



Australian Government
**Australian Commission for
 Law Enforcement Integrity**

**ACT INTEGRITY
 COMMISSION**



CCC | **Corruption and
 Crime Commission**

ibac independent broad-based
 anti-corruption commission
 Victoria

I·C·A·C | INDEPENDENT COMMISSION
 AGAINST CORRUPTION
 NEW SOUTH WALES

ICAC | Office of the
 Independent Commissioner
 Against Corruption (NT)

ICAC
 Independent Commission
 Against Corruption
 SOUTH AUSTRALIA

**INTEGRITY
 COMMISSION
 TASMANIA**

LECC
 Law Enforcement
 Conduct Commission

Best Practice Principles for Australian Anti-Corruption Commissions

Anti-Corruption Commissions have become an important element in the integrity frameworks in place at the State, Territory and Federal level in Australia, to investigate and report on allegations of corruption by public sector employees, holders of public office, individuals and entities contracted to perform public functions and people responsible for spending public money. Anti-Corruption Commissions also perform an important corruption prevention role by exposing systemic risks and providing public education.

While it is clearly the prerogative of each Legislature to determine the jurisdiction, functions and powers of an Anti-Corruption Commission, we consider the following twelve principles represent best practice for an Anti-Corruption Commission in an Australian jurisdiction:

1. The ability to consider referrals from any third party

Anti-Corruption Commissions should be empowered to consider an allegation of corruption referred to it by any third party. Third parties, in this context, include public sector employees, heads of government agencies or departments, holders of public office and members of the public.

Empowering Anti-Corruption Commissions to receive allegations of corruption from any third party will ensure that the Commission can consider allegations detected by a government agency as well as allegations that are reported by whistle-blowers.

2. The ability to commence an investigation on own volition (own motion powers)

Anti-Corruption Commissions should be empowered to commence investigations into corruption or maladministration on its own motion, so long as the investigation falls within the jurisdiction of the Commission. This “own motion power” enables a Commission to initiate investigations into allegations that have been detected by the Commission, rather than limiting its investigation powers to allegations that have been referred to it.

3. A requirement for the heads of public sector agencies to report allegations of corruption to the Anti-Corruption Commission

In keeping with the responsibility of public sector agency heads for the integrity of their agency, public sector agency heads should be subject to a mandatory duty to report allegations of corruption relating to their agency to the Anti-Corruption Commission.

This duty to report may also be expanded, as appropriate, to other public officials whose functions might identify allegations of corruption within the Anti-Corruption Commission’s jurisdiction.

4. The ability to conduct hearings to obtain evidence

Anti-Corruption Commissions should be able to conduct hearings as a coercive tool to obtain evidence. The features of hearings in this context include:

- The power to summons witnesses
- The power to require production of information or documents
- The provision of evidence under oath or affirmation
- The express abrogation of the rule against self-incrimination in respect to evidence given or documents or information produced at the hearing, with corresponding use of immunity provisions to ensure that the “fundamental principle”, that the prosecution must prove its case and cannot compel the accused to assist it, is not offended¹.

Anti-Corruption Commissions should be able to conduct hearings either in public or private. The types of considerations in deciding whether to conduct a hearing in public or in private include reputation, privacy, confidentiality, impact on any criminal proceedings and the public interest.

5. The ability to require the production of information or documents

Anti-Corruption Commissions should be able to require the production of information or documents as a coercive tool to obtain evidence. As with the conduct of hearings, the express abrogation of the rule against self-incrimination should apply in respect to the documents or information produced, with corresponding use immunity provisions to ensure that the “fundamental principle”, that the prosecution must prove its case and cannot compel the accused to assist it, is not offended.

6. The ability to refer matters to a prosecuting authority

Anti-Corruption Commissions are, by their very nature, investigation agencies. They should be empowered (or not restricted in their ability) to refer briefs of evidence assembled as a result of their investigations directly to a prosecuting authority, such as the Director of Public Prosecutions, for assessment for prosecution action.

7. The ability to make recommendations

As with other integrity agencies, such as the auditor-general and ombudsman, it is an important aspect of the work of an Anti-Corruption Commission to be able to make recommendations to heads of public sector agencies that arise from the Commission’s work. These recommendations may relate to individuals or systemic issues identified through the Commission’s work and have the aim of strengthening the integrity framework and anti-corruption controls and preventing the corrupt conduct from recurring.

