Centre for Governance and Public Policy
Griffith University
Nathan Queensland 4111 Australia
[redacted]
www.griffith.edu.au
[redacted]

11 April 2022

Hon Tony Fitzgerald AC QC
Hon Alan Wilson QC
Commission of Inquiry relating to
the Crime and Corruption Commission
submissions@cccinquiry.qld.gov.au

Dear Commissioners

Submission: Certain matters relating to the Crime & Corruption Commission (Queensland)

Thankyou for the invitation to make a submission to your Inquiry, and for accepting a late submission. Please find attached my submissions addressing the terms of reference.

For credentials in support of these submissions, please find details here: https://experts.griffith.edu.au/18540-a-j-brown/about

In particular, over the last 20 years, it has been my privilege to lead some of the world's most comprehensive research into public interest whistleblowing and the operation of legislated whistleblower protections – an issue which I submit remains at the heart of your Inquiry, since it was the central issue leading to the adverse findings of the Parliamentary Crime & Corruption Committee (PCCC), in its review of the Crime and Corruption Commission's investigation of former councillors of Logan City Council (December 2021), that the Crime & Corruption Commission breached its duties of independence and impartiality in its support for an official who reported corrupt conduct under the *Public Interest Disclosure Act 2010.*

This issue, along with the more specific questions referred to you for inquiry, remains at the heart of present public debate over the structures, legislation, procedures, effectiveness, independence and impartiality of the Commission (see pars 32-58 below).

Accordingly, my submissions include some reference to our research, conducted with the support of the Australian Research Council, Queensland Government and relevant agencies throughout Australia (see www.whistlingwhiletheywork.edu.au). I hope this assists the inquiry.

In relation to both this and the more specific issues referred to you for inquiry, you will note my submissions include:

- some strong disagreement with relevant findings of the PCCC, going to the heart of its allegations that the CCC failed to fulfil its duties of impartiality and independence
- reference to the fact that in July 2021, the PCCC rejected my own attempt to make a submission on key issues before its review, as falling outside its terms of reference, even though those terms of reference and the PCCC's report shows this not to be the case (see pars 53-57 and Attachments 1 and 2).

I bring this to your attention, not with any expectation that your Inquiry could or would review the conduct of the Parliamentary Crime & Corruption Committee, but to urge you to correct the public record on any of the key issues of fact regarding the conduct of the CCC which may be relevant to your final recommendations.

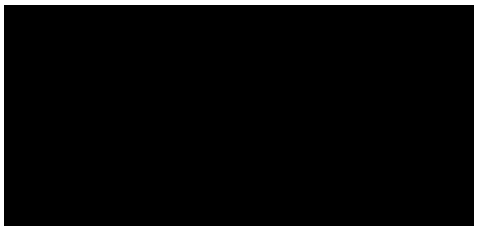
As your terms of reference reflect (especially TOR 10), it is vital that the people of Queensland have confidence in the effectiveness, efficiency, impartiality and independence of the Crime & Corruption Commission. Unfortunately, in my view, the one-eyed approach taken by the PCCC and its Counsel Assisting to the issues that confronted the CCC at Logan Council, led to inaccuracies which have increased that challenge more than they have helped address it.

This includes findings with respect to the former and current leadership of the CCC which now also lead many in the community to incorrectly see your Inquiry as a further investigation "into" the Crime & Corruption Commission itself, rather than an inquiry into legislative, policy and structural questions to help ensure the Commission continues to do the best possible job.

For the reasons set out below, I would also urge you to ensure that the central problems of legislation, structure and practice giving rise to the Logan events – especially the conflict between the CCC's corruption investigation and whistleblower protection functions exposed by these events, but not resolved by the PCCC's findings – are properly addressed.

I look forward to your recommendations and offer my best wishes for your important work in this regard.

Yours sincerely



A J Brown
Professor of Public Policy and Law
Program Leader, Public Integrity & Anti-Corruption
Centre for Governance & Public Policy

Boardmember, Transparency International Australia
Boardmember, Transparency International

Submission
Attachment 1
Attachment 2

Submission: Crime & Corruption Commission (Queensland)

Professor A J Brown
Centre for Governance & Public Policy

TOR 3.a. The adequacy and appropriateness of the structure of the Crime and Corruption Commission (CCC) in relation to use of seconded police officers

GENERAL ISSUE

1. The Report of the Parliamentary Crime & Corruption Committee on Logan City Council (PCCC Report) discusses this issue at p.143, making no adverse finding or recommendation in relation to the current CCC-Queensland Police Service policy limiting secondment of non-specialist police to 3-5 years, and specialist (surveillance and witness protection) police to 8 years. The PCCC apparently concluded that the issues arising in the Logan matter (CCC Operation Front) were issues of operational and management culture, rather than issues arising from the secondment of police officers *per se*.
2. In my view, if the CCC is to retain officers who are trained in criminal investigation and authorised to exercise police powers, including the power to charge with criminal offences (which I support below), then secondment of serving QPS officers remains one efficient and effective option for achieving this. This is provided it is supported by policies (such as above) which protect the functions of the Commission as a body which –
   - Needs to remain both institutionally and culturally independent of the QPS
   - Is not simply a law enforcement agency – i.e. whose responsibilities include investigation and prevention of corrupt conduct which may extend beyond, or not fit, the parameters of criminal offences which define police roles and training.
3. Should the Inquiry conclude that the best way for the CCC to achieve this balance, is to appoint its own authorised officers to exercise police powers independently of QPS powers and functions, careful consideration would be need to be given to the training needs, costs and legislative implications of this option.

WIDER STRUCTURAL ISSUE

4. In my submission, the **more important structural issues** relating to the CCC's use of seconded police are:
   - The fact that the bulk of police are seconded *not* to support the CCC's anti-corruption functions, but to support its *serious and organised crime* and related functions; and
   - The continuing risk of real or perceived conflict of interest in circumstances where corruption or serious misconduct concerns arise in respect of those functions, requiring the CCC to then 'independently' investigate itself.
5. Even if not directly raised by the Logan case, these issues are relevant to the general ability of the CCC to carry out its statutory functions in a way that is 'efficient, effective, objective, fair and impartial and meets the public interest' (**your TOR 10**, below).
6. While the CCC has long had processes in place to manage these potentially conflicting roles, in my view the Inquiry provides a timely opportunity to consider whether, in principle, it remains the best option to continue with one agency with this conjunction of roles. While the practical benefits of this conjunction may still outweigh real or perceived risks to public

integrity, it is more than 20 years since independent consideration was given to the desirability and feasibility of separating these roles, as part of ensuring the capacity of and public confidence in the Commission.

7. Accordingly I urge the Inquiry to include this larger, related issue in its deliberations.

TOR 3.b. The adequacy and appropriateness of legislation, procedures, practices and processes relating to the charging and prosecution of criminal offences for serious crime and corruption in the context of CCC investigations [including] iv. the consequences arising from the laying of criminal charges… including the provisions under section 175K of the *Local Government Act 2009* for a person to be automatically suspended as a councillor when the person is charged with a 'disqualifying offence'

GENERAL ISSUE

8. In my submission, it remains highly effective and appropriate for the CCC to retain the power to charge persons with criminal offences in relation to or arising from corruption investigations, rather than for this to depend entirely on other agencies.

9. I note that despite giving this detailed consideration, the PCCC itself did not recommend the removal of the power to charge. While the PCCC's Logan report (e.g. s 9.4.4) collected a range of views from interested parties that the ability of CCC officers to charge blurs 'investigative' and 'prosecutorial' functions, in my opinion these views were misinformed or misconceived with respect to basic operations of the criminal justice system, including the existing powers of police to both investigate and initiate prosecution by way of charge, notwithstanding ultimate control by the Director of Public Prosecutions.

10. History shows that if left to normal police or DPP processes for consideration of charges, corruption and official misconduct cases are at high risk of being jeopardised by delay or inaction. This is simply because they are usually complex matters which may also often seem comparatively less serious than other offences, when viewed as individual offences divorced from their wider implications for public integrity and public trust – resulting in them being given insufficient priority or attention relative to their complexity.

11. Further, wherever delay occurs between the conclusion of an anti-corruption investigation (especially if publicly known or reported) and the commencement of action – for example, while an investigation report is duly considered at length by independent prosecutors – there can be a deleterious effect on public confidence that exposed misconduct will lead to formal consequences. This is especially the case in jurisdictions where anti-corruption agencies have the power to report and publicly recommend charges, but do not themselves have power to charge (or have a power, but elect not to exercise it).

12. In my experience, while anti-corruption agencies such as the CCC are properly not necessarily limited to criminal investigations, when they *do* find and report on *prima facie* evidence of criminal conduct, but no criminal process is initiated, confusion and uncertainty is easily created in the public mind about the effectiveness of the investigative process or the criminal justice system or both – undermining confidence in the rule of law.

13. These factors mitigate in favour of retaining a power to lay criminal charges, to help ensure that a criminal process is initiated in as timely and thorough a manner as possible where *prima facie* criminal conduct is revealed – while also obviously ensuring this power is exercised as expertly, accurately and responsibly as possible.

SECTION 175K SUSPENSION

14. **A more important issue,** which lies at the heart of the complaints of the local government lobby about the CCC's Operation Front, is whether any of the issues giving rise to this Inquiry mitigate in favour of changes to the consequences arising from the laying of certain charges ('integrity offences') under section 175K of the *Local Government Act 2009* – notably for a person to be automatically suspended as a councillor when the person is charged with such an offence.

15. In my view, the Logan events provide no basis for reducing this legal consequence. I also do not read the PCCC as having made any suggestions in this direction.

16. The requirement for a public official to stand aside from their duties, if properly charged with a criminal offence that goes directly to their fitness to exercise those duties, is an important and justified measure which makes a significant contribution to public confidence in the response to the corruption risks proven to be present in Queensland local government.

17. In my submission, what the Logan events demonstrate is rather a need to:

    - ***expand*** the category of 'integrity offences' which trigger the s.175K consequence, to include the criminal offence of reprisal (i.e. the knowing or reckless causation of detriment by act or omission) against a person who has relevantly blown the whistle under the *Public Interest Disclosure Act 2010*; and possibly other like offences; and

    - if necessary, **to *increase*** the penalty for such an offence from its current maximum of two years' imprisonment, to a maximum of at least three years, to put beyond doubt that like the other identified offences, this is indeed a serious criminal offence going to the heart of public integrity and the fitness of officials to occupy their office.

18. In the Logan case, the central adverse findings of the PCCC were based on its assessment that the CCC charged seven councillors with fraud, as opposed to the offence of reprisal under s.40 of the *Public Interest Disclosure Act,* in order to (a) trigger the s.175K consequence and cause those councillors to be removed from office, thereby also (b) seeking to directly rectify the detriment those councillors had imposed on the CEO, who had made a public interest disclosure, by voting to terminate the CEO's employment.

19. However, irrespective of the PCCC's conclusion in this respect, it heard evidence from the Director of Public Prosecutions that if a charge were to be brought in these circumstances, the appropriate charge would have been that of reprisal under the *Public Interest Disclosure Act* rather than the 'more convoluted' charge of fraud (PCCC Logan report, p.103).

20. Separately, the PCCC has recommended, and the Queensland Government has accepted, that there should be a review of the effectiveness and appropriateness of protections afforded to whistleblowers under the *Public Interest Disclosure Act* (PCCC Recommendation 1). However the events also highlight that irrespective of how the *Public Interest Disclosure Act* is reformed, the omission of whistleblower reprisal offences from the categories of 'integrity offences' requiring a councillors' suspension constitutes a gap in s.175K of the *Local Government Act* which should be rectified.

21. Whistleblower protection is intrinsic to public integrity, and to the duties of all public officials, especially leaders. The duty to refrain from actions which would discourage or prevent other officials from coming forward with honest beliefs of corrupt conduct is a fundamental responsibility of all those holding public office, especially in respect of other officials more junior than or supervised by the official concerned. For an elected official to knowingly or recklessly *cause* detriment to someone who has made such a disclosure, on

matters within their field of responsibility, should plainly be treated as a disqualifying 'integrity offence' for the purposes of s.175K of the *Local Government Act.*

22. The fact that a s.40 *Public Interest Disclosure Act 2010* offence is not a prescribed 'integrity offence' in Schedule 1 of the *Local Government Act* appears to be pure oversight, given that the Schedule does already contain at least two other equivalent reprisal offences:

    - **s.150AW, *Local Government Act 2009* - Protection from reprisal** (prohibiting a councillor from taking detrimental action against a person in reprisal for a complaint about the councillor's conduct to the independent assessor of local government); and
    - **s.150EY, *Local Government Act 2009* - Offence to take retaliatory action** (prohibiting any person from prejudicing, or threatening to prejudice, the safety or career of a councillor or another person because a councillor complied with their obligation to report a suspected breach of conflict of interest requirements).

23. Disclosures under the *Public Interest Disclosure Act 2010* may be at least as serious, and create at least as heavy an integrity obligation on councillors, as the above forms of complaint – and often much more so.

24. There may be other equivalent offences which should logically be added, including:

    - **s.211, *Crime & Corruption Act 2001* - Injury or detriment to witness** (prohibiting a person from injuring or threatening to injure, or causing or threatening detriment of any kind, to another person anyone has or will give evidence, appear as a witness or provide information to the Commission); and
    - **s.212, *Crime & Corruption Act 2001* - Offence of victimisation** (prohibiting any person from prejudicing or threatening to prejudice the safety or career of any person, or intimidating, harassing or causing them any detriment, because they or anyone 'gave evidence to, or helped, the commission in the performance of its functions').

