Making Public Sector Integrity Systems Work

An assessment of reactive and proactive strategies to combat public sector corruption in three Australian States

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Abstract

The last two decades have witnessed increased attention on the preservation of public sector integrity. The introduction by Transparency International (TI) during the 1990s of the National Integrity System’s (NIS) Greek temple, comprising a number of main pillars for an integrity system as a holistic approach against corruption, sparked global efforts to introduce or strengthen these elements within different jurisdictions.

One of the main pillars of the TI Greek temple is the ‘Watchdog Agency’. The idea behind establishing an independent Anti-Corruption Agency (ACA) is that conventional law enforcement procedures and agencies are not capable of dealing with corruption or the promotion of integrity. Corruption has become more sophisticated to the point where conventional law enforcement organisations and legislation cannot keep up and the police are increasingly unable to detect or prosecute complicated corruption matters. This is more apparent in places with ‘endemic’ corruption, where law enforcement organisations are themselves corrupted and ethically defective.

Australia is not distanced from these developments; in fact, it has had its own share of government and public sector misconduct. Throughout the 1970s and 1980s and until recently, numerous cases of corruption have surfaced and been investigated, specifically those of police corruption. The standard Australian response was to establish inquisitorial royal commissions to investigate these incidents. The success of these special commissions was not always guaranteed, although they tended to give the impression of governments being serious in investigating such wrongdoings. However, in many cases these commissions found themselves under-resourced or, in some cases, stripped of adequate powers to conduct their investigations or to appropriately execute the investigations. The governments of the day either hesitated to implement or
ignored their findings. There were some exceptions where the findings of these inquiries came to be the driving force for reforms in their jurisdictions.

While Australia has had its share of corruption, it has also come to be renowned for its strong commitment to developing and maintaining robust public sector integrity systems. In most recent global corruption reports it has been ranked in the top ten countries for having superior integrity systems.

One part of this strong integrity system is the creation of specialised corruption and misconduct commissions, in most cases well-funded and resourced and given adequate extraordinary coercive powers that are usually not provided to conventional law enforcement agencies. The commissions are designed to deal comprehensively with corruption through a number of both reactive and proactive strategies.

My study looks at three of these special anti-corruption commissions, the Queensland Crime and Misconduct Commission (CMC), the New South Wales Independent Commission Against Corruption (ICAC) and the Western Australian Corruption and Crime Commission (CCC). The purpose of my examination was to explore what kind of strategies they use in combating corruption, to examine the generally shared themes and characteristics that have shaped the way they function and to recognise any shortfalls within the applied strategies.

I came to identify that, (i) all three anti-corruption commissions use similar reactive and proactive strategies, (ii) they all share a number of general characteristics of being part of broader State integrity systems, (iii) all three are organised and function holistically in dealing with misconduct, (iv) they all experience difficulties when investigating their political masters, (v) they all lack a formal mechanism for coordinating with other agencies involved in dealing with misconduct in their jurisdictions, (vi) they all suffer from a low prosecution rate of their cases and, (vii) they are all in the process of devolution
and in giving public sector organisations greater responsibility for dealing with their own misconduct, although whether public sector agencies are yet ready to take up such a challenge remains uncertain.
Statement of Originality

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by any other person except where due reference is made in the thesis itself.

…………………

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To my family, without their unwavering support and their sacrifices, this project may never have been completed. To them, I really am indebted.
Preface

When I first commenced my PhD foray into corruption I had no idea what I was getting into, from an academic point of view. The Sultanate of Oman is a country where corruption cases were rare in their occurrence until the last few years. A number of high profile cases involving high-level public sector officials brought me to realise the global spread of this problem, one that does not recognise borders, cultures or any social norms. Some of the corruption cases that occurred in Oman had international connections.

Being a member of the Royal Oman Police — the National Police Force, which usually assumes the responsibility with other governmental agencies for investigating these cases — put me on the first step in my interest to further explore academically this phenomenon. This interest stemmed from my participation as a member of the interdisciplinary teams that came to tackle some of these cases; in addition, concerned authorities in Oman, including the Royal Oman Police, are considering the creation of a specialised anti-corruption agency. By going abroad and looking into other countries’ experiences in corruption, representatives from a number of related organisations and I are part of the first step toward such a goal.

