges of the Supreme Court; and
- (iv) the number of examinations conducted; and
- (v) the extent to which investigations have resulted in prosecutions or disciplinary action; and
- (vi) the number and general nature of matters referred for investigation to the Commissioner of Police, the Police Ombudsman or other law enforcement agency; and
- (vii) the number and general nature of occasions on which public statements have been made by the Commissioner; and
- (viii) the number and general nature of matters referred to an inquiry agency or public authority; and
- (ix) the number and general nature of directions or guidance given by the Commissioner in referring matters; and
- (x) the number and general nature of the occasions on which the Commissioner exercised the powers of an inquiry agency in respect of a referred matter; and
- (xi) the number and general nature of requests for examinations of accounts by the Auditor-General; and
- (xii) the number and general nature of recommendations made to an inquiry agency or public authority by the Commissioner; and
- (xiii) the number and general nature of reports made to the Attorney-General, President of the Legislative Council or Speaker of the House of Assembly; and
- (xiv) a description of the activities carried out in relation to its evaluation and educational functions; ...⁸

The establishing Act also provides for an annual review of the operations of the ICAC and OPI.⁹ The annual review requires the Attorney-General in South Australia to appoint a person (who would be eligible for appointment as the Commissioner, so must therefore be the equivalent of a senior legal practitioner or a former judge) to conduct a review of the operations of the Commissioner and the OPI. Again, the act is prescriptive as to what can be reviewed. A report of the annual review must be presented to the Attorney-General each year and then tabled in Parliament.

⁸ [Independent Commissioner Against Corruption Act 2012](#) s 45.

⁹ [Independent Commissioner Against Corruption Act 2012](#) s 46.

The SA act is also prescriptive from an accountability perspective with respect to the information that must be maintained on the ICAC website: s 48; and about the provision of information to the Attorney-General: s 49.

Transparency

Like Tasmania, investigations by the Commissioner are to be conducted in private. Further all examinations conducted by the Commissioner¹⁰ as part of an investigation must also be held in private.¹¹

Status as an enforcement agency

The ICAC has made a submission to a Federal Senate inquiry that it is currently able to use electronic data obtained under federal law to investigate corruption allegations, but the same information cannot be used to investigate public officials accused of other forms of misconduct. The submission states 'This limitation creates the odd result that SA Police is permitted to provide to the ICAC information that the ICAC cannot use'.¹²

Budget

Although the first annual report from ICAC with financial information is not yet available, in June 2013 a government media release stated that the previous funding commitment of \$32 million over five years to ICAC was to be topped up with a further \$10.3 million over four years to provide information technology systems and their ongoing operation for ICAC and OPI.¹³ When fully operational the staff of ICAC and the OPI will consist of 29 FTEs excluding representatives of agencies, independent advisers and suppliers who are, over time, engaged to support the project and related services.

Lessons for Tasmania

The administration of the ICAC and OPI in South Australia is similar to that of the Commission. It is noted that its accountability framework does not include any Parliamentary monitor but does provide for an (independent) annual review and mandatory detailed reporting

Neither the first annual report of the ICAC nor of the first annual review are yet available. Both must be published before 30 September each year. Until that information is available it is not possible to ascertain the operating budget of the ICAC, OPI or for the annual review beyond the 2013 government statements. At this stage it is also not certain whether the cost for the independent annual review is from the ICAC budget, or from the Attorney-General's budget. What is clear is that SA committed significant resources to the establishment and ongoing operation of ICAC and OPI for the first five years.

¹⁰ In Tasmania it is the investigator who conducts the interviews ('examinations' in SA).

¹¹ This can be compared to the position in New South Wales, where examinations/inquiries are held publicly on a regular basis, but can also be held privately.

¹² <http://www.news.com.au/national/south-australia/south-australias-icac-wants-greater-federal-powers-to-obtain-access-to-information-obtained-from-phone-tapping/story-fnii5yv4-1226892864005> accessed 14 August 2014.

¹³ <http://servicesa.cdn.on.net/mybr2013/docs/icac.pdf> accessed 21 January 2014.



Independent Broad-based Anti-Corruption Commission – Victoria

The Independent Broad-based Anti-Corruption Commission (IBAC) in Victoria commenced in 2011, taking over, and broadening the jurisdiction from the Office of Police Integrity (OPI) to the public sector in general.

IBAC has a 'clearing house' role, which 'enables it to play a lead role in coordinating all integrity bodies in Victoria to whom referrals might be made. IBAC is able to conduct coordinated investigations with other prescribed bodies, monitor referred investigations and even recall them for investigation itself where appropriate.'¹⁴ Like Tasmania, IBAC has an important role in the education of the public sector with respect to corruption prevention.

There are many significant differences between IBAC and the Commission. From an accountability perspective, IBAC is required to report to the Parliament via its annual report and is also required to report to the Victorian Inspectorate. Discussion as to IBAC's accountability to the Inspectorate is expanded further later in this submission.

Since IBAC commenced there have been a number of public criticisms with the establishing legislation, particularly with respect to the threshold at which an investigation can start, and the power to investigate misconduct in public office.

Currently the IBAC threshold to commence an investigation is much narrower than in Tasmania and some of the other jurisdictions, being limited to 'corrupt conduct' with respect to the general public sector. The threshold is not as narrow in relation to Victoria Police.¹⁵ The IBAC Commissioner is required to find a relevant indictable offence before he can initiate an inquiry, or alternatively is dependent on cabinet for a reference, when the allegation is with respect to the general public sector. There has been media commentary that IBAC requires a broad definition of corrupt behaviour but that it hasn't been in the interests of the main political parties to introduce the necessary legislation.¹⁶ As early as October 2013 the IBAC Commissioner admitted that he did not have the authority under the legislation to investigate most of the complaints that came to his office, describing the IBAC Act as 'quite restrictive'.¹⁷ Those restrictions also extend to conduct hearings in private except in exceptional circumstances or if there is an overriding public interest.

In addition, the Victorian Ombudsman Ms Deborah Glass has recently stated that the IBAC legislation has caused the 'quite serious unintended consequence' of a significant increase in workload at her office.¹⁸

The restrictive nature of the IBAC Act has caused clear issues for IBAC and other integrity agencies in Victoria. In April 2014 the IBAC Commissioner Mr Stephen O'Bryan recommended that the threshold at which an investigation can start be lowered and that there be a power to

¹⁴ [IBAC Annual Report 2012-13, page 9.](#)

¹⁵ *Independent Broad-based Anti-corruption Commission Act 2011*, s 5.

¹⁶ WA Today, 29 March 2014, *Victoria needs an anti-corruption body with teeth*, <http://www.watoday.com.au/comment/victoria-needs-an-anticorruption-body-with-teeth-20140329-zqogj.html>

¹⁷ The Canberra Times, 27 October 2013, *Corruption watchdog breaks silence*, <http://www.canberratimes.com.au/victoria/corruption-watchdog-breaks-silence-20131026-2w8pk.html>

¹⁸ The Canberra Times, 14 August 2014, *Victorian Ombudsman calls for integrity legislation overhaul*, <http://www.canberratimes.com.au/victoria/victorian-ombudsman-calls-for-integrity-legislation-overhaul-20140813-101vul.html>



investigate misconduct (rather than corruption) in public office. The Premier for Victoria has stated that legislation to change IBAC's powers, as suggested by Mr O'Bryan, was being drafted. Any amendments are not expected to be implemented before November 2014.

