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To the Legal Affairs and Community Safety Committee,

The Australia Institute welcomes the opportunity to make a submission to the Crime and Corruption and Other Legislation Amendment Bill (CCOLA Bill). Please accept our recent research report, *Queensland watchdog asleep at the gate*, as an appendix to this submission.



The report makes the following findings in relation to the effectiveness of the Crime and Corruption Commission (CCC) and the CCOLA bill:

- The Queensland CCC is far less effective than the NSW ICAC as a result of differences in design, particularly the definition of corrupt conduct and the inclusion of public hearings in its investigations
- As part of an election commitment to integrity including [the Fitzgerald Principles](#) and the Accountability and the Law 2015 conference, Queensland Labor made a pre-election promise to fully restore the CCC, weakened by 2014 changes
- Part of this [commitment](#) included widening the definition of corrupt conduct in the CCC Act, and re-introducing official misconduct into its jurisdiction
- The CCOLA bill does not re-introduce official misconduct into the CCC jurisdiction, and in fact limits rather than widens the definition of corrupt conduct within the CCC Act

The CCOLA bill removes the former definition of corrupt conduct, which our research shows was inefficient, and replaces it with a more limited definition that is largely based on 2015 amendments to the NSW ICAC definition. These 2015 amendments were intended as *additions* to the NSW ICAC definition, which already has a list of 24 matters that could be involved in corrupt conduct. This not only conflicts with pre-election promises of the government, it also contradicts [the stated aim](#) of the CCOLA bill to 'widen the definition of corrupt conduct'.

The wider investigative jurisdiction given to the CCC through the CCOLA bill are of little use if the definition of corrupt conduct to which these investigative powers are used is narrower.

We urge the committee to read the attached report and take note of the lessons from NSW, where a wider definition of corrupt conduct and regular public hearings have led to it investigating and exposing systemic corrupt conduct.

Best regards,  
Hannah Aulby  
Accountability Project Officer



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# Queensland watchdog asleep at the gate

## A comparison of the Queensland and NSW anti-corruption commissions

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*The Queensland CCC has major design flaws that  
render it far less effective than the NSW ICAC,  
leading to fewer corrupt conduct findings and  
minimal public exposure of systemic corruption*

Discussion paper

Hannah Aulby  
April 2017

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# Executive Summary

The Queensland Crime and Corruption Commission (Queensland CCC) has major design flaws that render it far less effective than the NSW Independent Commission Against Corruption (NSW ICAC) in exposing systemic corruption. The NSW ICAC makes more findings of corrupt conduct, holds more public inquiries, and tackles systemic corruption cases of public significance. Over the observed period the NSW ICAC made corrupt conduct findings against 123 people, held 28 public inquiries, and investigated cases involving complex networks of corruption within the public sector. The Queensland CCC made corrupt conduct findings against 37 people, held no public hearings, and tackled cases involving one or two public sector employees involved in minor fraud. Differences in the design of each body impact their respective effectiveness, including the definition of corrupt conduct within the legislation and the conduct of public inquiries.

The report compares the legislative design of each body as well as their respective effectiveness in exposing systemic corruption. As well as differences in design, the report finds that the Queensland CCC has been conservative in its interpretation of the Queensland Crime and Corruption Act, which again has led to it having less impact. The report also finds that Queensland government pre-election promises to strengthen the CCC and expand its definition of corrupt conduct have not been met, and in fact 2017 amendments limit the definition of corrupt conduct.

The report makes the following recommendations:

**Recommendation #1:** The Palaszczuk Government should reintroduce the official misconduct function of the Queensland CCC, and adopt the design features of the NSW ICAC that make it effective – namely public hearings and a wider definition of corrupt conduct.

**Recommendation #2:** The Baird Government should reinstate and protect the jurisdiction and independence of the NSW ICAC and its Commissioners.

**Recommendation #3:** The federal government should create a federal Independent Commission Against Corruption based on the NSW model, particularly the definition of corrupt conduct and legislated public hearings as the norm.

# Introduction

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

Public distrust of federal government is growing, with a recent poll by the Australia Institute finding 85% of Australians believe there is corruption in federal politics. In addition, there is overwhelming public support for a federal ICAC, with the same poll finding over 82% of respondents supportive.<sup>1</sup>

To design an effective federal anti-corruption watchdog ‘with teeth’ it is important to look at the experience of state based anti-corruption commissions. This report compares the design and effectiveness of the NSW and Queensland anti-corruption commissions, and distils the key design features that are critical to a commission’s success.

