ROBUST WATCHDOGS, TOOTHLESS TIGERS, OR KANGAROO COURTS? THE EVOLUTION OF ANTI-CORRUPTION COMMISSIONS IN AUSTRALIA

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The spotlight has been shone on anti-corruption commissions with the creation of the National Anti-corruption Commission at the federal level in 2023. Despite the importance of these agencies in combating corruption in government, there is relatively little academic research in this area. This article will conduct a historical analysis of the development and evolution of anti-corruption commissions across the Australian federation. It will examine major legislative amendments to Australian anti-corruption commissions from their inception, and the political context in which amendments have occurred, with the goal of determining whether the changes to these bodies are attempts to bolster their function, clip their wings, or protect individual rights. We argue that while principles of independence, accountability and individual protection are important at the level of institutional design, the history and evolution of these bodies reveal the significant and sometimes overwhelming importance of political factors in driving design changes.

I INTRODUCTION

The anti-corruption commission is arguably the most significant tool developed in liberal democracies to fight corruption in recent times. As a body with both investigatory and at least quasi-judicial powers, the anti-corruption commission does not sit naturally within the traditional tripartite Westminster division of judicial, legislative, and executive powers.[1] From their inception, concerns have been expressed about their potential for infringement upon civil liberties, about the dangers of their acting as a 'second police force', and about the possibility that they may exceed or abuse their powers.[2] Nevertheless, it has become well accepted

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1 Mark Tushnet, 'Institutions Supporting Constitutional Democracy: Some Thoughts about Anti-corruption (and Other) Agencies' [2019] (September) *Singapore Journal of Legal Studies* 440, 442.

2 Editorial, 'Legislative, Judicial and Administrative Control of ICAC Action' (1976) 6(2) *Hong Kong Law Journal* 145, 145. For a more recent discussion of the issues surrounding abuses of power by anti-corruption agencies, see *Glenister v President of the Republic of South Africa* [2011] 3 SA 347, discussed in ibid 446.

that effective anti-corruption institutions play an important role 'as institutions supporting constitutional democracy'.[3]

Despite the obvious significance of corruption as an issue,[4] the extensive history of concern about it, and the growth in the study of corruption in recent decades as a significant field of academic endeavour,[5] anti-corruption commissions are a relatively recent development in Australian public and political life.[6] While there is a stream of academic literature analysing the purpose and powers of these institutions,[7] very little work has been done examining their origins and evolution. Arguably, the most significant debates about the purpose and powers of these institutions have been primarily pursued in the political sphere and in the media, often in the wake of successive scandals which have rolled through Australian political and legal life.

For example, and after years of debate,[8] a set of bribery, expenses, and foreign donations scandals at the federal level resulted in the creation of the National Anti-

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3 Tushnet (n 1) 442.

4 In 2018, for example, the United Nations estimated the economic cost of corruption worldwide at 5% of gross domestic product on average, or $3.6 trillion: see 'The Costs of Corruption: Values, Economic Development under Assault, Trillions Lost, Says Guterres', *UN News* (online, 9 December 2018) <https://news.un.org/en/story/2018/12/1027971>, cited in Tim Prenzler and Janet Ransley, 'Australia's New National Anti-corruption Commission: Background and Critique' (2023) *Public Integrity*:1–13, 1 <https://doi.org/10.1080/10999922.2023.2271684>.

5 For example, Jonathan Mendilow notes that 'the past three decades have witnessed an increasingly intense academic consideration of corruption and of populism. A voluminous literature also came to focus on the association between them.': Jonathan Mendilow, 'Introduction to Populism and Corruption', in Jonathan Mendilow and Éric Phélippeau (eds), *Populism and Corruption: The Other Side of the Coin* (Edward Elgar, 2021) 1, 1 <https://doi.org/10.4337/9781839109676>.

6 As Grant Hoole and Gabrielle Appleby point out, '[t]heir creation in the 1980s and 1990s followed the sweep of "new administrative law" reforms designed to strengthen and increase the accessibility of public accountability mechanisms': Grant Hoole and Gabrielle Appleby, 'Integrity of Purpose: A Legal Process Approach to Designing a Federal Anti-corruption Commission' (2017) 38(2) *Adelaide Law Review* 397, 398.

7 See, eg, Hoole and Appleby (n 6); Prenzler and Ransley (n 4); A J Brown, 'The Integrity Election: Public Trust and the Promise of Change' in Anika Gauja, Marian Sawer, and Jill Sheppard (eds), *Watershed: The 2022 Australian Federal Election* (Australian National University Press, 2023) 39 <https://doi.org/10.22459/W.2023.03> ('The Integrity Election'); Tim Prenzler and Michael Maguire, 'Reforming Queensland's Police Complaints System: Recent Inquiries and the Prospects of a Best Practice Model' (2023) 35(3) *Current Issues in Criminal Justice* 324 <https://doi.org/10.1080/10345329.2023.2210791>; Marie J dela Rama, Michael E Lester and Warren Staples, 'The Challenges of Political Corruption in Australia, the Proposed Commonwealth Integrity Commission Bill (2020) and the Application of the APUNCAC' (2022) 11(1) *Laws* 1 <https://doi.org/10.3390/laws11010007>. Tushnet (n 1) comments that policy-oriented corruption studies 'devote relatively little attention to questions of institutional design of anti-corruption agencies, perhaps because … the details of design seem to have little relationship to the success or failure of these agencies': at 444. A J Brown and Finn Heinrich argue that while much attention has been given to the diagnosis and measurement of corruption issues, little has been devoted to the evaluation of anti-corruption commissions and other possible solutions to the problem: A J Brown and Finn Heinrich, 'National Integrity Systems: An Evolving Approach to Anti-corruption Policy Evaluation' (2017) 68 *Crime, Law and Social Change* 283, 283 <https://doi.org/10.1007/s10611-017-9707-1>.

8 See, eg, Senate Select Committee on the Establishment of a National Integrity Commission, Parliament of Australia, *Interim Report* (Report, May 2016) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Establishment_of_a_National_Integrity_Commission/NIC/~/media/Committees/integrity_ctte/Interim_Report/report.pdf> ('*Senate Committee Interim Report*'); Senate Select Committee on a National Integrity Commission, Parliament of Australia, *Report* (Report, September 2017) ('*Senate Committee Report*').

corruption Commission ('NACC'),[9] although debates still remain about whether the powers of this body are too restrictive. In 2023, Victoria's Independent Broad-based Anti-corruption Commission ('IBAC') conducted an investigation of the so-called Operation Sandon scandal involving alleged corruption at a local council in Melbourne's south-east. The investigation became the focus of intense controversy when a former councillor, Amanda Stapledon, took her own life. Following this, the former commissioner, Robert Redlich, alleged political interference in the commission's operations,[10] and argued strongly for an increase in its powers.[11] Meanwhile, with far less publicity in the national media, a different sort of scandal has touched the Northern Territory's ('NT') anti-corruption body, which has become embroiled in controversies surrounding alleged conflicts of interest between private investigators holding lucrative contracts, and members of its staff.[12]

The purpose of this article is to begin to remedy the gap in the Australian academic debate and to critically analyse the historical evolution of anti-corruption commissions in Australia. The article will first conduct a historical analysis of the development and evolution of anti-corruption commissions in the Australian federation in Part II. As statutory bodies, anti-corruption commissions are vulnerable to legislative amendments that reduce their functions by hostile governments. Accordingly, Part III of this article will examine legislative amendments to Australian anti-corruption commissions from their inception, as well as the political context in which amendments have occurred, with the goal of determining whether the changes to these bodies are attempts to bolster their function, clip their wings, or protect individual rights.

Part IV of this article will bring together this historical and political background, drawing upon the concept of 'integrity of purpose' in discussing the design of a federal anti-corruption commission.[13] Consistent with this concept, we contend that anti-corruption commissions require strong powers and institutional independence,

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9 *National Anti-corruption Commission Act 2022* (Cth) ('*NACC Act*'). See also Hoole and Appleby (n 6) 398.

10 Josh Gordon, 'Anti-corruption Boss Says Integrity Committee Acted without Integrity', *The Age* (online, 31 July 2023) <https://www.theage.com.au/national/victoria/anti-corruption-boss-says-integrity-committee-acted-without-integrity-20230731-p5dsnh.html>; A J Brown, 'Australia's National Anti-corruption Agency Arrives. Will It Stand the Test of Time?', *The Conversation* (online, 30 November 2022) <https://theconversation.com/australias-national-anti-corruption-agency-arrives-will-it-stand-the-test-of-time-195560>. On potentially investigating the innocent, casting aspersions on the wrong people, see Mibenge Nsenduluka, 'IBAC Launches Internal Review after Former Mayor's Death', *The Age* (online, 7 June 2023) <https://www.theage.com.au/national/victoria/ibac-launches-internal-review-after-former-mayor-s-death-20230607-p5detb.html>.

11 Broede Carmody, 'Redlich Outlines Wishlist to Bring Victoria out of the Shadows on Integrity', *The Age* (online, 6 August 2023) <https://www.theage.com.au/politics/victoria/redlich-outlines-wishlist-to-bring-victoria-out-of-the-shadows-on-integrity-20230802-p5dta0.html>.

12 See Matt Cunningham, 'Is It Time to Disband the Territory's Corruption Watchdog?', *Northern Territory News* (online, 15 July 2023) <https://www.ntnews.com.au/news/opinion/matt-cunningham-opinion-is-it-time-to-disband-the-territorys-corruption-watchdog/news-story/10bcb83a30fcea34362ba31e32e9f27b>.

13 Hoole and Appleby (n 6). The 'integrity of purpose' concept draws upon work by former New South Wales Chief Justice, James Spigelman, and by Transparency International, amongst others. See further discussion in Part IV below.

balanced with accountability and protection of individual rights.[14] While these principles are important at the level of institutional design, we argue that the history and evolution of these bodies reveals the significant and sometimes overwhelming importance of political factors in driving change. These factors must always be borne in mind by those seeking to design anti-corruption commissions that will ultimately enhance, rather than erode, the higher order principle of integrity in government.

II THE ORIGINS AND INCEPTION OF ANTI-CORRUPTION COMMISSIONS IN AUSTRALIA

A The Common Law Background and the Influence of International Law

Offences involving corruption have a long history in the common law. The common law offence of misconduct in public office dates to the 13th century,[15] and to the notion that public officials are 'trustees' of their offices with duties of loyalty to the public, an idea dating to the Ancient Greeks.[16] Early English cases found officials, such as sheriffs, bailiffs, justices, coroners, gaolers, and others, to have neglected or abused 'their positions in a range of ways not limited to bribery or extortion'.[17] The offence was 'never … confined to fixed specific categories of misbehaviour',[18] and judges considered that 'it would be endless to enumerate all the particular instances, wherein an Officer may be [convicted and punished]; and it also seems needless to endeavour it, because they are generally so obvious so common sense, as to need no Explication'.[19] While the elements of the offence have been set out in more detail in recent cases, it remains general and subject to interpretation. In essence, it criminalises wilful misconduct by a public official in the course of or connected to their office, in circumstances where the misconduct is 'serious and meriting criminal punishment'.[20]

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14 This is also consistent with Tushnet (n 1), who comments that 'designing anti-corruption agencies requires striking a balance between independence and accountability', with the choice between 'legal' mechanisms such as prosecutor's offices, and 'political' mechanisms involving elected officials: at 447. Some mixture of the two is necessary, because '[a]nti-corruption investigations of high-level officials are deeply implicated in politics, and mere technical expertise is not the only qualification investigators should have': at 447–8.

15 David Lusty, 'Revival of the Common Law Offence of Misconduct in Public Office' (2014) 38 *Criminal Law Journal* 337, 337.

16 Ibid 338 (noting the writings of Aristotle, Plato and Cicero).

17 Ibid 339.

18 Ibid 340.

19 Ibid, quoting William Hawkins, *A Treatise of the Pleas of the Crown* (Professional Books, 1716) bk 1, 168.

20 *R v Quach* (2010) 27 VR 310, 323 [46] (Redlich JA):

> [T]he elements of the offence are:
> (1) a public official;
> (2) in the course of or connected to his public office;
> (3) wilfully misconduct himself; by act or omission, for example, by wilfully neglecting or failing to perform his duty;
> (4) without reasonable excuse or justification; and

During the 20th century, prosecutions for the common law offence of misconduct in public office continued in the United States ('US') and (at least in a codified form) in Canada.[21] However, it seems that until the 1970s it was rarely prosecuted elsewhere.[22] This may have been because a view developed that the English common law offence was 'clearly inadequate to cope with the more subtle forms of corruption which accompanied the social, economic and political changes of the 19th century'.[23] Consistent with this, around the turn of the 20th century, the English Parliament created specific offences dealing with corrupt practices at elections, as well as corruption involving public officials.[24] However, over time these offences themselves proved 'inadequate to capture the full range of ways in which public powers or positions may be culpably abused'.[25] By the early 1970s, this prompted a revival in the use of the common law offence, as well as interest in alternative and more effective ways of prosecuting the fight against corruption in public life.[26]

More recently, there has been a rise in international concern about corruption, leading to the development of international conventions requiring states to establish preventive anti-corruption bodies as part of the set of institutions to combat corruption.[27] While it appears to be accepted that the establishment of anti-corruption bodies on its own is not the sole answer to corruption,[28] the increasing appreciation of the need for such bodies has contributed to the political pressure to establish them at the state, territory, and ultimately federal level in Australia.[29] This

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(5) where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.