Lessons for Tasmania

For Tasmania, any proposed changes to threshold issues, whether that be to the definition of misconduct, serious misconduct or the introduction of a corruption definition needs to be carefully considered, both for the flow on effect to other agencies and the consequences which arise to the Commission's jurisdiction.

Any amendments to the IBAC Act as suggested by the Victorian Premier may be of considerable assistance to the Committee.

Crime and Corruption Commission – Queensland

The Crime and Corruption Commission (CCC) came into effect on 1 July 2014, taking over from the Crime and Misconduct Commission (CMC) in Queensland. The changes to implement the CCC followed two reviews of the CMC: one by retired High Court Judge Ian Callinan and University of Queensland Professor Nicholas Aroney, and the second by former Australian Federal Police Commissioner Mick Keelty. The second report was tabled in Parliament in November 2013 with 15 recommendations.

Misconduct has been removed from the CCC's jurisdiction with the focus now on serious and systemic corruption. While mandatory notifications remain, they are limited to referrals where the agency reasonably suspects that a complaint involves or may involve corrupt conduct. Further, complaints made to the CCC must now be made by way of a statutory declaration unless the CCC decides that exceptional circumstances apply.¹⁹

As the CCC is still 'new' it is too soon to analyse its statistics. However it does appear that complaint numbers are significantly lower than when it was the CMC. It has been widely reported that Premier Campbell Newman has admitted that a change made to the CCC to abolish the need for the CCC Chair to have bipartisan support, needs to be reversed.²⁰

Although the CCC has restricted its threshold for investigations to a corruption level, it has other significant powers and is considered a law enforcement agency, unlike the Commission. As a law enforcement agency, in addition to its corruption prevention work, it also investigates organised crime, paedophilia, terrorist activity and other serious crime, including to recover proceeds of crime and providing witness protection services in Queensland. It is the only integrity agency in Australia with that range of functions.

¹⁹ Summary of key changes <http://www.ccc.qld.gov.au/news-and-media/ccc-media-releases/summary-of-the-key-changes> accessed 14 August 2014.

²⁰ Canberra Times, 5 August 2014, *CCC receiving fewer complaints than CMC* <http://www.canberratimes.com.au/queensland/ccc-receiving-fewer-complaints-than-cmc-20140804-100cro.html> and <http://www.brisbanetimes.com.au/queensland/premier-campbell-newman-apologises-for-getting-some-things-wrong-20140721-zvaqd.html>



It is too early to say what effect the most recent changes to the CCC's threshold for investigations will have on its ability to investigate corruption and its reporting rates. The changes have been made to enable the CCC to focus on its major crimes functions.

Lessons for Tasmania

Similar to the IBAC issues, in Tasmania, any proposed changes to threshold issues, needs to be carefully considered. The issues affecting Queensland are quite different to those in Tasmania because it is a significantly different agency, by reason of its major crime functions.

Independent Commission Against Corruption – New South Wales

The NSW Independent Commission Against Corruption (ICAC) is currently subject to a parliamentary inquiry into whether its 'processes' should be changed to help increase the number of prosecutions flowing from its findings. ICAC has wide powers to compel people to give evidence and hand over documents. Some of the material that has emerged in its inquiries may not be admissible in court as part of a criminal prosecution because the rules of evidence are different.

The ICAC also holds regular public hearings, although not all of its investigations are conducted in public. A potentially related issue is whether the ICAC should hold hearings in public when most other anti-corruption commissions conduct hearings in private.

Lessons for Tasmania

While there are arguments on both sides about whether hearings should be held in public or private, on balance holding private hearings is consistent with the practices in other jurisdictions. However it is also the case that the outcomes of investigations are made public.

If there are no public hearings, coupled with no public reports, there are no real indicators of how a commission is working. Further, people who have information, whether corroborative or exculpatory are unable to come forward if they don't know about the work being done. The Commission is able to hold a public hearing via an Integrity Tribunal but it is clear that such a hearing would be infrequent, and would be reserved for the most serious allegations. The Commission does publish reports of some of its investigations.

Insofar as the Commission gathers evidence of crimes, it does so pursuant to s 8(1)(m). The Commission submits however, that there is a lack of clarity about how that evidence can be used.

Corruption and Crime Commission – Western Australia

The Corruption and Crime Commission (CCC) in Western Australia (WA) has been without a permanent, full-time commissioner since April 2014. A WA Parliamentary Committee report released on 14 August 2014 found there had been extreme difficulties finding suitable candidates. Currently there are two part-time acting commissioners occupying the role. The CCC's Executive Director is due to leave his position soon. The vacancies have been hindering the CCC's effectiveness in carrying out its functions. The Parliamentary Committee's view is that the current remuneration for the position of Commissioner is significantly below what will attract a suitable candidate for the position.

A former Commissioner, Mr Roger Macknay, recounted to the Committee that the loss of personal privacy and the contentious nature of the work also made it hard to attract suitable candidates. He



said 'Integrity agencies are never particularly liked by members of political parties; the police will never like an oversight agency, of course, and I suppose many public servants probably feel the same way. These are things which, to a greater or lesser extent, will always exist and will be impediments to finding suitable people.'²¹

The Committee chair Liberal MP Nick Goiran told parliament the situation is 'dire'.

Lessons for Tasmania

WA is not the only jurisdiction to have had difficulty recruiting a Commissioner, with lengthy delays experienced in Victoria and Queensland. In the Commonwealth ACLEI, there is an Acting Commissioner, with the search for a permanent appointment yet to be finalised.

In Tasmania the Chief Commissioner has certain functions under the Act in relation to a Tribunal, and also specific to the Board.²² The structure here includes the Board which enables the Chief Commissioner to act on a part-time basis.

Any changes to the functions or structure of the Commission will need to consider the flow-on effect on the Board functions, the Chief Commissioner functions and the costs associated with both.

Comparison costs – Commissioner(s)

Tasmania

In Tasmania, the costs to the Commission for the Board²³ and Chief Commissioner are:

Board position	Full-time rate p.a.	Actual cost 2010-11 ²⁴	Actual cost 2011-12	Actual cost 2012-13	Actual cost 2013-14
Chief Commissioner, Hon Murray Kellam AO QC	\$320 434	\$97 055	\$141 800	\$73 664	\$32 955
David Hudson	\$20 796	\$0	\$20 514	\$20 796	\$19 921
Elizabeth Gillam	\$20 796	\$18 238	\$20 335	\$20 796	\$19 921
Luppo Prins	\$20 796	\$17 790	\$20 335	\$20 796	\$19 921
Total	\$382 822	\$133 083	\$202 984	\$136 052	\$92 718

The first financial (part) year of operation included considerable time with respect to set up processes and dealing with the initial influx of complaints. The second financial year included a significant period where the Commission was without a permanent CEO and thus the Chief

²¹ ABC news online, 14 August 2014 *WA Govt to offer pay rise to attract CCC commissioner following damning report* <http://www.abc.net.au/news/2014-08-14/pay-rise-needed-to-attract-ccc-commissioner2c-report-finds/5671014>

²² The first submission, Chapter 2.2.1, Volume 1.

²³ The two ex-officio Board members [Auditor-General and Ombudsman] do not get paid.

²⁴ Part year.



Commissioner spent a considerable amount of time in Hobart. Board members are paid a flat rate, irrespective of the number of Board meetings. The Chief Commissioner has averaged the equivalent of 0.1 FTE in the last financial year, down from 0.2 FTE the year before. Even during 2011-12 when the Commission was without a permanent CEO, the Chief Commissioner was working less than 0.5 FTE on average.

