PUBLIC REPORTING OF CORRUPTION MATTERS:

RESEARCH REPORT FOR THE INDEPENDENT CRIME AND CORRUPTION COMMISSION REPORTING REVIEW

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Introduction

This report has been written for the purpose of informing the Independent Crime and Corruption Commission Reporting Review (the Review). The Review was established was following the High Court decision of *Crime and Corruption Commission v Carne* [2023] HCA 28. The High Court held that while the CCC could report generally in relation to the performance of its corruption functions, it does not have the ability to publicly report on individual corruption matters through s 69(1)(b) or any other provision of the *Crime and Corruption Act 2001* (Qld).

In its terms of reference, the Review has been tasked to examine the CCC's ability to publicly report and make statements connected to the performance of its corruption functions and prevention function so far as it concerns corruption, particularly in relation to the investigation, assessment, consideration or disposition of individual corruption matters (whether ongoing or concluded). The Review is also tasked to make recommendations on appropriate legislative amendments to enable the CCC to publicly report and make statements in performing its corruption functions and prevention function so far as it concerns corruption.

In undertaking this review, the reviewer is instructed to have regard to, relevantly, 'the views of the CCC and other relevant experts, including those with specialist expertise in corruption investigations and corruption prevention and human rights' (Terms of Reference, clause 6(g)), as well as 'recent developments, reform and other research in other Australian and international jurisdictions relevant to public reporting on corruption and related human rights' (Terms of Reference, clause 6(i)). Pursuant to this, the Reviewer has commissioned this Research Report from us, the Researchers. The Brief for this Research Report is set out in **Attachment A** to this report. The Researchers were expressly instructed to limit the scope of the literature review to Australian and international academic literature, and exclude government or parliamentary reports, including from anti-corruption commissions across Australia.[1] We understand this material will be considered separately by the Review.

The overarching purpose of the Research Report is 'to identify any principles that might inform the development of a public reporting model'. A number of very specific areas of focus relating to the effect of public reporting on the public sector, on public confidence, in relation to the weighing of reporting against reputational damage, and empirical research on community standards or expectations were set by the Review for focus. As we explain in the Executive Summary, the review of the literature reveals very little research directed at any of these specific areas of focus.

We would like to thank Kyla Hayden and Jane Moynihan for their assistance in preparing this Report for the Review.

Gabrielle Appleby, Yee Fui Ng and A J Brown
30 April 2024

[1] Such as the *Best Practice Principles for Anti-Corruption Commissions* (2022), endorsed by all anti-corruption commissions across Australia.

Executive Summary

A brief summary of the literature, based on our review of it, with respect to each of the four specific areas of focus set in the Brief is provided in this Executive Summary. These four areas relate to the effect of public reporting in various ways. *As is explained below, there is very little academic consideration of the different effects of public reporting by anti-corruption commissions.* The full literature review proceeds in Parts I-IV of this Report.

1. **The effect of public reporting on standards of public sector integrity, principally:**
    - **The value of identifying individuals who are the subject of investigations as a means of reducing public sector corruption; and**
    - **The value of reporting specific details of corruption investigations as a means of reducing public sector corruption.**

    Summary of Literature: *The predominance of literature in Australia and internationally identifies 'public reporting', including annual reports as well as reports on investigations, as a pivotal, or at least a desirable design feature of standing anti-corruption commissions. This is often expressed at a high level of generality, with various assumptions but little detailed consideration regarding the content and process of reporting (see discussion of this literature in Part I(b)). A variety of purposes (or values) of public reporting is identified (see Part II), including effectiveness of fulfilling mandates to reduce corruption within the public sector (see discussion in Part II(c)). So, for instance, public reporting has been identified as performing a role in reaffirming and enforcing norms (Khaitan), operating as a form of informal sanction (Bovens & Wille; Kostadinova), brokering confidence from those in government about the work and independence of anti-corruption agencies (Hoole & Appleby; dela Rama, Lester & Staples), ensuring that the findings and recommendations of the body cannot be ignored by government (IDEA), promoting rational decision making in government (Prasser) and higher standards of government behaviour (Hall). However, there is very little literature that considers specifically the likely value of public reporting of the names of individuals and the details of corruption investigations on public sector integrity, mostly because this is widely assumed (see discussion in Part IV).*

2. **The effect of public reporting on public confidence in the public sector and work of anti-corruption bodies, principally the value of de-identified reports compared to that of reports that identify the subject of an investigation, and whether or not specific case details are included.**

    Summary of Literature: *Most of the limited literature suggests or assumes there is value in public reporting in a general sense, connecting public confidence in the public sector and the work of anti-corruption bodies (see discussion Part II(c)). For example, the Colombo Commentary on the Jakarta Principles claims that public reporting encourages public support for the work of anti-corruption agencies, and*

supports their institutional legitimacy. Prenzler & Maguire have claimed that public reporting has established public confidence in the independence and impartiality of police oversight offices. Johnston has claimed that public reporting shows the public that complaints and evidence are taken seriously by agencies. However, this literature is predominantly not grounded in any data linking reporting to public confidence (see Part IV(c)). We have not been able to locate any academic consideration of the effect of public reporting on public confidence in anti-corruption commissions in light of recent controversies. Further, we could not identify any literature that considers the specific questions of when agencies have used or should use de-identified reports compared to reports identifying the subject of an investigation, and whether or not specific case details are included.

3. **The weighing of potential reputational damage to individuals who are the subject of corruption investigation reports against the public interest in promoting public sector integrity and public confidence in a transparency and independent anti-corruption framework.**

   Summary of Literature: *There is little human rights scholarship that has specifically considered the effect of anti-corruption agencies and public reporting on the rights to reputation and privacy. There is an assumption throughout the literature that the publication of investigation reports, while beneficial, must be accompanied by procedural fairness to any individual named in the reports, based on the potential reputational damage that may be incurred (see discussion of this literature in Part I(b) and Part III(a)). The commentary on the damage to reputation comes predominantly from practitioners and officers (See discussion of this in Part III). Some of these commentators argue for the restriction on publication in some circumstances (Callinan & Aroney), and the use of exoneration protocols (Cowdroy; The Rule of Law Institute). Others are less concerned by the potential damage to reputation given the other significant benefits of publicity (see, eg, Brown, Laurie, Gleeson & McClintock). Pearce raises questions as to whether safeguards such as legislative statements that findings of corruption by the NSW ICAC are not to be taken as a finding that a person has committed a criminal or disciplinary offence can actually address reputation damage. Commentators connect the potential damage to reputation as an interest that attracts procedural fairness (Donoghue), and there is consideration of the precise content of that procedural fairness obligation (Groves; Hall; Donoghue), informed by the case law in this respect (see Part III(c).*

4. **Any qualitative or quantitative research into current community standards or expectations about the public reporting of corruption investigations.**

   Literature: *We could not identify any qualitative or quantitative research specifically addressing this question. There has been various advocacy-based quantitative research of Australian citizen opinion confirming the perceived importance of*

transparency and publicity generally in the work of anti-corruption bodies (see full discussion in Part IV(c)).

The remainder of this Research Report provides an overview of the literature, and is structured as follows:

- Part I outlines the Australian and international literature that has identified the **general design principles** that should inform the establishment and reform of anti-corruption bodies, such as the Queensland Crime and Corruption Commission
- Part II considers the Australian and international literature that has identified the various **purposes of public reporting**. These purposes include transparency, accountability, independence and effectiveness, and public participation.
- Part III presents the scholarship on **human rights concerns** in relation to the publication of investigations by anti-corruption agencies, .
- Part IV details any specific Australian and international literature on the **design and effectiveness of public reporting** for anti-corruption bodies such as the Queensland Crime and Corruption Commission.

PART I: Literature on General Design Principles

There are two important developments that frame an understanding of the literature on the powers (including reporting powers) of anti-corruption bodies. The first is the pioneering development of the 'standing royal commission' anti-corruption model in Australian jurisdictions starting in the late 1980s.[2] In this, New South Wales and Queensland led the way not only nationally, but internationally.[3] The second is academic and practitioner support for the maximum institutional independence of this type of agency, to the extent of being reflected in concepts of a fourth or 'integrity' branch of government that emerged in the 2000s,[4] and has continued to attract discourse in Australia,[5] and internationally.[6] Much of this discourse has considered the function of such core 'integrity' agencies, the classification of such agencies, and their key characteristics. Standing anti-corruption bodies, such as Queensland's CCC, are universally accepted as core integrity institutions within these classification debates.[7]

Stemming from this literature, there is now a substantive body of scholarship that identifies **general principles** that should inform institutional design of integrity bodies, including anti-corruption bodies. This literature has broad relevance to the Research Brief in that they emphasise the importance of public reporting powers with respect to these bodies. This literature does not, however, provide specific answers to the questions posed by the Review. Accordingly it is set out, in summary form, below.

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2 The first bodies being established in New South Wales and Queensland: *Independent Commission Against Corruption Act 1988* (NSW); *Criminal Justice Act 1989* (Qld).

3 AJ Brown, 'Australia's National Anti-corruption Agency Arrives: Will it stand the test of time?' *The Conversation* (30 November 2022) <https://theconversation.com/australias-national-anti-corruption-agency-arrives-will-it-stand-the-test-of-time-195560>.

4 See further B Topperwein, 'Separation of Powers and the Status of Administrative Review' (1999) 20 *AIAL Forum* 1; James Spigelman, 'The Integrity Branch of Government' (2004) 78 *Australian Law Journal* 72, Chris Field, 'The Fourth Branch of Government: The Evolution of Integrity Agencies and Enhanced Government Accountability' (2013) 72 *AIAL Forum* 24, John McMillan, 'The Ombudsman and the Rule of Law' (2005) 44 *AlAL Forum* 1; John McMillan 'Re-thinking separation of powers; (2010) 38 *Federal Law Review* 423; David Solomon, 'What is the Integrity Branch?' (2012) 70 *AIAL Forum* 26; Robin Creyke, 'An "Integrity" Branch' (2012) 70 *AIAL Forum* 33; W M C Gummow, 'A Fourth Branch of Government?' (2012) 70 AIAL Forum 19.

