

Which Watchdog?

Discussion paper

October 2021

Summary

With the recent commitment by Attorney-General Michaelia Cash to introduce the Government's proposed Commonwealth Integrity Commission (CIC) Bill into Parliament before the end of the year, as well as the reintroduction of Helen Haines' Australian Federal Integrity Commission Bill and the ALP's announcement of the National Anti-Corruption Commission it will enact if elected, a comparison of the various proposed models and their State-based counterparts is instructive.

Our analysis of State and Territory integrity commissions concludes that the strongest and most effective integrity commissions in New South Wales and Queensland share the following powers:

- The ability to investigate any conduct of any person that affects the impartial exercise of public administration. This allows investigation of those outside the public service who seek to unduly influence public decision making, and does not limit investigations to criminal conduct.
- The ability to begin investigations without satisfying a threshold of evidence, meaning that investigations are used to determine whether any misconduct has occurred (which is their appropriate function)
- The ability to commence own-motion investigations
- The ability to hold public hearings if in the public interest.
- The ability to make findings and report publicly

These powers feature in independent MP Helen Haines' Bill, Greens Senator Larissa Waters' Bill, and the model proposed by the ALP; in contrast, none of them is a feature of the Government's proposed CIC.

Comparative analysis

Table 1 sets out our comparison of the features of State and Territory integrity commissions, as well as the models proposed by the Federal Government, the ALP, independent MP Helen Haines and Greens Senator Larissa Waters.

Because the legislation involved is complex, a more detailed analysis can be found at Figure A.

Table 1: Comparison of State and Territory integrity commissions, Federal Government CIC Bill, Senator Larissa Waters' Bill, Helen Haines' Bill and ALP proposal

	NSW	QLD	Larissa Waters' Bill	Helen Haines' Bill	ALP proposal	NT	WA	ACT	TAS	VIC	SA**	Government's CIC Bill (public sector)
JURISDICTION												
Can investigate public sector	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Can investigate MPs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Can investigate third parties corruptly influencing public sector	✓	✓	✓	✓	✓	✓	x	✓	x	✓	✓	x
Can investigate any conduct affecting impartial decision making	✓	✓	✓	✓	✓	✓	x	✓	x	x	x	x
Can begin investigations without threshold of evidence	✓	✓	✓	✓	✓	x	✓	x	✓	x	✓	x
Can initiate investigations	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	x
REFERRALS AND COMPLAINTS												
Can receive complaints from any person	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x
Can receive complaints in any form, including anonymously	✓	✓	✓	✓	Unknown	✓	✓	✓	x	x	x	x

INVESTIGATIVE POWERS												
Can compel witnesses/the production of documents	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Can search public premises* without application to a judicial officer	✓	✓	✓	x	Unknown	✓	✓	✓	✓	x	✓	x
Warrant process provided for in respect of other searches	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Can use surveillance powers (with warrant)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
PROCEDURE												
Public hearings can be held (whether by default, or if in public interest)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	x
REPORTING												
Can make findings of fact (nb: not findings of guilt in respect of criminal or disciplinary offences)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x Unclear	x
Can report publicly	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x Unclear	x

* "Public premises" means premises occupied or used by public authority or officer in that capacity

** This analysis is based on the *Independent Commissioner Against Corruption Act 2012* (SA) as amended by the *Independent Commissioner Against Corruption (CPIPC Recommendations) Amendment Bill 2021* (SA), even though as at 4 October 2021 that Bill was awaiting assent.

The Government's proposed Commonwealth Integrity Commission

The public sector division of the Government's proposed Commonwealth Integrity Commission (**CIC**) would be the weakest integrity commission in the country.

It would not be able to investigate the 2021 Commuter Car Park Project pork-barrelling allegations, the 2020 Sports Grants scandal, the 2019 Crown Casino scandal, allegations of conflict of interest (such as the 2019 allegations involving Minister Angus Taylor's family business), or potential breaches of the Ministerial Code of Conduct (such as those alleged in 2019 to have been committed by Christopher Pyne and Julie Bishop).

Its weakness is a consequence of the following deficiencies of jurisdiction and power:

Jurisdiction

- Limited to investigating public office holders: for example, the CIC would not have been able to investigate Crown Casino staff or business people allegedly involved in the 2019 Crown Casino scandal
- Limited to investigating nominated criminal offences: potential breaches of the Ministerial Code of Conduct and conflict of interest allegations would not be investigated
- Threshold of evidence must be met before an investigation is commenced: specifically, there must be "reasonable grounds to suspect" that a listed offence has been committed. Roman Quaedvlieg's 2019 allegations regarding the involvement of MPs in the Crown Casino scandal would not have been sufficient to meet the threshold, nor would allegations that Christopher Pyne and Julie Bishop breached the Code of Conduct
- Own motion investigations, and public and whistleblower complaints are precluded.

Investigative powers

- No ability to hold public hearings – any investigation would be held behind closed doors without any public knowledge
- No ability to search public premises without a warrant issued by a judicial officer
- Inability to make findings
- Inability to report: public would not know outcome unless case was successfully prosecuted in court

Conclusion

Comparing the features of existing state integrity commissions with the models proposed by the Federal Government, the ALP and Helen Haines reveals that the Government's CIC would be the weakest and least effective integrity agency in the country.

It would be ineffective in investigating or exposing corruption in government and the public sector, and requires urgent amendment if it is to be fit-for-purpose.

About The Centre for Public Integrity

The Centre for Public Integrity is an independent think tank dedicated to preventing corruption, protecting the integrity of our accountability institutions, and eliminating undue influence of money in politics in Australia. Board members of the Centre are the

Hon Tony Fitzgerald AC QC, the Hon Stephen Charles AO QC, the Hon Anthony Whealy QC, Professor George Williams AO, Professor Joo Cheong Tham and Geoffrey Watson SC. More information at www.publicintegrity.org.au.