Coming to Australia to pursue my study was not a coincidence. Australia is at the top of a list of countries around the world that maintains a strong public sector integrity system. Most of the recent international measures, schemes and reports attracted me to do my research here. Though my main objective was to explore the Australian experience in combating corruption, after being here for a few years what I have gained has unquestionably exceeded my expectations — a wealth of knowledge, a reputable academic network, and best of all, a rare chance of studying in-depth three highly-renowned anti-corruption agencies.
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Chapter One

Introduction

1.0 Introduction

The last few decades have seen integrity become an important element of governance, with the public expecting civil servants to prioritise the public’s interests rather than their own self-interest. Though integrity has always been a focal point of good governance, ensuring integrity in the public sector has become a particular problem as a result of the enlargement of such sectors in the middle of the 20th century and the expansion of the public sector’s activities and responsibilities after World War II (Doig, 1995, p. 152; Moon, 1999, p. 113). A number of high profile inquiries and investigations during the mid 1980s and the 1990s in Australia and around the globe — such as the 1987 Fitzgerald Inquiry in Queensland into police and government misconduct, the Wood Inquiry in 1994 into New South Wales Police Service corruption, the inquiry into torture allegations against the Metropolitan Toronto Police Force Hold-up Squad in Canada (1984), the Mollen Commission in 1994 into New York Police Department corruption — have all exposed widespread corruption, particularly among police (Clark, 1997, pp. 5–7; Ede, 2000, pp. 52–53).

One response to this situation has been to attempt to institutionalise ethics and apply some type of integrity mechanisms within public sector institutions (Dobel, 1999, p. 1; Shacklock, Connors, Gorta & O’Toole, 2004, p. 2; Zimmerman, 1994, p. 10). Governments have responded by either strengthening existing integrity measures, such as the improvement of codes of conduct and the introduction of newly developed ethics legislation or by introducing new mechanisms including financial disclosure systems for
public sector executives, and ethical training programs (Potts, 1998, pp. 87–88).

At the same time, other more managerial reforms to the public sector were occurring in OECD\(^1\) countries, under what became known as the ‘New Public Management’ (Maesschalck, 2004, p. 465; Steccolini, 2004, pp. 327). These reforms included the presentation of performance management systems, the introduction of quality management techniques, the assignment of more responsibility and accountability to public sector managers, and the creation of independent oversight bodies (Ackerman, 1999, p. 42; Glynn & Murphy, 1996, p. 125; Mulgan, 2003, p. 151; Rhodes & Weller, 2003, pp. 1–2; Shacklock, Connors, Gorta & O’Toole, 2004, p. 2).

This focus on introducing integrity mechanisms and ethics schemes by governments supported the notion that to encourage an ethical climate in the public sector, efforts should not be limited to a single avenue, but rather, should be collective and combined strategies that included various necessary elements to preserve the integrity of the public sector (Costigan, 2005, p. 41; Sherman, 1998, p. 16). In other words, the trend has been to establish systems comprising a group of integrity measures, rather than relying on a single agency or one single policy. Such regimes, infrastructures or integrity systems were intended to include ‘... institutions, laws, procedures, practices, and attitudes that encourage and support integrity in the exercise of power in modern society’ (Brown & Head, 2005, p. 42). The trend by governments toward a multi-component system to preserve integrity in their public sector came with the recognition of the limits of the single-body approach (Costigan, 2005, p. 40; Maor, 2004, p. 1; Sampford & Preston, 2002, p. 7).

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\(^1\) The 30 member countries of the OECD are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States (www.oecd.org, Accessed 21/01/2008).
The development of these mechanisms and reforms has been described as integrity system theory, which stresses the idea that integrity is the result of the combined efforts of a group of cooperative ‘institutions’ created to curb corruption prior to its occurrence (Gilman & Stout, 2004, p. 43; Sampford, Smith & Brown, 2005, p. 96).