5 See, eg, Stephen Gageler, 'Three is Plenty' in Greg Weeks and Matthew Groves (eds) *Administrative Redress In and Out of the Courts: Essays in Honour of Robin Creyke and John McMillan* (Federation Press, 2019) 12; A J Brown, 'The Integrity Branch: A "System", an "industry", or a Sensible Emerging Fourth Arm of Government?' in Matthew Groves (ed) *Modern Administrative Law in Australia: Concepts and Context* (CUP 2014) 302; Anita Stuhmcke, 'Government Watchdog Agencies and Administrative Justice' in Marc Hertogh, Richard Kirkham, and Robert Thomas (eds) *The Oxford Handbook of Administrative Justice* (OUP 2021) ch 6.

6 See, eg, Bruce Ackerman, 'The New Separation of Powers' (2000) 113 *Harvard Law Review* 642, Mark Tushnet, *The New Fourth Branch: Institutions for Protecting Constitutional Democracy* (CUP 2021), Tarunabh Khaitan, 'Guarantor Institutions' (2021) 1 *Asian Journal of Comparative Law* S40; Tarunabh Khaitan, 'Guarantor (or the so-called 'Fourth Branch') Institutions' in Jeff King and Richard Bellamy (eds) *Cambridge Handbook of Constitutional Theory* (CUP 2023); Heinz Klug, 'Transformative Constitutions and the Role of Integrity Institutions in Tempering Power: The Case of Resistance to State Capture in Post-Apartheid South Africa' (2019) 67 *Buffalo Law Review* 701.

7 See, eg, Ackerman (n 6), Field (n 4).

(a) Categorising anti-corruption agencies based on forms of accountability

There is a body of literature that attempts to classify or categorise integrity agencies and anti-corruption commissions based on one of the key initial design choices around the *form* of accountability that an agency provides. What emerges from these classifications is that the power to report, and to publicise findings, is not an additional or incidental design feature of anti-corruption agencies in Australia such as the Crime and Corruption Commission, but a fundamental characteristic for the achievement of their objectives.

The different forms of accountability have been identified in the literature as sitting on a spectrum. Professor Andreas Schedler, a leading political scientist on democracy, for instance, draws a distinction between the 'answerability' and 'enforceability' elements of accountability.[8] Professor Linda Reif, an international expert on oversight institutions, adds a third 'intermediate' form of accountability, which she argues lies between Schedler's 'answerability' and 'enforceability': where a body has the power to investigate, recommend, *report publicly*, and persuade privately, but not to sanction.[9] Australian public law scholars, Professors Lisa Burton and George Williams (2012) draw a similar distinction between soft and hard accountability.[10] 'Hard' accountability produces 'binding consequences' while 'soft' accountability relies on *public reporting*, criticising and demanding explanation.

Anti-corruption agencies in Australia, with varying powers of investigation, referral and reporting, predominantly exercise a form of 'soft' accountability. Their jurisdictions most commonly extend beyond criminal law enforcement, to include identification of other critically salient issues including non-criminal corruption, causes of corruption, imperatives for addressing corruption risk (criminal or non-criminal), cultural issues and opportunities for specific or systemic reform to control corruption. Sitting towards this end of the spectrum, the power of reporting and criticising is not just a desirable feature, but identified as a key dimension of the form of oversight they exercise.

Professor Tarunabh Khaitan, a leading comparative constitutional scholar, has written on what he refers to as 'guarantor institutions'.[11] He has identified *publicity* as a key secondary 'duty' of such institutions. He defines guarantor institutions as those with an obligation to guarantee constitutional norms in terms of their content and impact. The primary duty of securing the content of such norms is achieved through a set of secondary duties which he describes as including:

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8 Andreas Schedler, 'Conceptualizing accountability' in Andreas Schedler, Larry Diamond, and Marc F Plattner (eds) *The self-restraining state: Power and responsibility in new democracies* (Lynne Rienner Publishers, 1999) 13, 14-17.

9 Linda Reif, 'Building democratic institutions: The role of national human rights institutions in good governance and human rights protection' (2000) 13 *Harvard Human Rights Journal* 1, 29.

10 Lisa Burton and George Williams, 'The integrity function and ASIO's extraordinary questioning and detention powers' (2012) 38 *Monash University Law Review* 1, 28, 24, 26.

11 See also Khaitan, 'Guarantor Institutions' (n 6).

> a duty to vigilantly look out for *and publicise* any suspected breach, and to determine whether there has, in fact, been such breach. If this is the case, there may be additional duties to *criticise* and remedy such breach. (emphasis added)[12]

He goes on:

> The duty to publicise a suspected breach can only be performed if the duty bearer has access to the necessary information, regularly examines such information, a*nd can publicly highlight any suspected cases* … Criticism of breaches is a key tool for norm-maintenance, but often overlooked. *Public criticism expresses a reaffirmation of the norm, and by doing so strengthens it: its salience in overly court-centric constitutional scholarship has been underestimated*. (emphasis added)[13]

With respect to ensuring the impact of constitutional norms, Khaitan explains the ability to publicise is also important, although may not always be sufficient.[14]

Reflecting this focus on *reporting* as a defining characteristic of oversight institutions, in 2016, a study by criminologists Joseph De Angelis, Richard Rosenthal and Brian Buchner on civilian oversight of law enforcement in the US found that:

> most civilian oversight agencies reported that they publish public reports (78 percent), although there was slight variation among oversight agencies that provided data for this report, with a slightly smaller proportion of review boards reporting that they publish reports (69 percent) as compared to auditor/monitor (80 percent) and investigative agencies (85 percent).[15]

(b) Desirable design features

Consistent with the importance of public reporting to understanding the purpose of anti-corruption agencies, another set of scholarship and international statements have identified desirable design features of integrity bodies and anti-corruption bodies. These almost universally include public reporting, although the extent and nature of that public reporting, whether it be annual or with respect to specific investigations, is left at a high level of abstraction. This scholarship tends therefore not to draw out the different potential impacts of different forms of reporting.

The 2012 Jakarta Statement on Principles for Anti-Corruption Agencies was produced by current and former heads of anti-corruption agencies (ACAs), anti-corruption practitioners and experts from around the world,[16] who gathered in Jakarta at the invitation of the

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12 Ibid S46.

13 Ibid.

14 Ibid S48.

15 Joseph De Angelis, Richard Rosenthal and Brian Buchner, *Civilian Oversight of Law Enforcement: Assessing the Evidence* (2016) 42.

16 Participants included several heads of ACAs and representatives of regional networks, including Network of National Anti-Corruption Institutions in West Africa, the Southeast Asian Parties Against Corruption, the Arab Anti-Corruption and Integrity Network, the Southern African Forum Against Corruption, the East African Association of Anti-Corruption Authorities, and the European Partners Against Corruption/European anti-corruption contact point network (EPAC/EACN). Representatives

Corruption Eradication Commission (KPK) Indonesia, the United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC) to discuss a set of "Principles for Anti-Corruption Agencies" to promote and strengthen the independence and effectiveness of ACAs. The Jakarta Statement on Principles for Anti-Corruption Agencies provides a requirement for *annual* reporting of their activities to the public:

> PUBLIC REPORTING: ACAs shall formally report at least annually on their activities to the public.

While the Jakarta Statement does not speak to public reporting on *individual investigations*, the Colombo Commentary on the Jakarta Principles elaborates that the 'law should require [annual reporting] of ACAs, but they can also be proactive in publishing reports on their activities and on the impact of their work in order to encourage public support for and understanding of their efforts'.[17]

In 2015, Professor Gabrielle Appleby (one of the authors of this report) identified a set of 'independence markers' that she claimed were necessary for the independence and effectiveness of executive integrity institutions, such as anti-corruption bodies.[18] She identified the following markers (emphasis added):

> (a) statutory guarantees of tenures (during a fixed term);
>
> (b) relatively clear and broad mandates set by statute;
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> (c) statutory guarantees against being subject to the direction of the government;
>
> (d) adequacy of the powers given to the institution, including the power to investigate;
>
> *(e) the ability of the institution to make public their reports and recommendations without the permission of government;*
>
> (f) a guaranteed transparent, arms-length and merits-based appointment process;
>
> (b) greater guarantees of adequate funding and resourcing; and
>
> (c) an appropriate allocation of responsibilities to integrity institutions.

Appleby's markers capture individual investigative reports and recommendations, as well as annual reporting.

In 2021, leading public administration and accountability expert Professor Mark Bovens (Utrecht University) and public sector specialist Professor Anchrit Wille (Leiden

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from the United Nations Development Programme, the United Nations Office on Drugs and Crime, the United Nations Office of the High Commissioner for Human Rights and Transparency International took part in the proceedings. The Organization for Economic Cooperation and Development and the World Bank also submitted contributions to the Conference.

17 United Nations Office of Drug and Crime, *Colombo Commentary on the Jakarta Statement of Principles for Anti-corruption Agencies* (2020).

18 Gabrielle Appleby, 'Horizontal Accountability: the rights-protective promise and fragility of executive integrity institutions' (2017) 23(2) *Australian Journal of Human Rights* 168.

University)[19] developed a framework for assessing the accountability powers of watchdog mechanisms. They identified three dimensions of watchdog power: (1) formal powers, (2) organizational powers and strength, and (3) the operational exercise of those powers. Within formal powers, they identified a number of indicators that include legal powers to obtain information, to question witnesses and to sanction officials or actors. In relation to the sanctioning power, they explain the importance of public reporting of individual inviestigations:

> Sanctioning power: The extent to which the institution has formal powers to sanction actors when it finds irregularities. The ability to impose sanctions—or hand out rewards—will render an extra "bite" to the judgment of the watchdog institutions and may enhance the chances that their findings and recommendations will lead to improvement of the executive performance. Ideally, watchdogs themselves have the power to impose sanctions on executive actors, but they may also simply act as informants to external principals of executive bodies, such as parliamentary commissions or ministers. *A more informal, but in some cases effective way of sanctioning is the use of naming and shaming … This requires that its reports can be made public*. (emphasis added, references omitted).