It finds that key features, including the definition of corrupt conduct and the ability to conduct public hearings in the course of investigations, render the NSW ICAC far more effective than the Queensland CCC. It also finds that challenges to the NSW ICAC’s jurisdiction impacted its effectiveness, a trend that looks likely to continue following the attacks in 2016 on the NSW ICAC Chief Commissioner’s independence.

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<sup>1</sup> Polling reported in Farr, 17<sup>th</sup> January 2017, *Overwhelming majority believes polities are corrupt*, <http://www.news.com.au/finance/work/leaders/overwhelming-majority-believes-polities-are-corrupt/news-story/0f181019b1f1dcdd1485e262f5419b13>

# History of the CCC and the ICAC

## NSW INDEPENDENT COMMISSION AGAINST CORRUPTION

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The New South Wales Parliament passed the *Independent Commission Against Corruption Act 1988* (NSW) (*ICAC Act*) in 1988, in response to growing public concern about corruption among government ministers, the judiciary and at senior levels of the police force. The NSW ICAC was then established in March 1989.<sup>2</sup> It remained relatively unchanged in its functioning until a High Court challenge to the NSW ICAC's jurisdiction began in December 2014. The case, *Independent Commission Against Corruption vs Cunneen & Ors*, considered whether the NSW ICAC had acted outside its jurisdiction by investigating allegations that Margaret Cunneen, a NSW Crown Prosecutor, had engaged in corrupt conduct contrary to the ICAC Act. It was alleged that Ms Cunneen had adversely affected the behaviour of a police officer in an interaction between her daughter in law and the police officer.

The High Court found that the NSW ICAC had overreached in its interpretation of the definition of corrupt conduct, specifically in its understanding of the scope of the phrase 'adversely affect' the official function of a public official. The court limited the interpretation of 'corrupt conduct' in the ICAC Act to conduct that adversely affects the 'probity of the exercise of an official function by a public official', rather than the 'efficacy' of that function.<sup>3</sup> In effect, the decision means that the NSW ICAC can only investigate cases where the conduct of a third-party results in a public official acting dishonestly. The NSW government responded to the High Court's findings through its own review of the NSW ICAC, led by former Chief Justice of the High Court Murray Gleeson AC and Bruce McClintock SC. In 2015 the recommendations of the review were accepted by NSW Parliament, including an expansion of the definition of corrupt conduct to further focus on fraud, collusive tendering and dishonest use of public money in public administration. The review found no need to limit the definition of

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<sup>2</sup> *History, NSW ICAC*, accessed 8<sup>th</sup> March 2017, <http://www.icac.nsw.gov.au/about-the-icac/overview/history>

<sup>3</sup> High Court, *Judgement, Case S302/2014, Independent Commission Against Corruption vs Cunneen & Ors*, [http://www.hcourt.gov.au/cases/case\\_s302-2014](http://www.hcourt.gov.au/cases/case_s302-2014)

corrupt conduct as it found that this issue had already been resolved by the High Court.<sup>4</sup>

The operation of the NSW ICAC was altered once again in 2016 with the enactment of the *Independent Commission Against Corruption Amendment Act 2016* (NSW). This Act significantly altered the structure and governance of the NSW ICAC. According to the then NSW ICAC Commissioner Megan Latham, the Act ‘effectively strips the Commission of the authority of a “Chief Commissioner”, and vests significant operational decisions and powers in each of the three commissioners which may be exercised independently of each other.’<sup>5</sup> The Act caused the premature termination of the tenure of the Chief Commissioner, without meeting the legislated requirements for this termination, and according to former NSW ICAC Commissioners and the former NSW Director of Public Prosecutions (DPP), threatens the independence of future commissioners as they may fear similar political intervention.<sup>6</sup> These changes were made without consultation with the Parliamentary ICAC Committee, or ICAC Commissioners or staff.<sup>7</sup>

Former NSW DPP Nicholas Cowdery said that this ‘appeared to be nothing more than a device to remove the commissioner, cloaked in some other reforms that were probably unnecessary.’ He followed that he was ‘concerned with the principle of independence of the commissioner, akin to judicial independence, enshrined in the legislation... independence is essential to the effective exercise of the commission's powers.’<sup>8</sup> Former NSW ICAC Commissioner David Ipp said that ‘The government has shown that, despite what is in the legislation, if it wants to, it will get rid of any ICAC commissioner if they don't like what they're doing.’<sup>9</sup>

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<sup>4</sup> Report, *Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption*, 30<sup>th</sup> July 2015

<sup>5</sup> Statement regarding the *Independent Commission Against Corruption Amendment Bill 2016*, 15<sup>th</sup> November 2016, <http://www.icac.nsw.gov.au/media-centre/media-releases/article/5051>

<sup>6</sup> See Nicholls et al, November 2016, *ICAC Chief's resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html> and Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

<sup>7</sup> Ibid.