21 Lusty (n 15) 341.

22 This was to the point that Glanville Williams commented that the 'offence is practically never charged': Glanville Williams, *Textbook of Criminal Law* (Stevens & Sons, 2nd ed, 1983) 151, cited in ibid.

23 Bernard Downey, 'Combatting Corruption: The Hong Kong Solution' (1976) 6(1) *Hong Kong Law Journal* 27, 28.

24 *Public Bodies Corrupt Practices Act 1889*, 52 & 53 Vict, c 69; *Prevention of Corruption Act 1906*, 6 Edw 7, c 34; *Prevention of Corruption Act 1916*, 6 & 7 Geo 5, c 64. See also the *Honours (Prevention of Abuses) Act 1925*, 15 & 16 Geo 5, c 72.

25 Lusty (n 15) 341.

26 Ibid.

27 Note, in particular, the *United Nations Convention Against Corruption*, opened for signature 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005) ('*UNCAC*'), cited in Prenzler and Ransley (n 4) 3. See also dela Rama, Lester and Staples (n 7) 3, 15–17 (discussing the draft Anticorruption Protocol to the United Nations Convention Against Corruption ('APUNCAC')). The APUNCAC is a draft international treaty seeking to fill existing gaps in the *UNCAC* (n 27) and establish an International Commission Against Corruption with powers to investigate and refer charges of corruption to domestic anti-corruption courts: dela Rama, Lester and Staples (n 7) 16.

28 As Charles Sampford points out, while research by Transparency International has revealed the unsurprising fact that countries with strong national integrity systems were generally less corrupt than those without them, some countries without such systems had low levels of corruption, while other very corrupt countries had established national integrity systems: Charles Sampford, 'From Deep North to International Governance Exemplar' (2009) 18(3) *Griffith Law Review* 559, 565 <https://doi.org/10.1080/10854655.2009.10854655>.

29 For example, Australia's sliding position on the global Corruption Perceptions Index, published annually by Transparency International, contributed to the rise of integrity and accountability in government as significant issues in the 2022 federal election: see Brown, 'The Integrity Election' (n 7) 3.

pressure is maintained and increased by international anti-corruption advocacy groups such as Transparency International,[30] as well as independent thinktanks such as the Centre for Public Integrity in Australia.[31]

B The Overseas Background: Singapore and Hong Kong

The first anti-corruption commission in the common law world was arguably Singapore's Corrupt Practices Investigation Bureau ('CPIB').[32] The CPIB was established as an independent agency in September 1952, following revelations of police corruption under British colonial rule.[33] While initially the body was a 'paper tiger',[34] it was given far-reaching powers when Singapore achieved self-government under President Lee Kuan Yew in 1959. These powers, given to the CPIB under Singapore's *Prevention of Corruption Act* (Singapore, cap 241, 2020 rev ed), included the ability to arrest and search without court warrant, to enter and search under a warrant, and to require people to account for resources that are disproportionate to known sources of income.[35] While there is no doubt that these measures, amongst many others, have contributed to Singapore's reputation as a relatively corruption-free society, there has been significant criticism of the civil liberties cost of this approach.[36]

However, it is generally accepted that the first anti-corruption commission, whose powers and origins are relevant to the Australian models, was established in Hong Kong.[37] Hong Kong's model was a response to the 'long established and deep rooted' corruption which was a 'feature of public and commercial life in Hong Kong' during the British colonial period.[38] Arguably, this corruption was the

30 On Transparency International, see ibid. For a further influential example of this group's work, see Transparency International Australia, *Australia's National Integrity System: The Blueprint for Action* (Report, November 2020) <https://transparency.org.au/wp-content/uploads/2020/12/NIS_01_Summary_web.pdf>.

31 The Centre for Public Integrity is an independent think-tank led by well-known jurists and academics. According to its website, the Centre is dedicated (inter alia) to eliminating the undue influence of money in politics and ensuring transparency in the exercise of public power: see 'Home', *Centre for Public Integrity* (Web Page) <https://publicintegrity.org.au/>.

32 Adam Graycar and Tim Prenzler argue that the first anti-corruption institution was most likely the New York Department of Investigation, established in 1873: see Adam Graycar and Tim Prenzler, *Understanding and Preventing Corruption* (Palgrave Macmillan, 2013) 52–3 <https://doi.org/10.1057/9781137335098>.

33 Jon S T Quah, 'Lee Kuan Yew's Role in Minimising Corruption in Singapore' (2022) 25(2) *Public Administration and Policy* 163, 164–5 <https://doi.org/10.1108/PAP-04-2022-0037>.

34 Ibid 165, 170.

35 Ibid 169–70.

36 See, eg, Cameron Sim, 'The Singapore Chill: Political Defamation and the Normalization of a Statist Rule of Law' (2011) 20(2) *Pacific Rim Law and Policy Journal* 319. See also Stephen Gray and Andre Dao, 'Imprisoned for Shirts, Sex and a Mont Blanc Pen: The Corruption Case of Singapore Legal Academic Tey Tsun Hang' (2014) 15(1) *Australian Journal of Asian Law* 69.

37 Note, however, that Singapore established the Corrupt Practices Investigation Bureau in 1952. In 1968, public officials from Hong Kong went on a study tour to Singapore and (then) Ceylon. Hence, the Singapore model arguably forms a partial basis for the bureau ultimately adopted in Hong Kong: Downey (n 23) 29.

38 Ibid 27.

product of cultural factors,[39] but equally likely the 'often incomprehensible gap which exist[ed] between the governed and their governors' at that time.[40] The 1948 *Prevention of Corruption Ordinance* (Hong Kong) cap 215 ('*1948 Ordinance*') was modelled on the English statutes of 1889, 1906 and 1916,[41] with responsibility for enforcement being given to the Anti-corruption Office of the Royal Hong Kong Police Force.[42] However, this appears to have been akin to leaving the fox in charge of the henhouse. By the early 1970s, it was apparent that the *1948 Ordinance* was 'not effective' in the particular circumstances of Hong Kong, partly because of the endemic practices of offering 'advantages', or bribery, but also the 'growing realisation of police corruption in alarming proportions'.[43]

A police corruption scandal created the 'necessary moral panic' which led to the creation of Hong Kong's Independent Commission Against Corruption ('ICAC').[44] A police chief superintendent, Ernest Hunt, was served with a notice under Hong Kong's *Prevention of Bribery Ordinance* (Hong Kong) cap 201 ('*Prevention of Bribery Ordinance*'),[45] requiring him to furnish a statutory declaration of his expenses and liabilities. Shortly afterwards, another senior police officer, Peter Godber, fled Hong Kong. Evidence soon emerged that Godber was in possession of over HKD4 million, or 'approximately six times his total net salary over a period of more than 20 years' service in Hong Kong'.[46] Significantly, the officials in charge of investigating possible breaches of the *Prevention of Bribery Ordinance* were the police themselves. An official report 'came to the not surprising conclusion that corruption was rife in Hong Kong, as much in the private sector as in the public service'.[47] Hunt was tried, convicted,[48] and then appealed to the Full Court of Hong Kong – but before the outcome of his appeal was known, and with 'unseemly speed', according to Bernard Downey, a Bill to establish the Hong Kong ICAC passed through the Legislative Council.[49]

The legislative structure of this Commission has been discussed at length elsewhere.[50] For present purposes, it is sufficient to note that the Commission was an independent statutory authority[51] with broad powers to investigate 'corruption', that

39 H J Lethbridge, for example, notes that 'generations of Hong Kong residents, apparently, have been able to survive in a territory with the canker of corruption deep within its body politic, and many have lived comfortably in symbiosis with the corrupt': H J Lethbridge, 'Corruption, White Collar Crime and the ICAC' (1976) 6(2) *Hong Kong Law Journal* 150, 151. He adds that corruption was 'a form of exaction that had its roots in traditional Chinese society': at 153.

40 Downey (n 23) 27.

41 Ibid 29.

42 Mark Findlay, 'Institutional Responses to Corruption: Some Critical Reflections on the ICAC' (1988) 12(5) *Criminal Law Journal* 271, 271.

43 Ibid 272.

44 Ibid.

45 Downey (n 23) 29, 35.

46 Ibid 35.

47 Ibid 38.

48 *R v Ernest Percival Max Hunt* [1975] HKDCLR 1, cited in ibid 40.

49 Downey (n 23) 51.

50 See, eg, ibid 55; Findlay (n 42) 272.

51 Findlay (n 42) 276.

term not being defined in the legislation.[52] These powers included sweeping powers of investigation, such as the ability to search, seize, and confiscate documents and information with or without warrant; the power to detain without charge; to restrain or restrict disposal of property; and to apply for the confiscation of assets.[53]

Powers of this ilk appear to have more in common with the 'emergency' powers used by the British during the Malayan Emergency[54] than they do with those at the disposal of modern Australian anti-corruption commissions. Not surprisingly, they were extensively criticised at the time, with 'alarm' expressed at the 'naivety' of the Attorney-General, who was accused of shrugging his shoulders at infringements on civil liberty, merely asserting that under the legislation 'the rights of the innocent *may* legally be ignored, but in fact they will be carefully protected'.[55] Nevertheless, by the time Mark Findlay wrote in 1988, it was accepted that Hong Kong's ICAC had been broadly successful, at least in its overall mandate of achieving cultural change amongst Hong Kong's citizens toward the issue of corruption.[56]

C The Australian Background: Judicial Inquiries into Police Corruption in Queensland

It was specifically police corruption that led to the establishment of Hong Kong's original ICAC – and particularly, the problems arising when police investigate police. This is significant given Australia's long history of police corruption, dating back to colonial times, and perhaps not unconnected to their early duties,[57] which included supervising white convicts as well as 'dispersing' or massacring Indigenous people on the frontier.[58] As Paul Bleakley notes, 'Australian policing has been characterised by a disproportionate amount of corruption throughout the country's short history', quoting journalist Evan Whitton's claim that Sydney was 'the most corrupt city in the western world, except of course for Newark, New Jersey, and Brisbane, Queensland'.[59]

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52 Ibid 273.

53 *Independent Commission Against Corruption Ordinance* (Hong Kong) cap 204, ss 10A, 13, cited in ibid 275.

54 The British declared a State of Emergency to combat a communist insurgency in Malaya in 1948. This legislation was incorporated into Malaysia's *Internal Security Act 1960* (Malaysia) after independence, and was subsequently extended as part of the Rukunegara amendments in 1971: see Cyrus Das, 'The May 13th Riots and Emergency Rule' in A Harding and HP Lee (eds), *Constitutional Landmarks in Malaysia: The First 50 Years 1957–2007* (LexisNexis, 2007) 103. On the Malayan Emergency, see Rais Yatim, 'The Road to Merdeka' in A Harding and HP Lee (eds), *Constitutional Landmarks in Malaysia: The First 50 Years 1957–2007* (LexisNexis, 2007) 1, 9.

55 Editorial (n 2) 145 (emphasis in original).

56 Findlay (n 42) 282–3 (noting especially the Commission's success in public education and corruption prevention programs).

57 See, eg, Robert Haldane, *The People's Force: A History of Victoria Police* (Melbourne University Press, 1986).

58 See, eg, Timothy Bottoms, *Conspiracy of Silence: Queensland's Frontier Killing Times* (Allen & Unwin, 2013) 5. See generally Stephen Gray, 'Vulnerable People and the Police: The Role of Human Rights', in Paula Gerber and Melissa Castan (eds), *Critical Perspectives on Human Rights Law in Australia* (Lawbook, 2022) vol 2, 195.

59 Paul Bleakley, 'Methods of Inquiry: Police Corruption, Historical Anti-corruption Experiences and Implications for Contemporary Practices' (2023) 12(1) *International Journal for Crime, Justice and Social Democracy* 69, 69 <https://doi.org/10.5204/ijcjsd.2745>.