In 2017, Dr Grant Hoole (then a post-doctoral fellow at UNSW Law) and Professor Appleby published a paper in the *Adelaide Law Review*[20] that had its basis in a Transparency International Discussion Paper.[21] It advanced a theoretical framework, drawn from legal process theory, for the design of anti-corruption agencies. Their framework, coined 'integrity of purpose', emphasised the importance of providing targeted powers for anti-corruption agencies that were directed at their purpose while respecting the boundaries of their mandate, and the mandates of other government institutions. Fidelity to the purpose of an anti-corruption commissions requires, they argued, adherence to integrity of design, which requires adherence to higher level public values, such as the need to adhere to requirements of procedural fairness and accord appropriate respect for individual rights, including the right to reputation. Within this framework, they argue for the importance of the ability 'to publicly report the findings that result from any hearing, including findings of serious and systemic corruption and their relevant factual foundations.' 'This', they argue, 'is not only consistent with the commission's foundational purpose, it is essential to it.' Hoole and Appleby explain that public reporting of individual investigations must be at the discretion of the agency:

> It is difficult to conceive of how a commission can broker confidence in government if the government itself exercises control over the release of the commission's findings.[22]

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19 Mark Bovens and Ancrhit Wille, 'Indexing watchdog accountability powers: a framework for assessing the accountability capacity of independent oversight institutions' (2021) 15 *Regulation & Governance* 856.

20 Grant Hoole and Gabrielle Appleby, 'Integrity of Purpose: A Legal Process Approach to Designing a Federal Anti-Corruption Commission' (2017) 38 *Adelaide Law Review* 397.

21 Griffith University and Transparency International Australia 'A Federal Anti-Corruption Agency for Australia?' Discussion Paper No 1, 16-17 March 2017.

22 Hoole and Appleby (n 20) 437.

Public reporting has been identified in similar ways by others as an important design feature of anti-corruption commissions, particularly in the context of the campaign to establish and design a federal anti-corruption commission.[23]

Other scholars have identified design dimensions for anti-corruption agencies without necessarily advocating for any particular design within them. For instance, in 2018, US public service and accountability expert Professor Robin J Kempf and Australian criminologist and anti-corruption expert Professor Adam Graycar developed a model that encompassed seven dimensions of jurisdiction and authority for the design of anti-corruption agencies.[24] Within each dimension, they identify the need for'trade-offs' to occur, as different principles (including agency effectiveness as against individual rights, including procedural fairness) are balanced in institutional design. The seven dimensions of jurisdiction and authority are:

(1) Subject matters jurisdiction;

(2) Targets of oversight;

(3) Activities employed;

(4) Powers granted [including reporting powers];

(5) The extent to which authority is centralised;

(6) The extent to which authority overlaps with other entities; and

(7) The extent to which independence is granted.

In 2023, Professor Gabrielle Appleby and Associate Professor Yee Fui Ng (the authors of this Report), in a paper delivered to the annual Australian Institute of Administrative Law conference, identified the need to develop a framework through which an assessing the effectiveness of anti-corruption agencies could be undertaken.[25] They noted that most assessments of anti-corruption agencies in Australia and internationally propose a set of 'principles' or 'dimensions' of performance assessment that will facilitate the assessment.[26]

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23 See, eg, former Victorian Supreme Court judge, Stephen Charles, 'A National Integrity Commission?' (2020) 46(2) *Monash University Law Review* 1, 11.

24 Robin J Kempf and Adam Graycar, 'Dimensions of Authority in Oversight Agencies: American and Australian Comparisons' (2018) 14 *International Journal of Public Administration* 1145.

25 Yee Fui Ng and Gabrielle Appleby, *Towards a framework for assessing the design & amendment of anti-corruption commissions in Australia,* Paper delivered at National Administrative Law Conference, August 2023, Adelaide (on file with authors).

26 See, eg, OECD, Measures for promoting integrity and preventing corruption: How to assess? Report of OECD Public Governance Committee GOV/PGC (2004) 24 (October 2004) <www.oecd.org/dataoecd/40/47/34406951.pdf>; OECD, Public sector integrity: a framework for assessment (OECD, 2005); J Johnson, H Hechler, L De Sousa and H Mathisen, How to monitor and evaluate anti-corruption agencies: guidelines for agencies, donors, and evaluators (U4 Anti-Corruption Resource Centre, Issue No. 8, 2011). OECD, Specialised anti-corruption institutions: review of models (OECD, 2nd ed, 2013) 34–5; Transparency International, Anti-Corruption Agencies Strengthening Initiative, Research Implementation (2015) 7; Patrick Meagher and Caryn Voland, *Anti-Corruption Agencies (ACAs): Office of Democracy and Governance Anti-Corruption Program Brief* (Washington DC, United States Agency for International Development, June 2006) 8-14.

Reviewing these frameworks, they developed a set of five principles focussed on institutional design:

(a) The Commission must be independent;

(b) The Commission must be appropriately and proportionately empowered for its functions, while respecting basic rights and liberties;

(c) The Commission must be accountable for the exercise of its powers;

(d) The Commission must be properly resourced to fulfil its functions;

(e) The Commission must work constructively with other government and oversight institutions.

These high-level design principles are then fed into a series of design choices that Appleby and Ng argue must be scrutinised as part of an institutional design assessment. This list is potentially very long, but they identified 10 key design choices (emphasis added), including:

> **Public hearings & publicity:** Whether the Commission is able to hold public hearings and in what circumstances, and the other publicity that is afforded to the Commission's ongoing investigatory work.

PART II: Purposes of Public Reporting

There are a number of different purposes identified in the Australian and international scholarship that public reporting may achieve. These purposes are not always clearly distinct and often overlap. We have considered the scholarship in relation to four broad purposes:

(a) Transparency

(b) Accountability of agency

(c) Agency independence and effectiveness

(d) Public Participation

(a) Transparency

Many sources identify transparency as the objective driving publicity of anti-corruption agency findings and reports. When referring to transparency, the literature on anti-corruption agencies refers to two related ideas: transparency of government agencies processes that the anti-corruption agency is able to facilitate, and transparency of the anti-corruption agency's processes.

Transparency in government is closely associated with other purposes set out below, including relating to the effectiveness of an anti-corruption agency to uncover corrupt conduct, the accountability of an anti-corruption agency, and public participation. As a democratic ideal, transparency based on the notion that an informed citizenry is better able to participate in government; thus providing an obligation on government to provide public disclosure of information.[27] Transparency in government enhances participatory democracy on the assumption that an informed citizenry is more likely and better able to participate in, and be able to understand and judge, government decision-making than an uninformed one. It also enhances representative democracy because it is likely to lead to electors making better informed choices at periodic elections. It also reduces the risk of corruption and abuses of power by exposing executive activity to public scrutiny, via both vertical (congressional or parliamentary committees, formal audit institutions) and horizontal (civil society organisations, the media, the public) networks of accountability.[28] As the saying goes: 'sunlight is … the best of disinfectants'.[29]

Transparency is closely associated with public reporting in international anti-corruption material. Australia is a signatory to the 2005 United Nations Convention Against Corruption (UNCAC),[30] which introduces a comprehensive set of standards, measures and rules that countries can apply to strengthen their legal and regulatory regimes to fight both public and private sector corruption. In relation to public reporting, the UNCAC provides that State Parties must take measures to enhance *transparency* in public administration. This includes

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27 Daniel J Metcalfe, 'The History of Government Transparency' in Padideh Ala'I and Robert G Vaughn (eds), *Research Handbook on Transparency* (Edward Elgar, 2014) 247, 249.

28 Albert Meijer, 'Transparency' in Mark Bovens, Robert Goodin and Thomas Schillemans (eds), *The Oxford Handbook of Public Accountability* (Oxford University Press) 507.

29 Louis D Brandeis, *Other People's Money and How the Bankers Use It* (F A Stokes, 1914) 92.

30 *United Nations Convention Against Corruption*, opened for signature 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005) ('*UNCAC*').

measures such as publishing information on the risks of corruption, and adopting procedures allowing the public to obtain information on the organisation, functioning and decision-making processes of public administration.[31]

As the UNCAC is an international treaty, it provides high-level principles, rather than prescriptive methods on public reporting on corruption. Article 10 includes a requirement to publish information. The only example given is periodic reports on the risks of corruption, with guidance given on this corruption prevention reporting.[32] There is no specific mention of publishing corruption investigations, but the language is inclusive, meaning that other information may be published consistent with the requirement of public reporting. The UNCAC also identifies publication of corruption findings as relevant to public participation, which we return to below.

The Colombo Commentary on the 2012 Jakarta Principles (introduced above) elaborates that public reporting by government bodies (both with respect to annual reports and individual investigations) is intended to further the core principles of *transparency and accountability*.[33]

In 2022, Australian academics Marie dela Rama, Michael Lester and Warren Staples argued for the then proposed Commonwealth Integrity Commission to be required to publicly report its investigations, as they argued that this would enhancing *transparency*. They explained the multi-faceted objectives that transparency itself could achieve: transparency would promote the agency's capacity to provide an educative and public awareness role, and 'promote and enhance trust that the investigative process is not being compromised by vested interests'. [34] Thus transparency is closely connected to accountability and agency effectiveness. The authors drew on an analogy to Article 10 of the Anticorruption Protocol to the United Nations Convention Against Corruption, which states that a report would be published online by Transparency International once a corruption investigation has been filed by UN inspectors. The authors note that this requirement "addresses the fundamental *transparency* requirements of anti-corruption investigations".[35]

(b) Accountability of agency

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31 Article 10.

