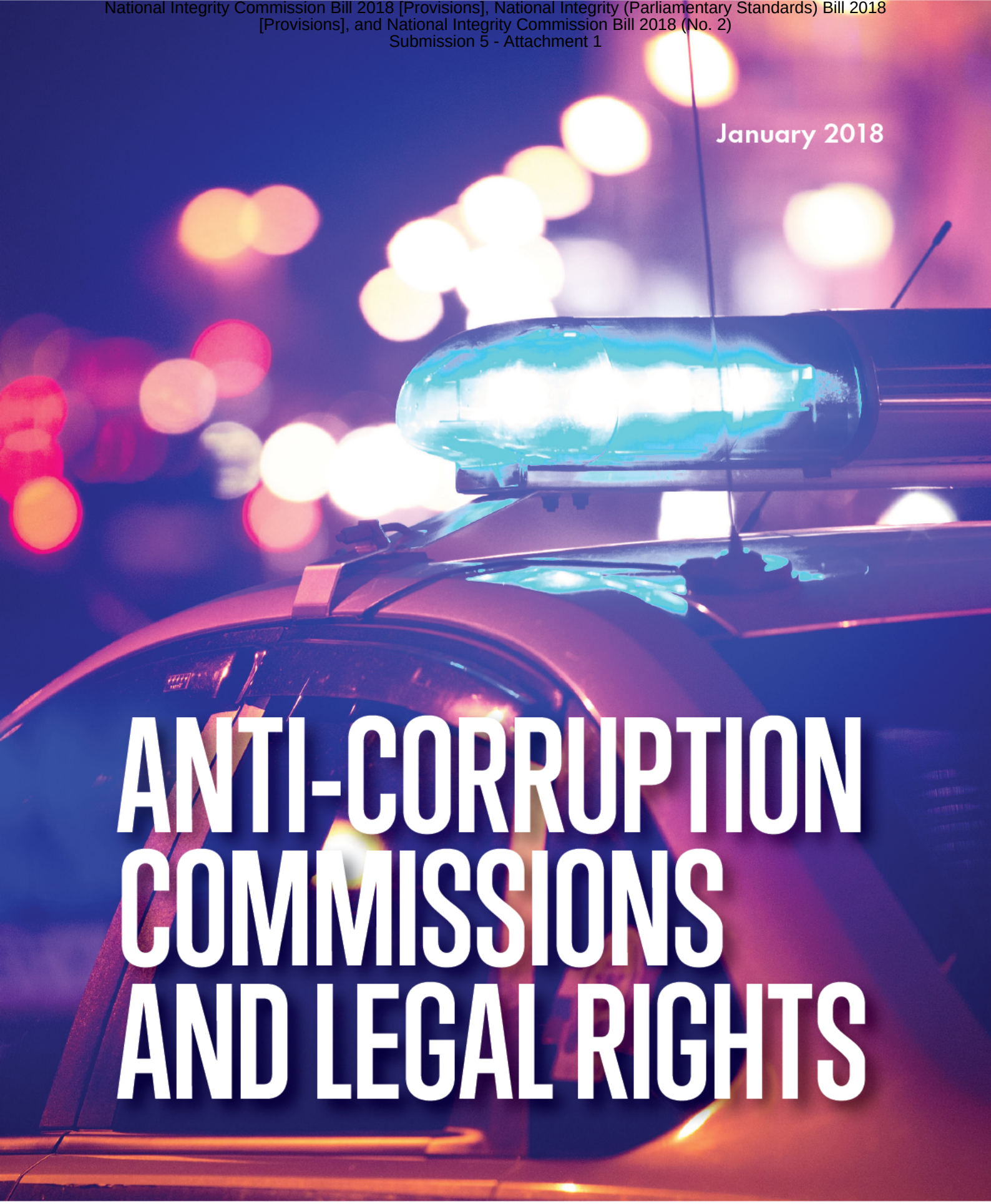

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ANTI-CORRUPTION COMMISSIONS AND LEGAL RIGHTS

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Institute of Public Affairs

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ANTI-CORRUPTION COMMISSIONS AND LEGAL RIGHTS

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Contents

Introduction

On 13 December 2018, the Australian government announced the establishment of a Commonwealth Integrity Commission (**CIC**), an independent statutory agency to investigate corrupt conduct in the Commonwealth public sector.[1] The Attorney-General's Department subsequently released a discussion paper on the proposed structure and functions of the CIC.[2]

The Morrison government's announcement came following the introduction into the Commonwealth Parliament of several private Bills designed to establish similar statutory commissions, including the:

- *National Integrity Commission Bill 2018*, and *National Integrity Commission Bill (Parliamentary Standards) Bill 2018*, introduced by Cathy McGowan MP (the **McGowan Bills**); and
- *National Integrity Commission Bill 2018 (no. 2)*, introduced by Senator Larissa Waters (the **Greens Bill**).

These Bills have subsequently been referred to the Senate Standing Legal and Constitutional Affairs Committee.

In addition, the Australian Labor Party has announced that if elected, it intends to:

> [E]stablish a National Integrity Commission – a new federal anti-corruption commission tasked with investigating allegations of serious corruption, and preventing any serious problems before they arise.[3]

These developments come following years of agitation by federal parliamentarians and others for the establishment of a 'federal ICAC', a reference to the Independent Commission Against Corruption, which acts in New South Wales as a state anti-corruption and misconduct regulator.