<sup>8</sup> Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

<sup>9</sup> Nicholls et al, November 2016, *ICAC Chief's resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html>



## QUEENSLAND CRIME AND CORRUPTION COMMISSION

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In 1987 a far-reaching commission of inquiry began in Queensland under the leadership of Tony Fitzgerald QC in response to media reports of corruption in the police service. The Fitzgerald Inquiry lasted 2 years and made over 100 recommendations, including the establishment of an anti-corruption body named the Criminal Justice Commission.<sup>10</sup>

The Criminal Justice Commission investigated police and public service misconduct and major crime until 1997 when its crime function was given to the Queensland Crime Commission. In 2001 the *Crime and Misconduct Act 2001* (QLD) merged the functions again under the Crime and Misconduct Commission.<sup>11</sup>

The Crime and Misconduct Commission operated unchanged until 2014, when the *Crime and Misconduct and Other Legislation Amendment Act 2014* (QLD) introduced by Premier Campbell Newman retrospectively changed the *Crime and Misconduct Act 2001* (QLD) to the *Crime and Corruption Act 2001* (QLD).<sup>12</sup> These amendments stripped the commission of its corruption prevention and official misconduct investigation functions, and required Ministerial approval to undertake research in certain areas. It also changed the management structure of the CCC, giving more power to the CEO, and required complaints to be made via statutory declaration with penalties for complaints deemed vexatious.<sup>13</sup>

The Palaszczuk Government came to power in 2015 after making election promises to restore the full integrity of the Queensland CCC before the Newman changes, and widen the definition of corrupt conduct.<sup>14</sup> The *Crime and Corruption Amendment Act 2015* (QLD) restores the Queensland CCC's corruption prevention function, removes the requirement for Ministerial approval prior to research, and removes the need for complaints to be made via statutory declaration. It also reinstates the former

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<sup>10</sup> See <http://www.ccc.qld.gov.au/about-the-ccc/the-fitzgerald-inquiry> and <http://www.ccc.qld.gov.au/about-the-ccc/history>

<sup>11</sup> *History, Crime and Corruption Commission*, accessed 8<sup>th</sup> March 2017, <http://www.ccc.qld.gov.au/about-the-ccc/history>

<sup>12</sup> *Changes to the Crime and Misconduct Act 2001 and the RTI Act*, Office of the Information Commissioner, 1<sup>st</sup> July 2014, <https://www.oic.qld.gov.au/about/news/changes-to-the-crime-and-misconduct-act-2001-and-the-rti-act>

<sup>13</sup> *Crime and Misconduct and Other Legislation Amendment Act 2014*

<sup>14</sup> Letter to the Australia Institute from the Deputy Leader of the Opposition, 19<sup>th</sup> January 2016, [https://d3n8a8pro7vhm.cloudfront.net/theausinstitute/pages/84/attachments/original/1421735160/ALP\\_response.pdf?1421735160](https://d3n8a8pro7vhm.cloudfront.net/theausinstitute/pages/84/attachments/original/1421735160/ALP_response.pdf?1421735160)

management structure of the CCC.<sup>15</sup> It does not, however, deal with the more critical issues of widening the definition of corrupt conduct and reinstating the official misconduct investigative function of the CCC, leaving it unable to investigate many issues of public sector and parliamentary misconduct.

In the 23<sup>rd</sup> March 2017, Attorney General Yvette D’Ath tabled the *Crime and Corruption and Other Legislation Amendment Bill (2017)* (QLD), stating in the press release that this bill would strengthen the CCC and widen the definition of corrupt conduct as promised pre-election.<sup>16</sup> In reality this amendment bill would remove the former definition of corrupt conduct in Section 15(2) in the CCC Act and replace it with a more limited definition.<sup>17</sup> In the explanatory notes for the bill it is stated that this is because ‘public sector conduct’ is dealt with effectively within the Public Service Commission, and that the definition needed to be simplified to assist the public service in their ‘interpretation and understanding’.<sup>18</sup> By simplifying the definition, the bill effectively limits it. This leaves a key election promise unfulfilled, and weakens rather than strengthens, the CCC.