Historically, the Australian response to allegations of police corruption has been the establishment of a public inquiry. While the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct ('Fitzgerald Inquiry') into police corruption in Queensland[60] is justly famous, there were in fact four such inquiries in Queensland prior to Fitzgerald's.[61] The first of these was the Gibbs Inquiry of 1963–4, an inquiry headed by (later Chief Justice of the High Court) Harry Gibbs, which 'found no evidence of police involvement in condoning or profiting from prostitution or vice at the National Hotel'.[62] It was limited in its terms to specific allegations involving then Police Commissioner Frank Bischof and his colleagues frequenting and encouraging sex workers at a downtown Brisbane bar, and was hence 'structurally limited by conditions set by governments, such as terms of reference and the amount of time allowed for hearings'.[63] The same was true of the Lucas Inquiry of 1976–7, the Williams Inquiry of 1977–9, and the Sturgess Inquiry of 1984–6.[64] Even where these inquiries recommended more widespread change,[65] their recommendations could safely be ignored by the politicians and police with responsibility to implement them. After the Sturgess Inquiry, for example, 'state Premier Joh Bjelke-Petersen and [Queensland Police Commissioner, Sir Terence] Lewis both admitted to not having read the Sturgess Inquiry report, reinforcing the perception that judicial inquiries in Queensland were a matter of show rather than substance'.[66]

After being initially limited to examining specific issues arising from an Australian Broadcasting Corporation *Four Corners* program, the terms of reference for the Fitzgerald Inquiry were widened to allow it to examine police evidence of involvement in organised crime dating back to the 1970s.[67] This change, as well as the ability to offer witnesses indemnity from prosecution, allowed this inquiry to report effectively on broad ranging issues of corruption, and ultimately have these reforms 'adopted by a state government with clear motivation to draw a decisive line under the problems of the past'.[68]

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60 Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report of a Commission of Inquiry Pursuant to Orders in Council* (Report, 3 July 1989) <https://www.ccc.qld.gov.au/publications/fitzgerald-inquiry-report> ('*Fitzgerald Report*').

61 Bleakley (n 59) 70.

62 Ibid 72.

63 Ibid 71–2. The terms of reference were '"impossibly narrow"': at 73, quoting Phil Dickie, *The Road to Fitzgerald* (University of Queensland Press, 1988) 9. Note also that the Gibbs Inquiry allowed many of the police officers who were being investigated by the inquiry to 'participate as members of its investigatory team – essentially, tasking them with collecting evidence against themselves': ibid 74.

64 Bleakley (n 59) 73.

65 The Lucas Inquiry, for example, 'was damning in its condemnation of the process corruption that was rampant in the [Queensland Police Force] in this era', and 'recommended a sweeping range of reforms to police practices': ibid 72.

66 Ibid 72–3, citing Dickie (n 63).

67 Bleakley (n 59) 75.

68 Ibid 77.

D The First Australian Anti-corruption Commissions: New South Wales, Queensland, and Western Australia

While the true extent of corruption in Queensland was finally being exposed to the national public, New South Wales ('NSW') was having its own parallel issues coming to light. During the 1980s, as Ian Temby QC pointed out in 1990, NSW Chief Magistrate Murray Farquhar was convicted of a corruption-related offence, as was NSW Cabinet Minister Rex Jackson, while the NSW Police Force was subject to serious and substantiated corruption allegations, including those leading to the discharge in disgrace of its Deputy Commissioner.[69] Serious corruption allegations had been levelled against the long-serving NSW Labor Premier Neville Wran, although he was never convicted of any criminal offence,[70] and the Nicholas Greiner Liberal/National Government was elected in 1988 partly on the strength of its pledge to 'deal with corruption allegedly exemplified by the previous 12 years of Labor rule in New South Wales'.[71] It promised specifically to establish an ICAC,[72] a promise it kept with the passage of the *Independent Commission Against Corruption Act 1988* (NSW) ('*NSW ICAC Act*'), which came into effect on 13 March 1989.[73]

It is sometimes said that the NSW ICAC was 'modelled' upon that already existing in Hong Kong.[74] While this is not strictly true, it is certainly true that during the lead-up to the passage of the NSW legislation, experts were drawing close comparisons between the proposed NSW and Hong Kong models. Writing in 1988, Findlay suggested that 'certain important features of the intended [NSW model] are legitimised as resembling operational characteristics of its much vaunted Hong Kong namesake'.[75] Perhaps most important among these is independence. As Temby, NSW's first anti-corruption Commissioner, pointed out in 1990, the original legislation made the 'Commission independent of the government of the day, but accountable to the Parliament', with its reports being provided to Parliament – not to a Minister – and with the Commission being 'required to regard the protection of the public interest and the prevention of breaches of public trust as its paramount

69 Ian Temby, 'Tackling Corruption in New South Wales' (1990) 13(1) *University of New South Wales Law Journal* 137, 138.

70 For a recent re-examination of issues surrounding Neville Wran, see Kate McClymont, 'Bombshell Corruption Claim about Former Premier Neville Wran', *The Sydney Morning Herald* (online, 6 March 2021) <https://www.smh.com.au/national/bombshell-corruption-claim-about-former-premier-neville-wran-20210305-p5788k.html>.

71 Michael Bersten and Russell Hogg, 'ICAC and NSW Inc: 18 Months on' (1990) 15(6) *Legal Service Bulletin* 251, 251.

72 Temby (n 69) 138 n 6.

73 See, eg, Murray Gleeson and Bruce McClintock, *Independent Panel: Review of the Jurisdiction of the Independent Commission Against Corruption* (Report, 30 July 2015) 1 [1.1.3] ('*Review of the ICAC*').

74 See, eg, David Spicer, 'ICAC Explained: Why It Was Established, Who Has Been Grilled by It, What the Future Holds', *ABC News* (online, 16 November 2016) <https://www.abc.net.au/news/2016-11-16/what-is-icac-and-why-is-everyone-talking-about-it/8029550>.

75 Findlay (n 42) 271. Shortly after the NSW ICAC was established, a NSW Parliamentary Committee went on a study tour of the Hong Kong ICAC, reporting on various features of the Hong Kong model, and that it was 'impressed with what it saw in Hong Kong': see Committee on the Independent Commission Against Corruption, Parliament of New South Wales, *Report on Fifth International Anti-corruption Conference 8–12 March 1992 and Hong Kong Study Tour 11–18 April 1992* (Report, 24 July 1992) 124 <https://www.parliament.nsw.gov.au/ladocs/inquiries/2786/Relevant%20issues%20for%20NSW.pdf>.

concerns'.[76] In this respect, it contrasts with the commissions of inquiry established in Queensland which, as noted above, were deliberately limited in their terms of reference, were drafted with political considerations in mind, and were ad hoc bodies that were disbanded following the conclusion of the targeted investigation.[77]

Meanwhile, the revelations of the Fitzgerald Inquiry provided strong impetus for Queensland to establish its own anti-corruption commission.[78] After nearly 30 years of National Party government, Labor was elected to office in Queensland in December 1989. Both sides of politics had promised to implement the Fitzgerald Inquiry's recommendations,[79] which had 'revealed entrenched corruption among political and police leaders, deeply ingrained abuses of process and power, and inept public administration'.[80] The Fitzgerald Inquiry had recommended the creation of new bodies to oversee the reform process. Hence, the Criminal Justice Commission ('CJC') was created to oversee the reconstitution of the Queensland Police Service, and was given a permanent role in both criminal justice reform and in ensuring that 'future corruption was minimised and properly managed'.[81] Since that time, the functions of this original body have been reorganised and extended several times, with the creation of the Queensland Crime Commission ('QCC') in 1997, the Crime and Misconduct Commission ('CMC') in 2001, and the Crime and Corruption Commission ('Qld CCC') in 2014.[82]

In Western Australia ('WA'), the government set up a specialist commission to investigate allegations of police corruption – the Official Corruption Commission ('OCC') established in 1988, which was later reformed to be the Anti-corruption Commission ('ACC') in 1996 – with limited investigative powers.[83] A series of corruption scandals over a decade during the 1980s and early 1990s formed a powerful impetus for the creation of a more robust anti-corruption body. These scandals, known collectively as 'WA Inc',[84] forced Labor Premier Carmen Lawrence

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76 Temby (n 69) 141, citing *Independent Commission Against Corruption Act 1984* (NSW) s 12 ('*NSW ICAC Act*').

77 Bleakley (n 59) 77. See generally Scott Prasser (ed), *New Directions in Royal Commission and Public Inquiries: Do We Need Them?* (Connor Court Publishing, 2023).

78 For a discussion of corruption in Queensland under the Bjelke-Petersen Government, and of the influence of the *Fitzgerald Report* (n 60), see Sampford (n 28).

79 Michael Briody, 'Establishing the Crime and Corruption Commission: The Reformation of Queensland's Premier Crime-Fighting Agency' (2015) 10(2) *Journal of Policing, Intelligence and Counter Terrorism* 136, 137 <https://doi.org/10.1080/18335330.2015.1089634>.

80 Janet Ransley and Richard Johnstone, 'The Fitzgerald Symposium: An Introduction' (2009) 18(3) *Griffith Law Review* 531, 532 <https://doi.org/10.1080/10854653.2009.10854653>.

81 Ibid 538.

82 See 'From the CJC to the CCC: An Overview', *Crime and Corruption Commission Queensland* (Web Page, 21 August 2019) <https://www.ccc.qld.gov.au/about-us/our-history/cjc-ccc-overview> ('From CJC to CCC').

83 *Official Corruption Commission Act 1988* (WA); *Anti-corruption Commission Act 1988* (WA). See *Royal Commission into whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers* (Interim Report, December 2002) 11–15 <https://www.parliament.wa.gov.au/intranet/libpages.nsf/WebFiles/Royal+Commission+into+whether+there+has+been+any+corrupt+or+criminal+conduct+by+Western+Australian+police+officers+interim+report/$FILE/WA+Police.pdf> ('*Kennedy Royal Commission Interim Report*').

84 Bruce Stone, 'Accountability Reform in Australia: The WA Inc Royal Commission in Context' (1993) 65(2) *Australian Quarterly* 17 <https://doi.org/10.2307/20635717>.

to announce the Royal Commission into Commercial Activities of Government and Other Matters in early 1991. The Royal Commission made a 'number of findings of serious impropriety' on the part of several WA ministers, particularly involving business deals with fallen tycoons Alan Bond and Laurie Connell.[85] While noting that the 'institutions of government and the officials and agencies of government exist to serve the interests of the public',[86] the Royal Commission argued that the traditional Westminster doctrine of ministerial responsibility was inadequate to make the government accountable,[87] arguing that further independent accountability mechanisms were required. In particular, it criticised the existing anti-corruption commission as being a mere 'post box' for official corruption complaints, with limited investigative authority and recommended the creation of a Commissioner for the Investigation of Corrupt and Improper Conduct.[88] Following this, the Kennedy Royal Commission into police corruption 'identified deficiencies in the powers and functions' of the then ACC, which was a specialist body with limited coercive powers set up to investigate police corruption.[89] It recommended that 'the ACC be replaced by a Corruption and Crime Commission … with expanded powers and resources to take over the role of the ACC, and to carry on the work of this Royal Commission, in order that there be a permanent independent agency with the capacity to resolve police corruption issues'.[90] This led to the formation of the WA Corruption and Crime Commission ('WA CCC') in 2004.

E Anti-corruption Commissions in the Other States and Territories, and Finally the Commonwealth

It took nearly two decades after 1991 for independent anti-corruption commissions to be formed in other Australian jurisdictions. During the 1990s and early 2000s, as A J Brown points out, there was a 'bifurcation in the approach undertaken by State governments', with Queensland, NSW and WA having created anti-corruption commissions, but 'Victoria, Tasmania and South Australia … retained oversight by either the Ombudsman or a similar but specialist Police Complaints Authority'.[91] The Commonwealth, likewise, resisted pressure to create an anti-corruption commission, despite the Australian Law Reform Commission's

85 Ibid 17.

86 *Royal Commission into Commercial Activities of Government and Other Matters* (Final Report, 12 November 1992) ch 1, 10 [1.2.5] <https://www.parliament.wa.gov.au/intranet/libpages.nsf/webfiles/rc+1992/$file/0015319.pdf > ('*WA Inc Royal Commission Final Report*').

87 Stone (n 84) 18–19.

88 *WA Inc Royal Commission Final Report* (n 86) 25 [4.9.1].

89 *Royal Commission into whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers* (Final Report, January 2004) vol 2, 2 ('*Kennedy Royal Commission Final Report*'); *Kennedy Royal Commission Interim Report* (n 83) 3 [1.6].

90 *Kennedy Royal Commission Final Report* (n 89) 2.