25. In my submission, the Inquiry should recommend the rectification of this gap through the addition of s.40 *Public Interest Disclosure Act 2010* (and any other further integrity offences it identifies) to the list of disqualifying integrity offences, or serious integrity offences, contained within Schedule 1 of the *Local Government Act 2009.*

TOR 3.c. The adequacy and appropriateness of section 49 of the *Crime and Corruption Act 2001* [including] vi. whether there should be a requirement that the CCC obtain a recommendation from the DPP, or a senior independent legal advisor, before police officers use their discretion to charge serious criminal offences

26. The PCCC Logan report details, at length, the impractical and inappropriate consequences of a requirement for the CCC to seek, in effect, approval of the DPP prior to charging integrity offences – reinforcing the reasons why s.49 of the *Crime & Corruption Act 2001* was amended in 2018 to support a move away from this prior practice.

27. In my view, these circumstances are not changed by the consequence in Queensland that the charging of elected local government officials with designated offences will trigger their suspension, as above. Contrary to the submissions of the LGAQ to the PCCC (Report, p.157), the idea that elected local government officials should automatically receive any kind of protection from statutory or employment consequences for their behaviour where other types of public officials or other citizens might not – even if only a procedural protection – is inimical to the rule of law and to public confidence.

28. See generally my submissions at pars. 8-13 above.

29. The CCC is currently free to consult with the DPP or engage independent legal advice when considering charging any criminal offence, and on the evidence, continues to do so as circumstances require.

30. In my view, rather than *requiring* the CCC to first consult the DPP, the Inquiry should consider codifying the circumstances in which investigatory and prosecutorial best practice would mitigate in favour of consulting either the DPP or an independent legal advisor prior to charge, and recommend the addition to these to s.49 as factors that the CCC is required to consider when determining whether or not to seek additional advice prior to charge.

31. Provided that the above consideration is given, in my view the discretion as to whether or not to seek that additional advice should nevertheless remain with the CCC (as should the discretion as to whether to seek that advice from the DPP or, as may often be more appropriate and efficient, from another independent source of advice).

TOR 10. Any recommended legislative, structural, procedural or organisational changes to promote the ability of the CCC to carry out its statutory functions in a way that is efficient, effective, objective, fair and impartial and meets the public interest in ensuring Queensland has an independent crime and corruption body that meets the highest standards of integrity and impartiality …

GENERAL ISSUE

32. As noted above (par.18), the Logan case giving rise to this Inquiry centred on the way the CCC sought to simultaneously fulfil two different statutory functions:

    - Its primary function of investigating suspected corrupt conduct under the *Crime & Corruption Act*, as had been reported to it by the Logan CEO; and
    - Its secondary function of assisting the protection of public officials who blow the whistle on corrupt conduct and/or otherwise assist the Commission with information or its investigations, under the *Public Interest Disclosure* Act and/or sections 211 and 212 of the *Crime & Corruption Act* (as noted at par. 24 above).

33. As already noted, as a result of the Logan events, the PCCC recommended that the Queensland Government review the effectiveness and appropriateness of protections afforded to whistleblowers under the *Public Interest Disclosure Act 2010*, including the role of the CCC (Recommendation 1). While I look forward to that review, in my submission it is important that this Inquiry also reach its own view as to whether changes are needed to promote the ability of the CCC to carry out these functions, because:

    - Despite accepting Recommendation 1, the Government has as yet provided no detail as to when, how or by whom the proposed additional review will be undertaken;
    - After five years, the Government is already yet to act on existing recommendations for reform of the *Public Interest Disclosure Act*, made by the Queensland Ombudsman's statutory review of the Act in 2017;
    - The conflict between these two functions was the central cause of the difficulties giving rise to the Logan events, and remains at the heart of unresolved questions regarding the effectiveness, objectivity, fairness and impartiality of the Commission's operations as highlighted by the PCCC;

- The ongoing potential for conflict between these functions is not limited to the CCC's role under the *Public Interest Disclosure Act*, as similar protection challenges may arise in any case of reprisal against a person who provides information to or assists the CCC and is entitled to protection under sections 211 or 212 of the *Crime & Corruption Act,* irrespective of whether it amounts to a whistleblowing disclosure under the *Public Interest Disclosure Act*.

34. In the Logan case, as noted above (par. 18), the PCCC's central findings that the CCC breached its duties of independence and impartiality, which have given rise to your Inquiry, flowed from its assessment that the CCC overstepped its powers and responsibilities in the support which the CCC sought to provide to the CEO of Logan City Council.

35. Notably, the PCCC's findings of overreach and partiality flowed from the CCC's decision *not* to exercise its power to intervene formally in support of the CEO's reinstatement proceedings in the Queensland Industrial Relations Commission (QIRC), as entitled to do under s.48(2) of the *Public Interest Disclosure Act*, nor initiate proceedings for injunctive relief in the Supreme Court as entitled by s.49(2) of that Act.

36. As the PCCC report details, and as criticised by the PCCC, the CCC sought to help prevent and remedy what it considered to be unlawful detrimental action against the CEO in other ways, including:

    - by warning Logan City Council against any reprisal
    - by asking the Government to assist with the CEO's legal expenses, once she was terminated by the Council and made her own QIRC application for reinstatement
    - by seeking to ensure that full evidence of the councillors' alleged dishonesty and collusion in the termination process was available to all parties to the QIRC proceedings
    - as noted earlier, by charging the majority councillors with fraud.

THE CONFLICTING FUNCTIONS

37. Unfortunately, despite its adverse findings with respect to the CCC's actions, the PCCC did not properly address the question of what the CCC *should have done* to protect someone who provides originating information or assistance to a corruption investigation in such circumstances – in large part, in my view, because the PCCC chose to overlook evidence that these decisions flowed not from any personal bias of CCC officers towards the CEO, but from a conflict in the current form of the CCC's functions.

38. The evidence provided by the CCC, and reported but not specifically addressed by the PCCC, was that it chose indirect rather than direct formal means of legal support under the *PID Act* because:

    - It was 'inappropriate to become involved in civil litigation while simultaneously investigating alleged criminal and corrupt matter in relation to matters the subject of the civil litigation' (CCC letter of August 2018, summarised at PCCC Report, p.23)
    - 'there was a greater public interest in the Commission focussing on the serious criminal investigation in its ongoing Operation Front (which had commenced before the QIRC proceeding)' (CCC submission to the PCCC, at Report, p.50)
    - On the evidence of the CCC Chair, Alan Macsporran QC, the first duty of the Commission was to fulfil its corruption investigation functions even if this was at the

cost of its whistleblower protection functions, rather than running any risk of jeopardising the former by formally pursuing the latter:

> No matter what you thought of her, she was [someone who had made] a PID. There is a tendency sometimes to forget how important it is in the public sector generally—and I am sure in the private sector as well, frankly—to do whatever can be done to protect PIDs. If you are not seen to be protecting PIDs, you undermine the entire ability to have corruption reported and properly dealt with by agencies such as ourselves…
>
> That is why, whilst we could have ignored Ms Kelsey—and I would be sitting here now if we had ignored her and there would be an inquiry into why I was not taking some action to protect someone who was a public interest discloser. We did not join the action through [in] sympathy for her. And I have termed it one of the hardest decisions I have ever made in this role, not to join in her action because I did have sympathy for her in her situation. But we decided not to do that, but to do what we could, whilst we did what we should do, more importantly, which was to pursue the corrupt conduct investigation.

(Evidence of CCC Chair, Alan Macsporran QC to PCCC, 17 Aug 2021, PCCC Report p.52)

39. The issue for the Inquiry under TOR 10 therefore remains: whether additional legislative or procedural changes are needed to promote the ability of the CCC to properly fulfil a statutory function of preventing, stopping or remedying detrimental action against a public official who, on its reasonable assessment, deserves protection as a result of reporting corruption or otherwise assisting the Commission – whether under the *PID Act* or its own enabling legislation.

40. In particular, the outstanding questions remain:

    - Whether it was necessary and correct for the CCC to prioritise its primary investigation function over its whistleblower or witness protection function in this way (notwithstanding its support for equivalent outcomes through other actions); and, to the extent that this was the case, or might be the case in future situations:

    - What reform is needed to enable legislated whistleblower and witness protection objectives to be properly fulfilled, in a manner that minimises any compromise to the primary investigation function, including to:

        i. the statutory functions or powers of the CCC or any other agencies,

        ii. legislation, procedures and resources for ensuring that corruption whistleblowers can access the legal support needed to properly assert the legislative protections to which they are supposedly entitled,

        iii. tribunal procedures with respect to the admissibility, publication and/or suppression of evidence derived from or relating to the primary investigation.

41. In my submission these remain important related questions for this Inquiry because they are the key ones on which overall confidence in the CCC's capacity, effectiveness and independence continue to depend, as a result of these well publicised events.

42. I stand ready to assist the Inquiry with further submissions on these issues should it agree that these are issues it should explore.

RELEVANT ISSUES OF FACT

43. In considering whether or how to address this issue, the Inquiry may wish to assess the reasons why the PCCC did not already do so, despite its centrality to the Logan events.

44. In case this assists, in my submission a first reason is that from the outset, the PCCC accepted the premise of the LGAQ's complaint – in my view, incorrectly and inappropriately – that valid whistleblower protection issues did not, in fact, arise in the Logan case, and that the CCC had wrongly inserted itself into what was *simply* an industrial dispute between the CEO and her Mayor and Council.

45. This premise was built largely on the fact that the CEO's QIRC application for reinstatement ultimately failed (*Kelsey v Logan City Council & Ors* (No.8) [2021] QIRC 114).

46. However, this premise was actually false, because:

    - Notwithstanding the QIRC decision, it has never been contested that the CEO did make a public interest disclosure and/or was entitled to protection under the *Crime & Corruption Act;*

    - The QIRC's primary reasons for dismissing the application were *not* that a protected disclosure had not been made or that it did not attract protection, but (i) that the *PID Act* protections did not constitute an 'industrial law' and hence were not triggered by her specific application, and (ii) that her termination was made by the Council as a body corporate, as her employer, rather than the individual majority councillors whose conduct she alleged to constitute detrimental action

    - These reasons are themselves legally questionable, raise serious questions about the workability of the protections, and remain subject to an application for leave to appeal;

    - In fact, the disclosures made by the CEO have led to corruption and misconduct charges being laid against the Mayor, which were sustained at committal and on which he remains due to stand trial, notwithstanding the withdrawal of the fraud charges laid against the seven councillors who voted to terminate the CEO.

47. Secondly, most of the suggestions that the CEO was not entitled to whistleblower protections rely on the fact that the CEO only made her *written* disclosure of suspected corrupt conduct by the Mayor on 12 October 2017, two days *after* the Mayor commenced an adverse probationary review of her performance.

48. This fact has been widely used to suggest that the adverse employment process could not have been in retaliation for the disclosure (see e.g. PCCC Report, pp.17, 33, 63).

49. However, while not referenced by the PCCC, the detailed evidence heard by the Queensland Industrial Relations Commission confirms that in fact:

    - the conflict between the CEO and Mayor over his ethical conduct, including matters included in the disclosure of 12 October 2017, commenced by at least August and September 2017 – i.e. *prior* to his initiation of the adverse process; and

    - the reasons given by the councillors for the loss of trust that led them to vote to terminate the CEO, were not simply based on her professional performance, but also *because of* the fact she had made the public interest disclosure (see *Kelsey v Logan City Council & Ors* (No.8) [2021] QIRC 114 at inter alia pars. [102]-[112], [307]).

50. Far from being unusual in public interest whistleblowing, empirical research indicates that this kind of chain of events is perfectly typical of the circumstances for which whistleblower protections are designed and in which, in theory, they should be triggered – see in particular:

    - Peter Roberts (2014), 'Motivations for whistleblowing: Personal, private and public interests' in A. J. Brown, D. Lewis, R. Moberly and W. Vandekerckhove (eds), *International Handbook on Whistleblowing Research* (Edward Elgar Publishing), p.207;
    - A. J. Brown et al (2019), *Clean As A Whistle: Report of the Australian Research Council Linkage Project Whistling While They Work 2* (Griffith University) at pp.12-16 (https://www.whistlingwhiletheywork.edu.au/wp-content/uploads/2020/01/Clean-as-a-whistle-Key-findings-and-actions-WWTW2-December-2019.pdf)

51. These factual issues are highlighted because they reinforce the public interest in ensuring that the fundamental problem of the conflicting statutory duties of corruption investigation and whistleblower/witness protection is analysed and resolved.

52. Contrary to the LGAQ complaint and its acceptance by the PCCC, this was the real and central issue in the Logan events. In my submission, public confidence in the CCC cannot be fully restored until this issue is properly, professionally and independently analysed – something that the PCCC did not achieve – and suitable reforms identified and enacted.

REJECTED SUBMISSION

53. Finally, a third reason which the Inquiry may wish to consider, for why the PCCC did not properly address this issue, is that its process was biased or otherwise miscarried, by virtue of it not being open to (or in any event, not receiving) evidence relevant to a full and comprehensive treatment of these questions.

54. In support of this possibility, I draw your attention to my own attempt to make a submission to the PCCC on issues within its terms of reference, including this issue as well as the specific issue of the CCC's power to lay criminal charges, in July 2021 (*Attachment 1*).

55. Unfortunately, the Secretary to the PCCC informed me that any such submissions by me would not be accepted or published as they had been deemed outside the terms of reference (*Attachment 2*). In my view, this was plainly not the case, as would also tend to be demonstrated by the centrality of these issues to the PCCC's report, and your own Inquiry.

