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Current Issues Brief

Independent Broad-based Anti-corruption Commission Bill 2011

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A discussion of issues relevant to the Independent Broad-based Anti-corruption Commission Bill 2011. The paper includes background information on the definition, effects and control of corruption, as well as the history of Victoria's integrity system. The paper also includes an overview of the main provisions of the Bill, and an overview of the history and composition of anti-corruption commissions in other Australian jurisdictions.

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Introduction

The Victorian Government introduced the Independent Broad-based Anti-corruption Commission Bill 2011 ('the Bill') on 26 October 2011. The purpose of the Bill is to create a new Act to establish an anti-corruption commission for Victoria, called the Independent Broad-based Anti-corruption Commission (IBAC). The Bill also amends the *Parliamentary Committees Act 2003* to constitute a Joint House Committee of the Parliament of Victoria ('the IBAC Committee') to oversee the IBAC.

The Victorian Government has stated that the Bill is the first stage of the establishment of the IBAC, and that it provides for the appointment of the Commissioner and for the educative and preventative functions of the IBAC. The Government has further stated that a second stage of legislation, currently under preparation, will provide the IBAC with its investigative powers.

This Current Issues Brief provides an overview of the Minister's second reading speech for the Bill and then provides background information on the definition, effects and control of corruption, Victoria's current integrity system, and the history of Victoria's integrity system. The Current Issues Brief then provides an overview of the main provisions of the Bill and concludes with a discussion of the history and composition of anti-corruption commissions in other Australian jurisdictions.

1. Second Reading Speech

The Minister responsible for the establishment of an anti-corruption commission,[1] the Hon. Andrew McIntosh, gave the second reading speech for the Independent Broad-based Anti-corruption Bill on 27 October 2011. Mr McIntosh began his speech by saying that the Bill implements a key election commitment of the Coalition Government to establish Victoria's first anti-corruption commission and that it is 'historic legislation' for the state.[2]

Mr McIntosh said that the Bill is the first stage of the establishment of the IBAC. He said that the main aspects of the Bill include enabling the appointment of the IBAC Commissioner. He said that the Bill establishes the IBAC Commissioner as an independent office-holder of the Parliament, and that the Commissioner must be – or have been – a judge, or a person who is eligible for appointment as a judge. The Commissioner is to be appointed by the Governor in Council for a non-renewable term not exceeding five years, to help ensure the independence of the Commissioner.[3]

Mr McIntosh said that as a body led by an independent officer of the Parliament, the IBAC will be able to report to the Parliament directly, and must report at least annually on its functions. The IBAC will also be empowered to table special reports in Parliament, and make recommendations on how to better prevent corruption.[4]

Mr McIntosh said that the Bill also provides the IBAC with educative functions for the purpose of preventing public sector corruption. He said that 'the bill specifically allows IBAC to proactively work with public sector agencies to identify corruption risks and to assist agencies to improve their systems and processes in order to prevent corruption occurring'.[5]

[1] The 'Minister responsible for the establishment of an anti-corruption commission' is the Minister's formal title.
[2] Victoria, Legislative Assembly (2011) *Debates*, Book 17, 27 October, p. 4974.
[3] ibid., pp. 4974-4975.
[4] ibid., p. 4975.
[5] ibid., pp. 4974-4975.

Mr McIntosh said that another main aspect of the Bill is 'the establishment of a joint house committee – the IBAC Parliamentary Committee – to oversee IBAC'.[6] The role of the Committee will be to monitor and review the IBAC's exercise of its functions, examine reports made by IBAC, and report to both houses of Parliament.[7]

Mr McIntosh said that further legislation, currently being prepared, will vest the IBAC with investigative functions, powers and safeguards.[8] He said that the further legislation will include: details of the IBAC's jurisdiction; own-motion powers and receipt of complaints and referrals; general investigation powers, including a range of coercive powers; and provisions dealing with the conduct of examinations.[9]

He also noted that at the same time as the introduction of this Bill – as the first stage in establishing the IBAC – the government has also introduced legislation to establish the Victorian Inspectorate and legislation to establish the Office of the Public Interest Monitor. He said that the Victorian Inspectorate will oversee the IBAC[10], and the Public Interest Monitor will provide checks and balances on applications for the use of covert investigative and coercive powers.[11]

He concluded his speech by stating that: 'The government is committed to ensuring a cohesive and comprehensive integrity and anti-corruption system for Victoria. The Independent Broad-based Anti-corruption Commission Bill 2011 is the centrepiece of these historic reforms'.[12]

[6] ibid., p. 4975.
[7] ibid.
[8] ibid.
[9] ibid. Mr McIntosh also said that further legislation will include additional powers for the Victorian Inspectorate to reflect IBAC's expanded powers and functions.
[10] According to the Media Release, which accompanied the introduction of the Bill, the IBAC Committee will exercise supervisory powers over the Victorian Inspectorate. See T. Baillieu & A. McIntosh (2011) *Coalition Delivers on Next Stage of Integrity Reforms*, Media Release, 27 October, viewed 28 October 2011, <http://www.premier.vic.gov.au/media-centre/media-releases/2344-coalition-delivers-on-next-stage-of-integrity-reforms.html>.
[11] Victoria, Legislative Assembly (2011) op. cit., p. 4974.
[12] ibid., p. 4976.

2. Background

2.1 The Definition, Effects and Control of Corruption

It is widely acknowledged that the meaning of the term 'corruption' is difficult to state with precision.[13] Corruption in the public sector is, however, generally understood to entail the abuse of entrusted power for personal or political gain.[14] It is conduct that violates the public trust placed in those in public office to operate in the public interest. When decisions are made for private interests rather than the public interest, public funds can be misused and the award of contracts and appointments can deviate from merit-based processes. Corruption can also enable organised crime to flourish.[15] Additionally, as retired Supreme Court judge the Hon. Tim Smith QC writes: 'Corruption damages the reputation of all in government, including those who are not corrupt. It also damages the democratic system by fuelling cynicism and causes members of the community to disengage from the political process'.[16]

Transparency International, a leading anti-corruption advocacy organisation, produces an annual Corruption Perceptions Index which measures the perceived levels of public sector corruption in 178 countries and ranks them from 'highly clean' to 'highly corrupt'.[17] Australia is a relatively 'clean' country by international standards and ranked equal eighth with Switzerland in the 2010 Corruption Perceptions Index. To provide some comparison, Denmark, New Zealand and Singapore are ranked equal first and Somalia is ranked last in the 2010 index.[18]

Experts in the field, however, argue that despite Australia's high ranking on the Corruption Perceptions Index, corruption remains a serious issue in Australia. Barry Hindess points out that the Corruption Perceptions Index reflects the perceived impact of corruption on private business and cannot be read as a measure of the impact of political corruption on other areas.[19] Marian Sawer et. al write that:

> While Australia's performance by world standards has been relatively good, the record is far from unblemished… Australians who have been imprisoned over the past two decades for offences relating to corrupt conduct include two former Premiers of Western Australia and former Ministers of the crown in Queensland and New South Wales. In addition, a number of members of federal Parliament have been the subject of investigations and successful prosecutions for corrupt practices... Another well-publicised and recurring form of corruption involves Australian police services… Local government in Australia is also vulnerable to corruption over issues such as planning permission and licensing.[20]

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[13] For further explanation see B. Hindess (2004) *Corruption and Democracy in Australia*, Report No. 3, Canberra, Democratic Audit of Australia, pp. 1-36, viewed 4 November 2011, <http://democraticaudit.org.au/?page_id=21>; R. Douglas (2009) *Douglas and Jones's Administrative Law*, Sixth Edition, Sydney, Federation Press, p. 175; M. Sawer, N. Aborjorensen & P. Larkin (2009) *Australia: The State of Democracy,* Sydney, Federation Press, p. 184.

[14] Sawer et. al (2009) op. cit., p. 184; T. Smith (2010) *Corruption: The Abuse of Entrusted Power in Australia*, Melbourne, The Australian Collaboration, p. 10, viewed 4 November 2011, <http://www.australiancollaboration.com.au/booksreports/index.html>.

[15] Smith (2010) op. cit., p.12.

[16] ibid.

[17] Transparency International states that the Corruption Perceptions Index is an aggregate indicator that ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. It is a composite index drawing on corruption-related data by a variety of independent and reputable institutions. For further explanation of the methodology used to compile the index see: Transparency International (2010) 'Corruption Perceptions Index: Long Methodological Brief', Berlin, T.I., viewed 21 January 2011, <http://www.transparency.org/policy_research/surveys_indices/cpi/2010/in_detail#4>.

[18] Transparency International (2010) *Corruption Perceptions Index 2010*, Berlin, T.I., viewed 21 January 2011, <http://www.transparency.org/policy_research/surveys_indices/cpi/2010>.

[19] Hindess (2004) op. cit., p. 20.

[20] Sawer et. al (2009) op. cit., pp. 185-186.

It is also important to note the difficulty in assessing with any precision the actual existence and extent of corruption because of its covert nature. As Smith explains, the consequence of the hidden nature of corruption is that it is not possible to conduct empirical studies that provide a comparison and measure of the nature and extent of corruption in Australia at any given time.[21] He adds that the 'absence of such evidence, however, does not mean there is no corruption problem. There is a problem, and what it presents to each jurisdiction is a risk management challenge'.[22]

Australian federal, state and territory governments have established accountability measures and independent 'watchdog' agencies designed to ensure individual and institutional integrity in the public sector. These 'integrity systems' include Auditors-General (introduced shortly after the establishment of each jurisdiction) and from the 1970s, Ombudsmen, the registration of interests of Members of Parliament, legislation pertaining to freedom of information, whistleblower protection provisions, police oversight bodies, and in some states, the creation of independent standing anti-corruption commissions.[23]

Australia's current anti-corruption commissions consist of the Independent Commission Against Corruption (ICAC) in New South Wales, the Crime and Misconduct Commission (CMC) in Queensland, the Corruption and Crime Commission (CCC) in Western Australia, and most recently the Integrity Commission in Tasmania. Notably, there is significant variation across the institutional structures and powers comprising the various integrity systems.[24]

The formation of Australia's integrity systems has also been accompanied by debate regarding the constitution of a best practice integrity model. A key focus of the debate concerns whether public sector integrity is best ensured through an overarching 'one stop shop' anti-corruption commission or through a more multi-layered integrity system. As Brown and Head note, 'there are arguments both for consolidation and for pluralist dispersion of accountability mechanisms/bodies'.[25] The debate also centres on the efficiency of existing integrity measures, the cost of anti-corruption commissions, appropriate oversight arrangements and the extent of investigatory powers.[26]

Notably, the anti-corruption commissions of New South Wales, Queensland, Western Australia and Tasmania have coercive investigatory powers similar to those of a royal commission. The coercive powers of the anti-corruption commissions are intended to facilitate information gathering for robust scrutiny of matters of public importance.[27] Critics, however, argue that the use of these coercive powers can abrogate civil liberties.[28] As stated earlier in this paper, the Victorian Government has said that further legislation will vest the IBAC with its investigatory powers.