91 A J Brown, 'Federal Anti-corruption Policy Takes a New Turn … but Which Way? Issues and Options for a Commonwealth Integrity Agency' (2005) 16(2) *Public Law Review* 93, 94 ('Federal Anti-corruption Policy').

recommendation in 1996 that the federal government should establish a National Integrity and Investigations Commission.[92]

On 16 June 2004, however, the Commonwealth Attorney-General announced that it would establish a federal anti-corruption commission.[93] According to A J Brown, it was a response to an announcement from the Victorian Liberal/National Coalition, at that time in opposition, that if elected, it would establish an anti-corruption commission along the lines of those existing in NSW, WA and Queensland.[94] This announcement itself had a strongly political flavour, since the Bracks Labor Government at that time was grappling with 'a substantial upsurge in organised crime-related violence in Melbourne, in which police corruption was also implicated'.[95] However, the federal body that was eventually established in 2006 – the Australian Commission for Law Enforcement Integrity – was a far narrower body than the State anti-corruption commissions, confined in its jurisdiction to only two (and later five) law enforcement agencies.[96]

In any case, no other Australian government, at either state or federal level, took any further action until 2009, when Tasmania established its Integrity Commission.[97] In November 2010, the Bracks/Brumby Labor Government in Victoria was replaced by a Liberal/National Coalition Government led by Ted Baillieu. Baillieu kept the Coalition's pledge of six years previously to establish an independent anti-corruption commission, which came into existence through legislation creating Victoria's IBAC in November 2011.[98] However, the powers of this body were restricted, such that it could only investigate serious corruption, and only when it had evidence of an indictable offence.[99] Not long afterwards, in 2012, South Australia ('SA') established its ICAC,[100] making it the last state in Australia to do so.

At this point, only the territories, and the Commonwealth, had yet to establish independent anti-corruption bodies. In 2015, the NT Legislative Assembly resolved to hold an inquiry into the establishment of an anti-corruption body in that jurisdiction. In May 2016, the Anti-corruption, Integrity and Misconduct Commission Inquiry released its final report,[101] and recommended the establishment of a NT ICAC following the model established in SA,[102] and employing SA's ICAC

92 Australian Law Reform Commission, *Integrity: But Not by Trust Alone* (Report No 82, 1996) <https://www.alrc.gov.au/wp-content/uploads/2019/08/ALRC82.pdf>.
93 Brown, 'Federal Anti-corruption Policy' (n 91) 93.
94 Ibid 94.
95 Ibid.
96 Transparency International Australia (n 30). See also Prenzler and Ransley (n 4) 3–4.
97 See *Integrity Commission Act 2009* (Tas).
98 See *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('*IBAC Act*').
99 Ibid ss 3 (definition of 'relevant offence'), 4(1) (definition of 'corrupt conduct'); Yee-Fui Ng, 'IBAC vs ICAC: What Are These Anti-corruption Commissions and How Do They Compare?', *The Conversation* (online, 11 October 2021) <https://theconversation.com/ibac-vs-icac-what-are-these-anti-corruption-commissions-and-how-do-they-compare-169544>.
100 See *Independent Commission Against Corruption Act 2012* (SA).
101 *Anti-corruption, Integrity and Misconduct Commission Inquiry* (Final Report, 27 May 2016).
102 Ibid 9.

Commissioner, Bruce Lander, on a part-time basis.[103] Since that time, concerns have consistently been raised about conflicts of interest in a small jurisdiction, with the NT's ICAC having used external contractors to carry out investigations, including people personally known to or involved with NT ICAC staff.[104] Meanwhile, in 2018, the Australian Capital Territory ('ACT') established its Integrity Commission, pursuant to the *Integrity Commission Act 2018* (ACT).

This left only the Commonwealth without a specialist anti-corruption commission. However, pressure on the federal government to establish such a commission was growing, with parliamentary inquiries into the issue in 2016 and 2017,[105] following previous inquiries calling for the establishment of a Commonwealth integrity commission.[106] As mentioned above, various bribery, expenses and foreign donations scandals added to the pressure on the Commonwealth.[107]

Following mounting pressure from Labor and independents (who argued that a federal anti-corruption commission was needed to promote public trust and confidence in government),[108] the Morrison Coalition Government reluctantly agreed to set up a Commonwealth integrity commission in 2018.[109] This culminated in the introduction of a private member's bill for a national integrity commission by

103 Ibid.

104 See Cunningham (n 12). For a more general discussion of the powers of the Northern Territory ICAC, see Neil Samuel Hope, Dane Bryce Weber and Maija-Ilona Wilhelmiina Pekkanen, 'The New Northern Territory ICAC: Better Corruption Offences, but Prevented by a Lack of Prevention' (2019) 43(5) *Criminal Law Journal* 339.

105 See *Senate Committee Interim Report* (n 8); *Senate Committee Report* (n 8). See also Hoole and Appleby (n 6).

106 See, eg, Senate Legal and Constitutional Legislation Committee, Parliament of Australia, *Provisions of: Law Enforcement Integrity Commissioner Bill 2006, Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006, Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006* (Report, May 2006) <https://www.aph.gov.au/~/media/wopapub/senate/committee/legcon_ctte/completed_inquiries/2004_07/aclei/report/report_pdf.ashx>; Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, Parliament of Australia, *Integrity of Overseas Commonwealth Law Enforcement Operations* (Report, June 2013) <https://www.aph.gov.au/-/media/wopapub/senate/committee/aclei_ctte/completed_inquiries/2010-13/integrity_international_operations/report/report.pdf?la=en&hash=1820E4CEC25A08DEF9779E1BE38BB4C9A56C60E7>.

107 Note, for example, the 'Australian Wheat Board oil-for-wheat' scandal and the 'Note Printing Australia and Securency' scandal: see Harry Hobbs and George Williams, 'The Case for a National Whole-of-Government Anti-corruption Body' (2017) 42(3) *Alternative Law Journal* 178, 179 <https://doi.org/10.1177/1037969X17730190>; Hoole and Appleby (n 6) 398.

108 Yee-Fui Ng, 'As the Government Drags Its Heels, a Better Model for a Federal Integrity Commission has Emerged', *The Conversation* (online, 26 October 2020) <https://theconversation.com/as-the-government-drags-its-heels-a-better-model-for-a-federal-integrity-commission-has-emerged-148796> ('Government Drags Its Heels'); Yee-Fui Ng, 'Explainer: What Are Labor and the Coalition Promising on an Anti-corruption Commission and What Is the Government's Record?', *The Conversation* (online, 20 April 2022) <https://theconversation.com/explainer-what-are-labor-and-the-coalition-promising-on-an-anti-corruption-commission-and-what-is-the-governments-record-180971>.

109 Yee-Fui Ng, 'The Proposed National Integrity Commission Is a Watered-Down Version of a Federal ICAC', *The Conversation* (online, 13 December 2018) <https://theconversation.com/the-proposed-national-integrity-commission-is-a-watered-down-version-of-a-federal-icac-108753>.

independent Member of Parliament ('MP') Cathy McGowan,[110] further increasing the pressure on the government.

After a couple of years' delay, the Morrison Government put forward a weak model in 2020 that had a high threshold of investigation, requiring a reasonable suspicion of corruption amounting to a criminal offence.[111] Further, the proposed commission would not have the power to hold public hearings or make public findings of corruption. The perception that the Morrison Government was soft on corruption was further added to by the 'Sports Rorts' scandal of 2020 – the widely-publicised revelation from the Australian National Audit Office that a $100 million community sports grants scheme had been contaminated by party-political concerns.[112] Amid vociferous advocacy and campaigning by interest groups and academics, Independent MP Helen Haines introduced a private member's bill that put forward a more robust model, with the power to make public findings of corruption and conduct public hearings in the public interest, balancing the seriousness of allegations with any unfair prejudice to a person's reputation or unfair exposure of a person's private life.[113]

In the lead up to the 2022 election, the Australian Labor Party ran an election campaign with integrity as a major pillar, promising a stronger model of a federal anti-corruption commission than the incumbent government.[114] Following their electoral success, the Albanese Labor Government kept its pledge to establish a NACC,[115] opting for a reasonably robust model that was far stronger than proposed by the previous Morrison Government. The newly established NACC has a lower investigative threshold than the Coalition model of 'serious or systemic corrupt conduct'. However, there is a higher threshold for public hearings than the NSW ICAC, which, for the NACC, can only be held in exceptional circumstances.[116] The NACC recently commenced operations in July 2023.[117]

110 National Integrity Commission Bill 2018 (Cth). See also Prenzler and Ransley (n 4).

111 Commonwealth Integrity Commission Bill 2020 (Cth). See Yee-Fui Ng, 'Government's Commonwealth Integrity Commission Will Not Stamp Out Public Sector Corruption: Here's Why', *The Conversation* (online, 25 November 2019) <https://theconversation.com/governments-commonwealth-integrity-commission-will-not-stamp-out-public-sector-corruption-heres-why-127502>.

112 Brown, 'The Integrity Election' (n 7) 46. See generally Yee-Fui Ng, 'Regulating the Rorts: The Legal Governance of Grants Programs in Australia' (2023) 51(2) *Federal Law Review* 205 <https://doi.org/10.1177/0067205X231166704>.

113 Australian Federal Integrity Commission Bill 2020 (Cth). See Ng, 'Government Drags Its Heels' (n 108).

114 Indeed, integrity and accountability became significant issues in the 2022 federal election, to the point where progressive thinktank The Australia Institute declared the federal poll to be the 'integrity election': Brown, 'The Integrity Election' (n 7) 39.

115 *NACC Act* (n 9).

116 Yee-Fui Ng, 'Will the National Anti-corruption Commission Actually Stamp Out Corruption in Government?', *The Conversation* (online, 5 October 2022) <https://theconversation.com/will-the-national-anti-corruption-commission-actually-stamp-out-corruption-in-government-191759>.

117 See discussion of the legislation in Prenzler and Ransley (n 4) 7.

III THE EVOLUTION OF AUSTRALIAN ANTI-CORRUPTION COMMISSIONS

The next question is how Australian anti-corruption commissions have evolved since their inception. As we will see below, NSW and Victoria have experienced expansion in their jurisdiction since inception, while WA and SA have had their jurisdiction reduced by hostile governments. Queensland has had its jurisdiction reduced, but then restored.

There have been no major legislative changes to the jurisdiction or powers of the anti-corruption or integrity commissions in the ACT, NT, and Tasmania,[118] since inception, so these will not be discussed.

A NSW: Gradual Expansion

The NSW ICAC was the first anti-corruption commission established in Australia, with the longest running history of legislative reform of 35 years. It was created in 1988 to fulfil the election promise of the new Liberal Greiner government to 'restore the integrity of public administration'.[119] When the NSW ICAC was first set up, Premier Greiner set a strong tone for the need of an anti-corruption body, due to the numerous corruption scandals in the State, in his second reading speech:

> [A] Minister of the Crown gaoled for bribery; an inquiry into a second, and indeed a third, former Minister for alleged corruption; the former Chief Stipendiary Magistrate gaoled for perverting the course of justice; a former Commissioner of Police in the courts on a criminal charge; the former Deputy Commissioner of Police charged with bribery; a series of investigations and court cases involving judicial figures including a High Court Judge; and a disturbing number of dismissals, retirements and convictions of senior police officers for offences involving corrupt conduct.[120]

Infamously, Premier Greiner was one of the scalps claimed by the anti-corruption body he set up – Greiner resigned in 1992 when ICAC made findings of corrupt conduct against him for the appointment of former Education Minister Terry Metherell to the Environmental Protection Agency.[121] Greiner later successfully challenged this finding in the NSW Court of Appeal, which found that the ICAC had exceeded its jurisdiction on the basis that the behaviour was not unlawful, and thus the finding of corrupt conduct was a nullity.[122]

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118 The *Integrity Commission Amendment Act 2011* (Tas) made minor changes identified by the Commissioner streamlining the scope of the own-motion powers following one year of the Commission's operation.

119 New South Wales, *Parliamentary Debates*, Legislative Assembly, 26 May 1988, 673 (Nick Greiner, Premier); 'History and Development of the ICAC Act', *NSW Independent Commission Against Corruption* (Web Page) <https://www.icac.nsw.gov.au/about-the-nsw-icac/legislation/history-and-development-of-the-icac-act> .

120 New South Wales, *Parliamentary Debates*, Legislative Assembly, 26 May 1988, 673.

121 Independent Commission Against Corruption, *Report on Investigation into the Metherell Resignation and Appointment* (Report, June 1992) <https://bleyzie.wordpress.com/wp-content/uploads/2012/02/first-report-on-investigation-into-the-metherell-resignation-and-appointment-1992.pdf>; 'Political Chronicle: Australia, January–June 1992' (1992) 38(3) *Australian Journal of Politics and History* 414, 421–2 <https://doi.org/10.1111/j.1467-8497.1992.tb00683.x>.

122 *Greiner v Independent Commission Against Corruption* (1992) 28 NSWLR 125.