56. I cannot say whether other submissions or sources of opinion, challenging the premises of the LGAQ complaint, were similarly rejected out of hand by or on behalf of the Committee. However, in my submission, the fact that my attempted submission to the PCCC was (in my view, improperly) rejected is fully consistent with the errors of fact and interpretation, and the overlooking of key issues, that are a hallmark of the PCCC's report.

57. I draw this background to your attention in full disclosure, and in case it assists the Inquiry to better understand the issues it has now inherited, not with any expectation that it can or will review the specific circumstances by which the rejection of my submission came about.

58. I will be happy to further assist the Inquiry.

Late submission: Crime & Corruption Commission / Logan City Council inquiry

A J Brown [redacted]

Tue 27/07/2021 7:23 PM

To: pccc@parliament.qld.gov.au <pccc@parliament.qld.gov.au>

Dear Committee Secretary

I seek your indulgence to make a late submission to the above inquiry, and to inform the Committee that I would be happy to appear before the Committee to address the issues raised.

My submissions and evidence would relate particularly to terms of reference:

> e. the CCC's involvement in related civil matters including those which were brought before the Queensland Industrial Relations Commission and Queensland Industrial Court, including the CCC's interaction with former councillors, the former CEO of Logan City Council and any other relevant officers of Logan City Council at relevant times; and
> j. the CCC's role in charging persons with an offence arising from its investigations.

My background and qualifications can be found here: https://experts.griffith.edu.au/18540-a-j-brown

My submissions relating to TOR (e) would be substantially to the effect that the complaint of "interference" in employment-related litigation is misconceived in various significant respects, due to its misunderstanding of the purpose and intended operation of the *Public Interest Disclosure Act 2010* (Qld) and like whistleblower protection legislation in Australia and around the world. Irrespective of what view the Committee takes with respect to the opinions of the Queensland Industrial Relations Commission regarding the Crime & Corruption Commission's involvement in the proceedings, it is my submission that the Commission's overall interpretation of the relationship between that Act and the questions of employment law with which it was dealing, also failed to adequately take account of the purpose and intended operation of the PID Act. This has important implications for the workability of the PID Act in Queensland and like legislation nationally, in addition to bearing upon the Committee's view as to the appropriateness or otherwise of the Commission's involvement.

Since the Committee's conclusions are likely to have significant bearing upon when and how the PID Act is reformed to better fulfil its purposes, I would be happy to assist the Committee in further explanation of these issues. By way of background, some of the research I have led in the field of whistleblower protection policy and legislation -- including research which contributed to reform of the PID Act in 2010 -- can be found here:

> www.whistlingwhiletheywork.edu.au
> www.whistlingwhiletheywork.edu.au/wp-content/uploads/2019/08/Clean-as-a-whistle_A-five-step-guide-to-better-whistleblowing-policy_Key-findings-and-actions-WWTW2-August-2019.pdf
> https://parkesfoundation.org.au/activities/orations/2019-oration/
> https://transparency.org.au/public-interest-whistleblowing/

My submission relating to TOR (j) is that the role of the CCC in charging persons with an offence is an important facility which has increased the effectiveness and relevance of the Queensland commission relative to other similar Australian commissions. This power and role goes to the heart of significant debates over the function and role of such commissions, which have been raised by the complaint. I would be happy to assist the Committee in its considerations of whether this role is

appropriate. By way of background, some of the research I have led on the roles and powers of Australian anti-corruption agencies can be found here:

https://transparency.org.au/a-strong-federal-integrity-commission/

I look forward to your advice as to whether these brief late submissions are accepted, and whether the Committee would like me to provide any further assistance at a public hearing.

Yours sincerely
AJB

A J Brown | Professor of Public Policy & Law
Program Leader | Public Integrity & Anti-Corruption
Centre for Governance & Public Policy | [redacted]
Griffith University | Nathan Campus | QLD 4111 | Australia
[redacted]

Project Leader, Australian Research Council Linkage Projects **Whistling While They Work 2: Improving managerial responses to whistleblowing in public and private sector organisations** and **Strengthening Australia's national integrity system: priorities for reform.**

Boardmember, Transparency International and Transparency International Australia

Submission to Parliamentary Crime and Corruption Committee

Parliamentary Crime and Corruption Committee [redacted]

Tue 17/08/2021 12:24 PM

Cc: Parliamentary Crime and Corruption Committee <pccc@parliament.qld.gov.au>

Dear Submitter,

[redacted]

[redacted]

Kind regards,

[redacted]

Parliamentary Crime and Corruption Committee

QUEENSLAND PARLIAMENTARY SERVICE
Parliament House
Cnr George and Alice Streets Brisbane Qld 4000
Ph: 07 3553 6606
Web: www.parliament.qld.gov.au
Connect with us on Social Media:

Centre for Governance and Public Policy
Griffith University
Nathan Queensland 4111 Australia
[redacted]
www.griffith.edu.au
Email [redacted]

4 May 2022

Hon Tony Fitzgerald AC QC
Hon Alan Wilson QC
Commission of Inquiry relating to
the Crime and Corruption Commission
submissions@cccinquiry.qld.gov.au

Dear Commissioners

Response to further questions

Thankyou for your letter of 22 April 2022 and the questions it contained.

Please find some answers below – I am happy to elaborate further on specific issues.

1. ***How best should the CCC ensure it does not become (or is not simply) a law enforcement agency which happens to be responsible for also investigating corruption matters? For example, you have referred to the need for policies to ensure against this and limitations on terms of secondment.***

   What, if any, other policies, practices, procedures etc. might you consider would be useful and appropriate in this regard, with particular focus on the structure of the CCC regarding the use of seconded police officers.

   See answers to Question 2 below. When it comes to the specific issue of use of (or reliance on) seconded police officers, a key way to protect the core anti-corruption role and mission of the Commission is by shoring up both the operational capacities and the broader professional philosophy, skills and capacities for judgment that go with the reality that anti-corruption is broader than simply the investigation of specific criminal offences.

   Slightly more broadly, putting aside the question of whether anti-corruption and serious and organised crime commission functions are best still located in the one agency (or assuming that they will continue to be), I would also suggest:

   - Shoring up the budgetary security and independence of the anti-corruption functions of the Commission, by statute, to ensure these are insulated from the risk of internal budget decisions (either autonomously or under direct or indirect budget pressure from a Government) that could see deprioritisation of resources for key "softer" anti-corruption functions relative to criminal investigation functions;

   - The types of key anti-corruption functions I have in mind, which seem at regular risk of deprioritisation and are also one or two steps removed from the traditional responsibilities of law enforcement agencies, include:

(i) investigations into 'grey area' corruption concerns (e.g. where there are plainly corruption risk issues or suspected high-risk behaviours or unanswered questions, but not necessarily clear evidence of any criminal offence or likelihood of any criminal prosecution);

(ii) concerns or allegations of this kind especially relating to ministerial or other parliamentary or electorally-related behaviour;

(iii) the capacity of the Commission to effectively – and in a timely way – review, oversight, give direction to and where necessary, take over anti-corruption investigations that it refers back to agencies;

(iv) the capacity of the Commission to properly support whistleblowers (both those who provide information directly to the Commission, and the role of the Commission in partnership with the Ombudsman in ensuring protections are enforced across the system); and

(v) corruption prevention functions more broadly (see below);

- Strengthening of statutory duties regarding the necessity of these and similar functions would assist in making it difficult for them to be deprioritised whether unwittingly, by attrition, by stealth or by executive design.

- In particular, re: (v): I would recommend strengthening corruption prevention functions and duties to provide the Commission with a much more active, enforceable, inquisitive and evaluative role in the corruption resilience of any and all parts of the public sector. This would require a substantial upgrade of resources and powers that, once properly established, should also then be difficult to downgrade and de-fund:

  - For some principles on this recommended approach, arising from our recent Australian Research Council funded National Integrity System assessment research, see our report *Australia's National Integrity System: The Blueprint for Action* (November 2020), Focus Area B, Action 4 'Legislate stronger corruption prevention functions', pages B11-12 (this is framed through the lens of what the Commonwealth should do, but applies to all states as well);

  - For more detail, see attached the full relevant chapter of our draft report, based on research by Professor Janet Ransley (who I will also copy these responses to): Chapter 5 in Brown, Ankamah, Coghill, Graycar, Kelly, Prenzler & Ransley: *Governing for Integrity: A Blueprint for Reform*, Draft Report of Australia's National Integrity System Assessment (April 2019).

- It should also be noted that there is currently limited scope for non-criminal corruption investigations to be reliably and effectively performed in respect of (ii) ministerial/parliamentary conduct matters, above – as highlighted for example by the CCC's [redacted] investigations. In this respect, Queensland still shares with other jurisdictions, the problem of limited codes of conduct for ministers and parliamentarians, and even more limited means of independent investigation and enforcement.

  Whether or not the CCC is the right agency to fill this gap, it needs to be filled – and history shows that the CCC has needed to fill this gap, from time to time, in the absence of anyone else. This issue now overlaps with the question of what investigative and enforcement powers the Integrity Commissioner should have with respect to inappropriate lobbying (and whether it would be better for the CCC to have this role).

However, the general issue is important because these types of anti-corruption enquiries are an increasingly strong public expectation, but are a long way from the types of jobs that most criminally-trained police officers could or should be doing. (To the extent that the CCC's Logan investigations ran into extra difficulty because they had quite properly passed into this more political realm of what standards can and should be applied when judging the conduct of elected officials (i.e. those who, in my view quite improperly, voted to sack the Logan Council CEO), I think it is indeed possible that these particular inquiries might have been best *not* spearheaded by the police officers who were otherwise well qualified to investigate the core corruption matters involved, even if they did so with the close oversight and supervision of others in the CCC leadership, including the Chair, who had the right background and skills to see a bigger picture.)

- Further, for most/all of the above functions, past pressure to reduce or sideline these functions has tended to coincide with arguments that other agencies can/should take direct responsibility for them – e.g. line agencies and the Public Service Commission for policing misconduct or risks to integrity standards involved in category (i) above; Integrity Commissioner to a degree involving (ii); agencies for (iii); Ombudsman or others for (iv); agencies and/or QAO for (v). However, this misunderstands both the value and importance of having an *independent* commission to see these functions through, and the fact that the Commission will always have to have an overlapping jurisdiction with other agencies and their jurisdictions for anti-corruption to be fully embedded across government. Embedding such a principle (i.e. in favour of a 'partnership' or 'redundancy' approach) more clearly in statutory objectives and duties may also be a helpful reform, to help entrench its acceptance.

- General budgetary security for the entire agency, but at least for its anti-corruption functions irrespective of changing priorities for other organised and serious crime investigations and enforcement, would also assist. In my submission, this should be strongly supported by the Inquiry.

  New budgetary models in which core integrity agencies' budgets are determined through a direct parliamentary process (as funding to officers of parliament) and not through the Government's annual budget, are now in place in New Zealand and in Victoria, and have been strongly recommended by the NSW Auditor-General for NSW: see Focus Area A of our November 2020 report, Action 2 'Guarantee sustainable funding and independence' at A08-13 (again, the issue is framed through the lens of Commonwealth events but the same principles apply to all states).

2. In terms of the appropriate role of seconded police officers at the CCC in corruption investigations (as distinct from their role in major crime investigations):

a) Are current, serving Queensland police officers, seconded to the CCC, best suited for this type of investigation?

In my view, they *can* be, especially:

- where criminal offences are alleged or arise, which then require confidence that investigations will be conducted and potentially, specific powers exercised, in a manner for which serving police officers are likely especially well trained;

- the fact that they are serving officers, seconded, should also help most easily ensure that their training and understanding of how to exercise "police" powers is current and up-to-date; as well as helping ensure that they do not perceive their role as CCC

investigators to be ones that involve different (or at least, lesser standards) of due process and due diligence than would apply if exercising those powers in the course of QPS duties (or when they go back to QPS duties);

- wherever corruption (criminal or non-criminal) concerns provoke similar investigative challenges to other complex areas of white-collar crime, fraud, deception etc (which is frequently), then police who have had that training and experience and have achieved highly, recently in those kinds of investigations are especially likely to be highly suitable, and have experience and skills which are difficult to source as easily from elsewhere (as opposed to say, police with only general duties or traffic experience, or who are specialists in violent crimes);
- the option of secondment presumably offers some high-performing investigators a better career option, than resignation for either a contract or permanent appointment at the CCC – and therefore helps attract them to the CCC where otherwise they would simply not be available.

From my observations, these are principal reasons why quality police investigators *can* be the individuals best suited to many anti-corruption investigations, or to key aspects of anti-corruption investigations (in addition to the convenience of not having to train officers in key aspects, and not having to duplicate legislative authority for key police powers e.g. the power to charge, even though that could be done).

In my experience, police officers who are attracted to integrity investigation roles are also often well suited to the specific subject matter, and to non-criminal aspects of investigations, either due to their personal values and moral compass and/or other personal and professional skills, including judgment, their sense of obligation to the community, etc – which in many cases also explains why they became a police officer, and why there were/are good at it, in many cases supported by post-1980s QPS training and experience. I think it important to keep these positive strengths in mind, while also weighing up the importance of the CCC having its own independent culture which can also withstand any risk of erosion or compromise in the event that these qualities do not happen to be present, or diminish (being also the kind of culture that is needed in circumstances where investigations rightly go beyond police training or experience).

b) Would additional and/or specialised training of seconded police officers likely suffice to enable them to adequately investigate corruption matters? If so, what type of specialised training is recommended?