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<sup>15</sup> *The Crime and Corruption Amendment Act 2015*

<sup>16</sup> Queensland Government, 23<sup>rd</sup> March 2017, *Palaszczuk Government moves to strengthen CCC powers*, media release, <http://statements.qld.gov.au/Statement/2017/3/23/palaszczuk-government-moves-to-strengthen-ccc-powers>

<sup>17</sup> Queensland Parliament, 2017, *Crime and Corruption and Other Legislation Amendment Bill 2017*, <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2017/5517T506.pdf>

<sup>18</sup> Queensland Parliament, 2017, *Crime and Corruption and Other Legislation Amendment Bill 2017*, *Explanatory notes*

## Design features—how many teeth?

By comparing the *Independent Commission Against Corruption Act 1988* (NSW) and its 2016 amendments, with the *Crime and Corruption Act 2001* (QLD) and its 2014 and 2015 amendments, key design features of both bodies have been outlined in the table below.

**Figure 1: Comparison of NSW ICAC and Queensland CCC design features.**

	NSW ICAC	QLD CCC
<b>Appointment of Commissioner</b>	Appointed by Governor, with support of bipartisan committee	Nominated by Minister, with support of bipartisan committee
<b>Independence of Commissioner</b>	2016 Act appoints 3 commissioners each with similar power to act on behalf of the Commission, thereby ending the former independent decision making of the Commissioner <sup>19</sup> The 2016 Act also terminated the tenure of the Commissioner before the end of her legislated 5 year term	2015 Act restores the 2011 model of separation between the CEO and the chairperson, and the 5 member commission
<b>Definition of corrupt conduct</b>	Corruption that would, if proven, be a criminal offence, a disciplinary offence or grounds for dismissal  Includes a long list of conduct that could pertain to corrupt  <i>Full definition provided below</i>	Corruption that would, if proven, be a criminal offence or grounds for dismissal  Limits conduct to collusive tendering, fraud, benefit from payment or evading tax  <i>Full definition provided below</i>

<sup>19</sup> See Nicholls et al, November 2016, *ICAC Chief's resignation sets back corruption fighting by years*, <http://www.smh.com.au/nsw/icac-chiefs-resignation-sets-back-corruption-fighting-by-years-20161123-gsvwo3.html> and Whitbourn, November 2016, *Former DPP slams ICAC shakeup*, <http://www.smh.com.au/nsw/former-dpp-nick-cowdery-slams-icac-shakeup-20161123-gsw9mu.html>

<b>Official misconduct</b>	Includes in definition of corrupt conduct	Removed in 2014 amendments
<b>Third parties</b>	Includes third parties	Includes third parties
<b>General functions</b>	Corruption prevention, investigating and exposing corruption	Crime, corruption prevention and exposure
<b>Public hearings</b>	Under 1988 Act, the Commission could conduct public hearings if it deemed them in the public interest.  The 2016 Act requires agreement between Assistant Commissioner and Chief Commissioner to hold a public hearing, and procedural guidelines to be tabled in Parliament	General rule that hearings are not open to the public
<b>Ability to undertake investigations</b>	Decision at commissions discretion, with final decision with Commissioner	Requires 'evidence' of criminal corruption required before investigation <sup>20</sup>
<b>Complaints</b>	Anyone can make one	Anyone can make one
<b>Parliamentary committee</b>	Bipartisan committee	Bipartisan committee

Source: Queensland Crime and Corruption Act 2011, Queensland Crime and Misconduct and Other Legislation Amendment Act 2014, Queensland Crime and Corruption Amendment Act 2015; NSW Independent Commission Against Corruption Act 1988, NSW Independent Commission Against Corruption Amendment Act 2016

## KEY POINTS OF DIFFERENCE

As seen in the above table, there are a number of key differences in the design of the Queensland and NSW anti-corruption bodies, namely in the definition and threshold of corrupt conduct and the conduct of public hearings. The key differences are expanded upon below.

<sup>20</sup> As demonstrated by CCC response to Acland State 3 allegation, Queensland CCC, *Annual Report 2015-16* pg 42

## Definition of corrupt conduct

Official misconduct is a critical term in the NSW ICAC Act that allows the NSW ICAC to pursue cases of breach of trust and fraud in public office. Many cases of public interest have been investigated under this term, which covers cases of breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition.<sup>21</sup> The *Crime and Misconduct and Other Legislation Amendment Act 2014* (QLD) removes this term from the definition of corrupt conduct applicable to the Crime and Corruption Commission.<sup>22</sup> The incoming Palaszczuk Government made an election promise in January 2015 to the Queensland public to reintroduce this function, but as described on page 7 of this report the 2017 amendments instead limit the definition of corrupt conduct.