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[21] Smith (2010) op. cit. p. 22.
[22] ibid.
[23] P. Hall (2004) *Investigating Corruption and Misconduct in Public Office: Commissions of Inquiry – Powers and Procedures*, Sydney, Lawbook, pp. 1-2. Note: this is not an exhaustive list of integrity bodies in each Australian jurisdiction.
[24] A discussion of Victoria's current integrity system is provided below and a discussion of the integrity systems in other Australian jurisdictions is provided in the concluding section of this paper.
[25] A.J. Brown & B. Head (2005) 'Institutional Capacity and Choice in Australia's Integrity Systems', *Australian Journal of Public Administration*, vol. 64, iss. 2, p. 85.
[26] For further information see T. Prenzler & N. Faulkner (2010) 'Towards a Model Public Sector Integrity Commission', *Australian Journal of Public Administration*, vol. 69, iss. 3, pp. 255-259.
[27] Law Institute Victoria (2010) *Submission to the Integrity and Anti-corruption System Review*, LIV, East Melbourne, p. 8, viewed 7 November 2011, <http://www.liv.asn.au/Membership/Practice-Sections/Administrative-Law---Human-Rights/Submissions/Integrity-and-Anti-Corruption-System-Review.aspx?rep=1&glist=0&sdiag=0&h2=1&h1=0>.
[28] See Liberty Victoria (2010) *Position Paper on the Proposed Victorian Integrity and Anti-Corruption Commission*, 24 September, LV, Melbourne, viewed 7 November 2011, <http://www.libertyvictoria.org/node/31>.

2.2 Victoria's Current Integrity System

At present, Victoria's integrity system consists of a range of investigative bodies and watchdog agencies but does not include an overarching anti-corruption commission. The current system comprises:

- Ombudsman Victoria – investigates administrative actions taken by Government departments, public statutory bodies and staff on municipal councils and promotes compliance by state entities with the *Whistleblowers Protection Act 2001*, *Freedom of Information Act 1982* and the Victorian *Charter of Human Rights and Responsibilities Act 2006*;

- Victorian Auditor-General's Office – examines the management of resources within the public sector on behalf of Parliament and Victorian taxpayers;

- Public Sector Standards Commissioner – works with public sector employers to promote high standards of integrity and conduct in the Victorian public sector;

- Victoria Police – provides policing services to the Victorian community, including detecting, investigating and prosecuting crime;

- Office of Police Integrity – detects, investigates and prevents police corruption and serious misconduct, examines police practices and procedures to ensure they work effectively and monitors and reviews the way Victoria Police investigates or conciliates complaints;

- Special Investigations Monitor – oversees Victoria Police's and the Office of Police Integrity's use of coercive and covert powers;

- Local Government Investigations and Compliance Inspectorate – promotes accountability and transparency in Victoria's local government sector by investigating alleged breaches of the *Local Government Act 1989* and conducting spot audits of Councils' compliance with legislation.

- Register of Members' Interests – requires Members of the Parliament of Victoria to declare any personal interests that may conflict with their public duties.[29]

Under Victoria's present integrity system, the Ombudsman and the Office of Police Integrity, together with the Local Government Investigations and Compliance Inspectorate are primarily responsible for combating corruption in the public sector.[30]

2.3 History of Victoria's Integrity System

In 2004, debate over corruption in the Victorian Police force and possible links to organised crime, at the time of the Melbourne gangland killings, led to calls by sections of the media, some stakeholders and the Liberal opposition for the Bracks Labor Government to establish a royal commission into police corruption, in a similar manner to royal commissions undertaken in Queensland (1987-1989), New South Wales (1995-1997) and Western Australia (2002-2004). Calls were also made for the creation of an independent standing anti-corruption commission combined with, or accompanied by, a crime commission (similar to those bodies in the three aforementioned states).[31] The Bracks Government determined

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[29] Department of Premier and Cabinet (2010) *Parliamentary Integrity Commissioner: Discussion Paper*, Melbourne, DPC, Integrity and Anti-corruption Secretariat, pp. 8-9. This list is quoted verbatim from p. 8 except for the final point which is paraphrased and appeared on p. 9. Additionally, there are other specialised integrity bodies, such as the Health Services Commissioner and Privacy Commissioner, which exercise a range of specific watchdog and review functions, see E. Proust & P. Allen (2010) *Review of Victoria's Integrity and Anti-Corruption System,* Melbourne, Public Sector Standards Commissioner, State Services Authority, p. vii, viewed 7 November 2011, <http://www.ssa.vic.gov.au/products/view-products/review-of-victorias-integrity-and-anti-corruption-system.html>.

[30] Smith (2010) op. cit. p. 36.

[31] See Brown & Head (2005) op. cit., p. 86; Liberal Victoria (2004) *Anti-corruption Commission Needed Now*, Media Release, 24 May; Liberal Victoria (2004) *Another Bracks Band Aid not Enough to Solve Corruption Crisis*,

that it was not necessary to create new commissions and opted instead to significantly increase the resources and powers of the Ombudsman and establish the police oversight body, the Office of Police Integrity (OPI).[32]

The OPI was established in November 2004 by amendments to the *Police Regulation Act 1958*[33] with a mandate to detect, investigate and prevent corruption and serious misconduct by sworn members of Victoria Police. It was granted coercive powers and the ability to initiate investigations without having to receive a complaint or allegation. The OPI was headed by the Director, Police Integrity whose dual role was also that of the Ombudsman, and oversight of the OPI was charged to the newly created Special Investigations Monitor (SIM).[34] Later the offices of the Ombudsman and the Director, Police Integrity were separated under the *Police Regulation Amendment Act 2007*.[35] Then, the *Police Integrity Act 2008* established stand-alone legislation to govern the OPI.[36] Since its inception, the performance of the OPI has come under criticism from the (then) Liberal Opposition who continued to advocate for an independent anti-corruption commission.[37] The Victorian Greens argued that the OPI should be accompanied by a standing anti-corruption commission.[38]

In 2009, the Brumby Labor Government established the Local Government Investigations and Compliance Inspectorate (LGICI) following alleged corruption at Brimbank City Council. The LGICI is an administrative office of the Department of Planning and Community Development and is responsible for ensuring that Victoria's local government sector meets the required standards of accountability and transparency. The LGICI focuses on ensuring compliance with the *Local Government Act 1989*, by investigating alleged breaches of the Act and conducting audits.[39]

From 2004 to mid-2010, the Bracks and Brumby Labor Governments maintained their policy that these bodies were sufficient to combat corruption in Victoria's public sector.[40] The Liberal Party, the Nationals and the Victorian Greens held that the existing measures were

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Media Release, 29 June; C. Lewis (2004) 'Good Reasons for a Commission', *theage.com.au*, 21 June, viewed 3 November 2011, <http://www.theage.com.au/articles/2004/06/20/1087669842066.html>.

[32] See Brown & Head (2005) op. cit.; S. Bracks (2004) *Greater Powers and Resources for Ombudsman*, Media Release, 8 April, Office of the Premier; S. Bracks (2004) *Laws Give New Powers to Tackle Corruption and Organised Crime*, Media Release, 24 August, Office of the Premier.

[33] The amendments to the Police Regulation Act to create the OPI were enacted through the *Major Crime Legislation (Office of Police Integrity) Act 2004*.

[34] Office of Police Integrity (2009) *The Office of Police Integrity: The First Five Years, Nov 2004 – Nov 2009*, Melbourne, OPI, pp. 3-8,13, viewed 7 November 2011, <http://www.opi.vic.gov.au/index.php?i=21&m=11&t=1>.

[35] Victoria, Legislative Assembly (2007) *Debates*, Book 15, 1 November, p. 3804.

[36] Victoria Legislative Assembly (2008) *Debates*, Book 3, 13 March, p. 849.

[37] See for example Liberal Victoria (2005) *OPI Fails – Libs Renew Push for Royal Commission*, Media Release, 6 August; Liberal Victoria (2006) *Watchdog Slams Labor's OPI Process*, Media Release, 16 October; Liberal Victoria (2010) *Ashby Trial Debacle Brumby's Anti-Corruption Framework Doesn't Work*, Media Release, 2 February. The OPI has also been criticised by the Police Association, see for example: G. Davies (2010) 'New Broad-based Anti-corruption Body a Must', *Police Association Journal*, vol. 76, iss. 3, pp. 6-7, 9.

[38] Victoria, Legislative Council (2008) *Debates*, Book 6, 8 May, pp. 1602-03.

[39] Local Government Investigations and Compliance Inspectorate (2011) 'About the Inspectorate', Melbourne, LGICI website, viewed 27 January 2011, <http://www.dpcd.vic.gov.au/localgovernment/about/inspectorate>.

[40] See Bracks (2004) *Laws Give New Powers to Tackle Corruption and Organised Crime,* op cit.; Victoria, Legislative Assembly (2008) *Debates*, Book 10, 31 July, p. 2868; AAP (2010) 'No Royal Commission into Williams Killing: Brumby', *theage.com.au*, 21 April, viewed 7 November 2011, <http://www.theage.com.au/national/no-royal-commission-into-williams-killing-brumby-20100421-su1u.html>; Stateline (2010) 'Critics Divided over Plans for New Anti-Corruption Body', program transcript, 4 June, ABC, J. Cafagna interviews E. Proust, C. Lewis, P. Faris & T. Percy, Melbourne, viewed 17 January 2011, <http://www.abc.net.au/news/video/2010/06/04/2918928.htm>

not sufficient to combat corruption and supported the establishment of an anti-corruption commission.[41]

The Proust Review

In November 2009, Mr Brumby announced that there would be a review of Victoria's integrity system, stating that 'As part of our commitment to an open, honest and accountable government, our systems are from time to time reviewed and refined to ensure that they are performing effectively'.[42] Mr Brumby appointed Elizabeth Proust, as Special Commissioner, to work with the Public Sector Standards Commissioner, Peter Allen, to conduct a review of the existing system, including the Auditor-General, the LGICI, the OPI, the Ombudsman and Victoria Police.[43]

The *Review of Victoria's Integrity and Anti-Corruption System*, known as the 'Proust Review', was completed on 31 May 2010 and found that Victoria's existing integrity and anti-corruption bodies 'collectively hold broadly similar powers to those in other Australian states' and that they appear to be reasonably well resourced and efficient, but that there are ways the system could be improved.[44] The Proust Review found that the way Victoria's integrity infrastructure has evolved over time, with the creation of new integrity bodies (each undertaking valuable but disparate functions), has resulted in some fragmentation, overlap, and gaps in jurisdiction. It determined that the main gaps in the jurisdictions of Victoria's integrity bodies relates to scrutiny of the judiciary, Members of Parliament, and publicly funded employees of Members of Parliament.[45]