A year after the NSW ICAC commenced operations, a High Court of Australia decision found that the ICAC had no power to make findings of guilt relating to criminal or corrupt conduct.[123] Legislation was introduced to clarify its jurisdiction to include the power to make findings of corrupt conduct,[124] although prosecutions are to be conducted by the Director of Public Prosecutions.[125]

The powers of the NSW ICAC were gradually increased over the next few years as further legislation was introduced to empower it to conduct public hearings in 1991,[126] and to investigate the conduct of MPs in 1994, with substantial breaches of codes of conduct of MPs being incorporated into the definition of 'corrupt conduct'.[127]

Only one major diminution of the NSW ICAC's functions has occurred in its legislative history, when its functions over police corruption were transferred to the Police Integrity Commission in 1997, which assumed responsibility for police corruption allegations.[128] This followed the Wood Royal Commission into the New South Wales Police Service, which recommended a specialised police integrity commission be instituted.[129]

In 2005, an independent review of the NSW ICAC conducted by Bruce McClintock SC found that the NSW ICAC's powers and jurisdiction were generally appropriate, subject to certain minor clarifications to the definition of 'corrupt conduct'.[130] Under these reforms, an independent Inspector of the NSW ICAC was established as an oversight body to investigate complaints against the NSW ICAC, audit its operations, and report on its operational effectiveness.[131]

Following the 2005 review, the NSW ICAC's model became widely accepted and remained stable, with it being seen as a successful body and successive governments being protective of its jurisdiction despite its various investigations that led to the downfall of many ministers of both parties.[132] By June 2014, 35 people had had findings of corrupt conduct made against them following the NSW ICAC's investigations, with another 22 pending.[133]

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123 *Balog v Independent Commission Against Corruption* (1990) 169 CLR 625.

124 *Independent Commission Against Corruption (Amendment) Act 1990* (NSW) sch 1 item 7 ('*ICAC (Amendment) Act*').

125 See 'Prosecution Briefs with the DPP and Outcomes', *NSW Independent Commission Against Corruption* (Web Page) <https://www.icac.nsw.gov.au/investigations/prosecution-briefs-with-the-dpp-and-outcomes>.

126 *ICAC (Amendment) Act* (n 124) sch 1 item 2.

127 Ibid sch 1 item 3.

128 *Police Integrity Commission Act 1996* (NSW).

129 See *Royal Commission into the New South Wales Police Service* (Final Report, May 1997) vol 1, 3 <https://www.australianpolice.com.au/wp-content/uploads/2017/05/RCPS-Report-Volume-1.pdf>.

130 Bruce McClintock, *Independent Review of the Independent Commission Against Corruption Act 1988* (Final Report, January 2005) xii–xiii <https://www.nsw.gov.au/sites/default/files/2023-07/Independent-review-of-the-Independent-Commission-Against-Corruption-Act-1988_0.pdf>.

131 *Independent Commission Against Corruption Amendment Act 2005* (NSW) sch 1.

132 Ian Dobinson and Leanne Houston, 'ICAC's Operation 'Hale': A Low Point in the History of the Agency' (2017) 29(1) *Current Issues in Criminal Justice* 57, 64 <https://doi.org/10.1080/10345329.2017.1203608 5>; Alex Mitchell, 'Funnily Enough, ICAC's "Overreach" Only a Concern for Those in Its Crosshairs', *Crikey* (online, 29 January 2015) <https://www.crikey.com.au/2015/01/29/funnily-enough-icacs-overreach-only-a-concern-for-those-in-its-crosshairs/>.

133 Mitchell (n 132).

However, in 2015, the NSW ICAC was embroiled in controversy for investigating the personal actions of Deputy Senior Crown Prosecutor Margaret Cunneen, who advised her son's girlfriend to pretend to have chest pains to prevent police officers from obtaining evidence of her blood alcohol level at the scene of a motor accident.[134] In *Independent Commission Against Corruption v Cunneen* ('*Cunneen*'), a High Court majority held that the NSW ICAC had overstepped its jurisdiction.[135] The High Court held that these actions did not constitute 'corrupt conduct' under the *NSW ICAC Act*, as it was not conduct that could adversely affect the probity of the exercise of an official function by a public official.[136]

The NSW ICAC's investigation into Cunneen was seen to be fundamentally flawed and to reflect significant failings in its decision-making processes.[137] Indeed, the NSW ICAC Inspector derided its actions in the Cunneen investigation as 'a low point in the history of [the] entity' and claimed that the watchdog had engaged in 'unreasonable, unjust, [and] oppressive maladministration'.[138]

Nevertheless, the Baird Government strongly defended the NSW ICAC, and legislatively validated its earlier corrupt conduct findings, which were thrown into doubt by the High Court's decision.[139] Premier Mike Baird was emphatic that the NSW ICAC should remain a strong body and that its previous corruption findings should stand:

> In simple terms, we will not tolerate corruption in this State, end of story. All previous findings of corruption by the Independent Commission Against Corruption [ICAC] should, and will, stand … We need a strong ICAC, and we will have one … A strong ICAC plays a vital role in investigating, exposing and preventing corruption involving or affecting public administration.[140]

Following *Cunneen*, the NSW Government commissioned an independent panel consisting of former High Court Chief Justice Murray Gleeson and Bruce McClintock SC to review and advise on whether the scope of the NSW ICAC's jurisdiction and powers remained appropriate.[141] The Panel recommended that the NSW ICAC's jurisdiction be modified by broadening the definition of 'corrupt conduct' to include conduct by non-public officials that 'could impair public confidence in public administration'; but also limiting the NSW ICAC's power to making findings of 'corrupt conduct' against individuals to 'serious' cases.[142]

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134 See generally Office of the Inspector of the Independent Commission Against Corruption (NSW), *Report Pursuant to Section 77A Independent Commission Against Corruption Act 1988: Operation 'Hale'* (Report, 4 December 2015) <https://www.oiicac.nsw.gov.au/assets/Uploads/Reports/Special-Reports/S.77A-REPORT-in-Operation-Hale-.pdf> ('*Operation Hale Report*').

135 (2015) 256 CLR 1.

136 The High Court found that 'corrupt conduct' must 'adversely affect the probity of the exercise of [public] official functions' rather than simply the efficacy of the exercise of those functions: ibid 28 [55] (French CJ, Hayne, Kiefel and Nettle JJ).

137 Dobinson and Houston (n 132) 59.

138 *Operation Hale Report* (n 134) 50, 56, 63.

139 *Independent Commission Against Corruption Amendment (Validation) Act 2015* (NSW).

140 New South Wales, *Parliamentary Debates*, Legislative Assembly, 6 May 2015, 175.

141 See generally *Review of the ICAC* (n 73).

142 Ibid x–xi.

The Panel also recommended that the NSW ICAC be given new jurisdiction to investigate breaches of electoral and lobbying laws.[143]

These recommendations were legislatively adopted by the government in 2015.[144] The expanded definition of 'corrupt conduct' meant that, even after *Cunneen*, the NSW ICAC could 'continue to investigate conduct such as collusive tendering for government contracts, fraudulently obtaining government mining leases and fraudulently obtaining or retaining employment or appointment as a public official', even without any potential wrongdoing by public officials.[145]

In 2016, based on the recommendations from the 'blistering' report of the NSW ICAC Inspector, the NSW ICAC's governance structure was amended by instituting a three-commissioner model, rather than having a sole commissioner.[146] A decision of the NSW ICAC to conduct a public inquiry must be authorised by the Chief Commissioner and at least one other commissioner, thus imposing an internal deliberative process that acts as a safeguard against potentially misguided investigations.[147]

Therefore, despite the significant controversy engendered by *Cunneen*, the NSW ICAC's jurisdiction was not significantly constrained after that case, and in fact was expanded in several respects. Premier Baird reiterated his Government's commitment to a robust anti-corruption watchdog: 'This Government is resolute in its commitment to integrity in public administration … Ensuring that the Independent Commission Against Corruption … is properly equipped to fight corruption is a priority for this Government'.[148] It can thus be argued that a path dependence has developed in NSW once the model had solidified, in which past events or decisions constrain later events or decisions and contingent events set in train institutional trajectories with moderately deterministic properties.[149] This implies that any reduction in jurisdiction is seen to 'weaken the ICAC's ability to expose and fight corruption', meaning successive governments may have felt politically unable to reduce ICAC's jurisdiction.[150] This has been reinforced by key political actors accepting and thus legitimising these past contingent choices.[151]

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143 Ibid 46–50 [8.4]–[8.5.14].

144 *Independent Commission Against Corruption Amendment Act 2015* (NSW) sch 1.

145 New South Wales, *Parliamentary Debates*, Legislative Assembly, 8 September 2015, 19–20.

146 *Independent Commission Against Corruption Amendment Act 2016* (NSW) sch 1 ('*ICAC Amendment Act 2016*'). See Michaela Whitbourn, 'ICAC "Acted Illegally" in Margaret Cunneen Inquiry, Inspector Says', *The Sydney Morning Herald* (online, 5 December 2015) <http://www.smh.com.au/nsw/icac-actedillegally-in-margaret-cunneen-inquiry-inspector-says-20151203-glfbvd.html>.

147 *ICAC Amendment Act 2016* (n 146) sch 1.

148 New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 November 2016, 39.

149 See Elizabeth Sanders, 'Historical Institutionalism' in R A W Rhodes, Sarah A Binder and Bert A Rockman (eds), *The Oxford Handbook of Political Institutions* (Oxford University Press, 2008) 39, 39 <https://doi.org/10.1093/oxfordhb/9780199548460.001.0001>.

150 Committee on the ICAC, Parliament of New South Wales, *Review of the ICAC: Stage II* (Report, 2001) 3 <https://www.parliament.nsw.gov.au/ladocs/inquiries/1642/Report%20Review%20II%20Jurisdictional%20Issues.PDF> ('*NSW ICAC Stage II Report*').

151 James Mahoney, 'Path Dependence in Historical Sociology' (2000) 29(4) *Theory and Society* 507, 508, 513, 523–4 <https://doi.org/10.1023/A:1007113830879>. See generally Paul Pierson, 'Increasing Returns, Path Dependence, and the Study of Politics' (2000) 94(2) *American Political Science Review* 251 <https://doi.org/10.2307/2586011>.

B Victoria: Expansion through Electoral Promises

Victoria has a comparatively short legislative history. The Victorian IBAC was established in 2012 by the Baillieu Coalition government as part of an election platform,[152] and was the first unified, broad-based anti-corruption body in Victoria, replacing the previous 'multi-layered, multi-agency integrity system'.[153] However, in 2012, the IBAC was criticised by former judges who were members of the Accountability Roundtable for being a 'toothless tiger' due to the high threshold of 'serious corrupt conduct' required to trigger an investigation.[154]

In the 2014 election campaign, the Labor Party campaigned on the basis of integrity reforms, including making commitments to addressing the barriers that prevented the IBAC from effectively investigating corrupt conduct in Victoria.[155] Following their electoral victory, the Andrews Labor Government honoured this commitment by introducing legislation in 2016 that increased the jurisdiction of the IBAC.[156] The amendment removed the requirement for 'corrupt conduct' to be 'serious', thus reducing the threshold by which the IBAC may commence an investigation.[157] It also expanded the definition of 'corrupt conduct',[158] by adding the ability to investigate misconduct in public office, and granting the IBAC the power to conduct preliminary inquiries.[159] However, the IBAC's jurisdiction still remains more limited than the NSW ICAC's, which has broad powers to investigate any allegation upon *suspicion* of corruption, including conduct that could constitute or involve a disciplinary offence, reasonable grounds for dismissal, or a substantial breach of conduct by a minister.[160]

Since his retirement in 2022, former Chief Commissioner Robert Redlich has been vocal about the need to further increase the powers of the IBAC, stating that the investigative threshold requiring criminality was too high and 'stifled' the

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152 *IBAC Act* (n 98).

153 Clem Newton-Brown and Philip Davis, 'Victoria's New Integrity System' (Conference Paper, Australasian Study of Parliament Group Conference, October 2013) <https://www.aspg.org.au/wp-content/uploads/2017/08/Conference-Paper-Clem-Newton-Brown-and-Philip-Davis.pdf>.

154 T H Smith 'IBAC: Material Relevant to the Jurisdiction Question' (Seminar Paper, Electoral Regulation Research Network, 19 June 2012) <https://www.accountabilityrt.org/wp-content/uploads/2012/11/IBAC-attachement-commitment-letter-July-2012-A.pdf>.

155 Victoria, *Parliamentary Debates*, Legislative Assembly, 10 December 2015, 5532 (Jacinta Allen).

156 *Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016* (Vic).

157 The jurisdiction was amended from requiring that the Victorian IBAC 'be reasonably satisfied that conduct amounts to a relevant offence', to requiring that the IBAC 'suspects on reasonable grounds that conduct constitutes corrupt conduct': ibid item 24. Further, the IBAC's remit was expanded to cover all corrupt conduct, with a direction to focus on more serious or systemic corrupt conduct whereas previously, the IBAC was restricted to investigating only serious corrupt conduct.