32 UN Guidance provides more detail about periodic reports on the threats of corruption: 'All public organizations should report periodically on the threats of corruption and anti-corruption prevention measures undertaken … The report may answer the following questions: What functions does the ministry or department perform? Which processes does it carry out? Which of its processes, systems and procedures are susceptible to fraud and corruption? What are the internal and external risks likely to be? What are the appropriate key anti-fraud and corruption preventive measures in place? How are they assessed in practice?' United Nations Office of Drugs and Crime, *Technical Guide to the United Nations Convention Against Corruption* (2009) 46.

33 United Nations Office of Drug and Crime, *Colombo Commentary on the Jakarta Statement of Principles for Anti-corruption Agencies* (2020) 71.

34 Marie J dela Rama, Michael E Lester and Warren Staples, 'The Challenges of Political Corruption in Australia, the Proposed Commonwealth Integrity Commission Bill (2020) and the Application of the APUNCAC' (2022) 11(1) *Laws* 1, 10-11 <https://doi.org/10.3390/laws11010007>.

35 Ibid 16.

Public reporting of corruption investigations is seen to enhance the accountability of anti-corruption agencies, as it allows the government and the public to evaluate the performance of anti-corruption agencies based on their investigative outcomes, whether they are fulfilling and their objectives effectively and whether the expenditure on oversight is justified.

Internationally, the role that regular reporting to Parliament and the public plays in terms of accountability has been identified, together with transparency and public participation, as its key purpose. For instance, the guidance to the 2012 Jakarta Principles notes:

> Regular reporting by ACAs will enhance their *accountability* by providing clear accounts of their progress. It can also strengthen their institutional legitimacy if the reports are made public. Formal reports serve as another accountability mechanism designed to ensure that the Government and the public can assess the performance of an ACA pursuant to its mandate and allocated budget. (emphasis added)[36]

The International Institute for Democracy and Electoral Assistance (IDEA) considers public reporting as part of the accountability for fourth branch institutions (including anti-corruption agencies) in its Constitution-Building Primer on *Independent Regulatory and Oversight (Fourth Branch) Institutions*:

> *Accountability:* Without compromising their neutrality or independence, independent institutions must be publicly accountable – with provision for public reporting and scrutiny of their activities.[37]

It is not explicit in this material whether this reporting refers to annual reporting, or reporting on individual investigations. However, it goes on to note the importance of requiring responses to public reports, 'so that reports which might be critical of government policy … cannot easily be ignored.'[38] This is typical of academic or official commentary assuming that publication should extend to specific investigation reports and – subject to rights protections for instance through procedural fairness – should contain such detail as is necessary to ensure that investigation outcomes are heeded and not dismissed or downplayed.

The Westminster Foundation for Democracy's 2020 report, *Combatting corruption capably: An assessment framework for parliament's interaction with anti-corruption agencies* identifies the importance of parliament's relationship to anti-corruption agencies through reporting, focussing on annual reports, as 'an important part of the accountability of the [anti-corruption agency] towards the parliament, but they also serve to inform the parliament and the general public about the ACA's work and key developments in anti-corruption efforts.'[39]

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36 United Nations Office of Drug and Crime, *Colombo Commentary on the Jakarta Statement of Principles for Anti-corruption Agencies* (2020) 72.

37 Elliot Bulmer, *Independent Regulatory and Oversight (Fourth-Branch) Institutions* (International IDEA Constitution-Building Primer 19, 2019) 22.

38 37.

39 Franklin De Vrieze and Luka Glušac, *Combatting corruption capably: An assessment framework for parliament's interaction with anti-corruption agencies* (Westminster Foundation for Democracy, 2020) 14.

Anti-corruption adviser to the UN, Samuel De Jaegere, identified in 2012 annual reporting as important for enhancing the *accountability* of anti-corruption agencies, and therefore potentially strengthening their credibility and independence.[40]

In an article considering how to make anti-corruption commissions more *effective*, Jeremy Pope and Frank Vogl, two Transparency International officials note that:

> The agency's work has to be seen as meaningful, which requires that the agency be as open as possible with the press and that it publish frequent reports on its activities.[41]

In the 2022 Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence, led by Judge Deborah Richards, a report was commissioned from leading police and security expert Professor Tim Prenzler and former Irish Police Ombudsman Michael Maguire. They were asked to inquire into 'Models of Police Oversight and Complaints Handling Processes'. This report examined models of external oversight of police by civilian review bodies and identified democratic accountability as a key dimension of public reporting of these bodies. Although not directly analogous to anti-corruption commissions, some anti-corruption commissions in Australia have oversight over police misconduct (eg the Victorian IBAC), and the general principles in relation to oversight of public bodies means that their conclusions are relevant to considering public reporting in the anti-corruption context.

Prenzler and Maguire's report reviewed five decades of experience internationally with different types of systems for investigating complaints against police and regulating police conduct. The report found that reporting key findings of investigations publicly is an important feature of police review agencies:

> Review agencies adopt different powers and processes. Available evidence indicates that the majority are limited to audits of police files; extending to communicating findings and recommendations to police (including recommendations to change procedures), and *reporting key findings publicly*. (emphasis added)[42]

Prenzler and Maguire noted that the ability to publish reports, alongside the 'capacity to hold open inquisitorial hearings and refer matters to a public prosecutor or administrative tribunal' … 'significantly enhances the democratic accountability process'.[43]

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40 Samuel De Jaegere, 'Principles for Anti-Corruption Agencies: A Game Changer' (2012) 1(1) *Jindal Journal of Public Policy* 79, 101.

41 Jeremy Pope and Frank Vogl, 'Making Anticorruption Agencies More Effective' (2000) *Finance & Development* 6, 9.

42 Tim Prenzler and Michael Maguire, *Models of Police Oversight and Complaints Handling Processes Report for the Independent Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence* (22 August 2022) 4.

43 Ibid 10-11. The 2022 Richards Final Report did not recommend publication of investigative reports, but, at a minimum, annual reporting on activities and outcomes: D Richards, *A Call for Change: Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence, Report, Commission of Inquiry* (2022) 30. See also Tim Prenzler and Michael Maguire, Reforming Queensland's Police Complaints System: Recent Inquiries and the Prospects of a Best Practice Model' (2023) 35(3) *Current Issues in Criminal Justice* 324, 333.

Demonstrating the accountability use to which public reporting can be put, in 2015, Transparency International developed a formalised methodology (co-authored by Professor AJ Brown, one of this report's authors) for conducting an assessment of Anti-Corruption Agencies. This assessment tool draws on established practice and UN Development Program-sponsored research to assume that there would be public corruption investigation reports, with part of the assessment including the frequency of including corruption prevention recommendations in the ACA's investigation reports during the previous 3 years, as part of assessing the effectiveness of corruption prevention:

> *Frequency of including corruption prevention recommendations in ACA's investigation reports during past 3 years*
>
> For indicator no. 29, the interviewer collects data on the number of investigation reports completed by the ACA during the past three years and identifies the number of corruption prevention recommendations in these reports so that the frequency of such recommendations can be determined.[44]

Alongside the assumption that individual investigation reports will be published on an 'as needs' or case-driven basis, the TI assessment methodology includes specific information about the ACA's more generalised annual report:

> There are three ways to enhance the ACA's accountability. First, the ACA's annual report provides important and relevant information on its activities to the public. Apart from ensuring accountability to Parliament, the ACA's annual report should provide comprehensive information on its activities during the previous year to all citizens. Is the ACA's annual report, which is submitted to Parliament, published on its website to ensure that it is accessible to the public? The submission of the ACA's annual report indicates that it is accountable to Parliament for its activities. It will be difficult to hold the ACA accountable for its actions if it does not submit an annual report to Parliament.[45]

(c) *Agency Independence and effectiveness*

A key purpose of public reporting is to ensure the independent and effective operation of oversight bodies.[46] Indeed, as is detailed above in Part I(a), the power of *publishing* reports and findings of corruption investigations is a fundamental characteristic of agencies that exercise 'soft' accountability power, such as anti-corruption commissions.

For instance, public inquiry specialist Scott Prasser (2012) has identified the ability to report to parliament (i.e. publicly) as a key dimension of the *independence* as well as accountability of integrity agencies.[47]

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44 Transparency International, (n 26) 10, 30, 40, 42.

45 Ibid 11.

46 As identified in scholarship already referred to above, such as Appleby (n 18).

47 Scott Prasser, 'Australian Integrity Agencies in Critical Perspective' (2012) 33 *Policy Studies* 21, 30.

In his 2021 book discussing investigatory/inquisitorial and advisory public inquiries,[48] Prasser developed this position, arguing that a signal of a public inquiry's independence is the transparency of its deliberations in the process of fact-finding and reporting (developing the link between independence, transparency and accountability):

> A signal of the independence of an inquiry is the extent it conducts its business in public, what Banks describes as 'ensuring transparency' … What distinguishes an inquiry [from review by a government agency] is the public and transparent character of its deliberations in the process of fact-finding and reporting.[49]

Prasser's work looked at public inquiries (such as royal commissions), that hold hearings and deliver reports in public. While such inquiries differ from the current design of Queensland's Crime and Corruption Commission, with its presumption against public hearings, and restrictions on reporting, nonetheless, the identified benefits of reporting of individual investigations are relevant to the consideration of the ideal design for the reporting powers of the CCC.

Prasser also noted that public inquiries are a 'major instrument of accountability and rational policy-making'[50] and developed a typology of rational policy development and how inquiries perform these activities.[51] The typology suggests that 'public release of [inquiry] reports and formal presentation to government' promotes rational decision-making, as it 'seeks to obtain formal endorsement from government of specific recommendations'.[52] This suggests that public reporting of investigative inquiry outcomes will promote rational government decision-making, and thus enhance the effectiveness of government.