On training of seconded police – I would be sure the answer is yes. However, I am not aware what, if any kind of proper stocktake has been done by the CCC or other agencies in Australia, or other Queensland agencies that take on police or ex-police in their ethical standards units (which over time is quite frequent), to identify what the additional training priorities are and then to fill them. I am sure that some agencies do this, at least informally or based on experience – at least through some kind of induction program, probably more. Asking the agencies and compiling a brief stocktake on this, would be a very good place to start. I'd be very happy to comment further on that evidence, if it is compiled through the Inquiry?

On training of corruption / integrity investigators generally – This is probably the more important question. I do know that there are significant skills needs which are not necessarily met by police training *or* any other training… this contributes to the reasons why seconded police are an attractive resource (not only because they should hopefully

have the specific skills listed above, as relevant to criminal and complex cases, but because they have any training and experience as investigators *at all*).

On this, see my answer to your final question, below.

c) Are police officers best placed as investigators to be involved in corruption investigation matters? If yes, why? If no, then who?

Some of the 'yes' is answered above, in terms of when/why police officers can definitely be best placed to be involved in, or have leadership of corruption investigations (from my general observations).

However while the answer is therefore still 'yes, often (see above)', the answer also remains 'not necessarily', and certainly 'not in totality'.

Even where criminal matters are involved, my perception is that having *only* people who are seconded or trained police officers involved (functioning like police officers) would not be (or should not be considered) best practice for any Australian anti-corruption agency or equivalent unit within any large agency.

Even if a particular matter called for *a lot* of police investigators (e.g. like a major fraud or white-collar crime investigation), you would expect to see a multi-disciplinary team which also included: legal expertise; financial investigators or forensic accountants; at least one generalist policy officer or public servant with familiarity with the functions, standards and normal operational practice in the type of agency or work involved; and likely a team leader with broader than just criminal investigation experience – because both the forensic side of corrupt conduct investigations, and the tactical and strategic decisions required to 'hit the mark' in terms of substantive outcomes (including both the public interest dimensions of any prosecution policy, but also actions or recommendations for non-criminal, policy responses etc), involve questions of public duty and public trust which will always go beyond simply the criminal process.

A parallel would be in anti-cartel or anti-price-fixing investigations by the ACCC – I am not sure exactly how they make up their investigation teams, but I would expect to find them headed up by people who have a good policy grasp on competition and consumer obligations and standards, an ability to investigate how these play out normally in very different industries, and a capacity for principled, strategic judgment on what the broader social, economic and political ramifications will be of where the investigation team tries to draw the line between acceptable and unacceptable conduct (in addition to normal evidence-gathering, forensics, fulfilling evidentiary needs, exercise of police powers and other investigative specifics crucial to the prospects of establishing any criminal or civil penalties).

To this can be added scenarios where:

- The conduct may not be criminal at all (or unlikely to be able to be proved to any criminal standard) but still amounts to corrupt conduct which should attract disciplinary, management or other institutional responses. In these circumstances, agencies often use workplace relations (human resources) investigators who themselves may not have the best skillsets, but have better skillsets than many police officers for unpacking what is going on, what if any standards were breached, and what might be the most appropriate responses.
- The more 'political' contexts for and implications of many corruption issues, whether criminality is potentially involved or not (noted above)

- The investigation focus is (or should be) squarely on identifying what went wrong and/or what could be done to strengthen institutional processes or cultures for the purposes of preventing and reduce corruption risk – irrespective of whether any individual(s) are being held to account through criminal, disciplinary or other processes. This is a totally different type of investigation with totally different forensic, evidentiary and analytical skills, which are even further away from traditional police skills.

d) Broader anti-corruption / integrity investigations training

As part of the response to these issues, there is certainly a strong argument to be made for training to increase and maintain a professional pool of people with good skills for anti-corruption and integrity investigations. This has emerged over recent decades as an under-met, specialist need among all Australian governments, which spans:

- Police officers themselves (or others with formal specialist investigation experience) who may not have experience in other aspects of the role, in non-criminal investigations, in policy and evaluation skills beyond narrow forensic investigations, or in understanding the policy/political context of their work
- Others who already make up, or could readily make up, investigation teams and could potentially and effectively carry more of the investigation role in many cases, but do not come from a law enforcement background (lawyers, forensics, HR/workplace complaint investigators etc)
- Similar needs in other integrity agencies (e.g. complex ombudsman investigations) where criminal conduct is less likely, or unlikely to be a focus of the investigation, but other investigative issues can be comparable including choices of relevant standards, identification of good practices and departures from it, use of powers of compulsion, procedural fairness, evaluation of policy responses, and identification of reforms and recommendations
- Similar needs within agencies' ethical standards and compliance units, where most corrupt conduct investigations currently occur (even if oversighted or reviewed by the CCC), and which are also often dependent on people with a former law enforcement background.

Expanding this kind of training would be a key step – or even a requirement – for reducing dependency on seconded police officers, even if there remains a valid place for use of seconded or former police officers in many investigations.

There seems to be growing recognition of the benefits of expanded training of this kind. It has been trialled in a limited way among some university postgrad programs in recent years, but without a sustained/sustainable model emerging for an ongoing program. [redacted]

There nevertheless remains a recognised need for improved training for investigators working in these fields. Apart from other limited earlier initiatives:

- In 2019, the **Deputy Ombudsmen** (state and federal, who meet nationally) also identified the need for a professional training qualification in administrative (i.e. non-criminal) investigations, partly in response to the same needs (our University

was working with the Queensland Deputy Ombudsman, Angela Pyke, to prepare a proposal for such a program, again at Graduate Certificate level, when the Covid pandemic also put this initiative on hold);

- [redacted]

I would also be very happy to assist further with details of the kind of thinking that we have previously had about training needs, and the features of a quality, sustainable program – if this is among the range of recommendations that the Inquiry is considering. Most of this thinking has not been formalised, and was suspended during Covid, as already noted – although new market research on demand for postgrad courses in related areas has now restarted.

The most commonly discussed needs I am aware of are not basic investigation training (which is often obtained through TAFE Certificate Level IV courses, as well as law enforcement training), or specific areas of technical need (e.g. technological trends and tools, although these are other areas of need), but training and further education to understand the wider roles and contexts involved in integrity investigations. For your information, this was a recent list of relevant topics I recently shared with [redacted] as being identified gaps in skills or experience of this kind:

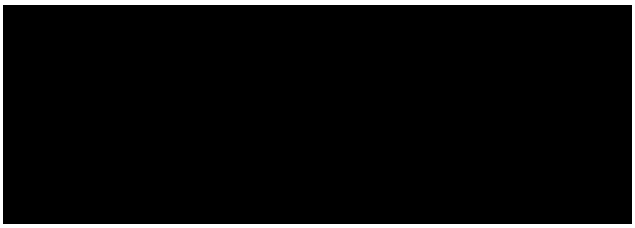
(i) policy and political understanding of the overall integrity / anti-corruption framework of any given jurisdiction, i.e. the institutional and political context of the work
(ii) international context of anti-corruption - UNCAC, AML/CTF regulation, international cooperation, trends and blockages, all as they affect Australia
(iii) use of compulsory powers – obligations, procedures and protections
(iv) procedural fairness (advanced admin law) for investigators (i.e. non-criminal... although something that covers both crim procedure and admin law obligations would be better)
(v) dispute resolution / conflict resolution / mediation skills, for dealing with and resolving complaints (possibly less relevant for ACAs)

(vi) investigation planning for results i.e. scoping potential outcomes and identifying relevant standards for judgment (beyond criminal and disciplinary standards), anticipating the politics of recommended reforms, report-writing
(vii) multidisciplinary investigations: building and managing teams
(viii) complainant / witness / whistleblower management and support (and also, reprisal investigation skills/standards)

Also for information, I attach a brochure on our now-abolished Graduate Certificate in Integrity & Anti-Corruption program. Please note, however, this was a policy focused program, and any new program designed to meet more of the above needs, would look quite different to this and involve more skills-based and operational content.

I hope these responses assist, and remain happy to assist further.

Yours sincerely



A J Brown
Professor of Public Policy and Law
Program Leader, Public Integrity & Anti-Corruption
Centre for Governance & Public Policy

5. Preventing corruption

5.1. The issues

Public sector integrity systems are designed to identify and respond to corruption, misconduct and undue influence, and also to promote ethical behavior, high integrity public decision-making, accountability and performance. An important part of this role is preventive – that is, not just fixing problems and ensuring accountability and justice after they arise, but preventing them from occurring in the first place.

Integrity is supported institutionally in a wide variety of ways, including through the leadership and culture of organisations and governments, and the mutually reinforcing work of all integrity agencies. However, as corruption risks grow and change, there is also increasing recognition that preventing corruption does not happen by accident or good intentions alone. It requires systematic attention and a program of activity, both by lead integrity agencies and within every institution, to support the desired culture.

Surprisingly, research, policy and practice in the prevention of corruption are much less advanced than other aspects of integrity. This is confirmed by new, national research undertaken as part of this assessment. We set out to establish:

- What do international research and experience say about the best approach to preventing corruption, including lessons learned from other domains that could be applied to help develop effective corruption prevention strategies?
- What kinds of prevention activities are currently employed across Australian governments jurisdictions – how do they compare, and what may be missing?
- Is a more strategic framework needed for corruption prevention – and if so, what should be its elements?
- Is resourcing for prevention adequate, and if not what should it be?
- How should prevention responsibilities and activities be formally embedded in public integrity frameworks, in support of Australia's historical commitment to a 'pro-integrity' culture in public institutions, now and in the future?

5.2. The state of the debate

Research and policy experience internationally

Research into corruption prevention is less advanced than it is for other aspects of integrity and corruption. This also sets corruption research apart from other areas of crime and misconduct where extensive literatures have developed around how wrongdoing can be reduced, while compliant behavior is encouraged.

It is self-evident that it is better to prevent corruption and other integrity breaches from occurring in the first place than to only invest energy and resources in responding to them after the event. Misconduct investigations tend to be protracted, expensive, and unpredictable in their outcomes. As a 'hidden' crime, corruption cases can be hard to identify and it can be difficult to find evidence to support them, particularly to the criminal standard of proof. Corruption control remains broader than prevention – it also has elements of public denunciation, punishment, education and standard setting. But prevention is integral -- as discussed in chapter 3, Article 5 of the UN Convention Against Corruption requires all countries to have a prevention strategy.

To implement this, corruption prevention involves a wide range of systems and measures that change the fundamental conditions which lead corruption to occur in the first place, by analysing vulnerabilities, hardening targets and making interventions to support ethical cultures, climates and leadership. At a practical level, international studies suggest that effective corruption prevention requires, among other factors:[1]

- Effective use of research on corruption and anti-corruption;
- Comprehensive, publicly reported risk-analysis across all public bodies and sectors;
- Engagement of senior management in designing and promoting integrity measures;
- Building adequate prevention systems including clear rules and practical tools, guidance, training, monitoring and enforcement;
- Development of better measures, and collection of appropriate data on prevention;
- Ensuring effective and transparent inter-institutional coordination.

Nevertheless, prevention continues to take a less visible role in anti-corruption efforts; unlike high profile investigations and prosecutions, prevention efforts tend to be much less acknowledged.[2] Similarly, they struggle for resources; Transparency International's evaluation methodology for anti-corruption agencies rates 5 per cent or more of an ACA's budget spent on corruption prevention, research and outreach as being 'high'.[3]

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[1] OECD Anti-Corruption Network for Eastern Europe and Central Asia (2015) *Prevention of Corruption in the Public Sector in Eastern Europe and Central Asia*, OECD, p15.

[2] Scott and Gong (2015). Evidence-based policy-making for corruption prevention in Hong Kong: a bottom-up approach, *Asia Pacific Journal of Public Administration*, 37:2, 87-101, doi: 10.1080/23276665.2015.1041222; Quah (2017). Learning from Singapore's effective anti-corruption strategy: Policy recommendations for South Korea, *Asian Education and Development Studies*, Vol. 6 Issue: 1, 17-29, https://doi.org/10.1108/AEDS-07-2016-0058

[3] https://www.transparency.org/files/content/activity/2018_Revised_ACA_Implementation_Guide.pdf

Further, despite the appeal of prevention, designing and implementing a comprehensive prevention strategy has proved problematic. As shown in chapter 4, the idea of corruption encompasses a wide spread of activity, from the clearly criminal (e.g. bribes) through misconduct (e.g. appointment processes disrupted by cronyism), to behaviours that are perhaps legal but nevertheless contrary to public expectations (politicians' entitlements used for personal or political benefit). What behaviours should a corruption prevention strategy target? Can a one-size-fits-all approach deal with varying types of problem? What techniques and tactics are most effective in preventing corruption?

Until recently there has been little discussion of these questions, much less a consensus on the best approach. Corruption prevention efforts have been ad hoc, and 'hit and miss in their impacts'.[4] Developing a strategy is a complex task.[5] There is very limited research on what constitutes effective corruption prevention, and almost none on the effectiveness of particular prevention strategies.[6] The lack of an appropriate evidence-base means that jurisdictions have very little guidance about how best to fulfill their corruption prevention responsibilities.

There is also often conceptual confusion about what constitutes corruption prevention, with international frameworks requiring preventive measures, but providing little practical guidance on how this is to be achieved. Similarly, until very recently there has been little research into what works, or might work, by way of corruption prevention strategies.