158 The definition of 'corrupt conduct' was expanded to include conduct of any person that 'adversely affect[s] the effective performance of a public officer … obtaining … a financial benefit or … other any direct or indirect monetary or proprietary gain': ibid item 4.

159 Ibid item 8. See Stephen Charles, 'Victoria's Anti-corruption Commission IBAC Will Still Be a Toothless Tiger', *The Age* (online, 23 January 2016) <https://www.theage.com.au/opinion/victorias-anticorruption-commission-ibac-will-still-be-a-toothless-tiger-20160121-gmay8c.html>.

160 *NSW ICAC Act* (n 76) ss 9(1)(b)–(d). See Stephen Charles, 'Victoria's Anti-corruption Watchdog Is Still Too Weak' (Briefing Paper, Australia Institute, 17 January 2018) <https://australiainstitute.org.au/wp-content/uploads/2020/12/Briefing-paper-IBAC-Stephen-Charles.pdf>.

IBAC's role.[161] If this advocacy were to continue, it is possible that there may be further expansion of the IBAC's jurisdiction.

C WA: Narrowed Jurisdiction

In contrast to Victoria, the WA CCC has experienced a narrowing of jurisdiction since its establishment in 2004.[162] In 2014, the Barnett Liberal Government passed legislation to reduce the jurisdiction of the WA CCC by removing the Commission's functions over minor misconduct and public sector education and prevention; transferring these to the Public Sector Commission.[163] It also ousted the jurisdiction and powers of the WA CCC over misconduct by members of Parliament relating to parliamentary privilege, thus immunising MPs from investigation by the WA CCC.[164] The stated intention was to refocus the WA CCC on more serious misconduct, and criminal and corrupt behaviour.[165] In a statement prior to the changes, Premier Barnett had claimed that the WA CCC was underperforming, with reports of harassment and intimidation by three WA CCC investigators.[166] Barnett previously tried to introduce similar amendments reducing the WA CCC's jurisdiction in the preceding Parliament in 2012, attempting to change the focus of the WA CCC to organised crime.[167] However, the Bill faced opposition from within Barnett's own party and lapsed due to the 2013 election.[168]

In 2017, although the newly elected McGowan Labor Government attempted to restore the jurisdiction of the WA CCC over misconduct by members of Parliament that could constitute a breach of the *Criminal Code Act Compilation Act 1913* (WA), the bill lapsed as it was not supported by the Opposition.[169]

In 2021, the McGowan Government controversially used its super-majority in Parliament to by-pass the bi-partisan appointment requirements for the Commissioner and unusually passed legislation specifically naming the Commissioner of their choice, John McKechnie, despite the objections of the Opposition to his appointment.[170] The position of Commissioner had previously been vacant for 15 months because the Opposition had blocked McKechnie's

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161 Adeshola Ore, 'Former Ibac Commissioner Says Watchdog Has Been "Stifled" by Legislative Powers', *The Guardian* (online, 31 July 2023) <https://www.theguardian.com/australia-news/2023/jul/31/former-ibac-commissioner-robert-redlich-legislation>.

162 *Corruption, Crime and Misconduct Act 2003* (WA).

163 *Corruption and Crime Commission Amendment (Misconduct) Act 2014* (WA) items 8, 12.

164 Ibid items 6, 12, 21. See Daniel Emerson, 'MPs No Longer the Untouchables', *The West Australian* (online, 19 June 2017) <https://thewest.com.au/news/wa/mps-no-longer-the-untouchables-ng-b88510339z>.

165 Western Australia, *Parliamentary Debates*, Legislative Assembly, 2 April 2014, 1960 (J H D Day).

166 Daniel Emerson, 'Barnett "Concerned" with CCC Performance', *The West Australian* (online, 4 February 2015) <https://thewest.com.au/news/australia/barnett-concerned-with-ccc-performance-ng-ya-224954>.

167 Corruption and Crime Commission Amendment Bill 2012 (WA).

168 'CCC Changes a Huge Conflict: Johnson', *The West Australian* (online, 19 September 2012) <https://thewest.com.au/news/wa/ccc-changes-a-huge-conflict-johnson-ng-ya-296546>.

169 Explanatory Memorandum, Corruption, Crime and Misconduct Amendment Bill 2017 (WA) 1.

170 *Corruption, Crime and Misconduct Amendment Act 2021* (WA); Rocco Loiacono, 'McGowan's Bid for Total Control', *The Spectator* (online, 20 August 2022) <https://www.spectator.com.au/2022/08/mcgowans-bid-for-total-control/>.

appointment.[171] Thus, the appointments process for commissioners can be politicised by both of the major political parties vying for their preferred candidate.

D Queensland: Waning and Waxing

The Qld CCC has experienced a reduction of jurisdiction by a hostile Premier who had been investigated by the Commission, but then a restoration of powers by the incoming opposition party based on an election promise.

The Qld CCC was established in its current form in 2014, although it was previously known as the CMC, which has been in existence since 2001.[172] The CMC was the product of a merger of the CJC and the QCC, meaning that the CCC is tasked with investigating both major and organised crime and misconduct in the public sector.[173]

In 2001, the CMC's initial formulation of 'official misconduct' was modelled on the NSW definition, including conduct that is not honest or impartial, involves a breach of trust or misuse of information, or adversely affects the honest and impartial performance of official functions, and secondly, conduct that could constitute a criminal offence or a disciplinary breach providing reasonable grounds for termination.[174]

However, the CMC's powers and functions were significantly reduced following the election of the Newman Coalition government in 2012. The newly elected Premier, Campbell Newman, was antagonistic towards the CMC, asserting that it had been 'used inappropriately as a political weapon' for 20 years, and stated that he wished to impose 'safeguards' against it being weaponised.[175] He claimed that former premier Anna Bligh 'had sought to capitalise on the prospect of a CMC investigation as part of the campaign against him in the lead up to the election', as Labor ran television ads portraying Newman as 'dodgy' due to developer donations.[176] The CMC had investigated three matters connected to Newman when he was Lord Mayor in relation to developer donations in the period before the 2012 election, although the CMC found no evidence of misconduct by Newman in any of those cases.[177]

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171 See Western Australia, *Parliamentary Debates*, Legislative Council, 24 June 2021, 2020 (James Hayward).

172 'From CJC to CCC' (n 82); 'Crime and Misconduct Commission', *Queensland Crime and Corruption Commission* (Web Page) <https://www.ccc.qld.gov.au/about-us/our-history/crime-and-misconduct-commission> ('CM Commission').

173 'From CJC to CCC' (n 82); 'CM Commission' (n 172). See Prenzler and Maguire (n 7).

174 *Crime and Misconduct Act 2001* (Qld) ss 14–15.

175 Daniel Hurst and Katherine Feeney, '"Enough's Enough": Newman Flags CMC Changes', *Brisbane Times* (online, 1 October 2012) <https://www.brisbanetimes.com.au/national/queensland/enoughs-enough-newman-flags-cmc-changes-20121001-26us9.html>.

176 Ibid; Daniel Hirst, 'Spin Check: CMC a "Political Weapon"', *Brisbane Times* (online, 16 October 2012) <https://www.brisbanetimes.com.au/national/queensland/spin-check-cmc-a-political-weapon-20121015-27mv7.html>.

177 Queensland Crime and Corruption Commission, 'CMC Completes Investigation into Circumstances Surrounding a Developer's Political Donations' (Media Release, 27 September 2012) <https://www.ccc.qld.gov.au/news/cmc-completes-investigation-circumstances-surrounding-developers-political-donations>; Hirst (n 176).

Accordingly, the Newman Government commissioned an independent advisory panel consisting of former High Court Justice Ian Callinan and Professor Nicholas Aroney.[178] The Panel was hostile towards the 'burgeoning and excessive "integrity industry"', criticised the CMC's 'self-propagating bureaucratic culture', and claimed that the vast majority of complaints made to the CMC were 'trivial, vexatious or misdirected', that baseless complaints needed to be deterred, and that the CMC needed to focus on serious cases of corrupt conduct.[179] The Panel recommended that the CMC should be 'divested of its general preventative and educative functions' in favour of the Public Service Commission, and recommended a reduction in the research function of CMC to matters relating to specific inquiries.[180] The Panel concluded that the 'whole structure and organisation of the CMC' should be reviewed.[181]

In 2014, following the recommendations in the report, the CMC was renamed as the CCC, and its jurisdiction was narrowed by raising the threshold of investigation through reducing the scope of 'corrupt conduct' (renamed from 'official misconduct') by making the elements of the definition 'cumulative rather than alternative'.[182] An additional requirement was added that conduct 'is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person', and incorporating a requirement that the 'conduct *would* [rather than *could*], if proved, be a criminal offence; or a disciplinary breach'.[183] In addition, the CCC's corruption prevention function was removed, and its research function narrowed to align strictly with supporting the performance of the CCC's functions rather than enabling the CCC to research any matter relevant to its functions.[184] Bipartisan support was no longer needed to appoint the chair and commissioners.[185]

These changes were criticised by the Labor Opposition, who decried the 'attacks on the independence of the corruption watchdog that politicised the CCC and impacted adversely on its ability to perform its functions'.[186] Tony Fitzgerald (author of the Fitzgerald Inquiry discussed previously) was scathing about the changes, stating that they were a 'gross abuse of power',[187] and calling the Newman

178 Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) <https://classic.austlii.edu.au/au/journals/UQLRS/2013/5.html> ('*Review of the Crime and Misconduct Act*').

179 Ibid 148, 204.

180 Ibid 206–7.

181 Ibid 205.

182 Queensland Government, 'Response to Review of the Crime and Misconduct Act 2001' (5 February 2019).

183 *Crime and Misconduct and Other Legislation Amendment Act 2014* (Qld) item 9 (emphasis added) ('*Crime and Misconduct and Other Legislation Amendment Act*'). See Department of Justice and Attorney-General (Qld), *'Corrupt Conduct' under the Crime and Corruption Act 2001* (Issues Paper, February 2016) 9 ('*Corrupt Conduct Issues Paper*').

184 *Crime and Misconduct and Other Legislation Amendment Act* (n 183) items 10–14.

185 Ibid.

186 Queensland, *Parliamentary Debates*, Legislative Assembly, 20 April 2016, 1227 (Yvette D'Ath, Attorney-General).

187 Ibid.

Government 'inexperienced, arrogant fools',[188] while other commentators criticised the changes as being 'retrograde'.[189]

Prior to the 2015 election, the Labor Party made a number of commitments to strengthen the independence and integrity of the CCC and promised 'to deliver a truly independent corruption watchdog'.[190] Upon winning government, Premier Palaszczuk implemented a range of reforms to fulfil Labor's election promises. Over several years, the government increased the jurisdiction of the CCC, including restoring its corruption prevention function and independence in undertaking its research function in 2016,[191] and widening the definition of 'corrupt conduct' in 2018 to capture the conduct of people outside the public sector that 'impairs, or could impair, public confidence in public administration' where it would be a criminal offence or a disciplinary breach (consistent with the definition in NSW and Victoria).[192] This extended 'the CCC's jurisdiction over conduct that, while not technically within the public sector, can corrupt its functions and damage public confidence in it',[193] due to concerns about privatisation and outsourcing.

Therefore, the CCC has experienced a reduction of powers and functions by a Liberal Premier who had a personal agenda against the CCC. These amendments included a higher threshold of investigation, the removal of their corruption prevention function and narrowing of their research function. However, a subsequent Labor government has honoured its electoral commitments to strengthen the independence of the CCC, restoring its powers and functions, and expanding its jurisdiction to incorporate conduct that relates to outsourcing and privatisation.

E SA: Hobbled and Weakened

SA's ICAC had a comparatively weak model at inception compared to other Australian jurisdictions and has been further eviscerated following amendments by a hostile government. The SA ICAC was introduced by the Weatherall government

188 Francis Tapim and Melinda Howells, 'Corruption Fighter Tony Fitzgerald Says Newman Government "Inexperienced, Arrogant Fools" over CMC Changes', *ABC News* (online, 1 May 2014) <https://www.abc.net.au/news/2014-05-01/tony-fitzgerald-says-newman-government-inexperienced-arrogant/5422726>.

189 See, eg, Alex McKean, 'Newman Turning Back the Clock in Queensland Corruption Fight', *The Conversation* (online, 12 May 2014) <https://theconversation.com/newman-turning-back-the-clock-in-queensland-corruption-fight-26157>.

190 Queensland, *Parliamentary Debates*, Legislative Assembly, 20 April 2016, 1226 (Yvette D'Ath, Attorney-General).

191 *Crime and Corruption Amendment Act 2016* (Qld) items 9, 14.

192 *Crime and Corruption and Other Legislation Amendment Act 2018* (Qld) item 5; Queensland, *Parliamentary Debates*, Legislative Assembly, 31 October 2018, 3229 (Yvette D'Ath, Attorney-General).