Leading international corruption expert Professor Michael Johnston, writing in 2002, identified four prerequisites for anti-corruption agency success, including independence, permanence, coherence and credibility. In relation to *independence,* he noted that an anti-corruption agency must publicise all of its activities freely and conduct them in a transparent manner to assure citizens that 'the evidence they give will be taken seriously, and that they can file reports without fear or reprisals.'[53]

Peter Hall, a former NSW ICAC Commissioner, has argued in his 2019 book on corruption in public office, one aspect of 'accountability' is that public reporting of corruption investigations by anti-corruption agencies will encourage higher standards of behavior by public officials, that is, increase their effectiveness:

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48 Anti-corruption agencies have investigatory (to establish facts and make recommendations on matters of policy) and inquisitorial functions (to determine in the manner of the police, to assess the facts of an incident or of events of the past).

49 Scott Prasser, *Royal Commissions and Public Inquiries in Australia* (LexisNexis, 2nd ed, 2021) 282.

50 Ibid 268.

51 Ibid 143.

52 Ibid.

53 Michael Johnston, 'Independent Anti-Corruption Commissions: Success Stories and Cautionary Tales' in Cyrille Fijnant & Leo Huberts (eds) *Corruption, Integrity and Law Enforcement* (Kluwer Law International 2002) 257.

> The primary functions of the [NSW ICAC] include the public exposure of corruption. Public inquiries, along with the Commission's public reports, may be seen as an effective mechanism for exposing truth and encouraging high standards of behaviour in public officials.[54]

Writing in the EU context, political scientist Petia Kostadinova noted in 2015, without independent legal enforcement powers, oversight agencies' 'impact' is closely associated with the informal sanctioning through publicity, that is, the '"naming and shaming" public nature of the critical remark and the specificity of the issued suggestions.'[55] In this sense, Kostadinova notes that the informal impact of public critical remarks and subsequent follow-ups can be stronger than the substantive inquiry itself.

The idea of 'naming and shaming' has been explored in other literature as a mechanism for changing behaviour. Expert in social research methodology Professor Ray Pawson identifies it as involving the following process:

> 1. Identifying and classifying that behaviour;
>
> 2. Naming the party involved and describing the behaviour to which complaint is made;
>
> 3. The community responds to this disclosure (the act of shaming); and
>
> 4. As a result the respondent changes its behaviour.[56]

Others have noted the danger of naming and shaming resulting in double-penalties, where a prosecution may subsequently be undertaken.[57] However we note that this risk, which is obviously central to the present inquiry, only pertains where a form of 'hard' accountability (criminal or disciplinary proceedings) is also being applied, or is sufficiently reasonably likely to be applied to mean that the 'soft' accountability effects of publicity should become secondary (whether temporarily or permanently). In all other circumstances, the ability to accurately describe the behaviour, including identifying those party to it, can be central to these strategies for behavioural, cultural, organisational or political change.

Public reporting of the work of oversight agencies has been linked to perceptions of independence and effectiveness in the police oversight context by Prenzler and Maguire (introduced above). The Office of the Police Ombudsman for Northern Ireland provides an independent, impartial police complaints system for the people and the police service of Northern Ireland. A survey of public awareness and perceptions and complainant satisfaction levels from 2014-2020/21 showed a high degree of perception of independence, fairness and satisfaction.[58] Prenzler and Maguire argued that the publication of both critical and

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54 Peter Hall, *Investigating Corruption and Misconduct in Public Office* (LawBook Co, 2019) 777.

55 Petia Kostadinova, 'Improving the Transparency and Accountability of EU Institutions: The Impact of the Office of the European Ombudsman' (2015) 53 *Journal of Common Market Studies* 1077, 1082.

56 See Ray Pawson, 'Evidence and Policy and Naming and Shaming', (2002) 23(3) *Policy Studies* 211.

57 A comment made in the context of corporate tax avoidance: see further Kalmen Dutt, 'To shame or not to shame, that is the question' (2016) 14(2) *eJournal of Tax Research* 486, 489.

58 Prenzler & Maguire (2022, n 41) 26-7.

supportive reports have been important towards establishing the independence and impartiality of the Office's work:

> The Office [of the Police Ombudsman for Northern Ireland] has published reports which have been both critical and supportive of the police. This reinforces confidence in the independence and impartially of the work. The publication of reports is extremely important as it provides valuable information to the public about what can be complained about and whether these complaints have been successful.[59]

Canadian doctoral candidate Nicholas Bautista-Beauchesne has written in 2020 on the importance of bureaucratic autonomy and reputation for the effectiveness of anti-corruption commissions, using the case study of how Quebec's anti-corruption agency constructed its bureaucratic reputation over time.[60] His work assumes that bureaucratic autonomy 'is not only a product of [anti-corruption agencies'] legislative frameworks; but equally emanates from their ability to contruct their organisational legitimacy, identity and reputation in the eyes of multiple "audiences" such as citizens, the political sphere or other institutions.'[61] Using a mixed-method including a narrative analysis of commission hearings and semi-structured interviews, paired with quantitative content analysis of media articles and agency web-communications, he identified a distinction between activities that were directed to performance credibility and those that related to reputation management within the bureaucracy. Performance credibility, particularly relating to repression of corruption, was identified by the agency as particularly important during the early phases after its establishment, and relied heavily on public reporting of its investigations in managing external perceptions of the agency's performance reputation.[62] In contrast, reputation management within the bureaucracy required a greater number of multi-faceted activities that were more directed towards the preventative function of the agency. He concludes that these activities do appear to be, however, related, with agencies able to leverage perceptions of performance credibility in other spheres; he also noted, however, the 'non-linearity' of reputation management demonstrated by the case-study during more turbulent periods.[63]

(d) Public participation

The ability of public reporting to enhance not just public understanding of government corruption and the work of anti-corruption agencies, but also for public participation, has also been identified.

Article 13 of the UNCAC, for instance, requires nation states to take appropriate measures to promote active societal participation in the fight against corruption, and to increase public awareness of the existence, causes and gravity of the threat posed by corruption.

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59 Ibid 31.

60 Nicholas Bautista-Beauchesne, 'Crafting anti-corruption agencies' bureaucratic reputation: an uphill battle' (2021) 75 *Crime, Law and Social Change* 297.

61 Ibid 298.

62 Ibid 308-309, 318-319.

63 Ibid 312-313, 318 and 319.

Article 13: Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information;

(c) Undertaking public information activities that contribute to nontolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public [public order] or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

Article 13 includes measures such as ensuring that the public has effective access to information, which can be promoted through publication of corruption investigations. The UN guidance notes that an element of this is the freedom to publish and disseminate information about corruption:

> *Freedom to seek, receive, publish and disseminate information concerning corruption and its restrictions*
>
> States Parties should review their licensing and other arrangements for various forms of media to ensure that these are not used for political or partisan purposes to restrain the investigation and publication of stories on corruption. At the same time, while those subject to allegations may have recourse to the courts against malicious or inaccurate stories, *States Parties should ensure that their legislative or constitutional*

framework positively supports the freedom to collect, publish and distribute information.[64]

Dr Samual Siebie Ankamah has identified in 2019 the role that social accountability actors (for instance, journalists, civil society activities, and complainants/whistleblowers) in the effectiveness of anti-corruption agencies.[65] One aspect of that constructive relationship is the 'amplification' of the work and published findings and reports of anti-corruption commissions.[66]

In 2018, anti-corruption expert Sergio Marco Gemperle developed a new index of anti-corruption agencies (ACAs) covering 53 states between 2006 and 2011. In this index, Gemperle identified the institutional determinants of an ACA's capacity, which includes 'powers and accountability'. He notes that 'mechanisms for ensuring better public access to ACAs include regular reporting, expenditure disclosure, and complaint systems or public hearings'.[67] This suggests that regular public reporting enables better public access to anti-corruption agencies.

Part III: Human Rights concerns relating to public reporting on investigations

There is little direct scholarship that has addressed the human rights concerns relating to public reporting on investigations. Indeed, the anti-corruption scholarship and human rights scholarship on this point have, by and large, not yet intersected. Internationally, the concern of human rights scholars and practitioners has tended to be to demonstrate the link between the need to address corruption, and how that promotes and protects human rights.[68] There has been some scholarship on the institutionalised misuse or political co-option of anti-corruption agencies in general ways that conflict with fundamental civil and political rights,[69] and some on human rights concerns about the sanctioning powers of government agencies against foreign political or business actors, including in the name of anti-corruption.[70] None of this speaks specifically to human rights concerns around when or how public reporting occurs.

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64 United Nations Office of Drugs and Crime, *Technical Guide to the United Nations Convention Against Corruption* (2009) 63.

65 Samual Siebie Ankamah, 'Why do "teeth" need "voice"? The case of anti-corruption agencies in three Australian states' (2019) 78 *Australian Journal of Public Administration* 481. See also A Mungiu-Pippidi and R Dadašov, 'When do anticorruption laws matter? The evidence on public integrity enabling contexts (2017) 68 *Crime, Law and Social Change* 387.

66 Ibid 488-489.

67 Sergio Marco Gemperle, 'Comparing Anti-corruption Agencies: A New Cross-national Index' (2018) 23(3) *International Review of Public Administration* 156.

68 For example, Juliet S Sorensen, *Human Rights and Corruption* (Edward Elgar Publishing, 2021); Zoe Pearson, 'An International Human Rights Approach to Corruption' in Peter Lamour *Corruption and Anti-Corruption* (ANU Press 2013).

69 See, eg, concern about this in the Polish context: Anna Krajewska and Grzegorz Makowski, 'Corruption, anti-corruption and human rights: the case of Poland's integrity system' (2017) 68 *Crime, Law and Social Change* 325.

70 See, eg, Radha Ivory, *Corruption, Asset Recovery and the Protection of Property in Public International Law: The Human Rights of Bad Guys* (Cambridge University Press, 2014).

Much of the general scholarship that sets out design principles for such bodies acknowledges the need for powers, including reporting powers, to be 'balanced' against the rights of individuals involved. The rights engaged include the right to reputation, privacy, a fair trial and fair process.[71] However, there is very little human rights focussed scholarship. The commentary that does exist has come predominantly from practitioners and public officials.