As a matter of best practice, an Anti-Corruption Commission should also be able to make recommendations to the public sector as a whole, either through a recommendation tabled in Parliament or provided to an appropriate Minister that relate to addressing corruption vulnerabilities or risks generally within the public sector.

8. The ability to report on investigations and make public statements

One of the key ways that an Anti-Corruption Commission can give insight into their operations is through the ability to report on investigations and make public statements. This should include the ability to oversight and report on the implementation of any recommendations. This is important to provide transparency in relation to the way that an Anti-Corruption Commission undertakes their work, to provide assurance to the public and public sector that corruption allegations are appropriately dealt with and as a mechanism of general deterrence.

¹ See, for example, *X7 v Australian Crime Commission* (2013) 248 CLR 92, French CJ and Crennan J at para 55, Hayne and Bell JJ at para 102 and Kiefel J at para 159.

In preparing a report on an investigation, Anti-Corruption Commissions should provide procedural fairness to persons about whom a finding is proposed to be made. In deciding whether to publish a report or make a public statement, Anti-Corruption Commissions should balance the public interest in disclosing the information with any potential prejudicial consequences that might result.

9. A corruption prevention function

As well as having an investigation function, it is best practice for an Anti-Corruption Commission to also have a corruption prevention function. Investigations, by their very nature, focus on events that have already occurred. In contrast, a corruption prevention function focuses on identifying vulnerabilities and potential mitigations to prevent the event from occurring in the first place, or avoid similar events occurring in the same or separate entities. This is a crucial element in a robust anti-corruption framework.

The corruption prevention function requires adequate resourcing to be able to support public sector agencies and public officials to mitigate the corruption risks that they face and put in place strong corruption prevention controls. The function may include multiple elements such as education, engagement, research, advice, support and specific projects.

10. A sufficient and predictable budget

An Anti-Corruption Commission's capacity to fulfil its statutory functions will be limited by its budget. The Commission's efficacy can therefore be undermined by budgetary restrictions. The threat of a potential reduction in budget also threatens an Anti-Corruption Commission's perceived, or actual, independence.

An Anti-Corruption Commission's budget should be sufficient to perform its functions. It should be quarantined so far as possible from the political process.

11. Transparency of appointments

The process for appointment of integrity commissioners impacts on the community's perceptions of an Anti-Corruption Commission's independence. Commissioner appointments should be made on the basis of merit following an open and transparent appointment process. Selection should be measured against publicly available criteria, with an independent panel putting forward a shortlist of suitable applicants to the relevant Minister for appointment. Merit should be the dominant consideration in selection.

The Council of Australasian Tribunals *Tribunal Independence in Appointments - Best Practice Guide* offers a useful template for this process.

12. Appropriate oversight

Given the powers available to Anti-Corruption Commissions, appropriate oversight of Commissions should be established, to ensure transparency and accountability. Appropriate oversight mechanisms include an independent inspectorate and parliamentary oversight through a dedicated parliamentary committee.

ACT Integrity Commission

Michael Adams KC
Commissioner

Australian Commission for Law Enforcement Integrity

Jaala Hinchcliffe
Commissioner

Petra Gartmann
Deputy Commissioner

Crime and Corruption Commission QLD

Bruce Barbour
Chairperson

Corruption and Crime Commission WA

The Hon. John McKechnie KC
Commissioner

Scott Ellis
Acting Commissioner

Independent Broad-based Anti-Corruption Commission VIC

The Hon. Robert Redlich AM KC
Commissioner

The Hon. Stephen Farrow
Deputy Commissioner

The Hon. Kylie Kilgour
Deputy Commissioner

David Wolf
Deputy Commissioner

Independent Commission Against Corruption SA

The Hon. Ann Vanstone KC
Commissioner

Paul Alsbury
Deputy Commissioner

Integrity Commission TAS

Greg Melick AO SC
Chief Commissioner

Law Enforcement Conduct Commission NSW

The Hon. Peter Johnson SC
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Anina Johnson
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NSW Independent Commission Against Corruption

The Hon. John Hatzistergos AM
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The Hon. Helen Murrell SC
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