193 These include collusive tendering; certain fraud relating to the application for a licence, permit or other authority; dishonestly obtaining, or helping someone to dishonestly obtain a benefit from the payment of application of public funds or the disposition of State assets; evading a State tax, levy or duty or otherwise causing the loss of State revenue; and fraudulently obtaining or retaining an appointment in a public administration unit: Explanatory Memorandum, Crime and Corruption and Other Legislation Amendment Bill 2018 (Qld) 3. See also Queensland Crime and Corruption Commission, 'Changes to the *Crime and Corruption Act 2001*' (Fact Sheet No 1, February 2019) <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Changes-to-the-CC-Act-2001-section-15-Factsheet-2019.pdf>.

in 2012, following opposition from the Rann Government,[194] extensive public debate, a series of nine cross-bench and opposition bills between 2005 and 2010,[195] and a final report by the Attorney-General's Department.[196] The investigative threshold of the SA ICAC at inception was high, requiring a criminal level of corrupt conduct before an investigation could begin.[197] In addition, all corruption examinations were required to be held in private if a public hearing may prejudice an investigation under the Act or unduly prejudice the reputation of a person other than the defendant, to alleviate concerns about reputational damage to individuals.[198] The Commissioner is also unable to make findings of corruption.[199]

Even so, in 2021, the SA ICAC's jurisdiction was drastically curtailed following controversy that erupted from the suicide of police officer Doug Barr in 2019. Alongside several other police officers, Barr had been investigated by the SA ICAC in relation to corruption allegations in the SA Police recruitment processes. There was significant criticism of the SA ICAC and the Director of Public Prosecutions, which had failed to notify Barr that he was cleared from wrongdoing and would not be prosecuted, despite these bodies having reached that conclusion before his suicide.[200]

Another controversy surrounding the SA ICAC in that period was the handling of Operation Bandicoot, a joint operation with the SA Police, involving allegations that eight police officers had been stealing property from crime scenes.[201] The SA ICAC was criticised for issuing a media release on the day six police officers were arrested following accusations of theft.[202] Although the media release did not

194 See Brian Lian, '"A More Effective Corruption-Busting Tool" or an Effectively Busted ICAC? Examining the 2021 Crime and Public Integrity Policy Committee Amendments to the *Independent Commissioner Against Corruption Act 2012* (SA)' (2022) 43(1) *Adelaide Law Review* 507, 509–510.

195 See, eg, Independent Commission Against Crime and Corruption Bill 2005 (SA); Independent Commission Against Crime and Corruption Bill 2007 (SA); Independent Commission Against Crime and Corruption Bill 2007 (SA); Independent Commission Against Crime and Corruption Bill 2008 (SA); Independent Commission Against Corruption Bill 2008 (SA); Independent Commission Against Corruption Bill 2009 (SA); Independent Commission Against Corruption Bill 2010 (SA). See ibid 510.

196 Attorney-General's Department (SA), *An Integrated Model: A Review of the Public Integrity Institutions in South Australia and an Integrated Model for the Future* (Final Report, November 2010) 45–6.

197 *Independent Commissioner Against Corruption Act 2012* (SA) s 5(1) ('*SA ICAC Act*'), as enacted.

198 Ibid s 55(2).

199 See ibid s 24.

200 Select Committee on Damage, Harm or Adverse Outcomes Resulting from ICAC Investigations, Parliament of South Australia, *Report of the Select Committee on Damage, Harm or Adverse Outcomes Resulting from ICAC Investigations* (Report, 30 November 2021) 13 <https://www8.austlii.edu.au/au/other/sa/SALCSelCPubInq/2021/5.pdf> ('*Outcomes Resulting from ICAC Investigations Report*').

201 Ibid 11–12.

202 See Independent Commissioner Against Corruption South Australia, 'Six South Australian Police Officers Arrested as a Result of Investigation Headed by the Independent Commissioner Against Corruption' (Media Release, 13 October 2014) 1 <https://web.archive.org.au/awa/20160302152200mp_/http://www.icac.sa.gov.au/sites/default/files/20141013_six_police_officers_arrested.pdf>.

name the officers, this was said to be prejudicial.[203] Ultimately, all police officers involved were acquitted or had the charges against them withdrawn.[204]

Following critical parliamentary committee reports led by Legislative Council Member Frank Pangallo,[205] legislation passed swiftly through both houses of Parliament unopposed and within the span of 24 hours.[206] Unusually, the SA ICAC Commissioner, SA Ombudsman, and SA Police were not consulted about the amendments affecting them.[207]

This legislation reduced the SA ICAC's jurisdiction by removing its ability to investigate maladministration and misconduct.[208] It reduced the definition of corruption to exclude all dishonesty offences, or criminal offences committed by public officers acting in their official capacity. The SA ICAC is now limited in its jurisdiction to 'intentional and serious contravention of a code of conduct by a public officer'.[209] These changes have been criticised, as they lift the threshold for investigation, and many instances of dishonesty, theft, or misconduct would no longer fall within the definitions.[210]

Remarkably, the legislation also removed the Commissioner's ability to launch own-motion investigations.[211] This means that the Commissioner is now at the mercy of the Office of Public Integrity's ('OPI') determination as to the corruption investigations that they can undertake.[212] This hobbles the independence of the Commission to properly investigate corruption issues. The Commissioner has expressed concerns about the OPI making this determination without 'the information and corruption intelligence database held by the Commission' and the Commission's specialist expertise.[213]

Furthermore, the Commissioner is disallowed from making public statements about a corruption investigation unless the Commissioner is satisfied

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203 South Australia, *Parliamentary Debates*, Legislative Council, 25 August 2021, 4012 (Frank Pangallo); Chris Merritt, 'Reputational Damage at the Heart of ICAC Probe into Operation Bandicoot', *The Australian* (online, 18 February 2021) <https://www.theaustralian.com.au/business/legal-affairs/reputational-damage-atheart-of-icac-probe-into-operation-bandicoot/news-story/7d51781f46036d524e5a54dd9d1b7904>.

204 'Government Settles Legal Fees in 2022 of Eight South Australian Police Officers Cleared of Operation Bandicoot', *AdelaideAZ* (Web Page) <https://adelaideaz.com/articles/government-settles-legal-fees-in-2022-of-eight-south-australian-police-officers-cleared-after-operation-bandicoot>.

205 Crime and Public Integrity Policy Committee, Parliament of South Australia, *Report of the Crime and Public Integrity Committee into Matters of Public Integrity in South Australia* (Report No 5, December 2020); *Outcomes Resulting from ICAC Investigations Report* (n 200).

206 *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Act 2021* (SA).

207 Letter from Ann Vanstone to Crime and Public Integrity Policy Committee, 15 December 2021 <https://www.icac.sa.gov.au/documents/correspondence-to-cpipc-15-december-2021.pdf>.

208 Following the amendments, the SA ICAC can only investigate matters of corruption in public administration: *SA ICAC Act* (n 197) s 7. The ability to investigate misconduct and maladministration now resides with the Ombudsman: see *Ombudsman Act 1972* (SA) ss 4, 5A.

209 *ICAC Act* (SA) (n 197) s 5(1).

210 See Independent Commission Against Corruption South Australia, *An Examination of the Changes Effected by Recent Amendments to the Independent Commission Against Corruption Act 2012: A Report Pursuant to Section 42 Prepared by the Independent Commission Against Corruption* (Report, November 2021) 5 ('*Examination of the Recent Amendments to the ICAC Act Report*'); Lian (n 194).

211 *Examination of the Recent Amendments to the ICAC Act Report* (n 210) 7.

212 *SA ICAC Act* (n 197) s 24(1).

213 *Examination of the Recent Amendments to the ICAC Act Report* (n 210) 6.

that no criminal, disciplinary, or penalty proceedings will result from it.[214] The Commission's ability to publish a report to Parliament on its investigations and operations is now limited only to circumstances where that report does not contain 'any findings or suggestions of criminal or civil liability'.[215] This means that the Commission cannot publicise any findings of corrupt conduct, reducing its ability to achieve its deterrence, corruption prevention, and educative functions.

These far-ranging restrictions in jurisdiction and powers[216] have resulted in the SA ICAC becoming by far the weakest anti-corruption commission in the Australian federation. The Commissioner branded the changes as 'regressive', lamenting that her jurisdiction was now 'decimated'.[217] While there were clear procedural deficiencies in previous investigations, the evisceration of the Commission's jurisdiction goes far beyond any concerns raised by the controversies. The SA Commissioner lambasted the changes, stating that they 'limit the Commission's jurisdiction, curtail its independence and reduce its ability to effectively identify, deal with and prevent corruption in public administration'.[218] Thus, the SA ICAC has been comprehensively weakened and hobbled in its functions.

IV EVALUATION AND ANALYSIS

As we noted above, the anti-corruption commission does not sit naturally within the traditional tripartite division of judicial, legislative, and executive powers. However, as Mark Tushnet points out, the reason independent democracy-supporting institutions such as anti-corruption commissions are needed 'is that the traditional institutions – legislatures and executives specifically, but to some degree courts as well – have incentives or handicaps that skew them away from performing certain democracy-supporting tasks well'.[219] Legislatures are too political, courts are too bound by legal doctrine, and while the police may be very well-suited to investigating corruption, they may equally, as the foregoing discussion has all too amply illustrated, be responsible for fostering it or covering it up. Consequently, the anti-corruption commission has become accepted as part of the so-called 'fourth arm' of government, its role being to help protect constitutional democracy,

214 Ibid 8; *SA ICAC Act* (n 197) s 25.

215 *SA ICAC Act* (n 197) ss 25(5)(b), 42(1a)(b).

216 Additional restrictions include the Commissioner being barred from referring matters to the Director of Public Prosecutions ('DPP'), excluding the operation of the *SA ICAC Act* (n 197) from matters where parliamentary privilege applies: at ss 6, 7(1). The ban on the SA ICAC referring matters to the DPP abrogates the decision in *Bell v The Queen* (2020) 286 A Crim R 501, 530 [145], 531 [152]–[153] (Kourakis CJ, Peek and Blue JJ).

217 '"Extraordinary" Bill to Reduce Powers of SA's Anti-corruption Commissioner Passes Parliament', *ABC News* (online, 23 September 2021) <https://www.abc.net.au/news/2021-09-23/sa-icac-bill-passes-parliament/100487668>; Ann Vanstone, 'ICAC's Ability to Hold Politicians to Account Is under Threat', *InDaily* (online, 23 September 2021) <https://indaily.com.au/opinion/2021/09/23/icacs-ability-to-hold-politicians-to-account-is-under-threat/>.

218 *Examination of the Recent Amendments to the ICAC Act Report* (n 210) 5.

219 Tushnet (n 1) 442.

or the proper functioning of government itself.[220] However, the creation of a new body always raises a new tension – in Tushnet's terms, the problem of how to introduce 'required expertise without introducing a new but equally troublesome set of skewed incentives'.[221] In other words, the anti-corruption commission may itself become part of the problem.

In a 2017 article, Grant Hoole and Gabrielle Appleby proposed an approach to the design of a federal anti-corruption commission drawn from legal process theory; that is, a conception of 'law in facilitative terms – as the "doing of something" – and of legal institutions as official embodiment of collective goals'.[222] The approach is designed to provide, or at least frame answers to, basic questions about the nature of the impropriety these commissions should be empowered to investigate, the powers they require, and how these powers should be balanced against their possibly deleterious effects on individual rights.[223] According to the theory, those responsible for the operation of legal institutions – lawmakers and judges, in particular – possess the power of 'reasoned elaboration'.[224] This is the duty of giving meaning to directive arrangements 'in terms that align with institutional purpose and honour systemic coherence'.[225] The notion of systemic coherence implies that anti-corruption commissions, in common with other institutions of government, must be both designed and operated with integrity of purpose that is coherently and harmoniously with the set of institutions within which it plays a role.[226]

The conception of integrity of purpose reflects the metaphor of a bird's nest used in an influential 2005 report by the National Integrity Systems Analysis,[227] or the notion that 'integrity is achieved by multiple interlocking measures'.[228] It also reflects the notion of the so-called 'integrity branch' of government enunciated by James Spigelman, particularly the idea that an institution with the power to hold others to account must itself be accountable[229] – or, more simply, that all power must be constrained. This is also consistent with the values of procedural justice, human rights, and restorative justice articulated in a recent article by Tim Prenzler and Janet Ransley, designed to prevent 'grey' corruption and facilitate a 'pervasive

220 Ibid 440–2.
221 Ibid 442.
222 Hoole and Appleby (n 6) 400.
223 Ibid 398–9.
224 Ibid 403–5.
225 Ibid 404.
226 Ibid 406.
227 The metaphor of the bird's nest is enunciated in Charles Sampford, Rodney Smith and A J Brown, 'From Greek Temple to Bird's Nest: Towards a Theory of Coherence and Mutual Accountability for National Integrity Systems' (2005) 64(2) *Australian Journal of Public Administration* 96 <https://doi.org/10.1111/j.1467-8500.2005.00445.x>. See also A J Brown et al, *Chaos or Coherence? Strengths, Opportunities and Challenges for Australia's Integrity Systems* (Final Report, 9 December 2005) <https://apo.org.au/sites/default/files/resource-files/2006-07/apo-nid3056.pdf>, cited in ibid 408.
228 Hoole and Appleby (n 6) 408.
229 See, eg, J J Spigelman, 'The Integrity Branch of Government' (2004) 78 *Australian Law Journal* 724; J J Spigelman, 'The Significance of the Integrity System' (2008) 4(2) *Original Law Review* 39; James Spigelman, 'Institutional Integrity and Public Law: An Address to the Judges of Hong Kong' (2014) 44(3) *Hong Kong Law Journal* 779.

culture of integrity in government'.[230] This approach provides a coherent intellectual and theoretical framework for the design of an anti-corruption commission at a high level, although there is no definitive framework that specifies the granular detail for institutional design. Ideally, the design of such a body will strike a balance between the values of independence and accountability, and be both effective in its pursuit of corruption while not infringing on individual rights, thereby undermining the value of integrity in government it was created to preserve.