The Proust Review proposed a model to reform Victoria's integrity and anti-corruption system – known as the 'Proust integrity model' – which aimed to 'establish a more comprehensive, coherent and coordinated integrity system'.[46] The Proust model involved the addition of new bodies to Victoria's integrity system to cover the identified gaps in jurisdiction. Key recommendations under the Proust model included:

- Establishing a Victorian Integrity and Anti-Corruption Commission (VIACC) to investigate allegations of serious misconduct and corruption in the public sector and local government, including whistleblower complaints. The VIACC was to comprise of three independent officers of the Victorian Parliament: a new Public Sector Integrity Commissioner; the Director, Police Integrity; and the Chief Municipal Inspector;

- Establishing a Parliamentary Integrity Commissioner to receive and investigate complaints about the conduct of Members of Parliament and their publicly-funded employees;

- Establishing the new Public Sector Integrity Commissioner, who would also be the inaugural VIACC chair, and would be responsible for gathering intelligence and investigating serious misconduct and corruption in the Victorian public sector, including through the *Whistleblowers Protection Act 2001*;

- Extending the jurisdiction of the Director, Police Integrity, to include unsworn, as well as sworn, employees of Victoria Police;

[41] See for example: G. Barber (2007) *Greens Call for Victorian Anti-Corruption Body*, Media Release, 22 August; Victoria, Legislative Council (2008) op. cit.; Victoria, Legislative Council (2010) *Debates*, Book 2, 24 February, p. 417; P. Ryan (2007) *Crime Commission Needed to Tackle Corruption*, Media Release, October 9.
[42] J. Brumby (2009) *Public Sector Standards Commissioner to Undertake Integrity Review*, Media Release, 23 November.
[43] Proust (2010) op. cit., p. vii.
[44] ibid, p. viii.
[45] ibid., pp. viii – ix.
[46] ibid., p. xii.

- Ensuring the Chief Municipal Inspector has responsibility for gathering intelligence and investigating misconduct and corruption involving local government councillors and employees; and

- Modernising the *Ombudsman Act 1973* to provide further clarity around the Ombudsman's procedures and jurisdiction.[47]

On 2 June 2010, the Brumby Government announced it would adopt the Proust integrity model – including the establishment of VIACC – as 'the next step in greater accountability in Government'.[48] It further stated that under the Proust model, the VIACC and other integrity bodies would be part of an Integrity Coordination Board and that a new all-party Parliamentary Committee would oversee the VIACC.[49] The Brumby Government's response to the Proust Review also included the planned establishment of a Judicial Commission to investigate complaints against judicial officers.[50] The Brumby Government policy was to develop the required legislation throughout 2011 and have the Proust model in operation in 2012.[51]

Coalition Response to the Proust Review and Proposal of IBAC Model

The Coalition argued that Victoria's existing integrity system and the Proust integrity model were both flawed. The Coalition asserted that the Proust integrity model was unnecessarily complex and bureaucratic and did not have the necessary 'teeth' to properly scrutinise the public sector, especially Ministers, Members of Parliament and their staff.[52]

On 23 November 2010, the Coalition released a 38 page policy document outlining its proposal for an 'Independent Broad-based Anti-corruption Commission' or 'IBAC'. In the proposal the Coalition stated that rather than having a multi-layered, multi-agency integrity system, Victorians will be better assured of integrity in government with an independent, broad-based anti-corruption commission based on the model of those in other Australian jurisdictions:

> The Liberal Nationals Coalition's IBAC will be a one-stop shop like other independent anti-corruption commissions in Australia including the Crime and Misconduct Commission (Queensland) and the Corruption and Crime Commission (Western Australia), covering the entire public sector including local government, the judiciary and the police, members of Parliament, ministers and staff. Experts believe that independent anti-corruption commissions are the more effective for being broad-based.[53]

The Coalition stated that the IBAC would have the powers of a standing royal commission and would be able to conduct public hearings. It would be headed by a Commissioner on a non-renewable, five-year fixed term appointment and be overseen by a Parliamentary Joint Committee with an inspector appointed to audit operations.[54] The Coalition further stated that as the IBAC would have responsibility for investigating and preventing police corruption, the functions, powers and resources of the OPI would be taken over by the IBAC and the OPI

[47] J. Brumby (2010) *Government Adopts the Proust Integrity Model*, Media Release, 2 June.
[48] ibid.
[49] ibid.
[50] ibid., R. Hulls (2010) *New Commission to Receive Complaints Against Judges*, Media Release, 2 June.
[51] R. Hulls (2010) *Parliamentary Integrity Commissioner Draft Released*, Media Release, 16 October.
[52] Victorian Liberal Nationals Coalition (2010) *The Victorian Liberal Nationals Coalition Plan for Integrity of Government,* Melbourne, Liberal Victoria, pp. 2-3; Victorian Liberal Nationals Coalition (2010) *IBAC: An Independent Broad-based Anti-corruption Commission for Victoria*, Melbourne, Liberal Victoria, p. 3.
[53] ibid., p. 4.
[54] ibid., pp. 3 – 6.

would be abolished.[55] The Coalition's success in the November 2010 state election ensured that the IBAC model became Victorian state government policy.

In the media release, which accompanied the introduction of the Independent Broad-based Anti-corruption Commission Bill 2011, the Minister stated that 'The Government has provided $170 million in funding over four years for the establishment and operation of the IBAC'.[56]

[55] Victorian Liberal Nationals Coalition (2010) *The Victorian Liberal Nationals Coalition Plan for Integrity of Government, Melbourne*, op. cit., p. 3; Victorian Liberal National Coalition (2010) *IBAC: An Independent Broad-based Anti-corruption Commission for Victoria*, op. cit., p. 33.
[56] Baillieu & McIntosh (2011) op. cit.

3. Main Provisions of the Bill

This section of the Research Brief details the main provisions of the Independent Broad-based Anti-corruption Commission Bill 2011. For a description of the Bill in its entirety, readers are directed to the Explanatory Memorandum.

Part 1- Preliminary

Purpose
Clause 1 specifies the two purposes of the Bill. The main purpose is to establish the IBAC. The other purpose is to amend the *Parliamentary Committees Act 2003* to establish a Joint House Committee of the Victorian Parliament to oversee the IBAC.

Commencement
Clause 2 outlines that the Act will commence on a day or days to be proclaimed. If any provisions of the Act have not been proclaimed before 1 July 2012, they will commence on that day.

Definitions
Clause 3 specifies the definitions of key terms used in the Bill. These include:

- *'*IBAC*'* which is defined as 'the Independent Broad-based Anti-corruption Commission established under section 6';
- 'IBAC Committee' which is defined as 'the Joint House Committee established under section 5(fa) of the *Parliamentary Committees Act 2003'*;
- *'*IBAC Officer' which is defined as the Commissioner, a Deputy Commissioner, the Chief Executive Officer appointed under section 27, a member of staff employed under section 29.

Objects
Clause 4 outlines the objects of the Bill. These are to:

(a) assist in the prevention of corrupt conduct;
(b) facilitate the education of the public sector and the community about the detrimental effects of corrupt conduct on public administration and the ways in which corrupt conduct can be prevented;
(c) assist in improving the capacity of the public sector to prevent corrupt conduct;
(d) provide for the investigation and exposure of corrupt conduct.

Part 2 – The IBAC

Clause 6 establishes the IBAC and specifies that the IBAC does not represent the Crown.

Clause 7 provides that the IBAC is a body corporate.

Clause 8 states that 'The IBAC consists of one Commissioner appointed by the Governor in Council in accordance with section 14'.

Functions
Clause 9 details the functions of the IBAC:

(1) The IBAC has the functions conferred on the IBAC under this Act or any other Act.
(2) The IBAC has education and prevention functions for the purpose of achieving the objects of this Act.
(3) Without limiting the generality of subsection (2), the IBAC has the following functions—

(a) to examine systems and practices in the public sector and public sector legislation;
(b) to provide information to, consult with and make recommendations to, the public sector;
(c) to assist the public sector to increase capacity to prevent corrupt conduct by providing advice, training and education services;
(d) to provide information and education services to the community about the detrimental effects of corruption on public administration and ways in which to assist in preventing corrupt conduct;
(e) to publish information on ways to prevent corrupt conduct.

Powers
Clause 10 outlines the powers of the IBAC. According to this clause, 'The IBAC has power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to, the achievement of the objects of this Act and the performance of its duties and functions'.

IBAC Not Subject to Direction or Control
Clause 12 provides that the IBAC is not subject to direction or control of the Minister in the execution of its duties and functions or the exercise of its powers.

Independence of the IBAC Commissioner
Clause 13 provides for the independence of the Commissioner. It states that 'the Commissioner is an independent officer of the Parliament'. It also specifies that the Commissioner is not subject to the control or direction of the Minister with respect to the exercise of the Commissioner's powers, duties or functions.

Appointment of the Commissioner
Clause 14 establishes the process for the appointment of the Commissioner. Subject to clause 15 (which provides for the veto of a proposed Commissioner), the Commissioner is to be appointed by the Governor in Council on the recommendation of the Minister. In order to be eligible for appointment, the person:

(a) is or has been, or is qualified for appointment as, a judge of—
    (i) the High Court; or
    (ii) the Federal Court; or
    (iii) the Supreme Court of Victoria or another State or a Territory;
(b) is not a member of the Parliament of Victoria or of the Commonwealth or of another State or a Territory.

In addition, under subclause 14(3), if a person holds a judicial office immediately prior to being appointed to the role of Commissioner, the person must cease to hold their judicial office upon being appointed. The Explanatory Memorandum states that 'This subclause is intended to ensure that the Commissioner does not hold any position which would create an actual or perceived conflict of interest with his or her role as the Commissioner'.[57]

Veto of the Proposed Commissioner
Clause 15 provides for the veto of the proposed Commissioner. Subject to subclause 15(4), subclause 15(1) provides that the Minister must not make a recommendation under clause 14 unless:

(a) the Minister has submitted details of the proposed recommendation to the IBAC Committee; and
(b) either—

[57] Explanatory Memorandum, p. 4.

(i) within the time specified in subsection (2) the IBAC Committee has informed the Minister that it has decided not to veto the recommendation; or
(ii) the time specified in subsection (2) has elapsed and the IBAC Committee has not vetoed the recommendation.

Subclause 15(2) specifies that the IBAC Committee must make a decision within thirty days of the Minister submitting the details of the proposed Commissioner to the Committee.

Subclause 15(3) stipulates that the IBAC Committee may decide either to veto or not to veto the recommendation proposed by the Minister. The Committee must notify the Minister in writing of its decision within the period specified in subclause 15(2).

Subclause 15(4) indicates that subclauses 15(1) and 15(3) do not apply to the appointment of the first Commissioner. It specifies that the Minister may make a recommendation for the first Commissioner after the Premier has consulted about the proposed recommendation with the Leader of the Opposition. The EM clarifies that 'The requirement for consultation does not require the Premier to obtain the approval of the Leader of the Opposition'.[58]

Duties, Functions and Powers of the Commissioner
Clause 16 outlines the duties, functions and powers of the Commissioner. The Commissioner:

(a) constitutes the IBAC under section 8;
(b) is responsible for undertaking the strategic leadership of the IBAC for the purpose of achieving the objects of this Act;
(c) has the duties, functions and powers delegated to the Commissioner by the IBAC;
(d) has any other duties, functions and powers conferred on the Commissioner under this Act or any other Act.