The NSW ICAC definition is much stronger in other areas also. The key section of the definition from the 1988 Act is provided below, with 2015 additions and emphasis on key strengths added:

(1) Corrupt conduct is:

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, *or*
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, *or*
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, *or*
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

(2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:

- (a) *official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),*
- (b) *bribery,*
- (c) *blackmail,*
- (d) *obtaining or offering secret commissions,*
- (e) *fraud,*
- (f) *theft,*
- (g) *perverting the course of justice,*
- (h) *embezzlement,*
- (i) *election bribery,*
- (j) *election funding offences,*
- (k) *election fraud,*

<sup>21</sup> *New South Wales Independent Commission Against Corruption Act 1988*

<sup>22</sup> *Queensland Crime and Misconduct and Other Legislation Amendment Act 2014*

- (l) treating,
- (m) tax evasion,
- (n) revenue evasion,
- (o) currency violations,
- (p) illegal drug dealings,
- (q) illegal gambling,
- (r) obtaining financial benefit by vice engaged in by others,
- (s) bankruptcy and company violations,
- (t) harbouring criminals,
- (u) forgery,
- (v) treason or other offences against the Sovereign,
- (w) homicide or violence,
- (x) matters of the same or a similar nature to any listed above,
- (y) any conspiracy or attempt in relation to any of the above.<sup>23</sup>

2015 additions:

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

In contrast the Queensland definition is weaker in key areas, notably the list of conduct pertaining to corrupt conduct. The section from the Act is below, with proposed 2017 amendments and emphasis on the key weaknesses added:

- (1) Corrupt conduct means conduct of a person, regardless of whether the person holds or held an appointment, that—
- (a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—
    - (i) a unit of public administration; or
    - (ii) a person holding an appointment; *and*
  - (b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that—
    - (i) is not honest or is not impartial; or
    - (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or
    - (iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment;
- (2) Corrupt conduct also means conduct of a person, regardless of whether the person holds or held an appointment, that—
- (a) *impairs, or could impair, public confidence in public administration; and*
  - (b) *involves, or could involve, any of the following—*
    - (i) *collusive tendering;*
    - (ii) *fraud relating to an application for a licence, permit or other authority under an Act with a purpose or object of any of the following (however described)—*

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<sup>23</sup> *New South Wales Independent Commission Against Corruption Act 1988*

- (A) protecting health or safety of persons;
- (B) protecting the environment;
- (C) protecting or managing the use of the State's natural, cultural, mining or energy resources;
- (iii) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;
- (iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;
- (v) fraudulently obtaining or retaining an appointment;<sup>24</sup>

## Threshold of corrupt conduct investigations

Each Act has a separate threshold to what pertains to corrupt conduct. The *Crime and Corruption 2001 Act* (QLD) states that conduct will only be seen as corrupt if it would, if proven, lead to a criminal offence or grounds for dismissal.<sup>25</sup> In its application, the interpretation of this by the CCC is narrowed to focus on criminal offences, raising a concern that the CCC is focussing on cases that could be pursued by the judicial system, rather than fulfilling its role as investigating and exposing corruption. This is demonstrated by the CCC's decision not to investigate certain cases stating 'the assessment found insufficient evidence to support the allegations or to raise a reasonable suspicion of a criminal offence.'<sup>26</sup> This response also places the onus of evidence on the complainant. It is further demonstrated on the CCC website in its statement that 'the performance of the official duties of a person elected to office could not amount to corrupt conduct unless the conduct would, if proven, amount to a criminal offence.'<sup>27</sup> The NSW ICAC Acts makes the same statement regarding criminal corruption but with an important addition – conduct can be seen as corrupt if it would result in a disciplinary offence. Disciplinary offence is defined as: any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.<sup>28</sup>

## Public hearings

The Queensland CCC Act states that 'in general hearings will not be public'. This contrasts with the NSW ICAC Act that says that the Commission can decide to hold a public hearing if in the public interest. In the interpretation and application of the legislation, the Queensland CCC has not held a public hearing since 2009, whereas the

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<sup>24</sup> *Qld Crime and Corruption Act 2001 and Crime and Corruption Amendment Bill 201*

<sup>25</sup> *Queensland Crime and Corruption Act 2011*

<sup>26</sup> Queensland CCC, *Annual Report 2015-16* pg 42

<sup>27</sup> CCC, *What the CCC investigates*, accessed 9<sup>th</sup> March 2017,