Possible approaches and frameworks

Fortunately, there is now an emerging literature that uses various analytic models to describe different approaches to prevention, and that focuses particularly on developing understanding about the likely effectiveness of preventive activities. Three different models can be used to describe possible lessons from other domains, on how to develop and implement effective corruption prevention strategies:

- Law enforcement models
- Bureaucratic models
- Situational corruption prevention models.

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[4] Graycar and Prenzler (2013) *Understanding and Preventing Corruption*. London: Palgrave Macmillan., p. 71

[5] Graycar and Sidebottom (2012). Corruption and control: a corruption reduction approach, *Journal of Financial Crime*, Vol. 19 Issue: 4, pp.384-399.

[6] Tunley et al (2018). Preventing occupational corruption: utilising situational crime prevention techniques and theory to enhance organisational resilience. *Security Journal* 31: 21 https://doi.org/10.1057/s41284-016-0087-5; Porter and Graycar (2016). Hotspots of corruption: applying a problem-oriented policing approach to preventing corruption in the public sector, *Security Journal* Vol. 29 (3) 423-441. https://doi.org/10.1057/sj.2013.38.

1) Law enforcement models

This can also be described as a criminal justice model of corruption prevention.[7] This model relies on new laws, increased penalties and stricter enforcement, on the assumption that wrongdoers will be deterred because of their fear of detection and punishment. While anti-corruption authorities may form the enforcement arm of such a model, their role in this approach has been criticised as 'centralised, top-down institutions relying heavily on well-publicised prosecutions, threats of sanctions, and moral exhortations',[8] often with little attempt made to assess the long term effectiveness of these strategies in reducing corruption.

The law enforcement model rests on largely untested assumptions, particularly the notion that new laws and penalties, and well-publicised prosecutions, will act as a deterrent to future corruption. But there is very little rigorous evidence to support the preventive effect of this approach, although it may serve other purposes including punishment, incapacitation, and public denunciation of wrongdoing.

In fact, a large body of research in criminology, economics and other disciplines, has focused on this approach to deterrence in crime prevention more generally, and found it to be problematic. There is clear evidence that for crime generally, deterrence only occurs when there is a well-publicised high risk of detection, and a swift law enforcement response.[9] These factors are far more important than the extent of any penalty. But both of these factors are hard to achieve for hidden crimes like corruption, where the prospects of detection are often low, and investigations and prosecutions are likely to be protracted. While increasing penalties is an easy solution for governments, on its own this is unlikely to deter misconduct.

Studies of other forms of organisational or hidden crime, such as corporate misconduct, have found that the relationship between punishment and deterrence is particularly weak, due to the diffusion of responsibility within such structures.[10] While responsibility for some corrupt acts might be clear, where individuals act alone, broader-scale corruption suffers from the same problem as corporate crime – it can be difficult if not impossible to attach major responsibility to particular individuals. This affects not only prosecution outcomes, but the capacity of such actions to have any deterrent effect. Organisational offenders can resist and deflect prosecutions and absorb most financial penalties, and in that context are unlikely to stop their misconduct.

A further problem with the law enforcement model is that it focuses resources on responding to corruption after the event. Expensive and protracted prosecutions risk detracting from 'front-end' prevention efforts. Yet for authorities with a law enforcement mindset, investigations and prosecutions are seen as key organizational drivers.

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7 Graycar and Sidebottom (2012). Corruption and control: a corruption reduction approach

8 Scott and Gong (2015). Evidence-based policy-making for corruption prevention in Hong Kong: a bottom-up approach

9 Nagin et al (2015). Deterrence, Criminal, Opportunities, and Police. *Criminology*, 53: 74-100. doi:10.1111/1745-9125.12057.

10 Simpson et al (2014). Corporate Crime Deterrence: a Systematic Review, Campbell.

2) Bureaucratic models of corruption prevention

Given the problems with law enforcement approaches to prevention, an alternative can be described as an audit or bureaucratic approach. This type of corruption prevention is characterised by lists of activities that can foster prevention, for example: risk assessments, training, communication, whistleblowing support, monitoring, and disciplinary measures.[11] The bureaucratic approach to prevention is often presented as practice guides and guiding principles, rather than an integrated and cohesive strategy.

There are two problems with this approach. First, the checklist technique often gives agencies very little guidance as to which activity to prioritise, or which bests suits certain types of corruption problem. Which of the bureaucratic techniques are most appropriate to address the range of corruption types mentioned already (criminal, misconduct, failing to meet public expectations)? A homogeneous bureaucratic approach may provide little assistance to agencies that must apply limited resources to the problem of prevention.

The second problem is that there tends to be little quality evidence to support some of the prevention activities commonly used.[12] This lack of evidence reflects the lack of an underlying rationale or theory to support the range of activities; instead it is simply assumed that they will be effective.

One way to overcome this problem is through incorporating regulatory theory, particularly ideas of responsive regulation.[13] In this approach many of the same types of bureaucratic technique are used, but within a structured framework that focuses on enhancing rule-compliance. A responsive regulation model incorporates compliance-based and deterrence-based strategies to control behavior in a tiered enforcement pyramid. Cooperative compliance is encouraged through education, negotiation and persuasion. Regulator action escalates through the tiers of the pyramid if compliance is not achieved. Higher tiers might include audits, monitoring and surveillance, with warning letters or administrative sanctions for persistent non-compliance. The tip of the pyramid is reserved for egregious misconduct, and involves civil or criminal sanctions.

A voluminous research literature on regulatory approaches has developed over the last twenty years, with several studies showing it can achieve long term success in improving compliance.[14] However, key to success is the idea of a structured, systematic response to breaches, with a careful targeting of sanctions dependent on the situation. A properly designed system can have prevention effects, first through encouraging compliance, and second by providing the necessary preconditions, such as certainty and swiftness and a calculated escalation of sanctions, for the deterrence mechanism to be activated in a way that is not achieved through protracted and delayed law enforcement models.

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[11] Tunley et al (2018). Preventing occupational corruption: utilising situational crime prevention techniques and theory to enhance organisational resilience., p. 24

[12] Ibid., p. 25

[13] Ayres and Braithwaite (1992). *Responsive Regulation: Transcending the Deregulation Debate*. Oxford University Press, New York.

[14] See Parker (2013). Twenty Years of Responsive Regulation: an Appreciation and Appraisal. *Regulation & Governance*, 2013, 7(1), 2-13.

Some guidance on how such a system could work in corruption prevention frameworks is given by the literature on reducing complaints against police. That literature shows that early intervention systems designed to identify and address behaviours of officers attracting repeat complaints, and better investigation and resolution processes, can lead to reduced levels of complaints.[15] Such an approach could be developed and applied to corruption prevention.

3) Situational corruption prevention models

A third model has emerged which considers corruption prevention through the lens of opportunity theories borrowed from criminology, and particularly crime prevention research. The central idea is that much wrongdoing derives from situational opportunities, which can be reduced by modifying environments to diminish factors that facilitate it.[16]

The approach assumes that rational actors will choose not to offend in situations where to do so is difficult or risky, and that manipulating situations can lead to changes in individuals and their motivations for offending. Situational approaches shift the focus from after-the-event responses, to pre-emptive prevention, by changing the regulatory and behavioural environment in which offending occurs. Necessarily then, the approach is highly tailored to individual problems, and offers a toolkit of strategies, rather than one-size-fits-all solutions.[17] The leading toolkit is a matrix of 25 crime prevention strategies.[18]

The situational approach draws on various theories, including rational choice, routine activity and crime pattern theories. Rational choice theory assumes individuals make calculated choices about offending, based on risks and rewards (while recognizing that not all offending is rational). Routine activity theory argues the importance of the 'crime triangle' comprising motivated offenders, vulnerable targets, and weak guardianship, as being the essential elements for crime to occur. Prevention then focuses on reducing motivations and access to targets, and increasing guardianship. Crime pattern theory shows that crime is not random but is concentrated in hotspots which can be targeted for response.[19]

Based on these theories, four essential elements of a situational model to prevention can be identified[20], so that such a model:

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[15] Prenzler et al (2016). Reducing public complaints and use of force: the Portland Police Bureau experience, *Journal of Criminological Research, Policy and Practice*, 2(4), 260-273.

[16] Clarke (1993). *Situational Crime Prevention*. Crime & Justice, 19,91.

[17] Graycar and Prenzler (2013) *Understanding and Preventing Corruption*. London: Palgrave Macmillan.

[18] See Clarke (1993). Situational Crime Prevention

[19] See Graycar and Masters (2018). Preventing malfeasance in low corruption environments: twenty public administration responses, *Journal of Financial Crime*, Vol. 25 Issue: 1, pp.170-186, https://doi.org/10.1108/JFC-04-2017-0026; Porter and Graycar (2016). Hotspots of corruption: applying a problem-oriented policing approach to preventing corruption in the public sector.

[20] See Porter and Graycar (2016). Hotspots of corruption: applying a problem-oriented policing approach to preventing corruption in the public sector; Tunley et al (2018). Preventing occupational corruption: utilising situational crime prevention techniques and theory to enhance organisational resilience.

- is based on an underlying assumption of rational assessments of risk versus reward influencing decisions to engage in corrupt behavior;
- recognizes the central role of opportunity, and has a focus on opportunity reduction;
- sees guardianship as a protective factor, and has a focus on boosting guardianship; and
- identifies hotspots using data analysis, to target enforcement and prevention efforts.

In the last five years, these ideas have increasingly been borrowed from criminology and applied to corruption prevention. Some authors[21] have adapted key principles from situational crime prevention to develop a corruption prevention framework based on five types of activities that aim to:

- *increase the effort* required to perpetrate corrupt acts, e.g. improved management controls; physical or digital safeguards to protect cash, other assets; and confidential information, more rigorous recruitment screening to reduce legitimate access;
- *increase the risks* of detection and punishment, e.g. regular monitoring of activity or functional areas, unscheduled audits, integrity tests, data analysis, improved whistleblower support;
- *reduce the rewards,* e.g. impose contract or expense authority limits;
- *reduce provocations,* e.g. ensure fair, merit-based employment conditions, employee assistance programs including counselling for financial or substance problems; and
- *remove excuses,* e.g. publicise standards and rules, provide clear and unambiguous guidance on ethical conduct.

Other scholars[22] adapted the situational crime prevention toolbox to develop 20 strategies to provide a structured framework for corruption prevention activities, based on four main categories of effort. This includes strategies that seek to: change the effort required to commit corrupt acts, change the risk and rewards structures, promote and value integrity, and raise awareness of the consequences of corrupt behavior.

A key feature of situational strategies is that there is no single 'one-size-fits-all' solution to corruption prevention. Instead, there is a need for careful analysis and data collection around specific problems, and the development of tactics based on the overall framework. Because of this, there is considerable scope for overlap between responsive regulation techniques which are also context dependent.

An integrated prevention framework drawing on both regulatory and situational approaches, as well as on highly selective and targeted law enforcement responses (as the tip of the regulatory pyramid of sanctions) could form the basis of an effective prevention framework. It would be based on theoretically sound anti-corruption levers and could simultaneously facilitate compliance, activate deterrence, and reduce opportunities.

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[21] See e.g. Tunley et al (2018). Preventing occupational corruption: utilising situational crime prevention techniques and theory to enhance organisational resilience.

[22] See e.g. Graycar and Masters (2018). Preventing malfeasance in low corruption environments: twenty public administration responses., p. 182

Current Australian approaches and activities

In Australia, these challenges are chiefly addressed by the nation's anti-corruption agencies (ACAs), which as in many countries, are given a mandate for prevention among other functions.[23] However, even among ACAs, there is considerable variation in how prevention is understood and implemented within their legislated suite of responsibilities.

Across Australia, ACA functions can be broadly characterized as community engagement, prevention, and investigations and prosecutions.[24] Most Australian ACAs have responsibilities across all areas. But how they balance the prevention role within those responsibilities, resource it, the strategies they adopt and how they are implemented, varies considerably.

What types of approaches to corruption prevention are currently adopted? To establish this, we drew on various sources of data (see Appendix 2), particularly:

- desktop review of publicly available documents and websites of Australian ACAs;
- responses to a survey of ACAs on prevention approaches and techniques; and
- interviews and focus groups with selected senior ACA officers with a prevention role.

We focused on ACAs because in general they have the lead role in prevention efforts, and mostly have a legislative mandate to perform that role. In some Australian jurisdictions, ACAs also have a formal or informal role in coordinating prevention efforts across other integrity agencies. Table 5.1 sets out the ACAs invited to participate in the prevention-specific research. Some jurisdictions split the prevention function across two bodies, so in these cases both were included. The ACT Integrity Commission is due to start operating in the Australian Capital Territory later this year, so was not included.

Table 5.1: ACA participants in the prevention-specific research

Jurisdiction	ACAs
Commonwealth	Australian Commission for Law Enforcement Integrity (ACLEI)
New South Wales	Independent Commission Against Corruption (ICAC) Law Enforcement Conduct Commission (LECC)
Victoria	Independent Broad-Based Anti-Corruption Commission (IBAC)
Queensland	Crime and Corruption Commission
South Australia	Independent Commission Against Corruption (ICAC)
Tasmania	Integrity Commission
Western Australia	Crime and Corruption Commission (CCC) Public Sector Commission (PSC)
Northern Territory	Office of the Independent Commission Against Corruption (ICAC)

[23] Graycar and Prenzler (2013). *Understanding and Preventing Corruption*.

[24] Quah (2017). Learning from Singapore's effective anti-corruption strategy: Policy recommendations for South Korea.