The Instrument of Appointment for all of the Board members, including the Chief Commissioner will expire in **August 2015**.

Basis of Chief Commissioner's remuneration

The Chief Commissioner's remuneration is calculated to a maximum of 0.8²⁵ of a full time rate set out in the Instrument of Appointment, and subject to any increase, applicable to the remuneration for the Chief Magistrate of Tasmania.²⁶

Other jurisdictions

Set out below in Table 3 is a summary of the costs of Commissioners/Chief Commissioners in other jurisdictions.

Table 3: Summary of remuneration - Commissioners

	Remuneration of chief commissioner - rule	Remuneration of chief commissioner – actual (August 2014)
Cth ~ ACLEI	<p>Section 178 of the <i>Law Enforcement Integrity Commissioner Act 2006</i> (Cth)</p> <p>178 Remuneration</p> <p>(1) The Integrity Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Integrity Commissioner is to be</p>	<p>According to the tribunal:</p> <ul style="list-style-type: none"> • Base Salary (per annum) \$304,640 • Total Remuneration for office (per annum) \$435,200 <p>Source: http://www.remtribunal.gov.au/offices/full-time-offices</p>

²⁵ The limitation of four days per week (0.8 FTE) is not to apply in relation to hours worked in relation to an Integrity Tribunal.

²⁶ Section 10(1) of the *Magistrates Act 1987*:

'10. Terms and conditions of service of magistrates

(1) A permanent full-time magistrate is entitled to be paid a salary at the rate of –

(a) 75% of the salary payable to a puisne judge of the Supreme Court of Tasmania, if the magistrate is the Chief Magistrate;'

The Department of Justice website states:

Remuneration

The Chief Justice is paid a salary in respect of a financial year at the rate determined by the Auditor-General. A Puisne judge is paid 90% of the salary of the Chief Justice.

As of 1 July 2012 the rate of salary determined is:

Chief Justice - \$448,507 per annum

Puisne Judge - \$403,656 per annum

Superannuation is paid at 9% of the salary of the Judge. Previous defined benefit schemes for judicial officers have been closed. A judge may organise a salary sacrifice in accordance with ATO rules.

A privately plated and fully maintained vehicle is provided. Judges may select from a list of approved vehicles.

A judge may take leave when ill or for other purposes as required. Judges have access to "recreation leave" and sabbatical leave.

http://www.justice.tas.gov.au/justice/news/archive/chief_justice_and_justice_appointment/information-package Accessed 19 August 2014.



	Remuneration of chief commissioner - rule	Remuneration of chief commissioner – actual (August 2014)																					
	<p>paid the remuneration that is prescribed by the regulations.</p> <p>(2) The Integrity Commissioner is to be paid the allowances that are prescribed by the regulations.</p> <p>(3) Subsections (1) and (2) have effect subject to the <i>Remuneration Tribunal Act 1973</i>.</p>																						
NSW ~ ICAC	<p>Section 5 of Schedule 1 of the <i>Independent Commission Against Corruption Act 1988</i> (NSW)</p> <p>5 Remuneration</p> <p>(1) The Commissioner or an Assistant Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as may be specified in the instrument of appointment or as may be afterwards determined by the Governor from time to time.</p> <p>(2) A determination does not operate so as to reduce the rate at which remuneration is payable during the person's current term of office.</p> <p>(3) Remuneration is payable out of the Consolidated Fund, which is accordingly appropriated to the necessary extent.</p>	<p>According to page 111 of Appendix 7 of the 2012-13 ICAC annual report:</p> <p>[the then commissioner] Mr Ipp's conditions of employment are outlined in his instrument of appointment, and his salary is paid in line with the determination provided by the Statutory and Other Officers Remuneration Tribunal (SOORT) for puisne judges.</p> <p>The Commissioner's salary is calculated at 160% of the remuneration of a NSW Supreme Court puisne judge. The total annual remuneration package for Mr Ipp is currently \$644,496. No fringe benefits were paid for the relevant reporting period. In its annual determination, SOORT awarded a 2.5% increase, effective from 1 October 2012.</p>																					
Qld ~ CCC	<p>Section 232 of the <i>Crime and Corruption Act 2001</i> (Qld)</p> <p>232 Terms of appointment</p> <p>(1) A commissioner is to be paid the remuneration and allowances decided by the Governor in Council.</p> <p>(2) To the extent that a commissioner's terms and conditions are not provided for by this Act, a commissioner holds office on the terms and conditions decided by the Governor in Council.</p>	<p>According to page 89 of the 2012-13 [then] CMC annual report:</p> <p>The remuneration paid to part-time Commissioners is determined by the Minister and based on rates specified in the guidelines for <i>Remuneration of Part-time Chairs and Members of Government Boards, Committees and Statutory Authorities</i>. The remuneration amounts shown include superannuation.</p> <table border="1"> <thead> <tr> <th></th><th>2013 \$'000</th><th>2012 \$'000</th></tr> </thead> <tbody> <tr> <td>Ann Gummow (term expired 20 August 2011)</td><td>-</td><td>6</td></tr> <tr> <td>Judith Bell (term expired 2 June 2013)</td><td>43</td><td>47</td></tr> <tr> <td>Phillip Nase*</td><td>47</td><td>65</td></tr> <tr> <td>Marilyn McMeniman</td><td>47</td><td>46</td></tr> <tr> <td>George Fox (commenced 23 September 2011)*</td><td>47</td><td>36</td></tr> <tr> <td>Total</td><td>184</td><td>200</td></tr> </tbody> </table> <p>* Commissioner George Fox acted as Chairperson for a brief period without financial compensation during the financial year (2012: Commissioner Philip Nase's remuneration includes an amount of \$17,856 for acting as Chairperson).</p>		2013 \$'000	2012 \$'000	Ann Gummow (term expired 20 August 2011)	-	6	Judith Bell (term expired 2 June 2013)	43	47	Phillip Nase*	47	65	Marilyn McMeniman	47	46	George Fox (commenced 23 September 2011)*	47	36	Total	184	200
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SA ~ ICAC	<p>There is nothing in the <i>Independent Commissioner Against Corruption Act 2012</i> (SA) about remuneration for the Commissioner.</p> <p>No annual reports have yet been released by ICAC.</p>	<p>According to an ABC news article from 2012:</p> <p>Attorney-General John Rau said South Australia's independent commissioner to tackle corruption would be on an annual base salary of more than \$300,000.</p> <p>Source: http://www.abc.net.au/news/2012-12-07/icac-commissioner-might-serve-a-decade/4414364</p>																					