This report is an updated version of the Institute of Public Affairs' 2016 *Submission to the Select Committee relating to the establishment of a National Integrity Commission*. In that submission, the IPA argued that historical experience with state anti-corruption commissions suggests that such bodies wield coercive powers which are inconsistent with the legal rights of individuals and the rule of law.

1 The Hon Scott Morrison MP, 'Commonwealth Government to establish new integrity commission' (Media Release, 13 December 2018).

2 Attorney General's Department, A Commonwealth Integrity Commission – proposed reforms (December 2018).

3 Australian Labor Party, 'Support the National Integrity Commission', Accessed 14 January 2019, https://www.alp.org.au/petitions/support-the-national-integrity-commission/.

In this updated report, we consider the implications of the current proposals for a federal anti-corruption agency. Details about the CIC proposed by the government are, at time of writing, vague, but it appears that its role would be limited to coordinating the numerous existing Commonwealth integrity agencies that currently exist.

However, the proposals put forward by Ms McGowan and the Australian Greens, if enacted, would seriously compromise legal rights, democratic principles and the rule of law. Importantly, given Labor's dogged pursuit of a federal anti-corruption commission, the McGowan and Greens Bills give an insight into the model we may expect from a Shorten Government.

Section 1: General principles

The case has not been made

Preventing corrupt conduct is a worthy and important public policy objective. However, it is not clear that corruption is such a problem in Australia that a federal agency – especially one with extraordinary investigative powers – is needed.

In fact, by the Australian government's own admission, there are a suite of federal regulators with responsibility for enforcing existing laws against corrupt conduct. These include the:

- Australian Commission for Law Enforcement Integrity;
- Integrity Commissioner;
- Australian Federal Police;
- AFP-hosted Fraud and Anti-Corruption Centre;
- Australian National Audit Office;
- Australian Public Service Commission;
- Commonwealth Ombudsman;
- Independent Parliamentary Expenses Authority;
- Inspectors-General of the Intelligence and Security, Taxation and Australian Defence Force; and
- Parliamentary Services Commissioner.[4]

It would appear that these bodies are achieving their intended purpose. The Corruption Perceptions Index, conducted annually by Transparency International, should be treated with caution, given that it measures the *perception* of corruption – including through the use of opinion survey data – rather than actual instances of corrupt conduct. Nevertheless, according to the index Australia remains one of the least corrupt jurisdictions in the world, ranking 13th out of 180 nations.[5]

Still, proponents of a federal anti-corruption regulator point to a vague notion of falling 'trust in government'. In one of several papers on supporting a national integrity commission, the Australia Institute argues that:

> Recent polls, studies and surveys show that trust in government is at a record low in Australia and still falling. A study conducted by the University of Canberra in 2016 found only 5% of Australians trust government. A similar study by the Australian National University in 2016 found that 74% of Australians think politicians are 'too often interested in themselves'. A recent poll commissioned by the Australia Institute revealed that 85.3% of respondents thought that there is corruption in federal politics.[6]

4 See Attorney General's Department, *A Commonwealth Integrity Commission – proposed reforms* (December 2018), 1.

5 Transparency International, 'Corruption Perceptions Index 2017', accessed 15 January 2019, https://www.transparency.org/news/feature/corruption_perceptions_index_2017.

6 Hannah Aulby, *The case for a federal corruption watchdog: ICAC needed to fill the gaps in our integrity system* (Australia Institute: August 2017), accessed 16 January 2019, http://www.tai.org.au/content/case-federal-corruption-watchdog-icac-needed-fill-gaps-our-integrity-system, 1.

Such survey results reflect a population that is undeniably cynical about Australia's public institutions. However, the causes of this cynicism are complex. It cannot necessarily be attributed to – nor accepted as evidence of – widespread corrupt conduct.

In any event, the 'perception' of corruption is too vague a notion on which to base a new and potentially powerful federal regulator. This is particularly because discussion of such perception issues too often 'mixes in' other governance issues that, while controversial, do not meet a reasonable definition of corrupt conduct. For example, in discussing potential anti-corruption measures, the chief executive of Transparency International Australia pointed to issues such as donations to political parties and lobbying as being part of the 'problem':

> The need for an independent anti-corruption agency at a national level is of critical importance... and of course we really need to address issues such as **political donation [sic] and ensure far better regulation of lobbyists** to avoid issues of conflict of interest or revolving doors.[7]

As the IPA has previously argued, donations to political parties and candidates are a form of political expression.[8] It is misguided to suggest that, in themselves, political donations amount to corrupt conduct.

Similarly, lobbying, in itself, is not necessarily corrupt conduct. There is nothing inherently corrupt about stakeholders meeting with parliamentarians and ministers to put forward views on legislative or government matters. If anything, lobbying – and the subsequent growth of professionals engaged in 'government relations' and related fields – is reflective of the fact that the government has become too large, intrusive and prone to overregulation. If 'lobbying culture' is indeed a problem in Australia, the solution is to eliminate the incentives for businesses to engage in lobbying by reducing the size of government.

7 ABC, 'Australia slips in corruption perception index as scandals cast a cloud', accessed 16 January 2019, https://www.abc.net.au/radio/programs/am/australia-slips-further-in-global-corruption-index/9473000m, emphasis added.