An important mechanism in this system theory is the anti-corruption agency or commission, which is tasked exclusively with tackling corruption. This is because such agencies usually come with extraordinary coercive powers not available to the police, and reflect the recognition that normal law enforcement bodies are neither equipped nor sufficiently advanced to deal effectively with corruption. Over the years, corrupt dealings have become very ‘sophisticated’ and difficult to uncover by conventional law enforcement organisations or through conventional procedures, especially if those organisations — the police — are themselves corrupt (UNDP, 2005, p. 9).

In recent years, Australia has been ranked at the top of the list of the majority of worldwide corruption reports as having a high commitment to integrity. The Transparency International Global Corruption Annual Report of 2004 (TIGCR), which usually contains the Corruption Perceptions Index (CPI), Bribe Payers Index (BPI), Global Corruption Barometer (GCB)² and the Center for Public Integrity of Washington DC (CPIW) acknowledged the high integrity levels in Australia (Brown & Head, 2004, p. 2; Global Integrity Index, 2005; Grabosky & Larmour, 2000, pp. 1–3; TI 2002, p. 2; 2004, p. 155).

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² The annual Corruption Perceptions Index (CPI), first released in 1995. The CPI ranks 180 countries by their perceived levels of corruption, as determined by expert assessments and opinion surveys. The TI Bribe Payers Surveys evaluate the propensity of firms from industrialised countries to bribe abroad. The Global Corruption Barometer is a survey that assesses general public attitudes toward and experience of corruption in dozens of countries around the world.
This high ranking could not have been achieved without the efforts over the last two decades put into combating corruption across the Australian states’ and territories’ public sectors. From the 1980s onwards, increased attention has been paid to governmental ethics and public servants’ ethical levels. Such attention was driven by the increased number of scandals relating to the abuse of public office. Australia, like many countries in the democratic world, was the scene of such a movement (Maesschalck, 2004, p. 465; Prasser, 2004; Preston, 2001; Whitton, 1994, p. 39). During that period, governments were viewed as untrustworthy. The public believed that the politicians making up the government tended to ‘look after themselves’ (Goot, 2002, p. 27) and consequently, the public’s confidence in government fell (Leigh, 2002, pp. 47–61). Leigh cited data from the Morgan Poll that has been annually conducted since 1983 examining and comparing how people in Australia rate the ethics and honesty of different occupations including federal and states politicians (Leigh, 2002, p. 1). After looking at data of the 24-year interval between 1976 and 2000, he acknowledged a trend of decreasing trust among the majority of Australians towards both state and federal politicians.

Inquiries such as (i) the Costigan Royal Commission in 1980 into the Federated Ship Painters and Dockers Union, (ii) the Fitzgerald Inquiry in Queensland (1987) into State Police Service misconduct, (iii) the Royal Commission into ‘the Commercial Activities of Government and Other Matters in WA’ (1990), (iv) the Wood Inquiry in NSW (1997) and, (v) the Kennedy Inquiry into WA police misconduct (2002), were all landmark investigations in uncovering misconduct in Australia. Each of these resulted in major policy changes and the creation of new watchdog institutions (Tiffen, 1999, pp. 93–96).

These and other experiences in different states across Australia since the 1970s led to the introduction of different types of reforms and the
inauguration of various forms of institutions to sustain integrity in both the public and private sectors (Verspaandonk, 2001, p. 2). In relation to the public sector, the reforms advocated the deployment of codes of conduct to enhance and strengthen legal frameworks by declaring such behaviours unethical in a way that would facilitate the exposure and the prosecution of corruption by officials (Clark, G. Jonson & Caldon, 1997, p. 1; Preston & Sampford, 2002, p. 5). To accomplish such a goal, governments strived, particularly during the 1980s and 1990s, to introduce new guidelines, a code of conduct and other forms of public service regulations and new external oversight institutions (Nicholson, 1998, p. 31).