	Remuneration of chief commissioner - rule	Remuneration of chief commissioner – actual (August 2014)
	The Commissioner does not appear to fall within the scope of the Remuneration Tribunal of South Australia	
Vic ~ IBAC	<p>Relevant provisions of section 24 of the <i>Independent Broad-based Anti-corruption Commission Act 2011</i> (Vic)</p> <p>24 Terms and conditions</p> <p>...</p> <p>(4) Subject to this section, the Commissioner or a Deputy Commissioner is appointed on the terms and conditions (including remuneration and allowances) that are specified in the instrument of appointment.</p> <p>(5) The remuneration of the Commissioner or a Deputy Commissioner cannot be reduced during his or her term of office unless he or she consents to the reduction.</p> <p>...</p>	[Unable to source relevant information. Annual Report due to be tabled in next few months.]
WA ~ CCC	<p>Section 3 of Schedule 2 of the <i>Corruption and Crime Commission Act 2003</i> (WA)</p> <p>3. Remuneration, leave and entitlements</p> <p>(1) The Commissioner is entitled to be paid remuneration and to receive allowances or reimbursements at the same rate as a puisne judge of the Supreme Court.</p> <p>(2) The Commissioner is entitled to the same conditions in respect of leave of absence as a judge of the Supreme Court.</p> <p>(3) The provisions of the Judges' Salaries and Pensions Act 1950 that relate to pensions apply, with such modifications as circumstances require, to and in relation to —</p> <ol style="list-style-type: none"> the Commissioner; and after the Commissioner's death, the Commissioner's spouse or de facto partner and children, <p>as they apply to and in relation to a judge of the Supreme Court appointed after the commencement of that Act and to and in relation to the spouse or de facto partner and children of a judge of the Supreme Court after that judge's death, and for that purpose judge in that Act includes the Commissioner.</p>	<p>According to the WA Salaries and Allowances Tribunal, they have recently made recommendations about the salary of a Senior Puisne Judge be raised to \$446,474.</p> <p>Source: http://www.sat.wa.gov.au/JudgesMastersAndMagistrates/Documents/Judicial%20Recommendation%20Report%202014.pdf</p> <p>A Joint Standing Committee on the Corruption and Crime Commission report released recently found that 'entice former judges to the position [of CCC Commissioner], a salary equivalent of a Supreme Court judge would need to be offered, including a pension rate equivalent to 60 per cent of the salary. Currently, although an equivalent salary is offered - \$422,691 per annum - the pension is not.'</p> <p>Sources: http://www.abc.net.au/news/2014-08-14/pay-rise-needed-to-attract-ccc-commissioner2c-report-finds/5671014 http://www.parliament.wa.gov.au/parliament/committees/(Report+Lookup+by+Com+ID)/CF778B277093246548257D33001C098B/\$file/Report+15+CCC+Commissioner+August+2014.pdf</p>

Lessons for Tasmania

Although the current structure with a Chief Commissioner and a Board is unique in Australian integrity entities, the cost of that structure is very modest when compared with costs in other jurisdictions.



Watching the watchers – public interest monitors and inspectorates

The first submission included information about Parliamentary oversight committees in Australia.²⁷ It also included brief information about Parliamentary Inspectors and Inspectorates.²⁸ One of the concerns of the then Opposition, when the Integrity Commission Bill was being read, was the lack of Public Interest Monitor.²⁹ This issue may be raised in submissions to the Committee therefore it may find it instructive to consider more fully arrangements for Public Interest Monitors (PIMs) and Inspectorates interstate. A comparative analysis across the jurisdictions is provided at the conclusion of this submission. However, a more detailed analysis of Victoria is also provided below, as they are the most recent institutions to have been established.

Victorian Inspectorate

At the same time as IBAC was created, its oversight body, the Victorian Inspectorate (VI) was established. It commenced operations on 1 July 2012, so to date there is only one annual report available. The VI took over all of the functions of the previous Special Investigations Monitor (SIM) that had oversight of the previous Office of Police Integrity.

Mr Robin Brett QC is the appointed Inspector of the VI. The VI occupies specially furnished and fitted out premises, separate and independent to the offices over which it has oversight, and to ensure the security of material in its possession.

The purpose of the VI is to:

- provide oversight of other integrity, accountability or investigatory bodies or officers, including the IBAC; and
- to monitor compliance by a Public Interest Monitor with the prescribed obligations; and
- oversight the Office of the Chief Examiner; and
- oversight the Department of Environment and Primary Industries; and
- oversight officers of the Victorian Auditor-General; and
- oversight officers of the Victorian Ombudsman.

The Inspectorate also investigates complaints about those integrity bodies and may also conduct investigations on its own motion.

In its first annual report, it had an operating budget of \$821 600. It also had a capital commitment to the value of \$2.5 million for the fit-out costs of new premises in Bourke Street.³⁰ Neither the VI website³¹ nor annual report makes it clear how many staff it operates with.

During the only available reporting period it received ten complaints regarding IBAC or its officers. Following assessment of each complaint (to determine both jurisdiction and whether the matter

²⁷ Volume 2, Appendix 3.

²⁸ Volume 1, para 3.1.3, page 20.

²⁹ Tuesday 3 November 2009, Second Reading, House of Assembly, Integrity Commission Bill 2009, proposed new Clause A, Mr Will Hodgman (negatived).

³⁰ Annual Report of the Victorian Inspectorate 2012-13

³¹ <http://www.vicinspectorate.vic.gov.au/utility/home/>



warranted investigation) the VI did not commence any investigations on the basis that in every matter the complaint lacked substance and in some cases, the complaint was in respect of events that had already been fully investigated by some other person or agency.³²

Public Interest Monitor – Victoria

In September 2012 Victoria appointed its first Principal Public Interest Monitor (PIM) as part of a reform of Victoria's integrity regime.

Mr Brendan Murphy QC is the appointed PIM, for a three year term. The PIM will appear in all applications for the use of telecommunications interception warrants and other covert and coercive powers, in particular surveillance device warrants, to add an extra layer of oversight in the use of those measures. This includes applications by IBAC and by Victoria Police.

The PIM is required under the establishing legislation³³ to operate independently of government and report to Parliament. The PIM will be assisted by Deputy PIMs. They will assist judges, magistrates or Administrative Appeals Tribunal members by appearing at the hearings of applications for these powers, with the power to ask questions of the applicant and to make submissions on the appropriateness of granting the application, in the public interest.

Oversight of the PIM is by the VI.

In its annual report of 2012-13, the PIM advised there were 2 full time Deputy PIMs and 2 part time PIMs. The Victorian acts under which the PIM has functions are: the *Major Crime (Investigative Powers) Act 2004*, *Surveillance Devices Act 1999*, *Telecommunications (Interception) (State Provisions) Act 1988* and *Terrorism (Community Protection) Act 2003*.

Law enforcement agencies required to notify the PIM of a relevant application are Victoria Police (VicPol), the Australian Crime Commission (ACC), the Department of Primary Industries (DPI), the Department of Sustainability and Environment (DSE)³⁴, and the Independent Broad-based Anti-Corruption Commissioner (IBAC). Within Victoria Police, the Office of Chief Examiner (OCE) and Professional Standards Command (PSC) also make applications.

In the part reporting period (February 2013 to June 2013), there had been 67 applications of which 51 had been from VicPol. The budget for the PIM appears to be part of the Department of Justice global budget of Public Sector integrity - \$34 million in 2012-13.³⁵

Lessons for Tasmania

The Commission has sought one surveillance device warrant and one search warrant since 1 October 2014. In each case, the warrant application had to be made to a Magistrate. Documentation maintained by the Commission in relation to surveillance device warrants is subject to annual inspections by the Ombudsman in accordance with the *Police Powers (Surveillance Devices) Act 2006*. The Commission has had two such inspections to date.

³² Annual Report of the Victorian Inspectorate 2012-13, p 9

³³ *Public Interest Monitor Act 2011* (Victoria)

³⁴ DPI and DSE have since merged to form the Department of Environment and Primary Industries.

³⁵ <http://assets.justice.vic.gov.au/justice/resources/282ef677-f0b2-4aa5-a10a-2d1102fdcf0a/dojannualreport2013.pdf>



Tasmania Police are also subject to the same inspection regime for surveillance warrants.