(a) Right to privacy and reputation

Demonstrating the lack of focussed academic scholarship in this area, Following the UN Human Rights Committee's recent findings of a breach of Article 17 of the International Covenant on Civil and Political Rights (ICCPR) (right to privacy) by the NSW ICAC in the Charif Kazal case,[72] there has, as yet, been no academic scholarship published. The only public commentary that has been able to be located has come from journalist Chris Merritt and the organisation of which he is Vice President, the Rule of Law Institute.[73] The Rule of Law Institute refer to Kazal's case as demonstrating the need for judicial review of the findings of anti-corruption bodies, and some form of exoneration protocol (that is, allowing people found corrupt by anti-corruption commission but not convicted in the courts to have their records expunged).[74]

Several Australian commentators have argued that having public reports by anti-corruption commissions that adversely name a person would unfairly tarnish their reputation. For example, Peter McClellan, when he was a barrister and before he chaired the Royal Commission into Child Sexual Abuse, warned about the excessive powers of anti-corruption commissions (focussing on NSW ICAC) as causing 'considerable harm to persons unfairly trapped by the blaze of sensational publicity which can be created'.[75] McClellan contended that there is a potential loss of reputation for individuals named in the context of an inquiry: 'On any view it will do, and has already done, great and irreparable harm to entirely innocent people'.[76] McClellan advocated for the modification of the NSW ICAC inquiry process to only hold public inquiries in limited circumstances, but did not explicitly call for the removal of public reporting of corruption investigations.[77]

Paul Pearce, a member of the New South Wales Joint Parliamentary Committee on the Independent Commission, with legal training and human rights experience, reflected on parliamentary oversight of the NSW ICAC and in particular the statement in the NSW statute

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71 For example, Hoole and Appleby (n 20); Ng and Appleby (n 25), Kempf & Graycar (n 24).

72 United Nations Human Rights Committee, *Kazal v Australia*, Views Adopted by the under Article 5(4) of the Optional Protocol, concerning Communication No 3088/2017, 7 July 2023 CCPR/C/138/D/3088/2017.

73 See, eg, Chris Merritt, 'United Nations puts arrogant ICAC on notice' *The Australian* (1 December 2023); Chris Merritt, 'Onus on Canberra to prevent human rights breaches *The Australian* (8 December 2023).

74 Rule of Law Institute, *Anti-corruption bodies* <https://www.ruleoflaw.org.au/anti-corruption-bodies/>

75 Peter McClellan, 'ICAC: A Barrister's Perspective' (1991) 2(3) *Current Issues in Criminal Justice* 17, 21.

76 Ibid 21.

77 Ibid 28-9.

that findings of corruption conduct are not to be interpreted as a criminal conviction or disciplinary measure:

> This is small comfort to someone found to be corrupt but who is not subsequently charged with any offence by the DPP. That person never gets his day in court. Do these findings have a discriminatory impact on the future employment of a person even though no criminal or disciplinary proceedings are taken? The answer to this question would justify some research I think.[78]

In his 2001 book on permanent commissions of inquiry and royal commissions, Stephen Donoghue (now the Commonwealth Solicitor-General), discussed damage to reputation by commissions as being an interest that attracts procedural fairness (which we consider separately below):

> Commissions may damage the reputations of suspects by publishing evidence, or by making findings, that implicate them in criminal activities. Similarly, they may damage the reputation of witnesses who are not suspects by, for example, finding they are associated with criminals or that they are otherwise unethical or guilty of misconduct. As damage to reputation may be caused by the conduct of the commission as a whole, rather than just by the actions of a commission when using coercive powers against a suspect or witness, commissions may be required to comply with the rules of procedural fairness in relation to any suspect or witness whose reputation may be damaged by the investigation as a whole.[79]

Donoghue analysed several cases, including *ICAC v Balog*[80] and *Re the Anti-Corruption Commission; ex parte Parker*,[81] which explicitly considered the reporting powers of anti-corruption commissions and damage to reputations. He concluded that anti-corruption commissions such as NSW ICAC that publicly publish reports identifying individuals who have engaged in corrupt conduct are likely to be subject to requirements of procedural fairness.[82] However, Donoghue noted that according to the case of *ICAC v Chaffey*[83] procedural fairness did not require a decision in favour of a private hearing when reputations may be damaged; the rules of procedural fairness do not guarantee that no harm will be done to an individual's reputation in the course of an investigation—the rules merely ensure that a person whose reputation is at risk is given an opportunity to be heard.[84]

In 2015, former High Court of Australia Chief Justice Murray Gleeson and Bruce McClintock SC were commissioned by the NSW government to review and advise on

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78 Paul Pearce, 'Parliamentary Oversight from Parliament's Perspective: the NSW Parliamentary Committee on ICAC' (2006) 21 *Australasian Parliamentary Review* 1447.

79 Stephen Donoghue, *Royal Commissions and Permanent Commissions of Inquiry* (Butterworths, 2001) 153.

80 *ICAC v Balog* (1990)169 CLR 625, 635-6.

81 *Re the Anti-Corruption Commission; ex parte Parker* SC(WA), Pigeon, Murray and Wheeler JJ, CIV 2345 of 1997, 8 May 1998, unreported.

82 Ibid 170.

83 (1993) 30 NSWLR 21.

84 Donoghue (n 78) 194-5.

whether the scope of the NSW ICAC's jurisdiction and powers were appropriate.[85] While Gleeson and McClintock noted the capacity of a finding of corrupt conduct to cause reputational damage, nevertheless, they considered that it was appropriate for ICAC to possess these powers:

> There is a limit to the extent to which legislation can provide the solution to criticisms of the kind that have been made of the procedures of the ICAC. The very fact that inquiries are held in public with the obvious potential for reputational damage arising not only from considered findings at the end of an inquiry, but also from publicity associated with the course of the inquiry, creates a risk of serious unfairness. At the same time, publicity itself is a source of protection against administrative excess. From the point of view of the terms of the legislation, the Panel does not consider that amendment or qualification is required.[86]

Former Victorian Supreme Court judge Stephen Charles has written that any national integrity commission should be restricted in its powers to making public findings of fact, which in appropriate cases can be referred to a prosecutorial body for review. He goes on to explain how any concerns relating to reputation or fair trial should be addressed:

> Findings of fact should be open to judicial review, so that anyone affected should be able to have alleged errors reviewed. If a prosecution is contemplated after a public hearing, unfairness can be dealt with by delaying a trial or by appropriate directions from the trial judge. The NIC's report should however be made public at the end of an investigation, at the same time as the report is received by Parliament.[87]

The ACT Integrity Commission is required under the *Integrity Commission Act 2018* (ACT) to issue reputational repair protocols. The statute sets out reputational repair measures that the Commission will undertake if it makes a finding of corrupt conduct against a person that is later not prosecuted or if the person is later exonerated in court.[88] Dennis Cowdroy, former ACT Integrity Commissioner explained the competing interests that led to the ACT approach:

> While privacy is of paramount concern, especially under the Integrity Commission Act 2018, there is also some perceived public benefit in ensuring that issues of corruption in public office are ventilated as a deterrent to others. The holding of a public inquiry carries risks that a person's reputation will indeed be damaged. The ACT Integrity Commission has prepared a policy on reputational repair of damage. It is very mindful of damage that can be occasioned to a person as a result of its legitimate operation.[89]

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85 See generally Murray Gleeson and Bruce McClintock, *Independent Panel - Review of the Jurisdiction of the Independent Commission Against Corruption* (2015).

86 Ibid 17, 68.

87 Charles (n 23), 11.

88 Integrity Commission Reputational Repair Protocols 2020 (ACT) notifiable instrument NI2020–594 made under *Integrity Commission Act 2018* (ACT) s 204.

89 Dennis Cowdroy, 'The ACT Integrity Commission' (2021) 3(101) *AIAL Forum* 7.

The idea of the exoneration protocol has been endorsed by others, including the Rule of Law Institute (see above) and former NSW DPP Nicholas Cowdery, in a piece regarding the lessons for a national anti-corruption commission.[90]

The impact of public reporting on the right to reputation has been identified by Neil Laurie in his commentary on the *CCC v Carne* decision, that we set out in Part IV(b), below.

(b) Right to fair trial

Another connection made by some commentators between public reporting and individuals is the potential for it to affect the right to a fair trial.

An independent advisory panel consisting of former High Court Justice Ian Callinan and constitutional law Professor Nicholas Aroney (2013) to assess the then Queensland Crime and Misconduct Commission (CMC) contended that the identification of individuals by the CMC in the course of its investigations may prejudice the fair conduct of criminal trials, including through contamination by the media:

> It is necessary, therefore, to confine the statements that bodies such as the Police Service and the CMC (and others) may make, not only for the reasons we have earlier set out concerning the detrimental effect upon the reputation of those made subject to a complaint, but also because such statements, whether in the media or otherwise, may affect, even subliminally, potential jurors and may therefore may have a real capacity to prejudice the fair conduct of criminal trials, particularly when there is no strong public interest served by making or publicising the statements. By this we mean statements to the effect that a particular person or events linked to a particular person, are under investigation. [91]

In 2018, leading Australian barrister Brett Walker SC argued in the Whitlam oration that the NSW ICAC's should not be able to make public findings of corrupt conduct and the findings of the commission of criminal offences, linking this to the notion of a fair trial before conviction.[92]

Donoghue in his book also linked the potential for commissions interfering with a person's right to a fair trial through the release of public reports with the requirements of procedural fairness:

> Fair procedures are … important when commissions are established to facilitate prosecutions, both because commissions have the potential to interfere with a suspect's right to a fair trial and because, if they conduct public hearings or release

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90 Nicholas Cowdery, 'Lessons from the NSW ICAC: "This Watchdog has Teeth"' (Paper presented at the Accountability and the Law Conference 2017) 31.