These activities resulted in escalating resources and monetary allocations for the establishment and the creation of integrity and anti-corruption schemes, initiatives and agencies around Australia in the last two decades of the 20th century. The point has now been reached where each Australian State Government has multiple ‘watchdog’ organisations in its arsenal (Costigan, 2005, p. 40).

Looking briefly at the public sector integrity systems across Australia, some commonalities can be sketched out. Australian integrity systems are categorised into two levels of integrity responsibilities. ‘Core integrity agencies’ are those agencies considered to be ‘generalist investigative’ institutions. Within their jurisdictions they have primary responsibility for conducting investigations or overseeing internal investigations into various matters across public sector departments and in relation to politicians. The New South Wales ICAC, Queensland CMC, Western Australian CCC, State and Territory Ombudsman and the Audit Office are all examples of this type of organisation (Smith, 2005, p. 56; TI Australia, 2004, pp. 11–15).

The other level of integrity responsibility is ‘distributed integrity functions institutions’. These usually supervise the implementation of a particular
agency code of conduct or oversee the application of financial or administrative accountability procedures in a specific department under their oversight responsibilities, such as the Health Complaint Commission and the Police Integrity Commission (Smith, 2005, p. 56; TI Australia, 2004, p. 12).

According to Brown & Head (2004, p. 4) the core integrity agencies belong to one of four institutional formats: Auditor-General, Ombudsman, anti-corruption commissions and the most recently introduced crime commissions (the latter directed primarily towards combating organised crime). These agencies are formed to act free of government interference, but are held accountable to parliament through parliamentary committees. For example, the ICAC is subject to several accountability mechanisms: the Operation Review Committee (ORC) that is intended to secure accountability in the Commission’s decisions to examine the public complaints; the Committee on the Independent Commission Against Corruption – Parliamentary Joint Committee (PJC), which aims to ensure the accountability of ICAC activities and reports through monitoring and reviewing; the NSW Ombudsman’s inspections of telephone interceptions and the use of controlled operations; and the auditing of the ICAC expenditure of funds by the NSW Treasury and Audit Office (Findlay, Odgers & Yeo, 2005, p. 93; ICAC, 2004, p. 51).

A common element within the Australian integrity systems is the tendency for external core integrity agencies to rely on a line agency to investigate complaints and take some responsibility for handling and managing ‘its own ethical climate’. Such delegation is considered vital as a way to ease the workload of the core integrity agencies on one side and to encourage agencies to take charge of their ethical responsibilities on the other (Brown & Head, 2005, p. 92).
The increase in number of these core integrity agencies in recent years has led to a more complicated ‘institutional matrix’. This institutional diversity as explained by Brown & Head (2004), tends to reflect the diversity in Australian politics, where each State responded differently to the issue of preserving accountability according to its own political circumstances and established its watchdog agencies in its own way (Brown & Head, 2004, p. 5). This follows from the diverse structure of Australian federalism. The Australian Constitution created a federal legislature through the Parliament of the Commonwealth, which comprises the Queen, the Senate and the House of Representatives. The Commonwealth government was given legislative powers and responsibilities in key areas of national interest such as defence, while other key powers and responsibilities such as education, health, criminal law and policing are primarily the responsibility of the States. In this political system, each State has its own constitution and parliament. Responsibility for corruption prevention within State agencies is therefore primarily a responsibility of each State (and the Northern Territory). The Commonwealth has responsibility for corruption prevention within its agencies.

Within these fundamental constitutional arrangements (Brown & Head, 2004), researchers question the ability of a range of mechanisms to work together to eradicate corruption within the public sector (Bernnan, 1999, p. 95; Brown & Head, 2004, p. 5; Sampford, Smith & Brown, 2005, p. 96). There are fears concerning the possibilities of misconduct and of illegalities slipping through the gaps within these multiple systems of integrity, and that the existence of multiple accountability organisations will make it unclear who is responsible to whom.