8 See Gideon Rozner, *Freedom of speech and political communication in Australia* (Institute of Public Affairs: January 2018).

The threat to fundamental legal rights

Fundamental legal rights, such as the right to silence and the presumption of innocence, are essential to a legal system achieving justice. These rights should be afforded to everyone, even those suspected of corruption or involved in corruption-related investigations.

In 2014, the Institution of Public Affairs published research to reveal the extent that key legal rights – the burden of proof, natural justice, the right to silence, and the privilege against self-incrimination – were undermined in all federal legislation that were in force at that time. At the time, at least 262 such legal rights were breached in extant Commonwealth legislation.[9] At the end of 2018, this number had increased to at least 358.[10]

Legal rights breaches in federal legislation in force at the end of 2018

Legal right	Breaches at end of 2018
Reversals of the burden of proof	58
Natural justice	98
Right to silence	65
Privilege against self-incrimination	137
TOTAL	**358**

A new anti-corruption regulator would inevitably add to this tally. An analysis of state legislation which establishes anti-corruption agencies reveals that they are particularly prone to containing legal rights breaches. In particular, this area of law contains numerous explicit restrictions of the right to silence and provisions which remove the privilege against self-incrimination. The provisions have been listed in Appendix B of this report.

9 Simon Breheny & Morgan Begg, 'The state of fundamental legal rights in Australia' (Research report, Institute of Public Affairs, 2014).

10 Morgan Begg & Anis Rezae, 'Legal Rights Audit 2018' (Forthcoming Research Report, Institute of Public Affairs).

Legal rights breaches in selected state anti-corruption legislation, 2018

State legislation	Burden of Proof	Right to Silence	Self-incrimination	Total
Independent Commission against Corruption Act 1988 (NSW)	1	2	1	**4**
Crime and Corruption Commission Act 2001 (QLD)	0	4	2	**6**
Corruption, Crime and Misconduct Act 2003 (WA)	0	2	1	**3**
Independent Broad-based Anti-corruption Commission Act 2011 (VIC)	0	3	1	**4**
Independent Commissioner Against Corruption Act 2012 (SA)	0	3	1	**4**
Integrity Commission Act 2013 (TAS)	0	3	0	**2**

The traditions of the common law legal system are valuable not for the ease with which it secures adverse findings against accused parties, but for the rigour in which it resolves these prosecutions and disputes.

The model used for typical anti-corruption agencies undermines this rigour, and would further undermine the rule of law and democratic principles at the Commonwealth level of government. An analysis of the McGowan and the Greens Bills appears to confirm this: No fewer than 12 provisions that breach the right to silence or removing the privilege against self-incrimination are present in the Bill (each Bill has six each). The specific provisions are listed in Appendix A of this report.

The paradox of independence

Independence of government agencies means that those agencies are not subject to the regular sort of oversight that apply to government departments. Putting distance between the parliament and 'independent' arms of the state makes them less accountable, and inherently undemocratic.

'Independent' law enforcement agencies and quasi-judicial bodies *outside* of the orthodox justice system are always in danger of losing sight of their original mission, objectivity and the values and traditions of the common law justice system. This view was encapsulated by the former Chief Justice of the High Court of Australia, Dyson Heydon, who commented on the nature of 'specialist bodies' in a 2010 case (the Kirk case):

> [A] major difficulty in setting up a particular court... to deal with specific categories of work... is that the separate court tends to lose touch with the traditions, standards and mores of the wider profession and judiciary. It thus forgets fundamental matters like the incapacity of the prosecution to call the accused as a witness even if the accused consents. Another difficulty in setting up specialist courts is that they tend to become over-enthusiastic about vindicating the purposes for which they were set up... [Courts] set up for the purpose of dealing with a particular mischief can tend to exalt that purpose above all other considerations, and pursue it in too absolute a way. They tend to feel that they are not fulfilling their duty unless all, or almost all, complaints that mischief has arisen are accepted. ... [To say all this is] to raise a caveat about accepting too readily the validity of what specialist courts do – for there are general and fundamental legal principles which it can be even be more important to apply than specialist skills.[11]

Problematically, independent agencies are less accountable and are more resistant to oversight and criticism. An equivalent agency at the federal level is the Australian Human Rights Commission (**AHRC**). Like anti-corruption agencies, the AHRC portrays itself as a watchdog on government (in their case legislative) activities, and thus above the fray of politics.

A consequence of this is that the AHRC is more resistant to criticism, particularly from parliament, as it is perceived as an attack on the AHRC's 'independence'.[12] (This entitled status has even allowed the president of the AHRC to publicly attack funding cuts.[13]) A reason for this is that the stated purpose of the agencies – in this case the protection of human rights – is of a nature that it gives the agency a shield which they use to defend their over-enthusiastic pursuit of their objectives.

11 *Kirk v Industrial Relations Commission* (NSW) (2010) 262 ALR 569, 609.

12 See for instance Ben Saul, 'Attacks on Commission unbefitting our government' *The Drum* (ABC) 16 February 2015, accessed 22 January 2019, http://www.abc.net.au/news/2015-02-16/saul-attacks-on-commission-unbefitting-our-government/6115078.

13 Rick Morton, 'Job cuts pay for child sex funding', *The Australian*, 15 December 2014, accessed 22 January 2019, http://www.theaustralian.com.au/national-affairs/in-depth/royal-commission/job-cuts-pay-for-child-sex-funding/news-story/b7bbba9962870c07aa0a36ef38a055b9.