Appointment of Deputy Commissioners
Subclause 17(1) specifies that the Governor in Council, on the recommendation of the Minister, may appoint one or more persons as Deputy Commissioners. The proposed Deputy Commissioners are people the Minister considers have the qualifications and experience required to enable the IBAC to achieve the objects of the Act and perform the IBAC's functions and duties.

According to subclause 17(2), the Minister must not recommend a person unless the person is an Australian lawyer within the meaning of the *Legal Profession Act 2004*. Subclause 17(3) states that prior to making a recommendation, the Minister must have the concurrence of the Commissioner.

Terms and Conditions of the Commissioner and Deputy Commissioner
Clause 18 outlines the terms and conditions of the appointments of the Commissioner and Deputy Commissioner. Subclause 18(1) specifies that a Commissioner or a Deputy Commissioner holds office 'for the period not exceeding 5 years as is specified in the instrument of appointment'. Subclause 18(2) provides that a Commissioner is not eligible to be re-appointed. In contrast, subclause 18(3) states that a Deputy Commissioner is eligible to be re-appointed.

Subclause 18(11) states that the Commissioner or a Deputy Commissioner must not undertake any business, community activity or employment outside the office of the Commissioner or Deputy Commissioner that may 'create an actual or perceived conflict of interest'. In addition, under subclause 18(13), the Commissioner or a Deputy Commissioner must not, without the approval of the Governor in Council: hold or apply for a licence or

[58] ibid., p. 5.

permit to undertake any profession, business or trade; or conduct any business, profession or trade; or accept any other employment.

Subclause 18(14) provides that the *Public Administration Act 2004* does not apply to the Commissioner or a Deputy Commissioner. The Explanatory Memorandum states that this subclause will assist the Commissioner and Deputy Commissioners to maintain their independence from the Executive.[59]

Vacancy and Resignation of the Commissioner
Clause 19 states that the Commissioner ceases to hold office if he or she:

(a) resigns by writing delivered to the Governor; or
(b) becomes an insolvent under administration; or
(c) is convicted, or found guilty, of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or
(d) nominates for election for the Parliament of Victoria or of the Commonwealth or of another State or a Territory; or
(e) is appointed to a judicial office; or
(f) becomes a represented person within the meaning of the *Guardianship and Administration Act 1986*.

In addition, the Commissioner ceases to hold office if he or she is removed under clause 20.

Suspension and Removal of the Commissioner
Clause 20 provides for the suspension and removal of the Commissioner. Subclause 20(1) stipulates that the Commissioner may be suspended by the Governor in Council on any of the following grounds: misconduct; neglect of duty; inability to perform the duties of the office; or any other ground on which the Governor in Council is satisfied that the Commissioner is unfit to hold office.

According to subclause 20(2), when a Commissioner has been suspended:

> The Minister must cause a full statement of the grounds of suspension to be presented to each House of the Parliament on or before the 7th sitting day of that House of the Parliament after the suspension.

Under subclause 20(3), the Governor in Council must remove the Commissioner from office if:

> … each House of the Parliament on or before the 7th sitting day of that House of the Parliament after the statement of the grounds of suspension is presented to it, declares by resolution that the Commissioner ought to be removed from office.

Subclause 20(4) specifies that unless each House of Parliament makes a declaration under subclause 20(3) within the specified time, the Governor in Council must remove the suspension and restore the Commissioner to office.

Subclause 20(5) provides that the Commissioner can only be removed from office in accordance with clause 20.

Vacancy and Resignation of Deputy Commissioner
Clause 21 outlines the circumstances in which a Deputy Commissioner may vacate or resign from office. The circumstances are the same as for the Commissioner under clause 19. A Deputy Commissioner may be removed from office under clause 22.

[59] ibid., p. 6.

Removal of the Deputy Commissioner
Clause 22 indicates that a Deputy Commissioner may be removed from office by the Governor in Council on any of the following grounds:

(a) misconduct;
(b) neglect of duty;
(c) inability to perform the duties of the office;
(d) any other ground on which the Governor in Council is satisfied that the Deputy Commissioner is unfit to hold office.

Declaration of Inability to Act
Clause 23 specifies that the Commissioner or a Deputy Commissioner may declare that they are unable to act in respect of a particular matter due to an actual or perceived conflict of interest.

Appointment of an Acting Commissioner or Deputy Commissioner
Subclause 24(1) states that the Governor in Council may, on the recommendation of the Minister, appoint a person to the role of Acting Commissioner or Acting Deputy Commissioner during:

(a) any vacancy in the office of the Commissioner or Deputy Commissioner; or
(b) any period when the person holding the office—
    (i) is absent from duty; or
    (ii) is for any other reason unable to perform the duties of the office.

Under subclause 24(2), the term of an acting appointment must not exceed six months. The Explanatory Memorandum states that the inclusion of this time limit will guard against acting appointments being used as a 'de facto appointment process for a Commissioner'.[60] However, under clause 24(4), if the acting appointee to the role of Commissioner is already a Deputy Commissioner, the acting appointment must not exceed a total of 12 months.

Subclause 24(5) specifies that a vacancy in the office of Commissioner must be filled in accordance with clause 14 within 12 months of the vacancy occurring. Subclause 24(6) stipulates that a person acting as the Commissioner or a Deputy Commissioner can be removed at any time by the Governor in Council.

Oath or Affirmation of Office
Clause 25 provides that prior to assuming the office of the Commissioner or Deputy Commissioner (or acting in either of these capacities), the appointee must have taken an oath or made an affirmation that he or she:

(a) will faithfully and impartially perform the duties and functions and exercise the powers of the office; and
(b) will not disclose, except as authorised or required by law, any information received in the performance of the duties and functions or the exercise of the powers of the office.

Chief Executive Officer
Subclause 27(1) provides that the IBAC must appoint a Chief Executive Officer of the IBAC. Under subclause 27(8), the Chief Executive Officer is the public service body Head of the IBAC for the purposes of section 16 of the Public Administration Act.[61]

[60] ibid., p. 8.
[61] Section 16 of the Public Administration Act refers to 'Persons with functions of public service body Head'.

Part 3 - Reports

Clause 34 provides for the matters to be included in the IBAC's annual report.

Clause 35 enables the IBAC to make special reports which are separate to the annual report.[62] Subclause 35(1) specifies that the IBAC may 'at any time cause a report to be transmitted to each House of the Parliament on any matter relating to the performance of its duties and functions'. Subclause 35(2) states that the clerk of each House of the Parliament must cause the report to be laid before the House on the day on which it is received or on the next sitting day.

According to subclause 35(3), if the IBAC proposes to submit a report to the Parliament on a non-sitting day, the IBAC must: give one business day's notice of the intention to the clerk of each House (cl 35(3)(a)); and give the report to the clerk of each House on the day indicated (cl 35(3)(b)); and publish the report on the IBAC internet website as soon as practicable after giving the report to the clerks (cl 35(3)(c)).

Subclause 35(5) provides that a report given to the clerks in accordance with subclause 35(3)(b) is taken to have been published by order, or under the authority, of the Houses of Parliament. Subclause 35(6) specifies that a report published by the IBAC on its website under subclause 35(3)(c) carries absolute Parliamentary privilege.

Part 4 - General

Division 1 - Regulations
Clause 36 provides the Governor in Council with the power to make regulations under the proposed Act.

Division 2 - Amendment of the Parliamentary Committees Act 2003
Clause 39 will amend section 5(f) of the Parliamentary Committees Act to include 'the Independent Broad-based Anti-corruption Commission Committee' in the list of Joint House Committees established under that Act.

Clause 40 will insert new section 12A into the Parliamentary Committees Act. This section will establish the functions of the IBAC Committee. These functions are:

(a) to monitor and review the performance of the duties and functions of the IBAC;
(b) to report to both Houses of the Parliament on any matter connected with the performance of the duties and functions of the IBAC that require the attention of the Parliament;
(c) to examine any reports made by the IBAC;
(d) to consider any proposed appointment of a Commissioner and to exercise a power of veto in accordance with the *Independent Broad-based Anti-corruption Commission Act 2011*;
(e) to carry out any other function conferred on the IBAC Committee by or under this Act or the *Independent Broad-based Anti-corruption Commission Act 2011*.

Division 3 - Miscellaneous
Clause 42 will amend the *Ombudsman Act 1973* to provide that the Ombudsman does not have authorisation to inquire into or investigate any administrative action taken by the IBAC.

Clause 43 will amend the Public Administration Act to provide that:

- the IBAC is a special body for the purposes of that Act;
- the Chief Executive Officer of the IBAC is a public service body Head for the purposes of that Act in relation to employees of the IBAC;

[62] Explanatory Memorandum, p. 11.

- the IBAC cannot be subject to a special inquiry under section 52 of that Act.[63]

The Explanatory Memorandum states that the effect of this clause is that IBAC Officers will not be subject to the usual requirements for public sector employees, including the requirement to adhere to Ministerial directions. In addition, designation as a special body and exemption from the special inquiry provisions will help to maintain the independence of the IBAC from the Executive.[64]

Clause 44 will amend the *Whistleblowers Protection Act 2001* to ensure that the IBAC is not subject to that Act.[65]

[63] ibid., p. 13.
[64] ibid.
[65] ibid., p. 14.

4. Other Jurisdictions

This final section of the Current Issues Brief provides an overview of anti-corruption commissions in other Australian jurisdictions. The states of New South Wales, Queensland, Western Australia and Tasmania have permanent independent anti-corruption commissions. South Australia, the Commonwealth and the Territories do not have anti-corruption commissions.[66] However, the new South Australian Premier, the Hon. Jay Weatherill, recently announced that an anti-corruption commission will be established in South Australia.[67]

As stated earlier in this paper, all Australian state, territory and Commonwealth jurisdictions have an auditor-general, an ombudsman, legislation pertaining to freedom of information, whistleblower or public interest disclosure legislation, and a register of Members' interests.[68] Additionally, the Australian Government is a signatory to the *United Nations Convention against Corruption (UNCAC)* which has involved the implementation of mandatory (as well as some non-mandatory) requirements prescribed by the Convention. The Commonwealth also has anti-corruption obligations under the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.[69]

This section will focus on the jurisdictions which have implemented anti-corruption commissions, including the establishment and organisational structure of each commission, as well as the oversight mechanisms, resourcing, and staffing levels of each commission. As the main aspects of the Bill relate to the appointment of the IBAC Commissioner and the IBAC's corruption prevention and education functions, the role of the commissioner and the corruption prevention and education functions of each commission will also be discussed. The organisational charts for each of the Australian anti-corruption commissions are provided in the appendices.