The contrary argument is that having multiple means of accountability will always increase the probability of success in detecting corruption, taking into consideration that not all of those means will fail at the same time,
regardless of their level of performance. The concept of relying on a single method of accountability, either within one jurisdiction or across a federal system, would always have the jeopardy of corruption going unchecked or that that particular mechanism might be doomed to failure (Bernnan, 1999, p. 96).

1.1 Research questions
The first section of this chapter has briefly overviewed international and Australian experiences of public sector corruption since the 1970s, and the way in which integrity systems theory has developed as a response to this problem. In Australia, specialised anti-corruption agencies have become a feature of such systems in some, but not all, states.

This thesis focuses on three Australian anti-corruption agencies’ experiences in dealing with public sector misconduct in their jurisdictions. The Crime and Misconduct Commission (CMC) of Queensland, the Independent Commission Against Corruption (ICAC) of New South Wales and the Corruption and Crime Commission (CCC) of Western Australia will constitute the case studies for this research.

The thesis will examine how these watchdog agencies evolved to holistically function to target public sector corruption. Currently there are various reactive and proactive strategies available to these institutions but the main question here is what mixture/combination of these strategies can produce the most effective overall approach? To address this question, the research will first concentrate on the current public sector integrity mechanisms used in the three Australian jurisdictions, such as the current strategies, the programs to control public sector corruption and the initiatives to promote integrity.

This preliminary investigation will provide an opportunity to understand the complexity and the dimensions of the integrity systems currently used to promote public sector integrity and control corruption to identify any
shortfalls that might help in presenting these organisations with a more comprehensive model.

The three organisations under examination in this study were each formed in the wake of landmark corruption investigations or from a major political debate about corruption and government misconduct.

1. The Fitzgerald Inquiry in Queensland (1987) exposed systemic police corruption, governmental and political misconduct, and a ‘politicised public sector’. The CMC — then the Criminal Justice Commission (CJC) — was created in 1989 (Grabosky & Larmour, 2000, p. 4).


The rationale for using these three organisations for this research was firstly that the existence of broadly similar agencies in three states offered the opportunity to identify, compare and contrast the strategies, policies and measures used by each to enhance public sector integrity and to control corruption. Secondly, as each can be considered to be a core integrity institution in their jurisdictions in a group of more than twenty other core and line integrity institutions (Smith, 2005, pp. 55, 56; TI Australia, 2004, 3 Qld Integrity agencies: Crime & Misconduct Commission, Electoral & Administrative Review Commission (EARC) (1990–1993), the Department of the Premier and Cabinet, Office of the Queensland Integrity Commissioner, Office of Public Service Merit and Equity, Department of Local Government & Planning, Queensland Treasury, Department of Public Works, Office of Gaming Regulation, Queensland Police Service, Supreme and Magistrates Courts, Director of Public Prosecutions, Legal Aid Queensland, Queensland Legislative Assembly, Queensland Parliamentary Committee System, Parliamentary Public Accounts Committee, Office of Parliamentary Counsel, Electoral Commission of Queensland, Queensland Audit Office, Parliamentary Commissioner for Administrative Investigations (Ombudsman), Office of the Information Commissioner (Qld), Criminal Justice Commission, Queensland Crime Commission, Queensland Government Agent Program and Brisbane City Council.)
pp. 11, 14), they provide an opportunity to study the role of such core agencies. Thirdly, the ICAC and CMC in particular are situated as public sector watch-dogs for the largest and the third-largest ‘public sector employers’ in Australia. The NSW public sector is the largest in Australia with about 480,000 employees, while Queensland is the third largest with 303,000 employees (TI Australia, 2004, pp. 11, 14). The CCC on the other hand represents a new experience, because it is the most recently established organisation and hence stands on the shoulders of the others. These different experiences provide the opportunity to compare the core integrity agency role in large/small public sectors and established/new integrity systems respectively.

In mapping the New South Wales integrity system in 2004, Smith categorised the ICAC as being at the core of the state integrity system⁴; it was viewed and agreed unanimously by the other participating institutions as an important element of such a system. It plays a vital advisory role among the state integrity agencies and other important agencies⁵ to facilitate coherence and cooperation within the NSW public sector integrity system⁶ (Smith, 2004, p. 56).