This problem is also true of the most prominent state anti-corruption agency; the Independent Commission against Corruption in New South Wales. (**ICAC**) was introduced in 1988 under the Coalition state government led by Nick Greiner. In the second reading speech to the *Independent Commission Against Corruption Bill 1988*, Mr Greiner noted:

> The third fundamental point I want to make is that the independent commission will not be a crime commission. Its charter is not to investigate crime generally. The commission has a very specific purpose which is to prevent corruption and enhance integrity in the public sector. That is made clear in this legislation, and it was made clear in the statements I made prior to the election.

By 1992, the ICAC was already found to have acted beyond its jurisdiction by the NSW Supreme Court. Mr Greiner himself and another minister became the target of significant criticism when it came to light that the other minister had enticed a crossbench MP to resign from parliament with the offer of a position in the public service. The matter was referred to the ICAC, who then reported to parliament in April 1992, in which the Commission determined that Mr Greiner and the other minister both engaged in corrupt conduct.

Whether one views this as a typical political manoeuvre, or genuinely corrupt in the general sense of the word, the majority of the Court of Appeal of the Supreme Court of New South Wales determined the Commissioner's report to be wrong according to the law. As Chief Justice Gleeson held:

> [I]t is for the Commission to identify and apply the relevant standards, not to create them. Just as the courts cannot create new criminal offences so the Commission cannot create new grounds for the dismissal of public officials. The observance and application by the Commission of objective standards, established and recognised by law, in the performance of its task of applying [the Act] to cases before it is essential. It is what was intended by Parliament, it is required by the statute, and it is necessary for the maintenance of the rule of law.
>
> The publication of findings of Royal Commissions or Commissions such as the present defendant, or the Criminal Justice Commission of Queensland, although they do not affect or create legal rights or obligations, can have the most far-reaching consequences for the reputation of citizens. ...
>
> The Commissioner, in reaching his conclusion that the conduct found by him could constitute reasonable grounds for dismissal, did not enunciate and apply objective standards to the facts of the case. Although the Com¬missioner recognised that the concept of dismissal of a Premier or a Minister is attended by sensitive constitutional implications and difficulties, he never identified any objective criteria for dismissal by reference to which his conclusion could be tested. He approached the question as though the matter was to be determined by his personal and subjective opinion. In this respect he exceeded his jurisdiction and failed to apply the correct test...[14]

14 *Greiner v Independent Commission Against Corruption (ICAC)* (1992) 28 NSWLR 125, 147-8.

Mr Greiner did resign after the report became public, falling afoul of the Commission that essentially wrote its own rules. That the Commission would depart from its legislated boundaries so soon after its establishment is telling, and was not an isolated incident. More recently, the ICAC was found to have exceeded its jurisdiction by the High Court of Australia. This case relates to accusations that a senior prosecutor, Margaret Cunneen SC, advised her son's girlfriend to fake chest pains in order to avoid a breathalyser test following an automobile accident (for which she was not responsible).

The investigation that followed was found to have exceeded its jurisdiction to only investigate 'corrupt conduct' under the Act that 'adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official'. As the majority noted, a finding of corrupt conduct on the part of Ms Cunneen would 'result in the inclusion in the definition of "corrupt conduct" of a wide variety of offences having nothing to do with corruption in public administration as that concept is commonly understood.'[15] This would make the Commission resemble a "Crime Commission", something Mr Greiner explicitly rejected in 1988.

It is apparent that the most prominent state anti-corruption agency has a track record of exceeding its jurisdiction in its over-enthusiastic pursuit of its objectives. The ICAC's public call in April 2015 for greater powers and legislative approval of its unlawful Cunneen investigation,[16] and the NSW state government's subsequent decision to swiftly pass retrospective laws confirming the ICAC's own interpretation of 'corrupt conduct',[17] supports the view that agencies such as ICAC have the potential to become a force unto itself, who dare not be subject to oversight or accountability. This point was underscored in ICAC Inspector David Levine's review of the agency tabled in NSW parliament in December 2015, which described correspondence Levine received from the then ICAC Commissioner Megan Latham as 'insulting, condescending and to border on insolent', that reinforced his view of 'the breathtaking arrogance of the Commission.'[18]

15 *Cunneen v Independent Commission Against Corruption* [2015] HCA 14, [52].

16 Independent Commission Against Corruption, "Public statement regarding ICAC v Cunneen" (Media release) 20 April 2015, since removed from the ICAC's website, accessed 22 January 2019, https://web.archive.org/web/20150623073448/http://www.icac.nsw.gov.au/media-centre/media-releases/article/4782.

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

18 David Levine, *Report Pursuant to Section 77A Independent Commission Against Corruption Act 1988 re Margaret Cunneen SC & Ors* (4 December 2015) 34.

Abuse of powers

Anti-corruption agencies are commonly given a wide scope to conduct their proceedings, ostensibly so they can fearlessly achieve their objectives. This means provisions of state legislation explicitly reject that the agencies themselves or the hearings they conduct are bound by the rules of evidence.[19]

Quasi-judicial independent agencies, being less accountable in nature, have an apparent tendency to abuse this power. As Justice Heydon identified in the Kirk case, quasi-judicial bodies can become over-enthusiastic in their pursuit of their objectives, leading them to 'exalt that purpose above all other considerations, and pursue it in too absolute a way'.