For the Commission, search warrants must be by way of an application to a Magistrate, who may issue a warrant subject to threshold issues in s 51(2) of the Act. For example, the application must state sufficient details in relation to the investigation to satisfy the Magistrate that the search is relevant and the grounds the investigator has to suspect that material is at the specified premises. In the absence of those matters, a warrant may not be issued.

For Tasmania Police, an application for a warrant is made to an 'issuing officer', defined under the *Search Warrants Act 1997*, as a justice of the peace, but not including a magistrate. Information as to the number of applications for search warrants by Tasmania Police is not publicly available.

If a PIM was established in Tasmania, along similar lines to that in Victoria, the PIM would only have appeared in relation to the two applications for warrants made by the Commission. It is not clear how many applications a PIM may have appeared for if it had oversight of Tasmania Police or any other agency in Tasmania that can apply for a warrant.

A PIM, if based on the Victorian model, would have no part to play with respect of the issue of coercive notices under s 47 of the Act.

Report No 1 of 2014 *An investigation into allegations of nepotism and conflict of interest by senior health managers*

This report of the Commission, tabled on 27 May 2014 has raised a number of issues about the about the framework in which the Commission operates, that have been widely reported in the media. In addition, some issues/observations were brought directly to the attention of the Commission by several people involved in the investigation.

The Commission offered a full briefing to the Committee, which was taken up on 29 July 2014. The briefing included disclosure of the full Investigator's Report with redaction of names of persons other than the two subject officers.

The report tabled in Parliament is a summary of the Investigator's Report. The full Investigator's Report was referred to the Premier as the 'Employer' under the *State Service Act 2000*. It is the Investigator's Report which contained a reference to all of the relevant evidence forming the basis of the factual findings. The evidence has been made available to the Premier (through his delegate) in his capacity as the employer of Gavin Austin; to the CEO of THO-NW and the CEO of THO-S with respect to any administrative proceedings they may choose to take against any other persons named in the Investigator's Report.

One matter which may not have been fully canvassed in the briefing to the Committee was the issue of the welfare of persons served with coercive notices to attend and give evidence at the Commission. In particular, whether a level of comfort could be given to persons served, as to whether they were a subject officer or a witness, to 'set their minds at ease'.

There are very good reasons why the Commission does not advise recipients to a notice what their status may be. Investigations follow the evidence. Evidence known at the end of an investigation



may be significantly different to the allegations which started the investigation. Someone who is thought to be a witness may become a subject officer during the course of an investigation, depending on the evidence that has become available. Alternatively, a person initially thought to be a subject officer may become a witness based on the emerging evidence.

It would be patently unfair to advise someone they are 'only' a witness if they were then later to be considered a subject officer and subject to an adverse finding. Further, it may cause considerable distress and worry to a person to be told that they are a subject officer, if the evidence at the end of the investigation reveals that they should only be considered a witness.

It is also important not to conduct these kinds of investigations with preconceived ideas about who has engaged in what conduct, so that all relevant lines of inquiry may be pursued.

The Commission has made it clearer on its FAQ section of the website and on the Information for Recipients of a Notice, which accompanies every coercive notice, that people may consult a medical practitioner, psychologist or psychiatrist, or their Employee Assistance Program if they need to at any stage of their involvement with the Commission.

Comparative analysis of integrity entity inspectorates across Australian jurisdictions

The Northern Territory and the ACT do not yet have integrity entities. The current equivalent bodies in those jurisdictions are the ombudsmen. The Ombudsman NT and the Australian Capital Territory Ombudsman have not been included in this analysis.

* Where the integrity agency lacked an inspectorate, information about any relevant parliamentary committee is instead supplied. It must be noted, however, that many of the agencies that have an inspectorate also have some form of parliamentary committee, and that information on these committees has **not** been included in this report.

** Note that the functions of the parliamentary inspectorates are included in a separate table below.

	Cth ~ ACLEI	NSW ~ ICAC	NSW ~ PIC	Qld ~ CCC	SA ~ ICAC	Tas ~ IC	Vic ~ IBAC	WA ~ CCC
Inspectorate or Parliamentary Committee*	No inspectorate Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity	Inspector of the Independent Commission Against Corruption (OIICAC)	Inspector of the Police Integrity Commission (OIPIC)	No Inspectorate Parliamentary Crime and Corruption Committee (PCCC)	No inspectorate Crime and Public Integrity Policy Committee (CPIPC)	No inspectorate Joint Standing Committee on Integrity	Victorian Inspectorate	Parliamentary Inspector of the Corruption and Crime Commission
Legislation	Established by LEIC Act (Part 14 of the <i>Law Enforcement Integrity Commissioner Act 2006</i> (Cth))	Established by ICAC Act (Part 5A of the <i>Independent Commission Against Corruption Act 1988</i> (NSW))	Established by PIC Act (Part 6 of the <i>Police Integrity Commission Act 1996</i> (NSW))	Established by CCC Act (Chapter 6 Part 3 of the <i>Crime and Corruption Act 2001</i> (Qld))	Established by Part 5E of the <i>Parliamentary Committees Act 1991</i> (SA)	Established by IC Act (Part 3 Division 2 of the <i>Integrity Commission Act 2009</i> (Tas))	Established by the <i>Victorian Inspectorate Act 2011</i> (Vic)	Established by CCC Act (Part 13 of the <i>Corruption and Crime Commission Act 2003</i> (WA))
Membership	Committee – 10 members. Under LEIC Act s 213(2): The Committee shall consist of 10 members, namely, 5 members of the Senate appointed by the Senate, and	Individual. Under ICAC Act ss 57A, 57AA, the Governor may appoint an Inspector and an Assistant Inspector. Under s 57AB, the Inspector and Assistant Inspector may	Individual. Under PIC Act s 88, the Governor may appoint an Inspector. Under s 92, the Inspector may employ 'such staff as may be necessary'.	Committee – 7 members. Under CCC Act s 300(1): the parliamentary committee must consist of 7 members nominated as follows— (a) 4 members	Committee – 6 members. Under PCA s 15N(1), the committee is to consist of 6 members (3 members of the House of Assembly - at least 1 appointed from	Committee – 6 members. Under IC Act s 23, the committee is to consist of 6 MPs: - 3 are to be Members of the Legislative Council; and - 3 are to be	Individual. Under the VIA s 10, the Victorian Inspectorate consists of one Inspector appointed by the Governor in Council. Staff may be employed under	Individual. Under CCC Act s 189(1), the Parliamentary Inspector is to be appointed on the recommendation of the Premier by the Governor. Staff may be