However, as our discussion of the evolution of Australian anti-corruption commissions has shown, it is at best unclear whether the actual development of these bodies reflects the working out of these values in practice. Perhaps this is because, as Tushnet argues in the context of his brief case study of the operation of two anti-corruption commissions in South Africa and Brazil, 'the details of design seem to have little relationship to the success or failure of those agencies'.[231] While at a very general level the design of an anti-corruption agency 'requires striking a balance between independence and accountability', Tushnet points out that this notion is of little practical help given the deeply political nature of anti-corruption investigations, particularly where they involve high-level officials.[232]

Even within a legal framework, he asserts, the concepts of independence and accountability are not helpful in giving 'a reasoned explanation for why marginal changes in design details balance the competing concerns either appropriately or inappropriately'.[233] He goes so far as to conclude that '[o]ne important finding in studies of anti-corruption efforts is that institutional design is largely irrelevant';[234] in general, the product of the fact that 'anti-corruption agencies are not merely technical or professional, but are deeply implicated in national politics'.[235]

Our survey of the evolution and development of anti-corruption commissions in Australia has borne out this observation. As we have shown, anti-corruption commissions conduct investigations that 'air the dirty laundry' and expose the wrongdoings of public officials. Consequently, they are often met with deep hostility by government. There is therefore a tension between the interests of government and the robust design of – and subsequent amendment to – the framework within which anti-corruption commissions work. This mirrors the issues that arise from other oversight bodies, such as the Ombudsman and Auditor-General, who may face opprobrium from government due to their scrutiny of government maladministration.

So, what lessons can then be learned from our analysis of the history and evolution of anti-corruption commissions? As we have seen in Part II, the legislative frameworks for anti-corruption commissions have waxed and waned over time. Anti-corruption commissions are commonly established based on electoral

230 Prenzler and Ransley (n 4) 10.
231 Tushnet (n 1) 444.
232 Ibid 447–8.
233 Ibid 448.
234 He considers that sustained political commitment by national leaders is more important, as shown in Singapore and Hong Kong: ibid 448.
235 Ibid 454.

promises, sometimes following scandals that have erupted in government. Indeed, the integrity platform was a key issue run by the Labor Party in the last federal election campaign, which led to the recent establishment of the federal NACC.[236] Further, invariably all significant increases of the jurisdiction and powers of anti-corruption commissions have been attributable to election commitments, rather than individual corruption scandals or the commissions' operational performance.

Following their establishment, anti-corruption commissions are vulnerable to having their jurisdiction and powers circumscribed by hostile governments given the investigations of anti-corruption commissions over their conduct. In addition, if anti-corruption commissions make significant operational blunders, such as in SA, where a lack of timeliness by the SA ICAC contributed to the suicide of a person subject to investigation, this may result in their jurisdiction and powers being reviewed and reduced.

Exceptionally, as the first anti-corruption commission in Australia, the NSW ICAC has developed a resilience to maintaining its broad jurisdiction and powers. A path dependency has developed where the political narrative was for an anti-corruption body that should not be weakened. For instance, Commissioner Moss gave evidence to the parliamentary committee reviewing the NSW ICAC that:

> As Members of Parliament reviewing this Act you are faced with complex issues made all the more difficult because the ICAC Act covers Members of Parliament. Regardless of how sensible suggested alternatives may be, they will inevitably be accompanied by criticism that they weaken the anti corruption effort. This makes change difficult and demands a clear and compelling case for any proposed change … In all of these issues we are, in many senses, captives of our history. If you were to set out today to establish a new anti corruption commission, having the benefit of the lessons of our experience you may well define our terms and jurisdiction very differently. However, with an organisation that has been in operation for 12 years, it is very hard to make changes in these areas without looking like you are weakening the Commission's jurisdiction and its ability to fight corruption.[237]

The remarkable resilience of the NSW ICAC despite its overstep in *Cunneen* stands in stark contrast to the current decimation of the jurisdiction of SA ICAC, and the previous reduction of jurisdictions by hostile governments in Queensland and WA. The SA ICAC is emblematic of the extreme vulnerability of anti-corruption commissions to having their powers dramatically curtailed, left without jurisdiction to conduct own motion investigations or to consider criminal conduct, amongst other significant changes.

Beyond issues of power and jurisdiction, anti-corruption commissions are vulnerable to having their budgets cut by hostile governments. For instance, the NSW ICAC had its budget severely cut following its explosive revelations of then Premier Gladys Berejiklian's 'close personal relationship' with former NSW MP Daryl Maguire, who was subject to a corruption investigation.[238]

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236 Brown, 'The Integrity Election' (n 7).

237 *NSW ICAC Stage II Report* (n 150) 3.

238 Michael McGowan, 'ICAC's Independence "Threatened" by NSW Funding Model', *The Guardian* (online, 20 October 2020) <https://www.theguardian.com/australia-news/2020/oct/20/icacs-independence-threatened-under-nsw-funding-model>.

The issues revealed in our survey of state and territory anti-corruption commissions can also be seen in the tensions inherent in the design of the new NACC. By and large, the design of the NACC does reflect the lessons learned from the history of anti-corruption commissions at the state and territory level, although no legislation can completely insulate from the political opportunism and manoeuvring of various governments.

The NACC's investigative threshold of 'serious or systemic' corrupt conduct[239] allows a broader scope of investigation than the previous Morrison Government's proposal, which required suspicion of corruption amounting to a criminal offence. The NACC also has a broad jurisdiction to investigate the actions of ministers, MPs, ministerial staff, staff of Commonwealth agencies and companies, government contractors, and those acting on behalf of the Commonwealth.[240] This breadth of jurisdiction is appropriate given the significant role of ministerial advisers in modern government,[241] as well as the prevalence of contracting out and outsourcing since the 1970s, which has been a factor in the NSW and Queensland reforms.[242]

The NACC is established as a multi-member commissioner model, with a Commissioner and up to three Deputy Commissioners.[243] The multi-commissioner model is advisable following the misstep by the single Commissioner in NSW ICAC in *Cunneen*.[244]

In terms of oversight mechanisms, the NACC is overseen by a parliamentary joint committee with members from government, the opposition, and the cross-bench.[245] This bipartisan committee approves commissioner appointments, which provides some protection against partisan appointments. Although this legislation is robust, an opportunistic government with a parliamentary majority in both houses will still be able to sidestep legislative appointments protections, such as in WA, where the government cheekily amended the legislation to directly appoint their chosen Commissioner.[246]

The parliamentary committee can also report on the sufficiency of the NACC's budget.[247] However, the budget is ultimately determined by Cabinet, and the NACC's budget can still be easily cut by a hostile federal government, as several State anti-corruption commissions have previously experienced.[248] Of course, the most egregious example of this is the Australian Information Commissioner, who was defunded to such an extent in 2014 that he was forced to shut down

239 *NACC Act* (n 9) s 55.
240 Ibid ss 10–14.
241 See generally Yee-Fui Ng, *Ministerial Advisers in Australia: The Modern Legal Context* (Federation Press, 2016).
242 Yee-Fui Ng, 'Institutional Adaptation and the Administrative State' (2021) 44(3) *Melbourne University Law Review* 889. See above Part II.
243 *NACC Act* (n 9) ss 16, 18.
244 See above Part II.
245 *NACC Act* (n 9) s 172.
246 See above Part II.
247 *NACC Act* (n 9) s 177(1)(g).
248 See, eg, McGowan (n 238).

his office and work from home.[249] Given the significant coercive powers of anti-corruption commissions and the media publicity that is generated by their public hearings, a salutary lesson for the NACC at its inception (and other anti-corruption commissions) is the need to be vigilant that their powers are exercised appropriately and that they strictly comply with the requirements of procedural fairness to those subject to their investigations, such as the timeliness of notices, and giving those adversely affected the opportunity to respond to adverse findings.

In short, the NACC has a solid legislative and design base. However, ultimately, based on the lessons of the past 35 years, the ebb and flow of jurisdiction and powers of anti-corruption commissions have been overwhelmingly due to political factors, rather than institutional, principled, or theoretical reasons. It is thus necessary to continue to monitor the evolution, effectiveness, and accountability of these bodies over time.

V CONCLUSION

It is difficult to resolve the perennial debate about the appropriate balance between the independence and accountability of anti-corruption commissions for their coercive powers. Although Australian anti-corruption commissions have similar missions of detecting and preventing corrupt conduct, and educating the community about corruption,[250] they have variegated thresholds of investigation and definitions of 'corrupt conduct' that have shifted over time.[251] The Australian anti-corruption commissioners themselves have generated proposed best practice principles for their own design,[252] but these do not address the granular issues of appropriate scope and powers. Multiple independent inquiries and reviews have come up with dramatically different formulations, with no consensus or agreement.[253] Indeed, there is no single perfect model or design. Nevertheless, it is clear that the depth of coercive powers of these bodies to compel witnesses, call public hearings that may smear reputations, and adversely name people in reports tabled in Parliament justifies robust oversight over their functions, operations, and performance. These exist in the form of specialist inspectorates over the anti-corruption commissions, specialist parliamentary committees, and judicial review of the commissions' decisions.

We are not seeking in this article to arrive at an exhaustive set of principles to delineate the jurisdiction of anti-corruption commissions. It is clear that debate will

249 Gabrielle Appleby, 'Horizontal Accountability: The Rights-Protective Promise and Fragility of Executive Integrity Institutions' (2017) 23(2) *Australian Journal of Human Rights* 168, 174 <https://doi.org/10.1080/1323238X.2017.1363372>.

250 *NACC Act* (n 9) s 3.

251 *Corrupt Conduct Issues Paper* (n 183).

252 Australian Commission for Law Enforcement Integrity et al, 'Nation's Integrity Chiefs Agree to Best Practice Principles for Australian Anti-corruption Commissions' (Media Release, 9 December 2022) <https://icac.nt.gov.au/__data/assets/pdf_file/0019/1178020/Media-release-2022-12-09,-Joint-communique-Best-practice-principles-for-Australian-Anti-corruption-Commissions.pdf>.

253 See, eg, McClintock (n 130). Cf *Review of the Crime and Misconduct Act* (n 178).

always occur about the appropriate scope, given the competing factors involved. On the one hand, anti-corruption commissions cannot be too weak, otherwise they will be unable to carry out their functions effectively. On the other, an overly powerful anti-corruption commission raises concerns of the sort raised in Singapore, that is, that an extra- or quasi-judicial body is operating as a kangaroo court, without the protections for defendants or suspects traditionally offered by the criminal process, and with the potential to smear innocent people or destroy lives. Independence must always be balanced with accountability.

Rather, the purpose of this article is to illustrate something of the ways these debates have played out in political practice. While the level of detail in the story is complex, it is possible to extrapolate some significant common factors – for example the significance of election promises to establish these commissions, or the power of 'path dependence' in certain situations, that is the continued existence of what has already been established; and, of course, the significance of individual corruption scandals and election campaigns in establishing, increasing, or occasionally decreasing the powers of anti-corruption commissions. We support Hoole and Appleby's argument outlined above: that anti-corruption commissions must always be designed with 'integrity of purpose'. However, this ideal is often not observed in practice. Debates about the legal issues of scope and powers of anti-corruption commissions belie the reality demonstrated in this article that the jurisdiction of these bodies tends to be constrained or expanded based on powerful political factors, rather than legal considerations. Just as much as the legal notion of 'integrity of purpose', these are important factors for those charged with the design of anti-corruption commissions to bear in mind.