91 Ian Callinan and Nicholas Aroney, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel* (Report, 28 March 2013) 90. <https://classic.austlii.edu.au/au/journals/UQLRS/2013/5.html> ('*Review of the Crime and Misconduct Act*').

92 Brett Walker, 'The Information that Democracy Needs', Whitlam Oration, University of Western Sydney, 5 June 2018 <https://www.whitlam.org/publications/the-information-that-democracy-needs>.

> public reports, they may cause irreparable damage to a suspect's reputation, irrespective of the outcome of the subsequent criminal proceedings.[93]

Thus, Donoghue simply emphasised the importance of fair procedures by commissions.

We note that even the most critical commentary from Callinan and Aroney[94] assumed that disclosure of the nature, substance and/or 'subjects' (that is, individuals) of corruption complaints was legitimate and/or necessary for a concluded investigation report, despite recommending significant legislated restrictions on release of that information upon receipt of a complaint or while an investigation was in progress (unless progressing in public). Their recommended restrictions on publication would have been 'permanent', unless named persons made or consented to the disclosure themselves, in the case of no further action by the Commission. But their recommendation did not apply where any finding had been made against a person or persons, or where the Commission was publishing details in order to 'clear' a person or persons, or once formal criminal or disciplinary proceedings commenced."

(c) Fair process

The principle of procedural fairness is fundamental to the exercise of public power, and has been the most directly addressed in scholarship considering the powers of anti-corruption commissions. Basic procedural rights should be provided to people who may be adversely affected by the use of these powers, although these rights can be modified or excluded by statute.[95] As such, the legislative requirement for anti-corruption commissions to publicly report their findings may be accompanied by the requirement for procedural fairness, where the commission must disclose adverse material to a person that they will adversely name in their public reports before the report is finalised.[96]

Following the High Court's recent decision in *AB v Independent Broad-based Anti-corruption Commission,* Australian administrative law expert Professor Matthew Groves has published on this point. In that case, the High Court held that the Victorian Independent Broad-based Anti-corruption Commission (IBAC) must disclose 'adverse material' (referred to in s 162(3) of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic)) in the form evidentiary material upon which those proposed adverse comments or opinions are based, although the obligation to provide adverse material may be satisfied by the provision of the substance or gravamen of the underlying material rather than the underlying material itself.[97] Thus, the disclosure of the mere proposed adverse comments or opinions in the special report was insufficient. Administrative law expert Professor Matthew Groves argued, in this context, the important question is how to 'strike the balance between the

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93 Donoghue (n 79) 137.

94 Callinan and Aroney (n 91).

95 *Kioa v West* [1985] 159 CLR 550.

96 See eg *IBAC Act* s 162.

97 [2024] HCA 10. See Matthew Groves, 'What's in a Name? Fairness and a Reasonable Opportunity: AB v Independent Broad-Based Anti-Corruption Commission' (2023) 45(4) *Sydney Law Review* 525.

competing interests of an investigative agency such as IBAC and the people who are affected by its investigations'.[98]

In his detailed book on investigating corruption in public office, former Chief Commissioner of the NSW ICAC Peter Hall noted that the issue of balance would differ based on the individual circumstances of the case:

> the issue of "balance" will depend upon considerations such as the nature of the commission of inquiry and its jurisdiction, the nature of the investigation in question and the issues arising. The balance between ensuring that the integrity of an investigation is preserved and the need to ensure fairness and prevent avoidable damage to reputation of affected persons is one to be carefully achieved having regard to the facts and circumstances of each case, there being no rigid rule. An appropriately considered approach is required rather than a one-size-fits-all formula.[99]

Hall has emphasised the ability of an affected person to make submissions in public even at an early stage of proceedings, such as to respond to the opening address of counsel assisting:

> Where an opening address in a public inquiry attracts considerable media attention with particular attention upon the conduct of individuals the subject of investigation into possible corrupt conduct, fairness usually requires that such persons have an early opportunity to respond to opening comments. That may serve at least three purposes. First, identification of relevant matters said to be exculpatory of wrongdoing. Second, as assistance in identifying issues likely to arise and that require particular scrutiny. Third, as a reputational safeguard against unwarranted or sensationalised media reporting at the outset of a public inquiry.[100]

There is thus a detailed articulation about the requirements of procedural fairness in the context of anti-corruption commissions.

Donoghue in his work has analysed the requirements for procedural fairness for those subject to commissions, and has identified several individual procedural rights that we have set out above, including the right to notice of adverse conclusions, accompanied by the right to answer those adverse findings.[101]

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98 Groves (n 97).

99 Hall (n 54) 780.

100 Ibid 779.

101 Donoghue (n 79) 181-4.

PART IV: Design and effectiveness of public reporting

(a) Scholarship on design of public reporting

As we explained in Part I(b), much of the scholarship directed towards the characterisation and design of anti-corruption agencies has included as a key characteristic, or design feature, the ability to publicly report findings and outcomes, which must be balanced against individual reputation and fair process rights, there is relatively little that considers the design of public reporting directly.

One exception to this is the work of public integrity expert Professor AJ Brown (one of this report's authors). Brown, writing in 2014 and responding to the 2013 Callinan-Aroney review of the Crime and Corruption Commission, identified the need not just for public reporting, but for it to be at the anti-corruption agency's discretion:

> … it typically remains central to the statutory purpose and political legitimacy of such agencies that they have the freedom to investigate what they see fit, as they see fit, *and to report when and what they see fit (subject to law)*.[102]

He goes on to explain that there has been a general acceptance that 'an integrity agency must have its own discretion to inform those it deems need to know, including the media or general public, where reasonably satisfied that this is in the public interest, and provided it is following statutory procedures and observing procedural fairness.'[103]

Brown was responding to a position taken by Ian Callinan and Nicholas Aroney with respect to the ability of any party (including an anti-corruption agency but more relevantly, third parties) to use the fact of a corruption complaint to then publicise that complaint, in their 2013 *Review of the Crime and Misconduct Act [Qld] and Related Matters*.[104] Callinan and Aroney recommended a very restrictive ability to publicly report on complaints or investigations, at least while in progress:

> The law should be that it is an offence for any person (including an officer of the CMC) to disclose that a complaint has been made to the CMC, the nature or substance or the subject of a complaint, or the fact of any investigation by the CMC subject only to three exceptions. The first exception should be that, in the case of a public investigation, fair reporting of, and debate about it, will be permissible. The second exception should be as authorised by the Supreme Court in advance of publication or disclosure if there be a compelling public interest in such publication or disclosure. The third is the case of a person cleared or not proceeded against who authorises in writing disclosure of it. Disclosure could of course occur if otherwise required by law, such as by Court processes or Court order.[105]

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102 Brown (n 5) 322.

103 Ibid.

104 Callinan and Aroney (n 91).

105 Ibid Recommendation 8, 216.

This recommendation was based on the 'traditional approach' of police forces undertaking investigations, where there are only limited circumstances in which public statements are allowed to be made.[106] Brown also responded:

> It is doubtful that the solution [the Callinan and Aroney recommendation of a blanket criminal offence of disclosure] would be workable, given the impracticability of the restrictions, which on Callinan and Aroney's account surpass any such restrictions on other investigative bodies such as the police. However, the key point is that rather than preserving the independence of the agency by imposing a balanced discretion, the independent discretion to make information public would simply be removed.[107]

However, we note that the above debate related primarily to complaints or investigations in process, not concluded investigations. We also note that despite subsequent recommendations (including by the CCC) for a more balanced approach to law reform to control the inappropriate publicisation of corruption allegations in specific circumstances, no reform was proceeded with based on the Callinan and Aroney recommendations.

In 2018, Parliamentary Inspector of the Corruption and Crime Commission of Western Australia Michael Murray delivered a paper that defended the restrictions on public reporting by the West Australian Crime and Corruption Commission, by reference to a test of 'public interest'. He stated:

> Otherwise, public disclosure is, in Western Australia and generally, confined to circumstances where it is considered to be in the public interest to advance the fight against corruption in particular circumstances. It ordinarily occurs by way of the process of reporting to Parliament (usually by way of a report to its bipartisan standing committee) and even then it should be the case that an opinion or finding formed in respect of the conduct of an individual public officer or other person who is found to be party to or in some way involved in the corruption should not name the individual unless necessary for the purpose mentioned above.[108]

The highly restrictive ability to disclose material on individual investigations under the South Australian *Independent Commissioner Against Corruption Act 2012* (SA) due to legislative amendments in 2021, has been subject to limited academic analysis. Yee Fui Ng (one of the authors of this report) and Stephen Gray have criticised the wide-ranging reduction of jurisdiction and powers of the South Australian ICAC in 2021, including restrictions on public reporting on findings or suggestions of criminal or civil liability, stating that '[w]hile there were clear procedural deficiencies in previous investigations, the evisceration of the Commission's jurisdiction goes far beyond any concerns raised by the controversies'.[109] Ng and Gray have argued that the restriction on the public reporting function 'means that the

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106 Ibid 91.

107 Brown (n 5) 324.

108 Michael Murray, 'A National Integrity Commission' (2018) 93 *AIAL Forum* 45.

109 Yee-Fui Ng and Stephen Gray, 'Robust Watchdogs, Toothless Tigers or Kangaroo Courts? The Evolution of Anti-Corruption Commissions in Australia' *UNSW Law Journal* (forthcoming 2024).