No institution better illustrates this point than the NSW Independent Commission Against Corruption. While the pursuit against Ms Cunneen was held to have no basis in law, the conduct of the ICAC itself was indicative of an agency that abused the generous powers granted to them by the state parliament. In one instance, ICAC officers re-enacted a seizure of Ms Cunneen's mobile phone from her residence in order to cover up a flawed raid a week earlier when they took possession of her phone without a search warrant.[20] ICAC Inspector David Levine was scathing in his review of the agency in a report tabled in NSW parliament in December 2015:

> ... it is of concern that the Commissioner issued the Notices... 'to attend and produce forthwith' [mobile phones already in the agency's possession] given that **this in fact rendered them unlawful**. This amounts to an **abuse of power and serious maladministration**.[21] [Emphasis added]

The methods of ICAC barrister Geoffrey Watson SC in questioning witnesses has also been the subject of debate. The questioning of former Premier Barry O'Farrell over his recollection of receiving a gift of a bottle of wine was a side issue to the ICAC's inquiry into Australian Water Holdings. At no stage was it suggested that the bottle of wine had any substantive link to any other issue of relevance to the ICAC inquiry. Nonetheless, the hearing was used as a medium to tarnish the reputation of a sitting premier, who subsequently resigned for a likely lapse in memory. During his tenure as ICAC Barrister, Mr Watson was also cautioned by the NSW Bar Council in June 2016 for engaging in 'unsatisfactory professional conduct' for breaching a rule prohibiting barristers from taking steps towards having the media publish material about an ongoing ICAC inquiry into alleged unlawful donations to the NSW Liberal Party.[22]

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19 *Independent Commission against Corruption Act 1988* (NSW) s 17; *Independent Broad-based Anti-corruption Commission Act 2011* (VIC) s 116; *Crime and Corruption Act 2001* (QLD) s 180; *Corruption, Crime and Misconduct Act 2003* (WA) s 135; *Integrity Commissioner Act 2009* (TAS) s 9.

20 Sharri Markson 'Mobile cover-up claims hit NSW ICAC', *The Australian*, 22 October 2015.

21 David Levine, *Report Pursuant to Section 77A Independent Commission Against Corruption Act 1988 re Margaret Cunneen SC & Ors* (4 December 2015), accessed 22 January 2019, http://www.oiicac.nsw.gov.au/assets/oiicac/reports/special-reports/S.77A-REPORT-in-Operation-Hale-.pdf, 18.

22 Australasian Lawyer, "ICAC barrister cautioned by Bar Council", 23 June 2016, accessed 22 January 2019, https://www.australasianlawyer.com.au/news/icac-barrister-cautioned-by-bar-council-218355.aspx>.

The concerns arising from these agencies are not limited to New South Wales. In 2015, a two year investigation by the parliamentary inspector of the Western Australia Crime and Corruption Commission catalogued 23 allegations of misconduct ranging from theft to improper interference with a police investigation. In the report tabled to the Joint Standing Committee of the Crime and Corruption Commission, Parliamentary Inspector Michael Murray QC noted 'the nature of the allegations was dishonesty, improper practices and abuse of statutory powers,' concluding:

> The number and nature of allegations made against [the CCC's Operations Support Unit] officers in this matter, and the systemic nature of the conduct investigated, revealed a disturbing culture of entitlement and unaccountability in the OSU contrary to the standards and values expected of public officers, particularly those employed by the State's anti-corruption body... In some instances, the conduct which this culture encouraged was suspected of having violated state, and possible Commonwealth, criminal laws.[23]

These reports are consistent with what Justice Heydon identified in the *Kirk* case of the tendency of specialist bodies to 'become over-enthusiastic about vindicating the purposes for which they were set up.' In so doing, these agencies disregard the rules of evidence and threaten the rule of law and the principles of natural justice.

23 Joint Standing Committee on the Corruption and Crime Commission, Parliament of Western Australia, *Parliamentary Inspector's report on misconduct and related issues in the Corruption and Crime Commission* (Report No. 19, June 2015) 37.

Section 2: Current proposals

Government CIC

A Commonwealth Integrity Commission was announced by the Morrison government in late 2018, with a consultation paper released by the Attorney-General's Department in December. At time of writing, this consultation paper provides the only details about the way in which the government's CIC will function.

Based on the broad and limited details in the government's discussion paper, it appears that the proposed CIC is 'minimalist' in design. This is perhaps because the government is mindful of the risks to fundamental legal rights inherent in broad-based anti-corruption bodies. The discussion paper claims that:

> The CIC model avoids a number of deficiencies that have emerged from the experience of established state anti-corruption commissions, like the NSW ICAC and the Western Australian Corruption and Crime Commission.[24]

However, the proposed CIC appears so minimalist that it is effectively pointless. It would appear that the proposed reforms are intended to – understandably – prevent the passage of the deeply problematic McGowan and Greens Bills. However, this means that in policy terms, the CIC is a 'solution in search of a problem'.

As noted in the previous section, there are a large number of integrity regulators already in existence at a federal level. The proposed CIC will largely augment these existing agencies. For example, many agencies that will be regulated by the CIC are already within the remit of the Australian Commission for Law Enforcement Integrity (**ACLEI**), such as the Australian Federal Police.