In Queensland, the CMC is highly rated for its research functions in developing prevention strategies. Queensland, like New South Wales, has a

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⁴ Other core integrity institutions in NSW are: the Audit Office, the Ombudsman, the Administrative Decisions Tribunal, Police Integrity Commission and Health Care Complaints Commission.
large matrix integrity system infrastructure with more than twenty core and line agencies. The CMC’s main role is to investigate state public sector employee misconduct, including police officers and politicians. However, it is also responsible for recommending, supervising and examining reforms in the state police force and the state criminal justice system. These comprehensive responsibilities give the Commission a leading role in preserving the integrity of the state public sector. It is recognised as being more effectiveness than other state integrity organisations, such as the Queensland Ombudsman. The latter has been characterised as being overly reactive in its approach to ‘mal-administration risks’ in that it works largely by investigating complaints and recommending changes (TI Australia, 2001, pp. 93–95).

The CCC in WA was formed in 2004 to replace the Anti-Corruption Commission (ACC). Before its establishment, the ACC and the Ombudsman were responsible for investigating both police and public sector misconduct, but neither organisation dealt with organised crime (Kennedy, 2002a, p. 14). The 2001 Royal Commission inquired into and reported on whether, since 1 January 1985, there had been any corrupt or criminal conduct by any Western Australian police officer and also sought to examine any shortfalls in the structure of the ACC, specifically those in relation to ‘secrecy, transparency and accountability’ (Kennedy, 2002b, p. 17).

There are other detailed but secondary questions stemming from this study, namely:

- What are the current strategies used by these organisations in furthering public sector integrity and controlling corruption in their jurisdictions?
• What indicators do these organisations use to report their performances and effectiveness and do the indicators reflect the organisations’ real efficiency and competency?

• What are the institutional options available when considering setting up an anti-corruption agency?

• Are there other strategies that have been overlooked but could be considered for these agencies in order for them to be more effective?

The main research question and the other secondary questions are ‘What’ and ‘How’ questions. This is due to the fact that this is an exploratory study into the types of powers and strategies used by the agencies being researched and why these powers and strategies were adopted. Documentary sources and case studies can be particularly useful for addressing these issues by identifying social issues and political processes driving such developments (Yin, 2003, pp. 6, 7).

1.2 Methodology

Prior to embarking on my methodology details, it is necessary to mention that one of the greatest obstacles come across while doing this research was the issue of how to condense or compress the total of about forty years of experience of the three tested Commissions combined within one research project and into one document like this thesis.

There is no doubt that each one of these agencies could be the subject of a PhD in its own right because of the richness of the experience. The then-CJC, now the CMC, for example, was the subject of comprehensive doctoral research a few years ago by Colleen Lewis, ‘Civilian Oversight of Complaints Against Police: External Relationships and Their Impact on Effectiveness’ 1997. The ICAC has also been the subject of much academic research over the years. This study is a very concise research project aimed
primarily at exploring the strategies, both reactive and proactive, in combating public sector corruption. Both the CMC and the CCC have jurisdiction over organised crime in addition to their misconduct and corruption functions. However, that is not within the scope of the research.

This is a comparative qualitative study; it is based on documentary source material analysis and the examination of existing research with a review of policy documentation, thus providing an overview of the current strategies and assessment trends in evaluating performance in the examined integrity organisations. The study will set forth both a descriptive and an explanatory look at these bodies’ strategies in controlling misconduct and institutionalising integrity in the public sector.

The study will treat as case studies the Crime and Misconduct Commission (CMC) of Queensland, the Independent Commission Against Corruption (ICAC) in New South Wales and the Crime and Corruption Commission (CCC) in Western Australia. This collective case study approach is intended to provide a better understanding and a clear insight into what strategies are used by the examined Commissions in their fight against public sector corruption. Studying these agencies collectively and understanding their functionality may produce ‘common characteristics’ that might be shared by other similar anti-corruption agencies to effectively deal with corruption (Bryce, 2002, p. 50; Stake, 2000, p. 437).