<http://www.ccc.qld.gov.au/corruption/what-the-ccc-investigates>

<sup>28</sup> *New South Wales Independent Commission Against Corruption Act 1988*

NSW ICAC holds 5-10 each year.<sup>29</sup> As the role of anti-corruption commissions is to investigate and expose corruption, and much of the content of investigations comes out in hearings, the act of hiding hearings from public view threatens the proper function of the commission. The other mechanism of exposing corruption is through reports. The NSW ICAC publishes comprehensive and easily accessible reports on its investigations on its website. There are no investigation reports on the CCC website.

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<sup>29</sup> See <http://www.ccc.qld.gov.au/corruption/past-investigations/cmc-public-hearings/cmc-public-hearings> and NSW ICAC Results table page 7



## Comparing impact - do they bite?

Figure 2 and Figure 3 below show results from each body over the period from 1<sup>st</sup> July 2012 to 30<sup>th</sup> June 2016.

This data has been compiled from NSW ICAC and Queensland CCC Annual Reports. The limited availability of results data from the Queensland CCC makes the analysis difficult. Another difficulty arises in that each commission measures slightly different factors, for example the Queensland CCC provides the number of people against whom disciplinary action was *recommended*, whereas the NSW ICAC measures the number of people against whom disciplinary action was *commenced*. For this reason we have focussed on the common elements of ‘number of people subject to corrupt conduct findings’ and ‘number of public inquiries’ as a basis for our analysis. The other data on NSW ICAC is provided for readers’ interest.

The available data shows that the NSW ICAC is dramatically more effective in exposing corruption. With 5-10 public inquiries each year, NSW ICAC delivered corrupt conduct findings against 123 people over the observed period. The Queensland CCC held no public inquiries, and delivered corrupt conduct findings against 37 people.

Over the observed period, NSW ICAC had its strongest years in 2012-13 and 2013-14 with 56 and 41 people subject to serious corrupt conduct findings in those years.

The data also shows that these bodies have suffered in effectiveness as a result of recent amendments and political and judicial challenges. In 2014-15, the year the *Crime and Misconduct and Other Legislation Amendment Act 2014* (QLD) came into effect, the Queensland CCC received 1,534 less complaints than the year previous. It also finalised 16 less investigations than 2013-14, and recommended disciplinary action against only 6 people – 22 less than the year before.

In 2015-16 the Cunneen challenge against the NSW ICAC’s jurisdiction began in the High Court. ICAC found 9 people subject to corrupt conduct findings that year, 8 less than the year before, and 24 less than 2013-14. Then Commissioner Megan Latham states in the Annual Report that ‘The Commission commenced 10 full investigations this year; four fewer than last year, which reflects the interruption to the Commission’s functions brought about by the uncertainty over jurisdiction.’<sup>30</sup> The results of the 2016 amendment act are yet to be seen.

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<sup>30</sup> NSW ICAC, *Commissioners Foreword*, NSW ICAC Annual Report 2015-16

**Figure 2: New South Wales ICAC results.**

Measure	2015—16	2014—15	2013—14	2012—2013
Matters received	2,436	3,146	3,386	2,930
Preliminary investigations commenced	41	42	43	71
Full investigations commenced	10	14	10	22
Number of public inquiries	6	7	9	6
Number of public inquiry days	48	64	84	108
Number of compulsory examinations	65	127	203	257
Number of persons subject to serious corrupt conduct findings	9	17	41	56
Number of persons prosecuted	12	8	11	19
Number of persons against whom disciplinary action was <i>commenced</i>	0	1	3	4
Number of investigations finalized	58	51	63	87

Source: NSW ICAC Annual Reports 2012-2016.

**Figure 3: Queensland CCC results.**

Measure	2015—16	2014—15	2013—14	2012—2013
Complaints received	2974	2347	3881	4494
Number of people subject to corrupt findings	14	8	8	7
Number of people against whom disciplinary action was <i>recommended</i>	26	6	28	37
Investigations finalised	57	45	61	87
Number of public inquiries	0	0	0	0

Source: Queensland CCC Annual Reports 2012-2016.