Commission cannot publicise any findings of corrupt conduct, reducing its ability to achieve its deterrence, corruption prevention, and educative functions'.[110]

Brian Lian, student editor at the *Adelaide Law Review*, has attributed the prohibition on the Commission from making a public statement or publishing a report which includes findings or suggestions of criminal or civil liability, to the events that stemmed from Operation Bandicoot (involving allegations that eight police officers had been stealing property from crime scenes), and a public media release of the South Australian ICAC relating to that investigation.[111]

(b) Scholarship responding to ACCC v Carne

There is very little scholarship responding directly to the High Court's decision in *CCC v Carne*,[112] and in particular the point regarding the desirability of public reporting on individual investigations (as opposed to the parliamentary privilege point). Neil Laurie, Clerk of the Queensland Parliament, has published two pieces on the decision.[113] On the question of the desirability of public reporting, and what that public report might entail following the *Carne* decision, he argues:

> In my submission, it is not necessary for independent commissions to make findings of corrupt conduct or criminal behaviour against individuals in a public report. Such matters can be decided by other more appropriate bodies. However, Commissions should be able to report a narrative of facts, expose broad behaviour and corruption risks and advise that they have referred matters to the appropriate body. It is necessary for the public to be appraised of the wider facts of a matter and the behaviours of public officials and an appreciation of the mischief at hand.[114]

He went on, critical of the 'balance' struck by the provision as interpreted by the High Court between the efficacy of the Crime and Corruption Commission, and the rights of the individuals involved:

> Without statutory amendment, the public will remain 'in the dark' about the outcomes of a large number of corruption investigations where a decision does not result in criminal proceedings but nonetheless contain lessons for, and usually recommendations to reduce the incidence of corruption or misconduct in, Queensland's public sector. Also, the very real benefit in some people under

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110 Ibid.

111 Brian Lian, 'A More Effective Corruption-Busting Tool' or an Effectively Busted ICAC? Examining the 2021 Crime and Public Integrity Policy Committee Amendments to the Independent Commissioner against Corruption Act 2012 (SA)' (2022) 43(1) *Adelaide Law Review* 507, 518.

112 *Crime and Corruption Commission v Carne* [2023] HCA 28.

113 Neil Laurie, 'Removing the watchdog's bark: Crime and Corruption Commission v Carne' (24 October 2023) https://www.auspublaw.org/blog/2023/10/removing-the-watchdogs-bark-crime-and-corruption-commission-v-carne; Neil J Laurie, 'Mount Erebus to Ann Street: Forty years of judicial supervision of ad hoc and permanent commissions of inquiry and the intersection with parliamentary privilege and doctrines of mutual respect; (2023) 38(2) *Australasian Parliamentary Review* 73.

114 Laurie 'Mount Erebus' (n 113) 94.

investigation, who may have been wrongly accused or slurred, to have a public report clearing their name cannot also be understated. Should we be so protective of individual rights (reputation) that it keeps the public in the dark about matters of corruption and misconduct by public officials? Should the public not be able to judge for themselves the conduct of public officials by knowing the factual circumstances of an issue and the behaviours that occurred?

Should we be so protective of individual rights (reputation) that it keeps the public in the dark about matters of corruption and misconduct by public officials? Should the public not be able to judge for themselves the conduct of public officials by knowing the factual circumstances of an issue and the behaviours that occurred?[115]

(c) Data on effectiveness of public reporting

We could not identify any direct empirical (qualitative or quantitative) research currently available on the public expectations relating to public reporting, nor on the impact of public reporting on public confidence.

There is significant empirical data confirming strong public perceptions as to the desirability of anti-corruption commissions being able to conduct their proceedings transparently and publicly, in the form of the ability to conduct public hearings.[116] Most of this was collected as part of advocacy relating to the design of the new National Anti-Corruption Commission. This may give an indication of likely answers if the same questions were asked in empirical research, regarding the ability of agencies to publicly report their findings. However, there is no data that we have been able to locate directly considering the perceived performance of anti-corruption commissions relative to their powers to report publicly. As we noted in Part III(c), Prenzler and Maguire draw conclusions from data about high public awareness, perception and complainant satisfaction about the effect of public reporting, but there is no data drawing this relationship. Surveys conducted by the New South Wales ICAC (the last of which was conducted in 2006) revealed data in relation to public knowledge of the work of

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115 Ibid.

116 See The Australia Institute, *Poll shows PM Backing a Winner on National Anti-Corruption Body* (12 December 2017) <https://australiainstitute.org.au/post/poll-shows-pm-backing-a-winner-on-national-anti-corruption-body/>; The Australia Institute, *Poll: 80% of Australians Support a National Integrity Commission with Strong Powers* (15 April 2019) https://australiainstitute.org.au/post/poll-80-of-australians-support-a-federal-integrity-commission-with-strong-powers/; The Australia Institute, *Only 1. In 5 Support Exceptional Circumstances Restriction on NACC Public Hearings* (12 October 2022) < https://australiainstitute.org.au/post/only-1-in-5-support-exceptional-circumstances-restriction-on-nacc-public-hearings/>. See also Griffith University and Transparency International, Global Corruption Barometer survey for Australia https://www.griffith.edu.au/__data/assets/pdf_file/0023/518252/20Aug-Global-Corruption-Barometer-Release-Griffith-University-TI-Australia-EMBARGOED.pdf; and the Australian Election Study (AES), which is the leading study of political attitudes and behaviour in Australia: see the 2022 report: Sarah Cameron et al, *The 2022 Federal Election: Results from the Australian Election Study* (Report, 2022) <https://australianelectionstudy.org/wp-content/uploads/The-2022-Australian-Federal-Election-Results-from-the-Australian-Election-Study.pdf>.

ICAC and individual matters, but did not directly connect this to the public hearings or public reporting of that body.[117]

In general, the lack of data on which to base conclusions as to the 'effectiveness' of different design aspects and operation of anti-corruption commissions has been commented on, for instance, in relation to the correlation between the establishment of anti-corruption commissions and public perceptions of corruption and trust in government institutions,[118] and in relation to the effectiveness of education programs conducted by anti-corruption agencies.[119]

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117 See New South Wales Independent Commission Against Corruption, *Community Attitudes to Corruption and the ICAC – Report on the 2006 Survey* (December 2006) 26-30.

118 See, eg, Gilbert + Tobin Centre of Public Law, Submission to the Select Committee on the Establishment of a National Integrity Commission (Submission 19, 20 April 2016), referring to empirical findings in relation to public perception of corruption in Diana Bowman and George Gilligan, 'Public awareness of corruption in Australia' (2007) 14(4) *Journal of Financial Crime* 438; Ian McAllister, 'Corruption and confidence in Australian political institutions' (2014) 49(2) *Australian Journal of Political Science* 174.

119 See further Catherine Cochrane, 'Teaching integrity in the public sector: evaluating and reporting anti-corruption commissions' education function' (2020) 28(1) *Teaching Public Administration* 78.

Researcher Profiles

Professor Gabrielle Appleby (UNSW) is a leading expert in government integrity. Her expertise includes the role of public lawyers in ensuring government integrity, the integrity of the judicial branch, and parliamentary law. Gabrielle is the Director of The Judiciary Project and the Gender and Public Law Project at the Gilbert + Tobin Centre of Public Law (UNSW). She sits on the Board of the Centre for Public Integrity and the Australian Studies Institute (ANU), is the constitutional consultant to the Clerk of the House of Representatives and a Fellow of the Australian Academy of Law. She has consulted across government, including for the New South Wales Legislative Council, the Victorian Department of Justice, the Australian Human Rights Commission and the Australasian Institute of Judicial Administration. She is the co-editor of the Hart Publishing series *Rule of Law in Context*, and was the inaugural editor of AUSPUBLAW, Australia's leading public blog. In 2016-2017, she worked as a pro bono constitutional adviser to the Regional Dialogues and the First Nations Constitutional Convention that led to the Uluru Statement from the Heart. She has previously led a team of researchers investigating the public perceptions of corruption in South Australia (2014). She has published extensively on government accountability, including *The Role of the Solicitor-General: Negotiating Law, Politics and the Public Interest* (Hart Publishing, 2016), as the lead author of *Australian Public Law* (Oxford University Press, 4th ed, 2023), and co-author of *The Tim Carmody Affair: Australia's greatest judicial crisis* (New South Publishing, 2016) and *Government Accountability* (Cambridge University Press, 2014). She has held visiting positions at Cambridge Law School, Edinburgh Law School, Bingham Centre for the Rule of Law and the Colorado Law School. She worked previously for the Crown Solicitor of Queensland and the Victorian Government Solicitor's Office.

Yee-Fui Ng is an Associate Professor at Monash University. She researches in the areas of political integrity and the law, as well as the interaction between public law and politics. Yee-Fui is the author of *The Rise of Political Advisors in the Westminster System* (Routledge, 2018) and *Ministerial Advisers in Australia: The Modern Legal Context* (Federation Press, 2016), which was a finalist of the Holt Prize. Yee-Fui was a 2021-22 Fulbright Scholar and undertook research at New York University on the digital welfare state. Her work has been cited by the High Court of Australia, State Supreme Courts, federal and state parliaments, as well as various government inquiries. In 2023, Yee-Fui was the winner of the Monash University Vice-Chancellor's Award for Research Excellence by an Early Career Researcher (HASS) (the University's highest honour for outstanding research excellence and impact).

A J Brown AM is professor of public policy and law in the School of Government & International Relations, Griffith University, and co-leader of the Centre for Governance & Public Policy's integrity, leadership and public trust program. He is also Chair of Transparency International Australia, having served on the TI Australia board of directors since 2010, and from 2017-2023 on the TI global board. He has worked or consulted at all levels, and across all branches of government in Australia, including as a senior investigator for the Commonwealth Ombudsman and Associate to Justice G E Tony Fitzgerald AC KC. He was a member of the Commonwealth's Ministerial Expert

Advisory Panel on Whistleblower Protection (2017-2019). In 2024, he was appointed to the Public Sector Governance Council of Queensland for a three year term. AJ has led seven Australian Research Council projects into public integrity and governance reform since 2005, including the 2020 Australian Research Council Linkage Project report, 'Australia's National Integrity System: The Blueprint for Reform'. He currently leads a $1.2 million Australian Research Council Discovery project on public trust, mistrust and distrust. He is a past President of the Australian Political Studies Association (2017-18), a Fellow of the Academy of Social Sciences in Australia, and a Fellow of the Australian Academy of Law. In 2023, he was made a Member of the Order of Australia for services to the law and public policy, particularly through whistleblower protection.

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Attachment A – Brief to Experts