4.1 New South Wales

The Independent Commission Against Corruption (ICAC) was established in 1988 in response to growing community concern about the integrity of public administration in NSW, following the exposure of corruption within the executive, judiciary and senior levels of the police force.[70] Public sector scandals in 1980s NSW had included the imprisonment of a Chief Magistrate and a Minister, trials of senior officials, and an inquiry into corruption in the

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[66] Notably, in regard to the Commonwealth not having an anti-corruption commission, a Parliamentary joint committee inquiry was recently conducted into the *Law Enforcement Integrity Commissioner Act 2006*. The Law Enforcement Integrity Commission is responsible for preventing, detecting and investigating corruption in the Australian Crime Commission and the Australian Federal Police. One of the Committee's recommendations was that the Australian Government: '…conduct a review of the Commonwealth integrity system with particular examination of the merits of establishing a Commonwealth integrity commission with anti-corruption oversight of all Commonwealth public sector agencies'. The Commonwealth Government has not yet responded to the Committee's final report. Parliamentary Joint Inquiry on the Australian Commission for Law Enforcement Integrity (2011) *Inquiry Into the Operation of the Law Enforcement Integrity Commissioner Act 2006*, Canberra, The Committee, p. viii, viewed 4 November 2011, <http://www.aph.gov.au/senate/committee/aclei_ctte/integrity_com_act/report/index.htm>.

[67] M. Owen (2011) 'South Australia to Have its Own Corruption-Fighting Body, New Premier Jay Weatherill Decides', *theaustralian.com.au*, 24 October, viewed 2 November 2011, <http://www.theaustralian.com.au/national-affairs/state-politics/south-australia-to-have-its-own-corruption-fighting-body-new-premier-jay-weatherill-decides/story-e6frgczx-1226175279454>. Mr Weatherill announced that $32 million will be provided for the body over the next five years.

[68] Smith (2010) op. cit., pp. 31-32. Additionally, the Australian Commonwealth and state jurisdictions have registers of lobbyists and related codes of conduct.

[69] Commonwealth Attorney-General's Department (2009) 'Australia's International Anti-Corruption Obligations', Attorney-General's website, viewed 3 November 2011, <http://ag.gov.au/www/agd/agd.nsf/Page/Crimeprevention_Corruption_Australiasinternationalanti-corruptionobligations>.

[70] Independent Commission Against Corruption (2011) 'About the ICAC', Sydney, ICAC, viewed 1 February 2011, <http://www.icac.nsw.gov.au/about-the-icac/overview/history>.

NSW police force that led to the discharge of the Deputy Commissioner.[71] The Greiner Liberal Government was elected in 1988 on a platform which included the introduction of an anti-corruption body. The *Independent Commission Against Corruption Act 1988* ('the ICAC Act') was passed in July 1988 and the ICAC became operational in March 1989.[72] The ICAC's principal functions are summarised as follows:

- to investigate and expose corrupt conduct in the NSW public sector;
- to actively prevent corruption through advice and assistance; and
- to educate the NSW community and public sector about corruption and its effects.[73]

The jurisdiction of the ICAC includes all of the NSW public sector (including the judiciary, Members of Parliament, Ministers and local government) except for the police force. Initially the police force was included within the scope of the ICAC, however, a separate Police Integrity Commission (PIC)[74] was established in 1996 when the Wood Royal Commission found corruption in the NSW police force that the ICAC had not detected.[75] NSW also has a Crime Commission, established in 1985, which is separate from the ICAC.[76] The ICAC is overseen by the Inspector of the Independent Commission Against Corruption[77] and the Parliamentary Joint Committee on the Independent Commission Against Corruption.[78]

In the 2010-11 financial year, the ICAC had an operating cost of almost $21 million[79] and employed 117.1 full time equivalent staff.[80] The organisational structure of the ICAC is provided in Appendix 1.[81]

ICAC Commissioner

The role of the ICAC Commissioner is set out in sections 4 and 5 of the ICAC Act, which deal with the constitution of the Commission. These sections state that the Governor may appoint a Commissioner for the Commission and that the Commissioner has and may exercise the functions conferred or imposed on the position by the ICAC Act or any other Act.

Schedule 1 of the ICAC Act sets out further provisions relating to the Commissioner. Schedule 1 states that the office of the Commissioner is a full time office and that a person may hold the office for such a term or terms totalling not more than five years. It states that in order to be eligible to be appointed as Commissioner, or to act in that office, a person must be qualified to be appointed as a judge of the Supreme, Federal or High Court, or must be a former judge. A person is not eligible to be appointed as Commissioner if the person is the current holder of a judicial office, or is a Member of Parliament in New South Wales, another state or the Commonwealth.

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[71] Maor, M (2004) 'Feeling the Heat? Anticorruption Mechanisms in Comparative Perspective', *Governance: An International Journal of Policy Administration and Institutions*, vol. 17, iss. 1, p. 10.
[72] Independent Commission Against Corruption (2011) op. cit.
[73] ibid.
[74] See Police Integrity Commission (2011) 'About Us', Sydney, PIC, viewed 1 February 2011, <http://www.pic.nsw.gov.au/AboutUs.aspx>.
[75] Prenzler & Faulkner (2010) op. cit., p. 253.
[76] See New South Wales Crime Commission (2011) 'Home: Establishment', Sydney, New South Wales Crime Commission, viewed 1 February 2011, <http://www.crimecommission.nsw.gov.au/>.
[77] See Part 5a of the *Independent Commission Against Corruption Act 1988* (NSW).
[78] See Part 7 of the *Independent Commission Against Corruption Act 1988* (NSW).
[79] The precise operating cost of the ICAC in 2010-11 was $20,978,000. Independent Commission Against Corruption (2011) *Annual Report: 2010-2011*, Sydney, ICAC, p. 13, viewed 28 October 2011, <http://www.icac.nsw.gov.au/publications-and-resources/publications-about-the icac?option=com_pubsearch&view=search&task=doSearch&Itemid=4134#results>.
[80] ibid., p. 138.
[81] ibid., p. 132.

Section 104 of the ICAC Act specifies that the Commissioner may appoint, as members of staff, such persons as are required to enable the Commission to perform its functions. These staff may include a Director of Operations and a Director of Administration.

ICAC Corruption Prevention and Education Functions
The principal functions of the ICAC include educating and advising the NSW public sector about combating corruption and corruption prevention. These functions, as outlined in section 13(1), are carried out by the ICAC's Corruption Prevention Division. According to the ICAC's 2010-2011 annual report, the Corruption Prevention Division provides advice, education and guidance to public sector agencies, and educates public officials and the wider community about corruption and how to report it.[82]

In the 2010-11 financial year the Corruption Prevention Division had 20.8 full time equivalent staff and a budget of $2.6 million.[83] Over this period, the Division produced seven publications, conducted 89 training workshops and processed 97 telephone/email advice requests.[84]

4.2 Queensland

The Queensland Crime and Misconduct Commission was established by the *Crime and Misconduct Act 2001* and replaced the Criminal Justice Commission, Queensland's original anti-corruption commission that had been established in 1989 following the Fitzgerald Inquiry. The Fitzgerald Inquiry, the formal title of which was the 'Commission of Inquiry into Alleged Illegal Activities and Police Misconduct', ran from 1987 to 1989 and exposed 'police misconduct, organised crime and official impropriety' in the state of Queensland.[85] The findings resulted in numerous prosecutions which included the police commissioner and the National Party Premier Sir Joh Bjelke-Petersen. The police commissioner, as well as other senior police officers, and several former government Ministers were convicted of corruption and sentenced to prison terms.[86]

The Report of the Fitzgerald Inquiry recommended the establishment of a permanent, independent body to investigate corruption in the police force and other public sector agencies, and to undertake research and provide advice on integrity matters. The Report also recommended that the body be responsible for the investigation of organised and major crime, as well as witness protection, both of which had formerly been responsibilities of the Queensland Police Service.[87] In response to the Report's recommendations, the Ahern National Party Government introduced the *Criminal Justice Act 1989* which established the Criminal Justice Commission.[88]

From 1996-1998, the Borbidge National Party Government introduced a number of legislative measures which altered the structure, functions and oversight arrangements of the Criminal Justice Commission. These changes included the transfer of responsibility for organised and major crime to the newly created Queensland Crime Commission (established under the *Crime Commission Act 1997*). The Criminal Justice Commission was strongly opposed to

[82] ibid., p. 42.
[83] ibid.
[84] ibid.
[85] Douglas (2009) op. cit., p. 177.
[86] Crime and Misconduct Commission (2011) 'About CMC: The Fitzgerald Inquiry', Brisbane, CMC, viewed 2 February 2011, <http://www.cmc.qld.gov.au/asp/index.asp?pgid=10877>; Maor (2004) op. cit., p. 11.
[87] Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (1989) *Report of a Commission of Inquiry Pursuant to Orders in Council*, Brisbane, Government Printer, viewed 28 October 2011, pp. 369-388, <http://www.cmc.qld.gov.au/asp/index.asp?pgid=10918>.
[88] Hall (2004) op. cit., p. 264.

this separation of functions, as well as other changes, which it viewed as designed to undermine the Commission's ability to function.[89]

In 2001, the Beattie Labor Government introduced the *Crime and Misconduct Act 2001* which effectively merged the functions of the Criminal Justice Commission and the Queensland Crime Commission to create the Crime and Misconduct Commission (CMC).[90] The broad functions of the CMC are described as being threefold. Firstly, the CMC works to combat and prevent the incidence of major crime by working with the Queensland Police Service, and other law enforcement agencies, to investigate organised crime, paedophilia and other serious crimes.[91] Secondly, the CMC works to reduce 'official misconduct' and promote integrity in the public sector. Thirdly, the CMC is responsible for conducting the Queensland witness protection program.[92]

In the 2010-11 financial year, the CMC had an operating cost of around $50 million[93] and employed 324.75 full time equivalent staff.[94] The organisational structure of the CMC is depicted in Appendix 2.

CMC Commissioners

Queensland's CMC is headed by five commissioners, including a full-time commissioner, who is the Chairperson and Chief Executive Officer of the CMC, and four part-time commissioners, who are community representatives. They are referred to collectively as the Commission.[95] Section 251 of the Crime and Misconduct Act delineates the role of the Chairperson and states that he or she is responsible for the administration of the Commission and the proper performance of the Commission's functions. Section 224 of the Crime and Misconduct Act sets out the qualifications required for the appointment to the position of Chairperson. It states that a person is qualified if the person has served, or is qualified for appointment as judge of the Supreme, Federal, or High Court. The Chairperson is appointed by the Governor in Council for a term not longer than five years.[96]

CMC Corruption Prevention and Education Functions

Section 24 of the Crime and Misconduct Act outlines the prevention function of the CMC. Areas covered by this function include providing advice and training to the public sector to increase its capacity to prevent misconduct and providing information relevant to its prevention function to the general community.