In the survey of ACAs, interviews and focus groups, we asked questions on:

1. the prevention role and mandate in the jurisdiction, other agencies that also undertake prevention, and how/to what extent these activities are coordinated;
2. the prevention function within the ACA, including its place and importance in the agency and the extent to which it is included in key governance structures;
3. the range of prevention activities undertaken by the agency, within the categories of general deterrence (broadly law enforcement), specific risk-based activities (broadly bureaucratic/administrative), and situational activities (targeting facilitators/ inhibitors) – including the emphasis placed on post-intervention activities (occurring alongside or after a law enforcement investigation) and more pre-emptive approaches;
4. how prevention activities are prioritized, selected and delivered, including the variety of delivery modes used;
5. how the impact of prevention activities is assessed and measured, including any formal evaluations, and suggestions for performance measurement indicators.

1) Prevention mandate and coordination

All Australian ACAs have some form of prevention mandate, although the extent to which that mandate is articulated in their establishing legislation varies considerably. Most share the mandate with other integrity agencies, particularly Ombudsman's offices, to some extent Auditors General, and in some jurisdictions public service commissions or similar bodies.

One important way in which ACA mandates vary is in the agencies and individuals over which they have jurisdiction. In the states and territories the mandate is largely inclusive of most of the public sector, whereas at the Commonwealth level ACLEI only has jurisdiction over the law enforcement activities of five specified agencies. As a result, no specific agency currently has a clear and comprehensive mandate to develop and foster corruption prevention across the Commonwealth sphere, and there is no over-arching strategy for how this might be achieved, even voluntarily, by agencies within the sector. While the Australian Public Service Commission has some developmental functions and activities in this area, there is no clear leadership or coordination of the corruption prevention mandate.

Overall, the extent of coordination between agencies specifically focused on prevention varies between the Australian jurisdictions. In some jurisdictions there are regular formal meetings among prevention directors (or similar senior officers) while in others these tend to be less formal catch-ups which depend to some extent on the maintenance of personal relationships among key staff. In some other agencies there is limited coordination at the prevention functional level, although the ACA head may meet regularly with his or her counterparts in other agencies to discuss the broader spectrum of activities.

There was little dissatisfaction expressed by ACA respondents with either the mandate or coordination arrangements, although one commented 'there is room for improvement but there is a reasonable degree of coordination' [between the relevant agencies]' (Survey B1).

There is also a degree of coordination on prevention between jurisdictions, with regular meetings attended by the prevention directors (or similar role title) from around the country. These meetings are used to share knowledge on current priorities, and to discuss common issues and problems. Beyond those meetings however, there is limited regular discussion of

ongoing initiatives, trends or intelligence gathering, with one respondent observing 'we could do a lot more to integrate our activities across state barriers, given that corruption increasingly crosses borders' (Interview 10). Another respondent observed 'it operates more on the basis that if we have a particular problem and we know jurisdiction X has dealt with something similar, I'll get on the phone to their prevention director and have a specific discussion about that matter – so much less formal and more ad hoc' (Interview 34).

2) Role of prevention within the ACA

Most respondents agreed or strongly agreed that prevention is a priority in their jurisdiction and their agency. There is some variation on how agencies' governance arrangements reflect the prevention role. At one end of the spectrum, in a small number of ACAs the senior officer in charge of prevention sits on all of the ACA's key decision making committees and has an integral role in shaping policy. This includes being part of senior executive committees, or operations committees, as well as the more obviously relevant prevention committees. While other respondents may not have that level of direct involvement, there was a general perception of prevention being present 'at the decision-making table' (Interview 35).

It was unclear however to what extent this level of access was able to influence decisions about resource allocation, and specifically the relative emphasis placed on prevention and investigation activities. In all agencies, prevention receives significantly less staffing and other resources than investigations. Some respondents reported that their staff complement had been increased relatively in recent years (Interviews 22, 34); but that it was still small and that meant 'tough prioritization decisions have to be made' (Interview 23).

In one agency, the prevention function does not stand alone but is combined with the strategic intelligence function of the ACA (Interview 9). This was seen as advantageous because it embeds prevention into the whole range of the ACA's activities and allows the early identification of important opportunities to strengthen prevention. Another advantage was that intelligence officers have become exposed to the idea, goals and techniques of prevention, and are more likely to identify particular matters as having prevention implications. This has amounted to a way of extending the otherwise very limited prevention resources in that agency (Interview 9). On the other hand, merging the two functions could potentially risk the prevention focus being subsumed or captured by intelligence efforts focused on responding to misconduct.

3) Approach to prevention

Most of the respondents referred to the ACA's legislative mandate as their ultimate guide for prevention. Within that mandate ACAs referred to a range of internal criteria and guidelines that frame how prevention is conducted. None of the ACAs described an explicitly articulated prevention model that directly connected to the models discussed above (law enforcement, bureaucratic/regulatory, situational), although elements of each were raised by most agencies. For example, ACLEI's public description of its approach – perhaps consistently

with the current jurisdiction of the agency – aligned most closely with the law enforcement model, being focused on 'detection, disruption and deterrence'.[25]

One ACA summarised its corruption prevention strategy:

> *There are three pillars to this strategy:*
>
> - *engage with the community and public sector to improve understanding of corruption and its harms*
> - *encourage reporting of corruption in the public sector*
> - *alert organisations to the latest information and intelligence to stay ahead of corruption risks.* (Survey C1).

The same agency described prioritised activities as largely focused on education and engagement, including 'awareness-raising, encouraging reporting, and supporting public sector agencies to build their internal capacity to prevent corruption through effective prevention practices' (Survey C1).

Another ACA referred to its publicly available corruption prevention strategy, described under two headings (Survey A1):

- prioritise and direct resources to areas of highest impact
- work with jurisdiction agencies to strengthen integrity systems.

Within that ACA there is a strong emphasis on connecting prevention with intelligence collection and analysis. It further reported:

> Our approach is slightly different to most, and is much more a contingent, intelligence led approach with corruption prevention practice embedded within an operational intelligence team at the front end of the investigations life cycle, rather than side lined with policy or after the fact. This works because we are small and specialist (Survey A1).

Most ACAs reported internal structures that guided prevention, including overall corporate strategies and plans, internal governance committees, and feedback from oversight agencies. Several noted that prevention activities were often guided by the ACA's overall program of work, current issues uncovered in investigations or through oversight bodies, and particular requests from other agencies. However, they also noted that these needs had to be balanced against restricted prevention resources, workloads and other agency priorities.

Several ACAs referred to the role of research and intelligence-based assessments in identifying areas of high need for prevention interventions. These could incorporate broad reviews of the external operating environment, national and international developments, research or recommendations from other sources, particularly about trends and areas of focus (Survey C1?).

Similarly, a number of respondents emphasised the importance of risk-based approaches to targeting prevention resources, so that they are focused on particular areas of need, with one commenting 'we need to target our resources in the areas of highest risk, given how limited they are' (Survey D1). Another said 'once an area is identified as high risk, then the

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[25] ACLEI, https://www.aclei.gov.au/corruption-prevention.

type of prevention activity is tailored so that the most effective form of delivery is used (Interview 35).

4) Selection, prioritisation and delivery of prevention strategies

Most of the ACAs incorporate a wide scope of prevention techniques, ranging from broad education campaigns, public education activities, targeted specific activities (eg focused on particular government departments or functional areas like procurement), post-investigation prevention recommendations, and some intelligence-based prevention efforts.

One respondent commented:

> We have four areas of work: investigations (which generally leads to the preparation of a corruption prevention chapter in the investigation report), education and training (delivering workshops and speaking engagements), advice (which is written or verbal and is usually, but not always, solicited. This includes maintaining website material and making submissions to relevant enquiries), and projects (which usually results in a corruption prevention publication) (Survey B1).

Overall, the main prevention activities reported across the ACAs include:

- research reports on corruption risks, including case studies
- guides on managing high-risk areas or functions, such as procurement processes or planning areas
- training programs, communities of practice, and capacity building in client agencies
- public engagement programs using various outreach platforms
- forums and events
- fact sheets, work-aids and tools, and advisory lines
- investigations and public hearings
- post-investigation prevention, focused on prevention lessons learned from specific corruption or misconduct investigations, for the public agency or more generally
- targeted audits
- using complaints and other data to identify potential issues and investigations.

All ACAs report conducting some or all of these prevention activities. One of the most common types of activity reported is broad education campaigns, focusing on either the role of the ACA or the nature or types of corruption. All ACAs reported this to be an important part of their work. These activities are delivered through a variety of channels, with the most common being training programs, outreach visits, factsheets and other general publications.

In general these activities were seen as important either because the agency has a specific mandate to perform them, or because broad education is seen as a specific component of an effective prevention strategy. However these activities were also seen as resource intensive; especially outreach visits and training, and potentially detracting from more targeted prevention tactics. In some agencies specific staff are dedicated to training or outreach activities of this nature, while in others the tasks are shared between prevention-related staff.

A recurrent theme was the extent to which prevention activities and resources relate to post-investigation processes. This occurs when an ACA investigates potential corruption or misconduct, and as a result, opportunities to improve prevention efforts are identified.

In some agencies a key technique is for prevention staff to be embedded into investigations at the early stages, to identify prevention issues and contribute chapters on prevention to investigation reports. This type of work was reported as consuming a considerable proportion of all prevention resources – in one agency with 15 prevention staff, at the time of data collection prevention officers were embedded in 20 live investigations (Interview 22). The importance of this role is seen to be that prevention is borne in mind from the beginning of major investigations, so that weaknesses in systems and processes can be identified and recommendations for improved practice can be incorporated into investigation reports. On the other hand, however, as well as limiting the prevention resources available for more proactive and future-oriented efforts, this approach risks prevention being perceived as primarily a reactive activity, focused on responses to investigations.

In terms of how prevention activities are prioritized, responses from ACAs varied. Most commonly this was described as a process of negotiation and consultation, including being responsive to current ACA investigations, or to highly topical and public corruption issues. One ACA described the need for 'tough decisions to get the best effects. As a small team we have to get the best bang for our buck' (Interview 35). Another ACA suggested that while there were no formally articulated criteria for initiating new prevention projects, they do tend to be discussed for a long time at team meetings before a decision is made to proceed (Interview 22). Resourcing constraints are clearly relevant in determining prevention priorities, with one agency commenting 'printed publications and pre-agreed training packages work best because this guidance is not really sensitive to audience type' (Survey C1), meaning these resources can be readily used across broad sectors.

Most respondents commented on the key role played by publicity, and the use of media releases and other such measures to achieve this. Publicity was seen as having two purposes – it both promotes the ACA and its mission, and highlights the risk of detection and the consequences of wrongdoing. Few of the ACAs reported any systematic approach to auditing or integrity testing. One commented:

> We don't do much direct auditing/checking of corruption prevention-related internal controls. Ideally, agencies should be doing this themselves but I think that overall coverage is patchy (Survey B1).

5) Measuring performance and outcomes

ACA participants were asked how they assessed the performance of prevention activities, and for any suggestions on how this could be strengthened. They were also asked what types of data are currently collected that could inform performance measurement. Most respondents acknowledged that this was an issue they struggled with. One respondent commented:

> The impact of corruption prevention activities is difficult to evaluate and cannot be assessed by a single measure. It may take years for an impact to be known or felt, or there may be consequences that are neither communicated nor publicised.

> Importantly, the number of charges and convictions are only one performance indicator for anti-corruption bodies (Survey B1).

Another commented:

> Assessing the impact has always had its challenges. Quantitative data is more easily collected but not necessarily a good measure of impact (Survey D1).

In terms of data collected by the ACAs relating to their prevention performance, these largely fall into six categories:

- activity counts e.g. numbers of training activities, publications and reports, and responses to advice requests, along with broader ACA measures like finalized investigations, numbers of reports etc
- policy and legislative impact e.g. reforms or statements in response to prevention recommendations
- levels of voluntary cooperation and engagement by agencies subject to the ACAs jurisdiction
- evaluation reviews and oversight agency reports
- measures of community and public sector perceptions and uptake of ACA activities, e.g. website hits, media mentions, engagement requests, publication downloads, and community surveys (conducted by the ACA itself or as part of other public sector initiatives)
- measures of community attitudes to corruption eg of levels of fraud and misconduct in the public sector.

As possible indicators for improved performance measurement, one respondent suggested:

- *Misconduct is understood as demonstrated by more appropriate notification and reporting of misconduct*
- *Employee surveys indicate that employees view their workplaces as ethical and have confidence in speaking up*
- *Feedback sheets from specific workshops or information sessions indicate that knowledge has increased*
- *The community has a positive perception of public authorities*
- *Reviews/follow up indicate that practices have changed in public authorities in response to issues being identified, particularly where a misconduct event has occurred.*

6) Summary of current approaches

Four strong themes emerge from the research. First, while ACAs generally perceive their mandate to include leadership of the corruption prevention agenda in their jurisdiction, there remains considerable variation in their formal mandates to do this, and their efforts to coordinate other agencies with a prevention role are at best unstructured and ad hoc. Similarly, while most ACAs see prevention as important, this is not always reflected in their formal governance arrangements or resource allocation.

Secondly, the level of resources allocated to prevention was consistently used to explain limitations on activities. There is considerable variation between the jurisdictions on prevention resources, especially dedicated staff, with complements ranging from just two to over twenty. However in those ACAs with a larger staff complement in prevention, those staff are often focused on primarily reactive activities, such as being embedded in investigations. While these activities are prevention-focused and may result in relatively broad recommendations and guidelines for practice, the end result is that prevention resources available for more strategic and future oriented activities are often very restricted.