What the data does not show is the content or topic of the investigations. For this reason case studies are provided below, showing that as well as delivering more findings of corrupt conduct the NSW ICAC has tackled much larger and systemic issues, often involving a complex web of people including parliamentarians. The case studies below show CCC cases such as academic research fraud result in the behaviour of one or two people being investigated, whereas the ICAC cases involve true 'systemic' corruption of networks within the public sector. The breakdown of allegations made to the Queensland CCC is indicative of this design flaw, with only 24 out of 6736 allegations made in 2015-16 being made on the conduct of parliamentarians, or 0.36%.<sup>31</sup>

The data and case studies also do not cover the scale of these investigations. As an indication, the NSW ICAC 2012-13 Annual Report states that 'in the Operation Jasper segment of the public inquiry, 86 witnesses gave evidence, and there were more than 5,000 pages of transcript generated over the 45 days of the inquiry. The Operation Acacia segment ran for 37 days, 52 witnesses gave evidence, and there were over 3,500 pages of transcript produced.'<sup>32</sup>

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<sup>31</sup> CCC Corruption Allegations Data Dashboard 2015-16, <http://www.ccc.qld.gov.au/data-visualisation>

<sup>32</sup> NSW ICAC, *Annual Report 2012-13*

# Case Studies

## NSW ICAC CASE STUDIES

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### Operation Spicer

The NSW ICAC investigated allegations that during the 2011 state election, members of the NSW Liberal Party received political donations that were undeclared under the *Election Funding, Expenditure and Disclosures Act 1981* (NSW). Some donations were over the legislated cap, and others were solicited from banned donors including property developers. It also found that donations were channelled through associated entities including the Free Enterprise Foundation.<sup>33</sup>

### Operation Credo

The NSW ICAC is investigating allegations that people with financial interest in the company Australia Water Holdings were attempting to influence a lucrative deal with Sydney Water Corporation. Conduct includes claiming expenses from other business pursuits in a SWC claim, drawing from funds allocated to other purposes, and withholding information regarding Australia Water Holdings true financial position.<sup>34</sup>

### Operation Acacia and Jasper

The NSW ICAC conducted two investigations concerning the issuing of mining leases and licences involving former NSW Government ministers. Operation Jasper found that then Resources Minister Ian Macdonald accepted personal benefit from the Obeid family in return for decisions regarding the EOI process for mining licences and leases covering areas owned by the Obeid's. This case involved a network of people involved in corrupt conduct for financial gain.<sup>35</sup> Operation Acacia found that Macdonald also

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<sup>33</sup> *Operation Spicer*, NSW ICAC, <http://icac.nsw.gov.au/investigations/past-investigations/investigationdetail/220>

<sup>34</sup> *Operation Credo*, NSW ICAC, <https://www.icac.nsw.gov.au/investigations/current-investigations/investigationdetail/203>

<sup>35</sup> NSW ICAC, *Annual Report 2012-13*

acted corruptly in the allocation of a mining licence to Dowles Creek Mining Pty Ltd, run by his 'mate' John Maitland, without tender and against departmental advice.<sup>36</sup>

## QUEENSLAND CCC CASE STUDIES

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### Timesheet fraud

The Queensland CCC investigated allegations of fraud in timesheets one Queensland Health employee. The employee was found guilty of dishonestly claiming \$40,000 of overtime.<sup>37</sup>

### Driver licence fraud

The Queensland CCC investigated allegations of fraudulent issuing and upgrading of driver licences by an employee of the Department of Transport. The employee was found guilty of fraudulently issuing or upgrading 57 licences for personal profit.<sup>38</sup>

### Academic research fraud

The Queensland CCC investigated allegations that a University of Queensland academic had fabricated research findings. The academic was alleged of publishing a research article based on this false data, and subsequently accepting research grant funding based on this article.<sup>39</sup>

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<sup>36</sup> Nicholls, November 2014, *Former Labor Minister Ian Macdonald prosecuted over Doyles Creek mine deal*, <http://www.smh.com.au/nsw/former-labor-minister-ian-macdonald-prosecuted-over-doyles-creek-mine-deal-20141119-11qbch.html>

<sup>37</sup> Queensland CCC, *Past investigations – Timesheet fraud leads to criminal conviction*, <http://www.ccc.qld.gov.au/corruption/past-investigations/timesheet-fraud-leads-to-criminal-conviction>

<sup>38</sup> Queensland CCC, *Past investigations - CCC investigation into driver licence fraud*, <http://www.ccc.qld.gov.au/corruption/past-investigations/ccc-investigation-into-driver-licence-fraud-leads-to-multiple-arrests>

<sup>39</sup> Queensland CCC, *Past investigations – Research fraud*, <http://www.ccc.qld.gov.au/corruption/past-investigations/research-fraud>