In 2010/11, the CMC spent $27.6 million on achieving the strategic objective to 'promote a trustworthy public sector'. Among the range of activities performed under this objective, 27

[89] ibid., p. 265-266; Maor (2004) op. cit., pp. 18-20; Criminal Justice Commission (1998) 'A Message from the Chairperson' in *Annual Report 1997-98*, Brisbane, CJC, pp. iii-v, viewed 4 February 2011, <http://www.cmc.qld.gov.au/asp/index.asp?pgid=10816>. Also of relevance is the Borbidge Government's establishment in 1996 of the 'Commission of Inquiry into the Effectiveness of the Criminal Justice Commission', which was known as the 'Connolly-Ryan Inquiry'. The Connolly-Ryan Inquiry was terminated by the Queensland Supreme Court in August 1997 for apprehended bias. The Parliamentary Criminal Justice Committee asserted in 1998 that the 'Inquiry impacted substantially on the CJC during the time that it was operational, with significant resources of the CJC being diverted to meet the demand placed upon it'. See Parliamentary Criminal Justice Committee (1998) *Annual Report 1997/98*, Report No. 46, Brisbane, Legislative Assembly of Queensland, p. 2, viewed 4 February 2011, <http://www.parliament.qld.gov.au/view/committees/PCMC.asp?SubArea=reports>.

[90] Hall (2004) op. cit., p. 266.

[91] Crime and Misconduct Commission (2011) 'About CMC: How We Operate', Brisbane, CMC, viewed 2 February 2011, <http://www.cmc.qld.gov.au/asp/index.asp?pgid=10702>.

[92] ibid.

[93] Crime and Misconduct Commission (2011) *Annual Report 2010-11*, Brisbane, CMC, p. 10, viewed 28 October 2011, <http://www.cmc.qld.gov.au/asp/index.asp?pgid=10935>. The exact operating cost of the CMC in 2010-11 was $49,798,000.

[94] ibid., p. 52.

[95] Hall (2004) op. cit., p. 267. The constitution of the Commission is set out in s 223 of the Crime and Misconduct Act.

[96] See s 229 and s 231 of the Crime and Misconduct Act.

research, intelligence, capacity building, prevention and monitoring projects were undertaken. In addition, the percentage of matters monitored by the CMC that were dealt with satisfactorily or better by public agencies was 86 per cent. [97]

4.3 Western Australia

The Western Australian Corruption and Crime Commission (CCC) was established by the *Corruption and Crime Commission Act (2003)* and became operational in 2004. The CCC was preceded by two earlier Western Australian anti-corruption commissions: the Official Corruption Commission (1988-1996) and the Anti-Corruption Commission (1996-2003).

The first of these, the Official Corruption Commission, was established by the Dowding Labor Government in 1988 amidst community concern regarding the relationship between politicians, businessmen and state financial losses, known as the 'WA Inc' controversy. As Roger Douglas explains, the 1992 *Royal Commission into the Commercial Activities of Government and Other Matters* found that between 1982 and 1989 over $6.5 million was donated through the Premier Brian Burke to the state Labor Party by prominent businessmen.[98] The timing of these donations often coincided with business transactions between the businessmen and the government. Mr Burke and Deputy Premier David Parker kept the details of these transactions secret from Cabinet and the Parliament, which were accordingly prevented from scrutinising the 'expenditure of hundreds of millions of dollars of public funds which were ultimately lost.'[99]

The Official Corruption Commission, established by the *Official Corruption Commission Act 1988*, had relatively limited powers. Its purpose was to receive information about public sector corruption and refer it onto an appropriate authority that was empowered to investigate and take action.[100] Amendments to the Official Corruption Commission Act in the early 1990s widened the scope of its powers but they still remained relatively limited. In 1996, the name of the Act was changed to the *Anti-Corruption Commission Act* and the Anti-Corruption Commission replaced the Official Corruption Commission.[101]

The Anti-Corruption Commission was provided with additional powers (but not coercive powers), and was constituted, as Peter Hall QC summarises, as 'an independent agency for ensuring that allegations of criminal, corrupt or serious misconduct made against public officers (including police officers) were appropriately investigated or otherwise resolved'.[102] In 1997, a Parliamentary Joint Standing Committee was established to oversee the Anti-Corruption Commission. In 2004, the *Royal Commission into whether there has been any corrupt or criminal conduct by any Western Australian police officers* (2002-2004), commonly known as the Kennedy Police Royal Commission, determined that the Anti-Corruption Commission suffered from flawed design and limited powers, and recommended that it be replaced by a new, more effective body.[103]

The *Corruption and Crime Commission Act 2003* ('the CCC Act') was introduced by the Gallop Labor Government, and the CCC replaced the Anti-Corruption Commission on 1 January 2004. Unlike the two predecessor bodies, the CCC is equipped with coercive powers equivalent to those of a royal commission.[104] The stated purpose of the CCC is to combat and reduce the incidence of organised crime, and to improve the integrity of, and

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[97] Crime and Misconduct Commission (2011) op. cit., p. 27.
[98] Douglas (2009) op. cit., p. 177.
[99] See ibid. See also D. Weber (2004) 'Former WA, Premier Brian Burke, Resurfaces', *PM*, Transcript, ABC Local Radio, viewed 10 February 2011, <http://www.abc.net.au/pm/content/2004/s1078246.htm>.
[100] Hall (2004) op. cit., p. 329.
[101] ibid.
[102] ibid.
[103] ibid., pp. 329-330.
[104] See *Corruption and Crime Commission Act 2003*, ss. 140, 95, 155.

reduce the incidence of misconduct in, the public sector.[105] The CCC thus operates as an anti-corruption commission and a crime commission, however, the CCC's crime commission function is primarily limited to granting the police greater investigative powers when they are dealing with organised crime. The CCC is not empowered to investigate organised crime itself.[106]

In the 2010-2011 financial year, the CCC had a total operating cost of $26 million and employed 144.58 full time equivalent staff.[107] The organisational structure of the CCC is depicted in Appendix 3.[108]

CCC Commissioner

Western Australia's CCC is headed by a single Commissioner. The role and conditions of service for the CCC Commissioner are set out in sections 9-15 and schedule 2 of the CCC Act. Section 9 of the CCC Act states that the Commissioner is to perform the functions of the Commission under the CCC Act and any other written law; that the Commissioner is to be appointed on the recommendation of the Premier (following consultation with the standing committee) by the Governor, and that the office of the Commissioner is not an office of the public service. Section 10 of the CCC Act states that the qualifications required for appointment as Commissioner are that the person has served as, or is qualified for appointment as a judge of the Supreme, Federal or High Court. Section 10 also states that a person who has been a police officer is not eligible to be appointed as Commissioner, and that a person holding judicial office shall retire upon appointment as Commissioner. Schedule 2 of the CCC Act sets out the terms and conditions of service for the Commissioner. It provides that the Commissioner is appointed on a full-time basis for a period of 5 years and is eligible for reappointment once. The Executive Director of the CCC oversees and coordinates the Commission's activities in accordance with the Commissioner's directions.[109]

CCC Corruption Prevention and Education Functions

Section 17 of the CCC Act provides the Commission with a prevention and education function. The CCC fulfils this function by assisting public sector agencies to identify and deal with misconduct within their 'systems and cultures'.[110] Within the CCC there are five 'corruption prevention teams' covering the following areas: justice, education, health, local government and general. Each team is tasked with dealing with reports of misconduct within their area, including providing advice to agencies and reporting on progress with regard to addressing the issues identified.[111] In addition to these five teams, the CCC has a research and development team that covers 'misconduct management systems and cultures across the public sector in general'.[112]

In the 2010-2011 financial year, the CCC delivered 74 corruption prevention presentations to 4,199 public officers and community members, and hosted five forums for misconduct

[105] See s 7A of the Corruption and Crime Commission Act 2003. Also see s 7B the CCC Act which states that the functions of the CCC are, firstly 'to authorise the use of investigative powers not ordinarily available to the police service to effectively investigate particular cases of organised crime'; and secondly 'to help public authorities to deal effectively and appropriately with misconduct increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly serious misconduct.'

[106] Part 4 of the Act sets out the Commission's functions with regard to organised crime.

[107] The precise total operating cost of the CCC in 2010-11 was $26,190,000. Corruption and Crime Commission (2011) *Annual Report 2010-11*, Perth, Corruption and Crime Commission, p. 34, viewed 3 November 2011, <http://www.ccc.wa.gov.au/Publications/Reports/Pages/AnnualReports.aspx>.

[108] ibid., pp. 1-5.

[109] ibid., p. 3.

[110] Corruption and Crime Commission (2011) 'Information for Public Agencies', CCC website, viewed 3 November 2011, <http://www.ccc.wa.gov.au/PreventionAndEducation/PublicAgencies/Pages/default.aspx>.

[111] ibid.

[112] ibid.

practitioners which were attended by 1,403 people. Four reports were also tabled in Parliament containing 28 recommendations regarding improvements to 'systems, practices and procedures', all of which were accepted by the relevant agencies.[113]

4.4 Tasmania

Tasmania's Integrity Commission was established by the *Integrity Commission Act 2009* and became operational in October 2010. The Integrity Commission was established in response to the widespread community perception that there was institutionalised corruption within the Tasmanian State Government, particularly in relation to its handling of the Gunns pulp mill approval process in 2007.[114] The Integrity Commission Act was introduced by the Bartlett Labor Government and based on the recommendations of the Parliamentary Joint Select Committee on Ethical Conduct which tabled its final report in July 2009.[115] The stated aims of the Integrity Commission are to:

- improve the standard of conduct, propriety and ethics in public authorities in Tasmania;
- enhance public confidence that any misconduct by public officers will be appropriately investigated and dealt with; and
- enhance the quality of, and commitment to, ethical conduct through a strong educative, preventative and advisory role.[116]

The Integrity Commission consists of a Board of six members and a Chief Commissioner, a statutorily appointed Chief Executive Officer and staff. The Board provides strategic oversight of the work of the Commission and consists of the Tasmanian Ombudsman, Auditor-General and State Service Commissioner (as ex officio members) and three appointed members. The Integrity Commission is then also overseen by the Joint Standing Committee on Integrity.[117] The organisational structure of the Integrity Commission is provided in Appendix 4.