Thirdly, prevention activities across the sector are strongly focused on education campaigns at one end of the spectrum, and investigation-led approaches at the other end. These strategies absorb most prevention resources. In most ACAs there is much less attention paid to strategies focused on compliance building and early intervention (e.g. audits, monitoring etc.) or opportunity reduction (strengthening guardianship, target-hardening), except for ad hoc recommendations arising from particular investigations. Further, there is no evidence-based framework or model guiding these strategies.

And fourth, while the importance of measuring performance and outcomes is recognized and acknowledged, little progress has been made in developing better measures. This is at least partly due to a lack of resources, but also the limited data collected by ACAs that could better test whether prevention is actually working.

These findings do not suggest that ACAs do not take prevention seriously, or that they are inactive in this area. The key issues are to do with resourcing, and better utilizing research evidence on what might work better in prevention.

Embedding and supporting a 'pro-integrity' culture

All of the above takes place against a backdrop of uncertainty about how corruption prevention should be institutionalised at a jurisdictional level, and in organisations.

It is well accepted that corruption prevention is an integral part of the link to promoting strong organizational cultures and systems, which are corruption resistant not only through technical strategies for making corruption more difficult, but by supporting an environment of high integrity. Getting the balance right between positive strategies for integrity building, including corruption prevention, and a focus on rules and institutions for detection and enforcement, is key to escaping the 'integrity paradox', in which new laws and institutions may obscure the behavioural challenges of organisational absorption of norms and values.[26]

At the Commonwealth level, this has long been a focus, summed up by one senior Attorney-General's Department official to the Senate Select Committee on a National Integrity Commission:

> If you think about the fact that we have over 200,000 employees in the Commonwealth, our starting point is making sure that we have a culture of integrity so that there is not

[26] See Mark Evans (2012), 'Beyond the integrity paradox – towards 'good enough' governance?' *Policy Studies* 33(1): 97-113.

> the kind of wrongdoing that you are talking about. That is a really key thing that agencies do.[27]

This discussion around a pro-integrity approach reinforces issues around leadership, mandate and scope for prevention. It is even reflected in shifting debate over the most appropriate names for lead agencies. In most States, corruption prevention is a secondary mandate for agencies that are clearly "anti-corruption" commissions (in historical order, NSW, Queensland, WA, Victoria, South Australia and the Northern Territory), but at the Commonwealth level, and in Tasmania and the ACT, the equivalent body is labelled an "integrity commission".[28] ACLEI's title was chosen in the context of debate, after Australia's first National Integrity System Assessment, about how to achieve and institutionalise the right balance between proactive and reactive strategies towards integrity and anti-corruption.[29]

However, as seen, anti-corruption commissions vary widely in their approach, with greater and lesser focus on prevention. The same is true of formal powers. For example, while no anti-corruption or integrity bodies have power to compel agencies to adopt their corruption prevention recommendations, some at least have requirements that agencies must inform the ACA whether they propose to implement those recommendations, and provide a plan of action.[30] Others have no such powers.

Even in Australia's "integrity" commissions, however, corruption prevention tends to continue to come a distant second behind corruption investigation in resource allocation, and may only involve select elements of integrity. Similarly, most proposals for a new national integrity commission provide little insight into how this might be changed. For example, the design put forward by The Australia Institute's National Integrity Committee references corruption prevention as an object, but makes no further reference to it, other than reinforcing the educative value of public inquiries and reports about corruption.[31] The Commonwealth Government's Commonwealth Integrity Commission proposal also presents prevention as a secondary function, but as it opposes the use of public inquiries and reports for this purpose, the detail on how prevention would be served is even less.

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[27] Hawkins, Catherine (21 April, 2016). Senate Committee Public Hearing on the Establishment of a National Integrity Commission, pp 4. Transcript. http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/fd9ab3c0-79be-433d-be89-91ccb912ae48/toc_pdf/Establishment%20of%20a%20National%20Integrity%20Commission_2016_04_21_4378_Official.pdf;fileType=application%2Fpdf#search=%22committees/commsen/fd9ab3c0-79be-433d-be89-91ccb912ae48/0000%22 (Accessed 10/7/2018)

[28] This is true of ACLEI, but also all proposals for a national "Integrity Commission" in Greens legislation, the Senate Select Committees into a National Integrity Commission, the Australian Labor Party commitment, the 2018 Bills, and the Commonwealth Government's 2018 proposal.

[29] For background to this, see A J Brown (2005), 'Federal anti-corruption policy takes a new turn… but which way? Issues and options for a Commonwealth integrity agency', *Public Law Review* 16 (2): 93-98. ACLEI's originally proposed title was Inspector-General of Law Enforcement.

[30] See e.g. NSW ICAC Act 1988, s.111E.

[31] See The Australia Institute, Paper 2 (Objects).

Within the current Review of the Australian Public Service, it has been argued that proposals for a "national integrity commission" do not include significant enough shifts away from traditional core anti-corruption responsibilities to justify the shift in name – and that instead, the intended agency should just be termed an "anti-corruption commission".[32] On this model, more proactive, system-wide responsibility for building and preserving "integrity" would lie with a second agency, such as a "new" Australian Public Service Commission.

Apart from central ACA mandates and resources to fulfil them, some governments do have policy frameworks which are relevant for requiring and supporting prevention strategies at agency level.

For example, all Commonwealth agencies must have fraud control plans, under the fraud control policy mentioned in chapter 4. This has long been presumed to include corruption control, although not explicitly nor adequately. Even though "fraud" is defined quite broadly under the Policy, it remains inherently focused on risks and actions to control theft and direct financial loss, and the language of plans remains focused on the objectives 'to deter, detect and deal with' criminal acts, rather than a full suite of prevention approaches.[33] Indeed, neither the Commonwealth Fraud Control Policy[34] nor the Commonwealth Risk Management Policy[35] specifically mention corruption (or integrity), and provide no *direct* support or obligations upon agencies to develop plans that would equate to corruption prevention policies.[36] Nevertheless, in practice, individual agencies use this framework to develop 'Fraud and Anti-Corruption Plans' and 'Fraud Control and Corruption Prevention Plans'.

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[32] Nikolas Kirby and Simone Webbe (2019). *Being a trusted and respected partner: the APS integrity framework*. An ANZSOG research paper for the Australian Public Service Review Panel. March 2019 < https://www.apsreview.gov.au/resources/aps-integrity-framework>. On the Australia & New Zealand School of Government's endorsement of an 'institution-first' approach to integrity, as one of 9 priority focuses for the APS Review, see its submission, July 2018, p.12: https://www.anzsog.edu.au/preview-documents/publications-and-brochures/5283-anzsog-submission-to-the-aps-review. See also https://www.themandarin.com.au/96690-nine-priority-areas-for-the-aps-review/ (2 August 2018).

[33] See e.g. https://www.ag.gov.au/CrimeAndCorruption/FraudControl/Pages/default.aspx, referencing the Fraud Control and Corruption Prevention Plan 2017–2019.

[34] Cth Fraud Control Plan (2017), consisting of the Fraud Rule, Fraud Policy and Fraud Guidance, the first being mandatory for all Commonwealth entities, and the second and third only advisory for corporate i.e. non-core Commonwealth entities: Retrieved 27 March 2019, from https://www.ag.gov.au/Integrity/FraudControl/Documents/CommonwealthFraudControlFramework2017.PDF. These only reference to corruption in the Fraud Guidance, which recognizes the availability of ACLEI to support its five agencies 'to detect and prevent corrupt conduct', and citing 'internal and complex fraud incidents in these entities' as also capable of being regarded as 'corrupt conduct' (par C5); and suggesting that 'where corruption or other entity risks are concerned', the guide be used 'as a starting point… in conjunction with other appropriate guidance materials' (par C6).

[35] Commonwealth Department of Finance, *Implementing the Commonwealth Risk Management Policy – Guidance, 2016 - Resource Management Guide 211*, p.15 https://www.finance.gov.au/sites/default /files /implementing-the-rm-policy.docx. Examples of suggested 'specialist risk categories' with their own legislation, standards, compliance and reporting obligations, and suggested 'specialist programs and processes', are: business continuity and disaster recovery; fraud control; workplace health and safety; and protective security.

[36] Despite its written submissions that the Commonwealth's Fraud Control Framework is central to its anti-corruption plans, the Attorney-General's Department also chose not to mention it in its in-person

Only one Australian jurisdiction goes further, with most NSW government agencies formally required, since 2018, to have a fraud and corruption control framework, under instructions from NSW Treasury.[37] This requirement makes it mandatory for agencies to have a suite of 'preventive' policies, procedures and controls, while providing no detail on their content.

Similarly, the *National Integrity Commission Bill 2018* proposed that every Commonwealth agency or entity must have an 'integrity and anti-corruption plan', defined as 'a plan to protect and enhance integrity in the performance of the agency's functions (including the prevention of corruption in its program delivery, use of financial assets and information, decision-making, and the conduct of its staff)'.[38] This would be supervised by agency audit committees, and supported by the central integrity commission in a variety of ways. The proposal does not spell out the content of corruption prevention plans, but if implemented, would be the most comprehensive statutory framework for corruption prevention to date. According to estimates previously released as part of this assessment, the resources needed to administer such a framework would amount to around 10% of the budget of a properly funded national ACA.[39]

5.3. The way forward

Overall lessons on current activities

A key lesson is that the mandate of the agencies varies considerably, as do their resources. This means that there is unlikely to be a one-size-fits-all, best practice approach. In each jurisdiction the agencies involved in corruption prevention differ, as do the risks and priorities. While there are issues that apply across the board, care needs to be taken not to overlook local needs.

A second lesson is that for most agencies, prevention is currently understood and practiced in accordance with aspects of two of the models identified from the research literature – the law enforcement model and the bureaucratic model. As discussed, both models currently lack an evidence base to support their main underlying assumptions – that well publicized investigations and punishments deter wrongdoing, and that ad hoc bureaucratic measures are effective to detect corruption.

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appearance before the Senate Select Committee on a National Integrity Commission: see Senate Select Committee, par. 2.251.

[37] NSW Fraud and Corruption Control Policy, Treasury Circular TC18-02, 6 April 2018 https://www.treasury.nsw.gov.au/sites/default/files/2018-04/TC18-02%20NSW%20Fraud%20and%20Corruption%20Control%20Policy%20-pdf.pdf. Applying to all public sector agencies and state-owned corporations, but not local governments or universities.

38 *National Integrity Commission Bill 2018*, Part 3 (**Error! No text of specified style in document.**), Divisions 1-5, sections 18-31: House of Representatives, 26 November 2018: www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6217; Senator Waters (Greens), Senate, 29 November 2018: www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1154.

[39] See Brown et al (2018), *A National Integrity Commission: Options for Australia,* Griffith University, August 2018, p9.59-60.

The lack of evidence to support these approaches is potentially problematic, given the emphasis currently afforded to them. Most agencies pay far less attention to identifying situational factors that could be manipulated to reduce opportunities for offending. And no ACA currently adopts a cohesive framework around its bureaucratic measures, such as is used in responsive regulation that has been shown to effectively improve compliance and invoke deterrence.

A third lesson is that all ACAs struggle with assessing the impact of their prevention activities. As discussed, measuring prevention is inherently hard, but the respondents have identified ways in which this endeavor could be improved.

In summary, there is considerable similarity but also some important differences across the ACAs included in this research, in relation to their approaches to corruption prevention. Key findings include:

1. ACA prevention leaders largely rely on ad hoc ways of integrating their prevention efforts, both with other agencies in their jurisdiction, and across the other Australian jurisdictions. They draw heavily on personal networks and contacts.
2. For the most part, while prevention is seen as an important aspect of the work of ACAs, its profile tends to be lower than other aspects of ACA work, especially investigations and enforcement. This is reflected in resource allocation, especially staffing.
3. While some ACAs have developed a corruption prevention strategy or approach statement, these tend to be general and framed around legislated or organisational priorities, rather than more evidence-based models about what works, or might work, in prevention.
4. Most ACAs report engaging in a broach range of prevention activities and techniques. These tend to cluster in three nodes – law enforcement, where prevention activities are embedded in or follow specific investigations; educative, where awareness, training or advice resources are developed and delivered in various ways; bureaucratic, using audits, intelligence or data analysis to identify and respond to problems or trends. Bureaucratic measures tend to be least used, and where they are incorporated, this tends to occur in response to an investigation or intelligence report, rather than as part of any comprehensive strategy.
5. The selection of prevention strategies at most ACAs is strongly influenced by resource constraints.
6. Most assessments of prevention are reliant on the counting of input activities, or compliance reviews by oversight bodies. Much less attention is paid to attempting to measure the outcomes or impact of prevention activities.
7. Overall the Commonwealth suffers from an incomplete approach to corruption prevention. While ACLEI has devoted some resources to prevention, its limited jurisdictional mandate – as recognised in proposals for an enlarged national or Commonwealth integrity commission – leaves out most of the Commonwealth sector.

An optimal corruption prevention framework?

As noted earlier, international studies suggest that effective corruption prevention efforts require, among other factors:[40]

- Effective use of research on corruption and anti-corruption;
- Comprehensive, publicly reported risk-analysis across all public bodies and sectors;
- Engagement of senior management in designing and promoting integrity measures;
- Building adequate prevention systems including clear rules and practical tools, guidance, training, monitoring and enforcement;
- Development of better measures, and collection of appropriate data on corruption prevention;
- Ensuring effective and transparent inter-institutional coordination in corruption prevention.