	Cth ~ ACLEI	NSW ~ ICAC	NSW ~ PIC	Qld ~ CCC	SA ~ ICAC	Tas ~ IC	Vic ~ IBAC	WA ~ CCC
	5 members of the House of Representatives appointed by that House.	hold a dual appointment as either the Inspector or the Assistant Inspector of the PIC. Under s 57E, the Inspector may employ 'such staff as may be necessary'.		nominated by the Leader of the House; (b) 3 members nominated by the Leader of the Opposition.	the Opposition and at least 1 from the Government; and 3 members of the Legislative Council - at least 1 from the Opposition and at least 1 from the Government).	Members of the House of Assembly. At least one member of any political party that has 3 or more members in the House of Assembly is to be a member of the Joint Committee.	s 28.	appointed under s 210.
Method of appointment	Under LEIC Act s 213(1), the Committee 'is to be appointed according to the practice of the Parliament with reference to the appointment of members to serve on joint select committees of both Houses of the Parliament'.	As above – under ICAC Act s 57A(1), the Governor may appoint an Inspector. Schedule 1A of the ICAC Act provides further detail about, for example, eligibility, remuneration, and veto of appointment.	As above – under PIC Act s 88(1), the Governor may appoint an Inspector. Schedule 2 of the PIC Act provides further detail about, for example, eligibility, remuneration, and veto of appointment.	As above – under CCC Act s 300(1), 4 members of the Committee are to be nominated by the Leader of the House, and 3 members are to be nominated by the Leader of the Opposition.	As above – under the PCA s 15N(1), the Committee is to consist of 3 members from the House of Assembly appointed by that house, and 3 members from the Legislative Council, appointed by that Council.	Under IC Act s 23(4), the Committee is to be appointed at the commencement of the first session of each Parliament according to the practice regulating the appointment of MPs to serve on select committees of the Legislative Council and House of Assembly respectively. Further information on membership of the Committee is contained in Schedule 4 of	Under VIA s 18(1), subject to s 19 [veto of the appointment], the Governor in Council, on the recommendation of the Minister, may by instrument appoint an eligible person to be the Inspector. Sections 18(2)–(3) concerns eligibility.	As above – under s 189(1), the Inspector is to be appointed on the recommendation of the Premier by the Governor by commission under the Public Seal of the State. Further, under s 189(2), the Premier is to recommend the appointment of a person — (a) whose name is on a list of 3 persons eligible for appointment that is submitted to the Premier by the nominating committee; and (b) who, if there

	Cth ~ ACLEI	NSW ~ ICAC	NSW ~ PIC	Qld ~ CCC	SA ~ ICAC	Tas ~ IC	Vic ~ IBAC	WA ~ CCC
						the IC Act.		is a Standing Committee, has the support of the majority of the Standing Committee and bipartisan support.
Does it take complaints against the integrity entity?	<p>No – see LEIC Act s 215(2)(a). Section 154 of LEIC Act deals with complaints of corruption conduct against ACLEI – basically, they may be made through the Minister or the Ombudsman.</p> <p>Section 154(1): ‘A person (other than a staff member of ACLEI) may refer to the Minister an allegation, or information, that raises an ACLEI corruption issue.’</p> <p>Section 154(5): ‘Nothing in this section limits a person’s right to make a complaint to the</p>	<p>Yes – ICAC Act ss 57B(1)(b)–(c) specifies that two of the principal functions of the Inspector are:</p> <p>(b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and</p> <p>(c) to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of</p>	<p>Yes – PIC Act ss 89(1)(b)–(b1) specifies that two of the principal functions of the Inspector are:</p> <p>(b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and</p> <p>(b1) to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of</p>	<p>Yes – see CCC Act s 295, which specifies what the Committee may do if it receives a complaint or has suspicions; this includes initiating an investigation.</p>	<p>No – see s 15O(3)(a) of the <i>Parliamentary Committees Act 1991</i> (SA).</p> <p>It is not clear what the process is for making complaints against the ICAC SA – it is possible that it falls within the jurisdiction of the state Ombudsman.</p>	<p>Maybe – but powers limited. There is no information in the IC Act about making a complaint against it. A person could write to the Committee, but the Committee’s powers in regard to the complaint would be limited (they would not be able to investigate, for instance). A complaint could also be made directly to the IC CEO under the <i>State Service Act 2000</i> (Tas); administrative decisions of the IC and its staff may also fall under the jurisdiction of the Ombudsman</p>	<p>Yes – ss 43(1)–(2), 44 of the <i>Victorian Inspectorate Act 2011</i> (Vic) outlines the Inspectorate’s powers in relation to complaints against IBAC and its personnel. It includes the power to investigate a complaint.</p>	<p>Yes – s 195(1)(b) gives the Inspector the function of dealing with matters of misconduct on the part of the CCC. Under s 196(3)(a), this includes the power to investigate.</p>

	Cth ~ ACLEI	NSW ~ ICAC	NSW ~ PIC	Qld ~ CCC	SA ~ ICAC	Tas ~ IC	Vic ~ IBAC	WA ~ CCC
	Ombudsman in relation to action taken by the Integrity Commissioner or a staff member of ACLEI.'	investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission, and	investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission, and			Tasmania.		
Current members and staff (as of 18/8/2014)	<p>Chair: Mr Russell Matheson MP, Liberal Party of Australia , Macarthur NSW</p> <p>Deputy Chair: Senator Catryna Bilyk, Australian Labor Party, TAS</p> <p>Members: Senator Sean Edwards, Liberal Party of Australia, SA</p> <p>The Hon Justine Elliot MP, Australian Labor Party, Richmond NSW</p> <p>Senator Barry O'Sullivan, The Nationals, QLD</p> <p>Hon Christian Porter MP, Liberal Party of Australia ,</p>	<p>Inspector: The Honourable David Levine AO RFD QC</p> <p>Staff: Two - an Executive Officer and Office Manager/Executive Assistant (Annual Report 2012-13, p. 7).</p>	<p>Inspector: The Honourable David Levine AO RFD QC</p> <p>Staff: Two – Senior Legal Project Officer and Executive Support Officer (part-time). (Annual Report 2012-13, p. 4)</p>	<p>Chair: Mr Steve Davies MP, Member for Capalaba</p> <p>Deputy Chair: Mrs Jo-Ann Miller MP, Member for Bundamba</p> <p>Members: Ms Verity Barton MP, Member for Broadwater</p> <p>Mr Michael Pucci MP, Member for Logan</p> <p>Mr Ian Rickuss MP, Member for Lockyer</p> <p>Ms Jackie Trad MP, Member for South Brisbane</p> <p>Mr Peter Wellington MP, Member for</p>	<p>Members: Hon Robert Brokenshire MLC</p> <p>Hon Gerry Kandelaars MLC</p> <p>Mr Lee Odenwalder MP</p> <p>Mr Christopher Picton MP</p> <p>Mr Vincent Tarzia MP</p> <p>Hon Stephen Wade MLC</p> <p>Executive/Research Officer: Ms Katherine McLachlan</p>	<p>Legislative Council members: Hon Ivan Dean MLC (Chair)</p> <p>Hon Mike Gaffney MLC</p> <p>Hon Tony Mulder MLC</p> <p>House of Assembly members: Mr Barnett MP</p> <p>Ms Giddings MP</p> <p>Mr McKim MP</p> <p>Secretary: Laura Ross</p>	<p>Inspector: Mr Robin Brett QC</p> <p>It is not clear how many staff the Inspector has.</p>	<p>Inspector: Hon Michael John Murray QC</p> <p>It is not clear how staff the Inspector has, but there may be several. The Assistant to the Parliamentary Inspector of the Corruption and Crime Commission is Mr Murray Alder.</p>

	Cth ~ ACLEI	NSW ~ ICAC	NSW ~ PIC	Qld ~ CCC	SA ~ ICAC	Tas ~ IC	Vic ~ IBAC	WA ~ CCC
	<p>Pearce WA</p> <p>Senator Glenn Sterle, Australian Labor Party , WA</p> <p>Mr Jason Wood MP, Liberal Party of Australia, La Trobe VIC</p> <p>Mr Tony Zappia MP, Australian Labor Party, Makin SA</p>			Nicklin				
Budget	n/a	<p>According to the 2012-13 Annual Report (p 7):</p> <p>- 1 July 2012 to 30 June 2013 total expenditure: \$425,373</p> <p>- 1 July 2011 to 30 June 2012: \$438,642.</p> <p>The budget for 2013-14 will be \$446,000.</p> <p>The Inspector is a cost centre within the NSW Department of Premier and Cabinet.</p>	<p>According to the 2012-13 Annual Report (p 4):</p> <p>The budget for 2012-13 was \$339,000, and actual expenditure was \$396,000.</p> <p>The Inspector is a cost centre within the NSW Department of Premier and Cabinet.</p>	n/a	n/a	n/a	Refer to information in body of submission.	Not clear.
Office	n/a	Located in	It is not clear	n/a	n/a	n/a	Somewhere in	Located in