The Integrity Commission Act additionally established the office of the Parliamentary Standards Commissioner. The Parliamentary Standards Commissioner is independent of the Integrity Commission and provides advice to Members of Parliament and the Commission about ethical conduct, including the interpretation of any relevant guidelines or codes of conduct relating to Members of Parliament.[118]

As the Integrity Commission commenced operation in October 2010 it has only recently completed its first annual report. In the second reading speech for the Integrity Commission Bill, the then Attorney-General, Lara Giddings, stated that it was intended that the Commission would have an operating budget of $2.5 million per annum. She added that this figure would increase according to the number of major investigations and inquiries the Commission undertakes.[119] In the annual report, the total operating expenditure was $2.8 million and the budget was listed as $3 million.[120] The Integrity Commission currently

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[113] Corruption and Crime Commission (2011) *Annual Report 2010-2011*, op. cit., p. xx.
[114] See Integrity Commission (2010) 'Integrity Commission: Raising the Standard of Public Sector Conduct, Ethics and Propriety', Hobart, Government of Tasmania, viewed 25 February 2011, <http://www.integrity.tas.gov.au/home>; Parliament of Tasmania Joint Select Committee on Ethical Conduct (2009) *Final Report: 'Public Office is Public Trust'*, Hobart, Parliament of Tasmania, viewed 25 February 2011, pp. 17-20, <http://www.parliament.tas.gov.au/ctee/old_ctees/archived.htm>; Tasmania, House of Assembly (2009) *Debates*, 3 November, Part 2, pp. 35-207; Q. Beresford (2010) 'Corporations, Government and Development: The Case of Institutional Corruption in Tasmania', *Australian Journal of Political Science*, vol. 45, iss. 2, pp. 209-255.
[115] See Parliament of Tasmania Joint Select Committee on Ethical Conduct (2009) op. cit.
[116] Integrity Commission (2010) 'Integrity Commission: About the Integrity Commission', Hobart, Government of Tasmania, viewed 2 March 2011, <http://www.integrity.tas.gov.au/the_commission>.
[117] ibid; Tasmania, House of Assembly (2009) op. cit., p. 81.
[118] Integrity Commission (2010) 'Integrity Commission: About the Integrity Commission', op. cit.
[119] Tasmania, House of Assembly (2009) op. cit., p. 80.
[120] Integrity Commission (2011) *Integrity Commission Annual Report 2010-2011*, Hobart, Integrity Commission, p. 3, viewed 5 November 2011, <http://www.integrity.tas.gov.au/>.

employs 17.8 FTE staff.[121] It should be noted that the population of Tasmania is significantly smaller than those of the other states and stands at approximately 500,000.[122]

Integrity Commission Chief Commissioner
The office of the Chief Commissioner of the Integrity Commission is a part time position.[123] Section 15 of the Integrity Commission Act deals with the appointment of the Chief Commissioner and states that the Governor appoints the Chief Commissioner following the Minister's consultation with the Joint Committee.[124] It states that to be eligible for the position of Chief Commissioner, the person must be an Australian lawyer with at least seven years experience as a legal practitioner and be under the age of 72. Section 15 also states that a person is not eligible to be appointed as Chief Commissioner, if that person is, or has been in the last five years, a Member of Parliament, a member of a council or of a political party or similar organisation. Schedule 2 of the Integrity Commission Act states that members of the board, including the Chief Commissioner, are appointed for a period not exceeding five years and, if eligible, can be reappointed.

The Integrity Commission also has a statutorily appointed Chief Executive Officer who is appointed by the Governor on the recommendation of the Premier. The CEO is responsible to the board for the general administration, management and operation of the Integrity Commission.

Integrity Commission Corruption Prevention and Education Functions
Similar to other jurisdictions, the Commission has a focus on education and prevention with regard to public sector misconduct. Officers of the Misconduct Education, Prevention and Research unit conduct education and awareness sessions and work with public sector agencies to assess training needs.[125] The Commission's education function is set out in section 8 of the Act, with more specific provisions contained in Part 4.

Over the last reporting period, the Integrity Commission's Misconduct Prevention Education and Research unit conducted 25 meetings with state and local government agencies. The purpose of the meetings were to ensure that managers and officers were aware of the *Integrity Commission Act 2009* and the role of the Commission, and to determine the education and training needs of each agency. The Commission also notes in the annual report that section 32 of the Act requires principal public officers to provide information and training to their organisation with regard to ethical conduct.[126]

[121] ibid.
[122] In March 2011 the population of Tasmania was 510,200. Australian Bureau of Statistics (2011) 'Australian Demographic Statistics, March 2011', Canberra, ABS, viewed 3 November 2011, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0>.
[123] Integrity Commission (2011) 'About the Integrity Commission: Organisational Chart', Hobart, Integrity Commission, viewed 12 April 2011, <http://www.integrity.tas.gov.au/the_commission>.
[124] Section 15 of the Integrity Act does not state that the Minister advises the Governor on the appointment of the Chief Commissioner but that is what is implied.
[125] Integrity Commission (2011) 'Prevention and Education', Integrity Commission website, viewed 3 November 2011, <http://www.integrity.tas.gov.au/prevention_and_education>.
[126] Integrity Commission (2011) *Integrity Commission Annual Report 2010-2011*, op. cit., p. 14.

Figure 1 below shows a summary of the main functions of corruption commissions in Australia.

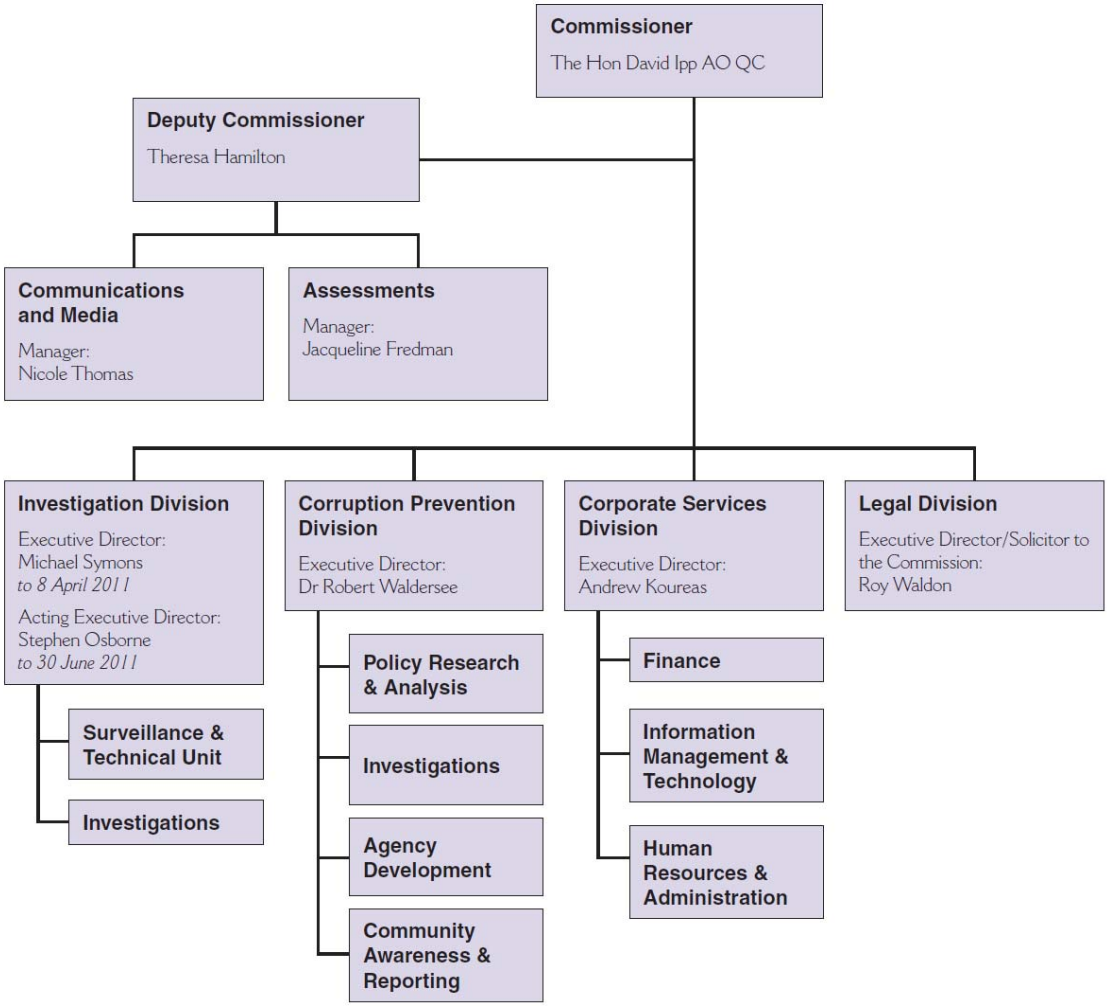
Figure 1: Main Functions of Corruption Commissions in Australian Jurisdictions

	NSW	Qld	WA	Tas
Functions:	ICAC	CMC	CCC	Integrity Commission
Investigate public sector corruption	Yes	Yes	Yes	Yes
Actively prevent corruption through advice and assistance	Yes	Yes	Yes	Yes
Educate community and public sector about corruption	Yes	Yes	Yes	Yes
Combat and prevent incidence of major crime and organised crime	No	Yes	Yes*	No
Provide witness protection program	No	Yes	No	No

*The CCC's crime investigation function is primarily limited to granting the police greater investigative powers when dealing with organised crime.