As this research shows, most of these elements remain missing in all Australian jurisdictions. While prevention activity does occur, it is ad hoc, and too dependent on strategies which lack an evidence-base to support their effectiveness, while more proven approaches are not pursued due to resource restrictions. Individual agencies risk developing standards, approaches and integrity measures in a vacuum.

Within any framework, there is also a need for local nuances[41] that reflect different constructions of particular acts of corruption and local norms and practices. However, there is a need for a much more systemic, coordinated, evidence-based approach that draws on international best practice. From the evidence to date, a cohesive strategic framework for prevention activities needs to include the following essential elements::

- A range of activities across the spectrum of education and information programs, system-wide guidelines and policies, regular monitoring and audits to detect potential problem areas, collection of data and intelligence to inform more targeted audits and reviews, and early intervention systems when problems are detected.
- System-wide, agency specific, and function specific analysis to identify situational contexts conducive to corruption and integrity breaches and how they can be reduced. This should include both strengthening of guardianship and hardening of targets.
- Where integrity breaches are detected, the adoption of a graduated system of responses and sanctions that is sensitive to the context in which offending has occurred, and the prospect of voluntary compliance being achieved. Sanctions should incorporate a range of options from education, through warnings and administrative measures.
- Law enforcement measures, including criminal sanctions, for egregious misconduct. To have an effective deterrent effect, these measures need to be as swift, certain and public as possible.

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[40] OECD Anti-Corruption Network for Eastern Europe and Central Asia (2015)

[41] Quah (2017). Learning from Singapore's effective anti-corruption strategy: Policy recommendations for South Korea; Tunley et al (2018). Preventing occupational corruption: utilising situational crime prevention techniques and theory to enhance organisational resilience.

- The development of performance measures and collection of relevant data to assess the effectiveness of prevention activities, including feedback loops to modify and improve practices where needed.

In addition, while developments show the importance placed by ACAs on developing this more strategic approach to corruption prevention, and its value for agencies, efforts to date are not being adequately supported nor embedded in governance and public administration frameworks.

There is forward movement in NSW, and within some proposals for a National Integrity Commission. However, a stronger approach would see a lead prevention agency with a coordinating role in every jurisdiction, enabling them to develop and test new approaches, promote effective prevention across the public sectors with the support of mandatory requirements, and advocate for sufficient resources. At present, lead agencies are limited in these abilities, and are largely unsupported by systemic cross-agency cooperation.

An optimal prevention framework needs to specifically address issues including mandate and coordination, the embedding of prevention as a primary focus, resources, and the development of a strategic, evidence-based prevention model. The time is right, given debates about the appropriate model for a broad integrity commission at the national level.

5.4. Conclusions and recommendations

The first conclusion is the need for a clear prevention mandate and a defined role for the coordination of prevention focused activities, in each jurisdiction. The evidence shows that current approaches are at best ad hoc, patchy and inconsistent. While ACAs see this as their responsibility, this is often not reflected in formal structures.

In each jurisdiction there needs to be a lead agency, usually the relevant ACA, with a role and responsibility to lead and coordinate prevention efforts. This prevention mandate needs to be embedded in legislative and policy frameworks, so that it is given due weight within an integrated integrity framework. Part of this embedding process needs to involve the imposition on public sector agencies of responsibility to develop and publicly report on their own prevention activities.

While these conclusions relate primarily to ACAs, it is clear that effective prevention involves integration of a wide range of integrity issues within any organisation, as well as alignment of objectives, information and outreach between integrity agencies. Some of the implications for better coordination are discussed in chapter 10. However it is already apparent that all integrity agencies need to play a role in defining agency-level requirements, and will all play a role in determining, based on complaints and compliance, whether corruption prevention and broader integrity-building strategies are working. Strengthened institutional arrangements therefore also need to reflect these needs.

Recommendation 6: Strengthened corruption prevention mandates

That the Commonwealth and each State government **strengthen the legislative and policy mandate of their lead agency for corruption prevention**, to include:

- Responsibility to implement and monitor a proactive program of corruption prevention and resistance-building
- Clear statutory requirements for all public sector entities to develop their own corruption prevention frameworks, which are publicly available and reported, and regularly monitored by the lead integrity agency, and
- Formal coordination and information sharing mechanisms across other integrity agencies within the jurisdiction and across jurisdictions.

This recommendation relates to: the **Commonwealth** and **all States and Territories**.

Secondly, resourcing has emerged as a key constraint limiting the range of prevention activities undertaken across the jurisdictions. While resources will always be limited and contested, budget allocations to ACAs, and within ACAs or other relevant integrity agencies, need to reflect the true needs as well as true value – in cost-benefit or return-on-investment terms – of corruption prevention activities. Within their own budgetary allocation processes, ACAs need to take particular care that resources notionally allocated to prevention are appropriately spread between reactive strategies (e.g. embedded within investigations) and more proactive measures focused on preventing wrongdoing from occurring in the first place.

Recommendation 7: Resources for prevention

That as part of the proposed national benchmarking review of integrity expenditure (Recommendation 25), the Commonwealth and States identify **minimum thresholds for investment in a full program of corruption prevention activities**, incorporating reactive and proactive strategies, as a proportion of:

- Total public expenditure
- Total core integrity agency expenditure, and
- Lead anti-corruption agency expenditure.

Further, that ACAs and/or other integrity agencies responsible for prevention allocate a significant portion of their budget (greater than 5 per cent) to their prevention program, and publicly report on how the budget allocation is apportioned between prevention, investigations and other responsibilities.

This recommendation relates to: the **Commonwealth** and **all States and Territories**.

Thirdly, within the prevention function, there is a need for lead agencies to develop a cohesive strategic framework for prevention activities that is based on research evidence on what works most effectively in prevention. There is no one-size-fits-all model, but essential elements are known. With this framework, the real work and value of corruption prevention can be achieved.

Recommendation 8: A comprehensive corruption prevention framework

That the lead integrity agency of each jurisdiction develop and publicly articulate **an agreed framework for best practice in corruption prevention and resistance-building programs**, based on:

- A broad range of activities that does not over-emphasise education or law enforcement at the expense of other activities
- System-wide, agency specific and function specific strategies that specifically address situational contexts
- Graduated responses to detected breaches to maximise voluntary compliance (see also Recommendation 16)
- Targeted use of law enforcement

A comprehensive approach to performance measurement and data collection, focused on prevention outcomes rather than input activities.

This recommendation relates to: the **Commonwealth** and **all States and Territories**.

Centre for Governance and Public Policy
Griffith University
Nathan Queensland 4111 Australia
[redacted]
www.griffith.edu.au
[redacted]

30 June 2022

Hon Tony Fitzgerald AC QC
Hon Alan Wilson QC
Commission of Inquiry relating to
the Crime and Corruption Commission
submissions@cccinquiry.qld.gov.au

Dear Commissioners

Further submission
Integrity investigation and professional capability development

Thankyou for the opportunity to make a final further submission to your inquiry.

Background

In response to your earlier queries, my submission of 4 May 2022 argued that a key way to protect the core anti-corruption role and mission of the Crime and Corruption Commission – while continuing to make appropriate and proportionate use of seconded police officers – is through development of a range of important operational skills, knowledge and capacities which are currently either not guaranteed, are inconsistently obtained and applied, or take an inefficient and uncertain amount of time to build up through 'on the job' experience alone.

These professional skills, capacities and areas of knowledge are critical ones now proven by over 30 years of history, in Australia, with both:

- the investigation of complex criminal and non-criminal matters in the often unique context of official misconduct or corruption, and
- the investigation and prevention of corruption and wider integrity issues, broader than specific criminal offences, and often involving systemic relationships between tangible corruption risk and actual corrupt conduct on one hand, and issues of political context, culture, leadership, policy, public sector standards and systems, compliance, risk management, people management, ethics, education, training and awareness on the other.

Since your query regarding recommended additional and/or specialised training for seconded police officers, I have had opportunity to further discuss the needs, scope and feasibility of enhanced professional development for anti-corruption practitioners in these contexts, with a number of agencies participating in the new National Anti-Corruption Investigation Network (NACIN), other integrity agencies concerned to ensure that related capacity needs are met throughout the public sector, and tertiary sector colleagues.

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Key additional information

As a result, further to my 4 May submission, it is fair to say that beyond basic induction of new staff into their new legislative and organisational context, professional training in many of the key areas – whether for seconded police officers, or for investigators or prevention officers from other disciplinary and professional backgrounds – is extremely limited to non-existent.

It is important to note this is not simply in the case of the Crime & Corruption Commission, or Queensland, but nationally.

Queensland therefore has an opportunity to be both a national leader, and a participant in establishing a sustainable national approach, for ensuring that key professional development and capability gaps begin to met in an enduring way. I would urge the Inquiry to make a recommendation to that effect.

As argued in my 4 May submission, there is a strong need for training to increase and maintain a professional pool of people with good skills for anti-corruption and integrity investigations, and associated functions, including but not limited to former or seconded police. While the need is most acute for specialist anti-corruption agencies such as the CCC, it has emerged over recent decades as an under-met, specialist need across all Australian governments and a range of integrity functions.

There is therefore a strong case for a sustainable professional development program to meet these needs. However, based on experience with past University-based, non-University and in-house training programs as they have arisen, fizzled and died, it is equally clear that a sustainable program to meet long-term needs is unlikely to be able satisfied either simply by (a) limited, expanded training within single integrity agencies (including the CCC) as isolated exercises, or (b) by assuming that tertiary or vocational education and training providers will naturally fill these gaps in a strategic or 'packaged' way without coordination and government support.

This is not withstanding that enhanced internal training and induction, and effective utilisation of existing third-party capacity can and must play a role.

Program content

[redacted] provides a preliminary indication of the types of knowledge and skills needs that, according to research to date, should shape design of an effective program across these areas.

While only indicative, it emphasises both obvious and less obvious areas of critical need, shared across different parts of the integrity and anti-corruption professional 'community'. It also demonstrates the viability of designing a suitable full program, which could be scaled up or down according to priority needs depending on the scale of available resources.

In my submission, movement towards such a program is not simply possible and desirable, but imperative if long-term issues about investigator and associated capabilities of the CCC and similar agencies are to be properly addressed.

While the scope of program content suggested goes beyond simply servicing the needs of the CCC (or other similar anti-corruption agencies), the universal feedback from agencies and professionals in the field is that this holistic approach is the necessary one for meeting the needs in any given agency, in a sustainable way – especially given:

- the need for greater transferability of knowledge and skills as individuals move into, through and out of any given agency, and

- the desirability of maximising the number of individuals who have qualified through such training *before* they even arrive in a corruption/integrity investigation or prevention role, and are thus more job-ready from the outset.

This indicative program structure is also intended to meet some further key principles below.

Key principles

Based on my research and discussions, the following key principles would need to drive the design of a truly sustainable and enduring program:

1. Professionally designed, supported and co-delivered by skilled, qualified, multidisciplinary tertiary and/or vocational education and training providers, in partnership with key government agencies.\
2. Supported by public investment in development and establishment, whether through specific enhanced agency training budgets, or central government seed investment, or both.
3. Designed to service a sufficiently large market of individual professionals to be financially viable for tertiary and/or vocational education providers to the maximum possible extent, without unrealistic over-reliance on ongoing government subsidisation, especially given volatility in agencies' annual training budgets over time. Experienced anti-corruption agency managers suggest aiming for a broad market: anyone in a public sector integrity role or interested in public sector integrity. For example, this would include the many law enforcement agencies throughout Australia with Professional Standards sections.
4. Nationally designed and locally delivered to the maximum extent.
5. Clear multi-level objectives – design and ongoing adaptation to simultaneously meet local (agency-specific) needs in specific jurisdictions, statewide capability needs and common national needs in a coordinated and strategic way.
6. Ensuring content addresses strategic, theoretical and policy skills needed to apply existing basic skills in integrity-specific contexts, i.e. not base / technical training in investigative interviewing, report writing, evidentiary analysis etc, but adaptation, extension and application of those technical skills in multi-disciplinary ways in anti-corruption and integrity environments.
7. Career attractiveness to individual public officers (police or others) as a personal professional development path, through flexible options that lead to recognisable, transferable outcomes – both:
   - award (e.g., TAFE or University accredited qualifications) and
   - non-award (executive education / continuing professional development (CPD)) –

   in order to sustain 'bottom up' (student) interest and demand, in addition to perceived 'top down' (agency) assessments of capability gaps.
8. Cost options aligned with these different levels of learning assurance or accreditation – e.g. per-module fees and base funding per student from government for non-award participation, with student-funded top-ups for for-award (university qualification) outcomes.
9. A partnership model (similar to or through the Australia & New Zealand School of Government) which maximises the best training talent from across Australian institutions and minimises (unsustainable) competition in trying to service a still finite market.

Discussions have reinforced that to be sustainable, such a program likely needs to be supported by, and service, integrity agencies and internal integrity investigation needs of all governments across Australia – or as many as possible – rather than any single state or agency.

In other words – while any university, including ours, would or should be interested in supporting any smaller scale, Queensland or agency-specific initiative – an enduring and sustainable approach requires building pools of integrity investigation expertise, suitable for police but larger than simply law enforcement or ex-law enforcement, which are as large, multi-disciplinary and transferable across the Australian public sector as possible.

I hope this further information assists, and wish you well for the conclusion of your inquiry.

Yours sincerely

[redacted]

A J Brown
Professor of Public Policy and Law
Program Leader, Public Integrity & Anti-Corruption
Centre for Governance & Public Policy

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