	Cth ~ ACLEI	NSW ~ ICAC	NSW ~ PIC	Qld ~ CCC	SA ~ ICAC	Tas ~ IC	Vic ~ IBAC	WA ~ CCC
		physically separate premises from the ICAC.	exactly where the OIPIC is located – somewhere in the Sydney CBD. Possibly it is in the same premises as the OIICAC.				Melbourne CBD – as it monitors several bodies, it is likely that the Inspectorate is located separate to the IBAC. The Inspectorate's Annual Report 2013-13 does mention moving premises within the Melbourne CBD.	physically separate premises from the CCC.
Website	http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Australian_Commission_for_Law_Enforcement_Integrity	http://www.oica.c.nsw.gov.au/	http://www.oipic.nsw.gov.au/	http://www.parliament.qld.gov.au/work-of-committees/committees/PCCC	https://www.parliament.sa.gov.au/Committees/Pages/Committees.aspx?CTId=5&CId=306	http://www.parliament.tas.gov.au/ctee/Joint/Integrity.htm	http://www.vicinspectorate.vic.gov.au/	http://www.piccc.wa.gov.au/

	Functions of the parliamentary inspectorates
Cth ~ ACLEI	<p><u>See LEIC Act s 215 (emphasis added):</u></p> <p>215 Duties of the Committee</p> <p>(1) The Committee has the following duties:</p> <ol style="list-style-type: none"> to monitor and review the Integrity Commissioner's performance of his or her functions; to report to both Houses of the Parliament, with such comments as it thinks fit, on any matter: <ol style="list-style-type: none"> connected with the performance of the Integrity Commissioner's functions; or relating to ACLEI; that the Committee considers should be directed to the attention of Parliament; to examine: <ol style="list-style-type: none"> each annual report referred to in section 201 that is prepared by the Integrity Commissioner; and any special report prepared by the Integrity Commissioner under section 204;

	Functions of the parliamentary inspectorates
	<p>and report to the Parliament on any matter appearing in, or arising out of, any such annual report or special report;</p> <p>d. to examine trends and changes in:</p> <ul style="list-style-type: none"> i. law enforcement in so far as they relate to corruption; and ii. corruption generally in, or the integrity of staff members of, Commonwealth government agencies with a law enforcement function; <p>and report to both Houses of the Parliament on any change that the Committee thinks desirable:</p> <ul style="list-style-type: none"> iii. to the Integrity Commissioner's functions or powers; or iv. to the procedures followed by the Integrity Commissioner; or v. to ACLEI's structure; <p>e. to inquire into any question in connection with the Committee's duties that is referred to it by either House of the Parliament, and to report to that House upon that question.</p> <p>(2) Subsection (1) does not authorise the Committee:</p> <ul style="list-style-type: none"> a. to investigate a corruption issue or an ACLEI corruption issue; or b. to reconsider the Integrity Commissioner's decisions or recommendations in relation to a particular corruption issue or ACLEI corruption issue; or c. to reconsider a special investigator's decisions or recommendations in relation to an ACLEI corruption issue.
NSW ~ ICAC	<p>See Part 5A of the ICAC Act.</p> <p><u>From the Inspector's website (emphasis added):</u></p> <p>In summary the Inspector may:</p> <ul style="list-style-type: none"> • investigate any aspect of the ICACs operations or any conduct of ICAC officers; • request have full access to the records of the ICAC and to take or have copies made of any of them; • require ICAC officers to produce documents or attend before him to answer questions; • investigate and assess complaints about the ICAC or its officers; • refer matters concerning the ICAC or its officers to other public authorities or public officials for consideration or action; and • recommend disciplinary action or criminal prosecution against ICAC officers. <p>Section 57D provides that the Inspector may hold inquiries as a Royal Commissioner. This means that he can compel witnesses to give evidence and that, for the purposes of any inquiry conducted as a Royal Commissioner, the Inspector has the powers, authorities, protections and immunities conferred on a commissioner by the <i>Royal Commissions Act 1923</i>.</p> <p>Section 57E provides that the Inspector can employ staff under the Public Sector Employment and Management Act 2002 or as consultants. The Inspector can also arrange for the use of staff from the ICAC, any government department or a local or public authority.</p> <p>Section 57F provides for the Inspector to do all things necessary to be done for, or in connection with, or reasonably incidental to, the exercise of the Inspectors functions.</p> <p>Section 57G makes it clear that the Inspector's functions and powers apply in respect of current as well as former ICAC officers.</p>
NSW ~ PIC	<p>See Part 6 of the PIC Act.</p> <p><u>From the Inspector's website (emphasis added):</u></p>

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The Inspector oversees the PIC by:

- dealing with **complaints** made against it, including against former and current officers;
- undertaking **audits** of the PIC's exercise of its powers; and
- assessing the effectiveness and the appropriateness of the PIC's procedures.

Powers

The Inspector has extensive powers to **investigate the conduct** of the PIC and its officers including:

- being able to obtain full access to the PIC's records and to take or have copies made of them. Officers of the PIC may be ordered to supply information or produce documents about any matter relating to the PIC's operation or any conduct of officers of the PIC.
- requiring officers of the PIC to attend before him to answer questions or produce documents.

The Inspector may:

- investigate or assess complaints about the PIC or officers of the PIC.
- refer matters relating to the PIC or officers of the PIC to other agencies for consideration or action.
- recommend disciplinary action or prosecution against officers of the PIC.

In order to carry out his functions the Inspector may hold inquiries and has the powers, authorities, protections and immunities conferred on the Commissioner under the ***Royal Commissions Act 1923***.

Qld ~ CCC

See s 292 of the CCC Act; the powers of the Committee are set out in s 293.

From the Committee's website (emphasis added):

The principal functions of the committee are:

- to **monitor and review** the performance of the functions, and the structure of the Crime and Corruption Commission (CCC or the Commission);
- to report to Parliament on matters relevant to the Commission; and
- to participate in the **appointment** of Commissioners of the Commission.

From the CCC Act (emphasis added):

292 Functions

The parliamentary committee has the following functions—

- (a) to **monitor and review** the performance of the commission's functions;
- (b) to report to the Legislative Assembly, commenting as it considers appropriate, on either of the following matters the committee considers should be brought to the Assembly's attention—
 - i. matters relevant to the commission;
 - ii. matters relevant to the performance of the commission's functions or the exercise of the commission's powers;

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- (c) to examine the commission's **annual report and its other reports** and report to the Legislative Assembly on any matter appearing in or arising out of the reports;
- (d) to report on any matter relevant to the commission's functions that is referred to it by the Legislative Assembly;
- (e) to participate in the **selection** of commissioners and the removal from office of a commissioner as provided under this Act;
- (f) to review the activities of the commission by 30 June 2016, and by the end of each 5-year period following that day, and, for each review, to table in the Legislative Assembly a report about any further action that should be taken in relation to this Act or the functions, powers and operations of the commission;
- (g) to periodically review the structure of the commission, including the relationship between the types of commissioners and the roles, functions and powers of the commission, the chairman and the chief executive officer, and, for each review, to table in the Legislative Assembly a report about the review, including any recommendations about changes to the Act;
- (h) to issue guidelines and give directions to the commission as provided under this Act.