The consultation paper indicates that the CIC will differ from the ACLEI because it will have a wider remit. In addition to agencies currently regulated by the ACLEI, the CIC will cover bodies like the Australian Competition and Consumer Commission, the Australian Securities and Investments Commission and the Australian Taxation Office (**ATO**).

However, these agencies are already subject to substantial scrutiny, both from Parliament (via processes such as Senate Estimates) and other statutory agencies. The ATO, for example, is accountable to the Australian National Audit Office, Australian Information Commissioner, the Commonwealth Ombudsman and the Inspector-General of Taxation.[25]

24 Above n 2, 12.

25 Australian Taxation Office, 'Our scrutineers', accessed 21 January 2019, https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Our-scrutineers/.

This is not to suggest that there are no problems with Commonwealth agencies. The ATO in particular has attracted media attention over allegations that it is 'abusing its powers'.[26] However, it is unclear how, if at all, the CIC will address issues of this nature. If it is the case that Commonwealth authorities are abusing their authority, then the simplest solution is to limit their powers. Instead, the CIC will largely duplicate existing oversight mechanisms at substantial public cost.

Labor policy

Similarly, few details are available in relation to the design of the National Integrity Commission (**NIC**), which the Australian Labor Party has promised 'within the first 12 months of a Shorten Labor government'.[27]

The only details available in relation to Labor's proposed NIC consist of seven 'design principles' listed on their website. Some of these principles are benign, such as the fact that the NIC will act as an 'independent statutory body', consisting of one commissioner and two deputy commissioners.[28]

However, other design principles are superficially concerning. Labor proposes that 'the [NIC] will have sufficiently broad jurisdiction and freedom of action to operate as a standing Royal Commission' with the same investigative powers.[29] There is a reason that Royal Commissions are not by their nature 'standing'. The Royal Commission is an institution which is given extraordinary and broad powers, and if they are to be used, should be rare and limited in scope and time. By entrenching a body with the powers of a Royal Commission with a broad scope increases the threat of abuses of powers and resistance to parliamentary oversight and accountability.

Additionally, Labor's NIC will more closely resemble current state-based anti-corruption commissions which, as discussed in the previous section, compromise fundamental legal rights.

McGowan and Green Bills

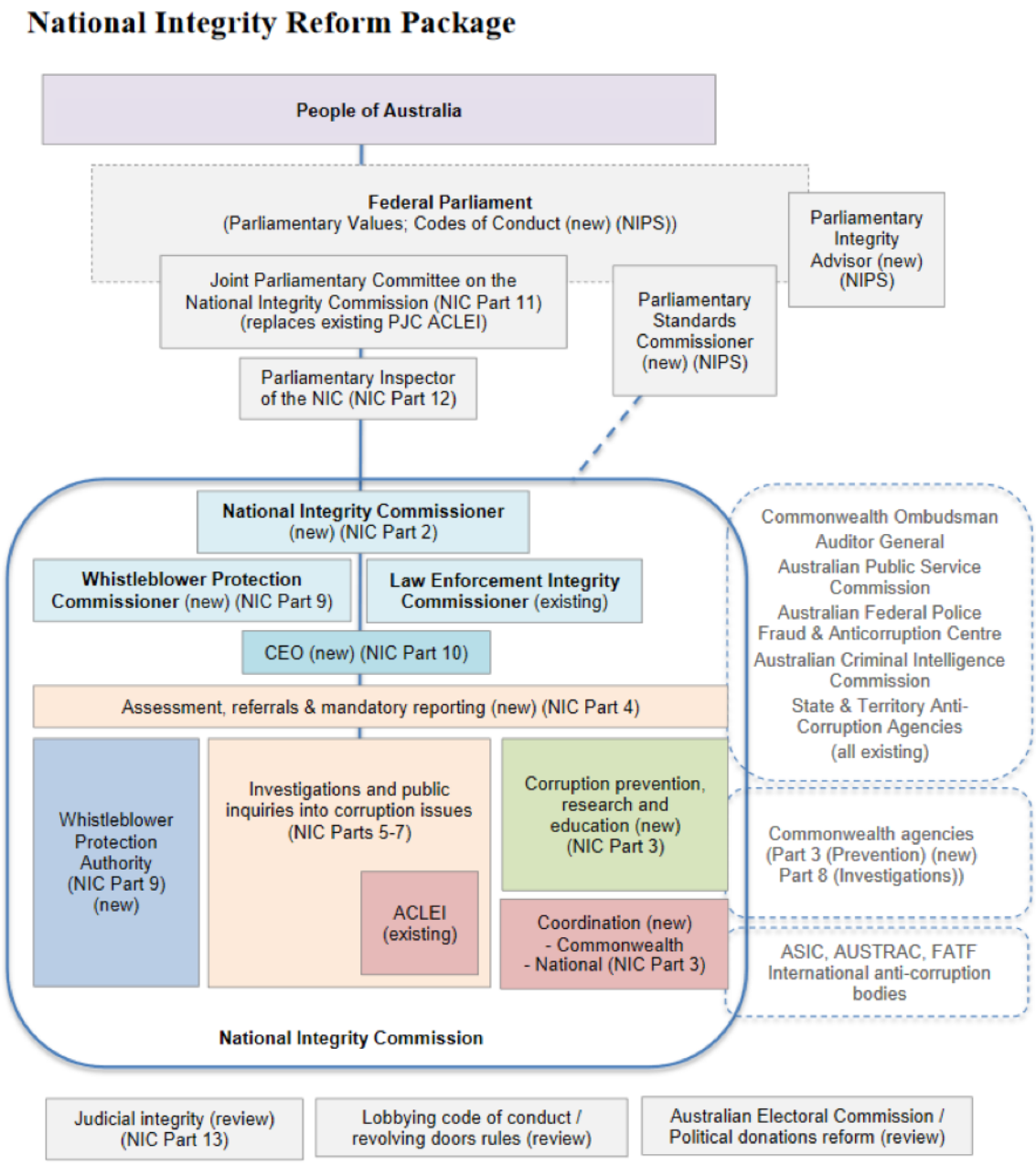
Both of the McGowan and Greens models are based on option 3 of Griffith University & Transparency International Australia's options paper published in August 2018. The option, to establish a 'custom-built Commonwealth Integrity Commission model', which involves the establishment of a new National Integrity Commission embedded within a rearranged bureaucracy. The explanatory memoranda for both Bills provides the following:

26 ABC *Four Corners*, 'Mongrel bunch of bastards', accessed 21 January 2019, https://www.abc.net.au/4corners/mongrel-bunch-of-bastards/9635026.

27 Australian Labor Party, 'The National Integrity Commission', accessed 21 January 2019, https://www.alp.org.au/national_integrity_commission.

28 Ibid.

29 Ibid.



The bills outlines the powers and responsibilities of the National Integrity Commission and the National Integrity Commissioner, includes many parallels to state anti-corruption bodies, in particular, the wide scope of powers and associated legal rights breaches within the legislation. Given the parallels to existing anti-corruption bodies, the McGowan and Greens party bills threaten to further undermine the rule of law problem in federal legislation.

Appendix A: Legal rights breaches in current proposals

National Integrity Commission Bill 2018		
Section 77 Failure to comply with notice	Right to silence	A person commits an offence if the person is served with a notice to give information or to produce a document or thing to the National Integrity Commissioner and fails to comply to do so.
Section 79 Self-incrimination etc.	Privilege against self-incrimination	A person is not excused from giving information or producing a document or thing under a section 72 notice on the ground that doing so would tend to incriminate the person or expose the person to a penalty.
Section 92 Offences	Right to silence	A person commits an offence if the National Integrity Commissioner summons a person to attend a hearing at a time and place specified in the summons to give evidence or produce any documents or other things referred to in the summons and the person fails to answer a question or produce a document or thing as required by the summons.
Section 93 Contempt of the Commission	Right to silence	The Commission may make an application the Supreme Court of federal courts when a person is in contempt of the Commission, where a person refuses or fails to answer a question at a NIC hearing or produce a document when required to do so by a summons.
Section 101 Offences relating to claims for legal professional privilege	Right to silence	A person commits an offence if the person had been served with a summons requiring a person to attend a NIC hearing and answer questions or produce a document or thing specified in the summons and the person fails to produce the document or thing, and a claim for legal professional privilege is rejected by the Commissioner, and the person fails to comply with the summons.
Section 102 Self-incrimination etc.	Privilege against self-incrimination	A person is not excused from answering a question or producing a document or thing when summoned under section 82 to attend a hearing to do so on the ground that doing so would tend to incriminate the person or expose the person to a penalty.

National Integrity Commission Bill 2018 (No. 2)		
Section 77 Failure to comply with notice	Right to silence	A person commits an offence if the person is served with a notice to give information or to produce a document or thing to the National Integrity Commissioner and fails to comply to do so.
Section 79 Self-incrimination etc.	Privilege against self-incrimination	A person is not excused from giving information or producing a document or thing under a section 72 notice on the ground that doing so would tend to incriminate the person or expose the person to a penalty.
Section 92 Offences	Right to silence	A person commits an offence if the National Integrity Commissioner summons a person to attend a hearing at a time and place specified in the summons to give evidence or produce any documents or other things referred to in the summons and the person fails to answer a question or produce a document or thing as required by the summons.
Section 93 Contempt of the Commission	Right to silence	The Commissioner may make an application the Supreme Court of federal courts when a person is in contempt of the Commission, where a person refuses or fails to answer a question at a NIC hearing or produce a document when required to do so by a summons.
Section 101 Offences relating to claims for legal professional privilege	Right to silence	A person commits an offence if the person had been served with a summons requiring a person to attend a NIC hearing and answer questions or produce a document or thing specified in the summons and the person fails to produce the document or thing, and a claim for legal professional privilege is rejected by the Commissioner, and the person fails to comply with the summons.
Section 102 Self-incrimination etc.	Privilege against self-incrimination	A person is not excused from answering a question or producing a document or thing when summoned under section 82 to attend a hearing to do so on the ground that doing so would tend to incriminate the person or expose the person to a penalty.