The three cases studied will be examined in depth, their background will be explored and their activities will be examined in detail in pursuit of a better understanding of the right mixture of both reactive and proactive strategies that could be used by the anti-corruption agencies. According to this research approach, cases are used to support and to ‘facilitate’ an explanation of other issues (Stake, 2000, p. 437).
The use of a qualitative case study approach can best serve the aim of this research. The advantage of using this approach is that it permits the researcher to grasp the totality of the events tested. The approach’s ability to cope with a large number of references such as ‘documents’, ‘interviews’, ‘observations’ and ‘artefacts’ gives the examiner the necessary mobility to holistically understand the complexity of the issues at hand regardless of the variation of sources used, and at the same time ensure that the research is still restricted to that particular area of interest (Punch, 1998, p. 149; Yin, 2003, p. 8).

To study social phenomena, such as public sector corruption, and to understand its complexity and how to deal with it, one must use a number of research resources, such as looking into ‘real-life events’ and studying a wide range of data, then perform detailed research on the studied organisations. The study requires flexibility during data collection. The diversity of the qualitative case study characteristics definitely supports the purpose of the research (Punch, 2005, p. 134).

Unfortunately, this approach has it drawbacks. One of the main criticisms is that the researcher’s perspectives might hinder the subjectivity of the outcome. In other words, the researcher’s opinions might result in biased findings. To guard against this possibility, it is of vital importance to subject the research to an analytical review (Huberman & Miles, 2002, pp. 8–9; Punch, 1998, pp. 150–156; Yin, 2003, pp. 10, 59).

Another major problem that might limit the use of this particular method is data overload. If the researcher did not guard against information surplus, a great deal of irrelevant data might be collected. To eliminate such a possibility, an organised introductory analysis was performed to decide which information should be included and which excluded.
To illustrate the importance of this dissertation’s main research question of ‘What are the reactive and proactive strategies used by the Anti-Corruption Commissions to deal with public sector misconduct?’ this study conducts a thorough context analysis investigation on various sources that include:

- annual reports
- special reports
- legal cases
- parliamentary debates
- official reviews
- parliamentary oversight committees reports
- newspaper reports

The research also considers whether new approaches and strategies, such as integrity testing and early warning systems, can improve the effectiveness of the anti-corruption holistic approach when combating official misconduct.

In addition and as a literature review technique, the researcher conducted an Internet search using databases — such as ‘Factiva’ for newspaper articles, Swetwise, APAIS (Australian Public Affairs Information Service), Blackwell Synergy and the Criminal Justice Abstracts for academic articles as the main data sources for criminology — by using a ‘key word’ search for ‘corruption’, ‘misconduct’, ‘accountability’, ‘inquiry’, ‘commission’, ‘public sector’ and ‘civilian oversight’. Websites of relevant institutions were searched, including the ‘CMC’, ‘ICAC’, ‘CCC’, ‘QPS’, ‘NSWPS’, ‘Transparency International’ and other international organisations such as the OECD, the World Bank and the Centre for Public Integrity of Washington DC.
In addition, some of the primary sources used for the purpose of this research include the Royal Commission reports and reports produced by oversight bodies such as the CMC, the ICAC and the CCC. Secondary sources include public opinion surveys, books and journal articles (Neuman, 2003, pp. 415–417; Prenzler, 2004, pp. 87–88).

As stated earlier, this study is an ‘instrumental case study’ that investigates a specific case with the aim of exploring the issue of searching the right mixture or combination of reactive and proactive strategies for the anti-corruption bodies (Punch, 1998, p. 152). Consequently, the primary and secondary sources will be examined to extract themes relevant to the research questions.

With such a large variety of documented public records including annual reports, special reports, newspaper articles and Hansard used to extract the relevant themes, research commenced by coding the information and providing labels to establish themes and recognise patterns. At this stage, such coding was descriptive in nature and required no reasoning. It was mainly to begin the analysis for this study, to find and identify patterns and to set the stage for a more detailed coding at a later level in the research. During this phase, taking memoranda helped to register a number of elements, ideas, concepts and even personal thoughts related to the study that were used later to further the analysis.