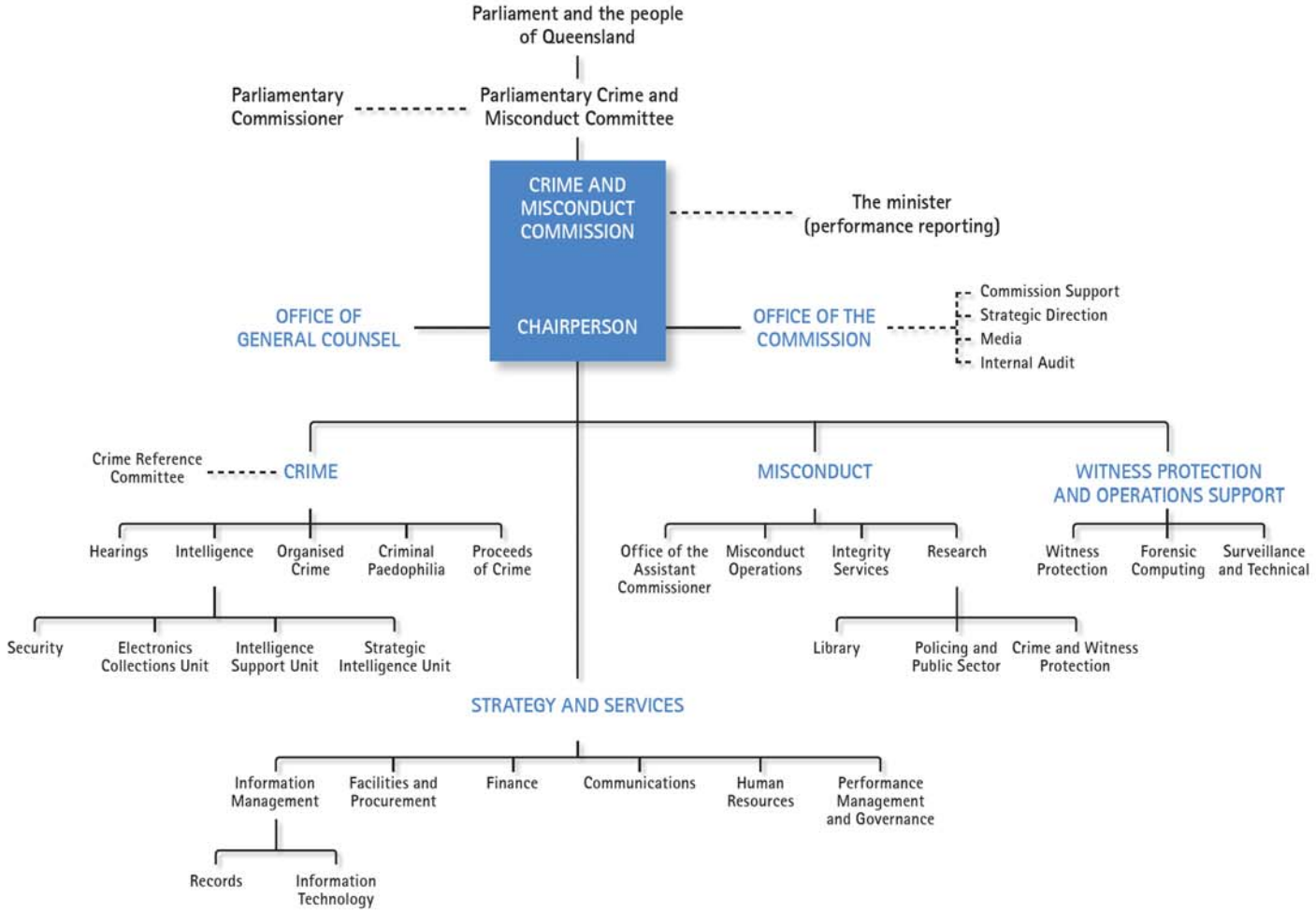
Appendices

Appendix 1: NSW Independent Commission Against Corruption Organisational Structure 2010 - 2011.



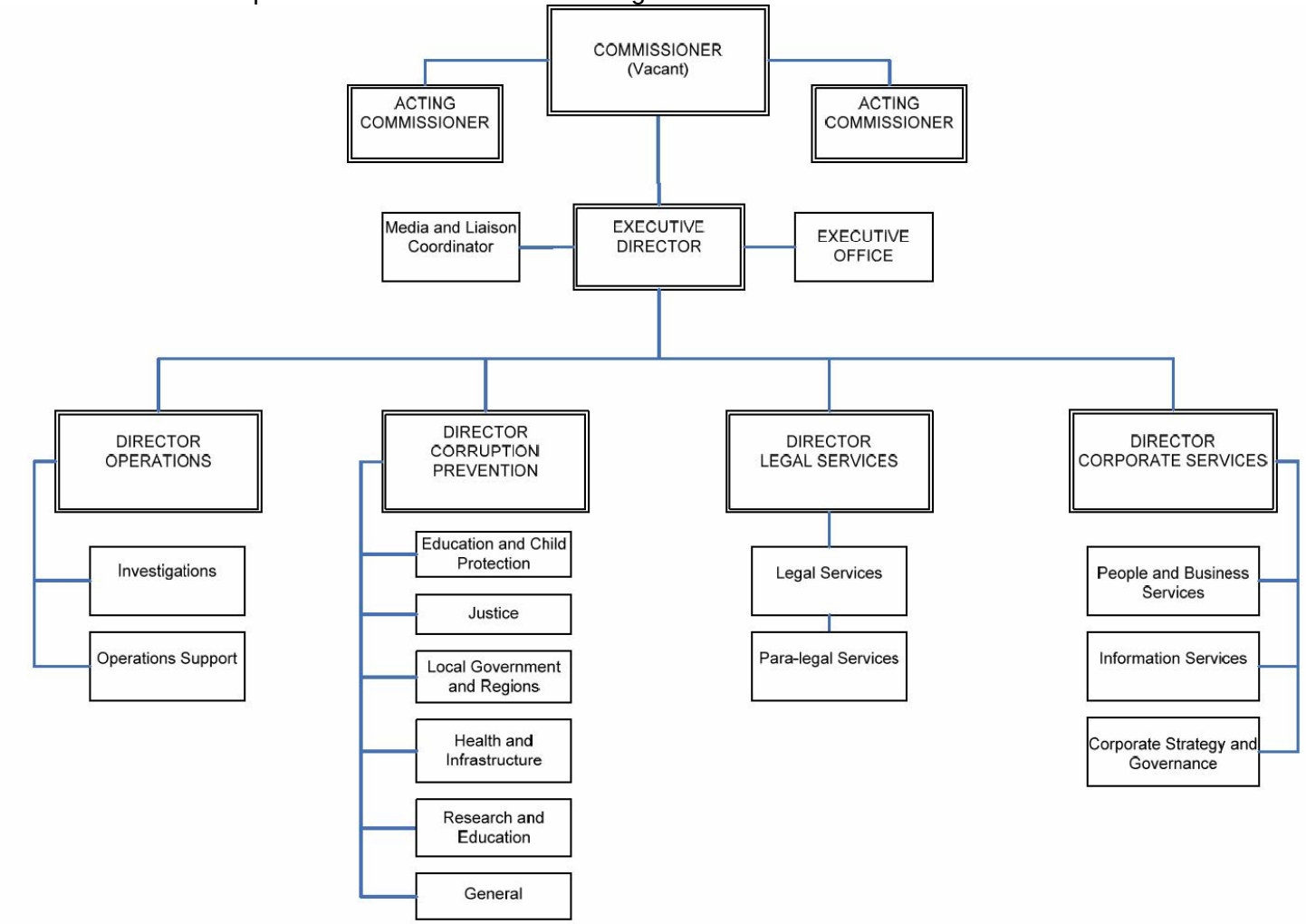
Source: ICAC (2011) *Annual Report 2010-2011*, Sydney, ICAC, p. 132, viewed 4 November 2011, <http://www.icac.nsw.gov.au/annual-reports?option=com_pubsearch&view=search&task=doSearch&Itemid=4270#results>.

Appendix 2: Queensland Crime and Misconduct Commission Organisational Structure 2010-2011.



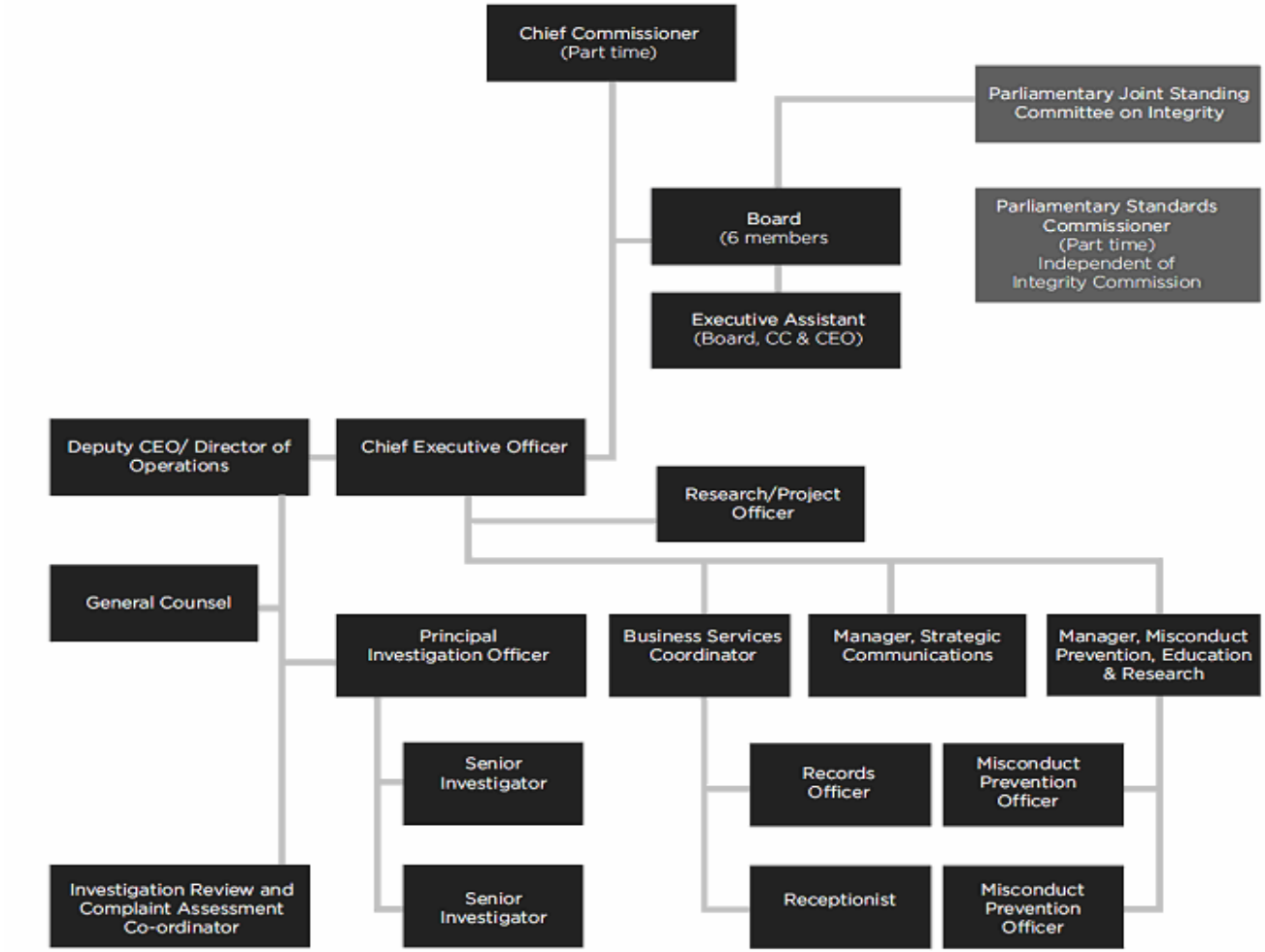
Source: Crime and Misconduct Commission (2011) *Annual Report 2010-11*, Brisbane, CMC, p. 73, <http://www.cmc.qld.gov.au/asp/index.asp?pgid=10935>.

Appendix 3: Western Australian Corruption and Crime Commission Organisational Structure 2010-2011.



Source: Corruption and Crime Commission (2011) *Annual Report 2010-2011*, Perth, CCC, p. 5, viewed 3 November 2011, <http://www.ccc.wa.gov.au/Publications/Reports/Pages/AnnualReports.aspx>.

Appendix 4: Tasmanian Integrity Commission Organisational Structure 2010-2011.



Source: Integrity Commission (2011) *Annual Report 2010-2011*, Hobart, Integrity Commission, p. 3, <http://www.integrity.tas.gov.au/>.

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Freedom of Information Act 1982

Local Government Act 1989

Whistleblowers Protection Act 2001

Major Crime Legislation (Office of Police Integrity) Act 2004

Charter of Human Rights and Responsibilities Act 2006

Police Integrity Act 2008

Relevant Legislation from other Australian Jurisdictions

Independent Commission Against Corruption Act 1988 (NSW)

Crime and Misconduct Act 2001 (Qld)

Corruption and Crime Commission Act 2003 (WA)

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