Appendix B: Legal rights breaches identified in selected state anti-corruption agency legislation

Independent Commission against Corruption Act 1998 (NSW)		
Section 26 Self-incrimination	Privilege against self-incrimination	The Commission has the power to compel the production of self-incriminating documents, statements and other things, which can be used for the purposes of the investigation concerned.
Section 37 Privilege as regards answers, documents etc	Right to silence	A witness summoned to attend or appearing before the Commission at a compulsory examination or public inquiry is not entitled to refuse to answer any question or produce any document relevant to the investigation.
Section 86 Failure to attend etc	Right to silence	A person summoned to attend or appearing before the Commission shall not without reasonable excuse fail to answer any question or produce any document relevant to the investigation.
Section 88 Offences relating to documents or other things	Burden of proof	If, in any prosecution for the indictable offence of intending to delay or obstruct the carrying out by the Commission of any investigation, it is proved that the person charged with the offence has destroyed or altered any document or other thing, or has sent or attempted to send, or conspired to send, out of New South Wales any such document or other thing, the onus of proving that in so doing the person had not acted in contravention of this section is on the person.

Integrity Commission Act 2009 (TAS)		
Section 52 Powers of investigators while on premises	Right to silence	A person required or directed to answer questions or produce any record, material or thing to a person to an investigator who has entered premises under section 52.
Section 54 Offences relating to investigations	Right to silence	A person who, without reasonable excuse, fails to comply with a requirement or direction under section 47 within 14 days of receiving it commits an offence.
Section 80 Offences relating to Integrity Tribunal	Right to silence	A person who fails without reasonable excuse to answer any question or produce or authorise another person to produce any record, information, material or thing when required by the Integrity Tribunal to do so, is guilty of an offence.

Independent Broad-based Anti-corruption Commission Act (VIC)		
Section 136 Offence for summoned witness to refuse or fail to answer question	Right to silence	A person who is duly served with a witness summons to attend as a witness to give evidence at an examination before IBAC, must not, without reasonable excuse, refuse or fail to answer a question as required by the IBAC.
Section 137 Offence for summoned witness to fail to produce document or other thing	Right to silence	A person who is duly served with a witness summons to attend as a witness before the IBAC, must not, without reasonable excuse, refuse or fail to produce a document or other thing that he or she was required to produce by the witness summons.
Section 144 Privilege against self-incrimination abrogated – witness summons	Privilege against self-incrimination	A person is not excused from answering a question or giving information or from producing a document or other thing in accordance with a witness summons, on the ground that the answer to the question, the information, or the production of the document or other thing, might tend to incriminate the person or make the person liable to a penalty.
Section 152 Contempt of the IBAC	Right to silence	A person who has been served with a witness summons by the IBAC is guilty of contempt of the IBAC if the person, without reasonable excuse fails to produce documents or answer questions relevant to the subject matter of the examination.

Independent Commissioner Against Corruption Act 2012 (SA)		
Section 33 Obstruction	Right to silence	A person must not refuse or fail to provide a statement of information as required by the person heading the investigation.
Sch. 2 Section 5 Power to obtain document	Right to silence	It is an offence to refuse or fail to comply with a notice in writing served on a person requiring the person to attend, at a time and place specified in the notice, before the examiner or a member of the staff of the Commissioner; and produce at that time and place a document or other thing specified in the notice that is relevant to an investigation into corruption in public administration.
Sch. 2 Section 8 Failure of witnesses to attend and answer questions	Right to silence Privilege against self-incrimination	A person compelled to appear as a witness before an examiner must not refuse or fail to answer a question as required by the examiner, or to produce a document or thing as required to produce by the summons as prescribed. Section 8(4) merely limits the use of self-incriminating information.

Crime and Corruption Commission Act 2001 (QLD)		
Section 72 Power to require information or documents	Right to silence	A person must comply with a notice to produce information or documents to the chairperson.
Section 74 Notice to produce for crime investigation, specific intelligence operation (crime) or witness production function	Right to silence	A person must comply with a notice to produce a stated document or thing the chairperson believes on reasonable grounds is relevant to a crime investigation.
Section 74A Notice to produce for confiscation related investigation	Right to silence	It is an offence for a person to fail to comply with a notice to give an identified commission officer a stated document or thing that the chairperson believes on reasonable grounds is relevant to a confiscation related investigation.
Section 75 Notice to discover information	Right to silence	A person must comply with a notice to give to an identified commission officer information or documents of a stated type that is relevant to a corruption investigation.
Section 188 Refusal to produce – claim of reasonable excuse	Privilege against self-incrimination	It is not a reasonable excuse to refuse to produce a document or thing under as required under sections 75, 75B, or at a commission hearing under an attendance notice because the document or thing might tend to incriminate the person.
Section 192 Refusal to answer question	Right to silence & privilege against self-incrimination	A witness at a commission hearing is not entitled to remain silent or refuse to answer a question put to the person at the hearing by the presiding officer on the ground of the self-incrimination privilege or the ground of confidentiality.

Corruption, Crime and Misconduct Act 2003 (WA)		
Section 158 Failing to comply with notice given under s. 94 or 95	Right to silence	A person who fails, without reasonable excuse, to comply with a notice served on the person to attend a place and produce specified documents under sections 94 or 95 is in contempt of the Commission.
Section 159 Failing to comply with notice given under s. 96	Right to silence	A person who has been served with a summons under section 96 and fails, without reasonable excuse, to produce any document or other thing as required by a summons is in contempt of a Commission.
Section 160 Failing to be sworn or to give evidence when summonsed	Privilege against self-incrimination	A person served with a summons under section 96 to attend and give evidence is not excused from answering a question relevant to the investigation on the ground that the answer might incriminate or tend to incriminate the person or render the person liable to a penalty.

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