## Cases the CCC did not investigate

### ***Acland Stage 3 – alleged improper influence in decision making through political donations***

An allegation was made to the CCC that New Hope Coal, the proponents of the Acland Stage 3 mine expansion, influenced the decision by the Newman Government to approve the expansion, after pledging pre-election not to approve it. The allegation included evidence that New Hope made significant political donations, gifts to senior government staff, and had a high level of access to senior LNP figures.<sup>40</sup> In stating its reason not to investigate, the CCC states in its 2015-16 Annual Report that ‘the assessment found insufficient evidence to support the allegations or to raise a reasonable suspicion of a criminal offence.’<sup>41</sup>

### ***Sibelco – alleged improper influence in decision making through political donations***

An allegation was made to the CCC that Sibelco, a sand mining company operating on Stradbroke Island, influenced the decision by the Newman Government to extend the legislated closure of the sand mine from 2019 to 2035. The allegation included evidence of a \$91,000 mail out in Campbell Newman’s electorate prior to the election, a \$1 million pre-election campaign by Roland Pty Ltd paid for Sibelco, and a high level of access to senior LNP figures before and after the election. In responding to the allegation, the CCC stated ‘Our assessment is that while the allegation you have raised may, if proved, amount to suspected corrupt conduct, the assertion of favourable treatment for Sibelco and a connection between the donations by Sibelco and the recent legislative amendments is speculative.’<sup>42</sup>

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<sup>40</sup> ABC, *No evidence donations swayed former Newman government’s Acland mine decision, CCC says*, <http://www.abc.net.au/news/2015-12-05/ccc-clears-newman-government-donations-acland-mine/7004322>

<sup>41</sup> Queensland CCC, *Annual Report 2015-16* pg 42

<sup>42</sup> See Moore, 2014, *CCC says no inquiry into 2012 \$91,000 Sibelco sandmining ads*, <http://www.brisbanetimes.com.au/queensland/ccc-says-no-inquiry-into-2012-91000-sibelco-sandmining-ads-20141117-11ojor.html>, and The Australia Institute, 2016, *Greasing the Wheels*, <http://www.tai.org.au/content/greasing-wheels> pg 16

# Discussion and Recommendations

The Queensland CCC has design flaws that make it dramatically less effective than the NSW ICAC.

A high threshold of requiring *evidence of criminal* corrupt conduct before commencing investigations undermines the purpose of the commission – to provide an independent investigative body separate to the courts to investigate and expose corruption. If a person had enough evidence to prove criminal conduct had occurred, the State could be expected to bring charges in a court of law.

The exclusion of official misconduct from the Crime and Misconduct Commission in 2014, and the creation of the Queensland CCC, severely limited the scope of corrupt conduct cases the Queensland CCC could investigate within the public service. Many corrupt conduct cases that the public expect an anti-corruption commissions to investigate are covered by this term, including breach of trust by a public official and fraud by a public official or parliamentarian in office.

An anti-corruption commission's main function is to expose corruption. By holding inquiries privately, and making its investigation reports hard to access, the Queensland CCC fails to provide the public with the opportunity to scrutinise the public sector and government.

The Palaszczuk Government made pre-election promises to strengthen the integrity of the Queensland CCC, implement the Fitzgerald Principles, and commence an inquiry into political donations with the powers of Royal Commission. These promises, particularly the reintroduction of the official misconduct role and the inquiry into political donations, have not been met. In fact the 2017 amendments to the CCC, if passed, would limit the definition of corrupt conduct and weaken the CCC.

**Recommendation #1:** The Palaszczuk Government should reintroduce the official misconduct function of the Queensland CCC, and adopt the design features of the NSW ICAC that make it effective – namely public hearings and a wider definition of corrupt conduct.

The NSW ICAC's effectiveness suffered from questions arising in 2015 about its jurisdiction. The impact of the 2016 amendments has yet to be seen, but it can be presumed that the challenge to its governance structures and independence of the Commissioners will limit its ability to meet its prior success record. Statements by

former Commissioners David Ipp, Anthony Whealy and former DPP Nicholas Cowdery support this assumption.

**Recommendation #2:** The Baird Government should reinstate and protect the jurisdiction and independence of the NSW ICAC and its Commissioners.

In the design of a federal ICAC, the lived experience of state anti-corruption commissions should serve as evidence of the effectiveness of certain models and legislative design.

**Recommendation #3:** The federal government should create a federal ICAC based on the NSW model, particularly the definition of corrupt conduct and legislated public hearings as the norm.