SA ~ ICAC

Section 150 of the *Parliamentary Committees Act 1991* (SA) (emphasis added, irrelevant provisions removed):

150—Functions of Committee

- (1) The functions of the Crime and Public Integrity Policy Committee are—
 - a. to examine—
 - i. **each annual and other report** laid before both Houses prepared by the Independent Commissioner Against Corruption, the Commissioner of Police, the Ombudsman or the Police Ombudsman; and
 - ii. each report on a review under section 46 of the *Independent Commissioner Against Corruption Act 2012*; and
 - iii. ...
 - b. ...
 - c. to **inquire into and consider the operation** of the *Independent Commissioner Against Corruption Act 2012* and, in particular—
 - i. the performance of functions and exercise of powers by the Independent Commissioner Against Corruption and the Office for Public Integrity; and
 - ii. whether the operation of the Act has made an appreciable difference to the prevention or minimisation of corruption, misconduct or maladministration in public administration; and
 - iii. whether the operation of the Act has adversely affected persons not involved in corruption, misconduct or maladministration in public administration to an unreasonable extent; and
 - d. ...
 - e. to report to both Houses on any matter of public policy arising out of an examination of a report or an inquiry (including any recommendation for change) as the Committee considers appropriate; and
 - f. to perform other functions assigned to the Committee under this or any other Act or by resolution of both Houses.
- (2) The Independent Commissioner Against Corruption must not disclose to the Crime and Public Integrity Policy Committee information that identifies, or could tend to identify, a person or body (whether incorporated or unincorporated) who is, or has been, the subject of a complaint, report, assessment, investigation or referral under the *Independent Commissioner Against Corruption Act 2012* or has provided information or other evidence under that Act, unless the information disclosed to the Committee is already a matter of public knowledge.
- (3) **Nothing in this section authorises** the Crime and Public Integrity Policy Committee—
 - a. to investigate a matter relating to particular conduct; or
 - b. to obtain—
 - i. information classified as criminal intelligence under an Act; or

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	<ul style="list-style-type: none"> ii. information the release of which— <ul style="list-style-type: none"> A. may, in the opinion of the Commissioner of Police, prejudice a South Australia Police investigation; or B. may, in the opinion of a person in charge of an investigation being carried out by another body established for law enforcement purposes, prejudice the investigation; or c. to reconsider a decision of the Independent Commissioner Against Corruption or any other person or body in relation to a particular matter.
Tas ~ IC	<p><u>Section 24 of the IC Act (emphasis added):</u></p> <p>24. Functions and powers of Joint Committee</p> <p>(1) The Joint Committee has the following functions:</p> <ul style="list-style-type: none"> a. to monitor and review the performance of the functions of an integrity entity; b. to report to both Houses of Parliament, as it considers appropriate, on the following matters: <ul style="list-style-type: none"> i. matters relevant to an integrity entity; ii. matters relevant to the performance of an integrity entity's functions or the exercise of an integrity entity's powers; c. to examine the annual reports of an integrity entity and any other report of an integrity entity and report to both Houses of Parliament on any matter appearing in or arising out of such reports; d. to report to the Legislative Council or House of Assembly on any matter relevant to an integrity entity's functions that is referred to it by the Legislative Council or House of Assembly; e. to review the functions, powers and operations of the Integrity Commission at the expiration of the period of 3 years commencing on the commencement of this section and to table in both Houses of Parliament a report regarding any action that should be taken in relation to this Act or the functions, powers and operations of the Integrity Commission; f. to provide guidance and advice relating to the functions of an integrity entity under this Act; g. to refer any matter to the Integrity Commission for investigation or advice; h. to comment on proposed appointments to be made under section 14(1)(e), (f) or (g), section 15 and section 27. <p>(2) Nothing in this Part authorises the Joint Committee –</p> <ul style="list-style-type: none"> a. to investigate any matter relating to a complaint that is being dealt with by the Integrity Commission; or b. to review a decision of the Integrity Commission to investigate, not investigate or discontinue an investigation or inquire into or not inquire into a particular complaint; or c. to make findings, recommendations, determinations or decisions in relation to a particular investigation or inquiry of a complaint that is being or has been dealt with by the Integrity Commission.
Vic ~ IBAC	<p><u>Section 11 of the <i>Victorian Inspectorate Act 2011</i> (Vic) (emphasis added, irrelevant provisions removed):</u></p> <p>11 Functions of the Victorian Inspectorate</p> <p>(1) The Victorian Inspectorate has the functions conferred on the Victorian Inspectorate under this Act or any other Act.</p> <p>(2) Without limiting the generality of subsection (1), the Victorian Inspectorate has the following functions—</p> <ul style="list-style-type: none"> a. to monitor the compliance of the IBAC and IBAC personnel with the <i>Independent Broad-based Anti-corruption Commission Act 2011</i> and other laws; b. to oversee the performance by the IBAC of its functions under the <i>Protected Disclosure Act 2012</i>; c. to assess the effectiveness and appropriateness of the policies and procedures of the IBAC which relate to the legality and propriety of IBAC's activities;

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- d. to receive **complaints** in accordance with this Act about the conduct of the IBAC and IBAC personnel;
 - e. **to investigate and assess the conduct** of the IBAC and IBAC personnel in the performance or exercise or purported performance or purported exercise of their duties, functions and powers;
 - f. to monitor the interaction between the IBAC and other integrity bodies to ensure **compliance with relevant laws**;
 - g. ...
 - h. ...
 - i. ...
 - j. ...
 - k. to report on, and make recommendations as a result of, the performance of its duties and functions.
- (3) ...
- (4) ...

Section 12 of the VI Act specifies the powers of the Inspectorate: 'The Victorian Inspectorate has power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to, the achievement of the objects of this Act and the performance of its duties and functions.'

WA ~ CCC

Section 195 of the CCC Act (emphasis added):

195. Functions

- (1) The Parliamentary Inspector has the following functions —
 - (a) to **audit** the operation of the Act;
 - (a) to audit the operations of the Commission for the purpose of monitoring compliance with the laws of the State;
 - (b) to deal with **matters of misconduct** on the part of the Commission, officers of the Commission and officers of the Parliamentary Inspector;
 - (cc) to audit any operation carried out pursuant to the powers conferred or made available by this Act;
 - (c) to **assess the effectiveness and appropriateness** of the Commission's procedures;
 - (d) to make **recommendations** to the Commission, independent agencies and appropriate authorities;
 - (e) to report and make recommendations to either House of Parliament and the Standing Committee;
 - (f) to perform **any other function** given to the Parliamentary Inspector under this or another Act.
- (2) The functions of the Parliamentary Inspector may be performed —
 - (a) on the Parliamentary Inspector's own initiative; or
 - (b) at the request of the Minister; or
 - (c) in response to a matter reported to the Parliamentary Inspector; or
 - (d) in response to a reference by either House of Parliament, the Standing Committee or the Commission.
- (3) The Parliamentary Inspector may declare himself or herself unable to act in respect of a particular matter by reason of an actual or potential conflict of interest.
- (4) The Commission is not to exercise any of its powers in relation to the Parliamentary Inspector.

The Inspector's powers are listed under s 196 of the CCC Act.