The next step was to extract a conclusion about whether or not the research questions were supported by the gathered information. However, to reach this stage, the researcher compared the evidence from the tested materials, literature and reports to evaluate the proposed model for anti-corruption agencies.

A historical analysis was used to grasp the totality of this research and also as a research method. A historical analysis provided a greater understanding
of how each examined organisation combats public sector misconduct and promotes integrity within their jurisdictions. The analysis was used to examine possible trends over time (political climate, major inquiries, strategies and measures to evaluate their performance) and to explore how the ICAC, the CMC and the CCC arrived at their current position. A mixture of secondary sources was used, including newspapers, journal articles, relevant books, agency publications and annual reports.

1.3 Ethics

Issues concerning ethical questions such as ‘privacy’ and ‘confidentiality’ were not obstacles in this research, because both the primary and secondary sources were publicly accessible. The documents are available either in printed or computerised formats, making reproduction and analysis achievable. Similarly, the reliability of both the primary and secondary sources is high, because all data is reported and published for or by academics and experts accountable for their accuracy.

1.4 Outline of the thesis

This thesis is in three parts. Part I outlines the historical developments and the background of the integrity systems and their pillars, one of which is the focus of my research, the anti-corruption agencies (ACA). Chapter Two draws primarily on the literature on integrity systems from the early 1990s to discuss the historical development of such systems globally and from the Australian perspective. Chapter Three outlines the theoretical framework, by reviewing in detail reactive strategies such as investigation, surveillance, prosecution, enforcement and intelligence. It also reviews proactive measures such as corruption prevention, education and training, integrity capacity building, law reform and research, for the purpose of providing an overview of the kind of mechanisms that have been employed by most of
the anti-corruption bodies. Some of these strategies can be used both as reactive and proactive approaches against corruption.

Some of the available institutional options that might be of consideration when planning the creation of such agencies will be discussed. The theoretical framework chapter finishes with the presentation of a modified and suggested model for an ACA. The proposed model includes two undeveloped proactive strategies of integrity testing and early warning systems. These two mechanisms are used currently in relation to police misconduct but not for other forms of public sector corruption.

Part II presents the findings. Chapters Four and Five are devoted to the first case study, the Crime and Misconduct Commission of Queensland. Chapter Four focuses on the structure, the legislation and the function of the CMC. It provides a broad view of how this Commission conducts itself in the wake of such organisational arrangements. Chapter Five examines the CMC’s various strategies for combating misconduct and how these strategies have developed over time.

Chapters Six and Seven examine the New South Wales Independent Commission Against Corruption (ICAC). Both chapters take the same format of the previous two chapters on the CMC. Chapter Six concentrates primarily on the structure, the legislation and the function of the ICAC. Chapter Seven examines the types of strategies used by the Commission and what activities are taken to support each of the identified measures.

Chapters Eight and Nine deal with the newly-formed Corruption and Crime Commission of Western Australia. Though relatively new, the CCC is trying to benefit from the two previous Commissions’ experiences. Chapter Eight also explores how the Commission is organised to function, both structurally and legislatively. Chapter Nine examines the CCC’s reactive and proactive strategies for dealing with public sector corruption.
When examining the three Commissions, the research attempted to match each against the proposed model to determine which one was the most compatible with the suggested model. The CCC, being new in comparison to the other two, tended to include more mechanisms in its efforts to deal with misconduct. This has been obvious with its adaptation of integrity testing and its initiative for establishing the WA integrity coordinating group\textsuperscript{7}, for example. This is not to say that the other two are far behind, but the research recognises their deficiencies in these aspects.

Part III presents the main themes that are revealed by this study — namely, those characteristics that are common to all three Commissions’ life spans. Chapter Ten discusses what major issues have shaped and affected the functionality of these organisations. Finally, Chapter Eleven summarises the complete thesis with a reminder about those issues that the three Commissions should bear in mind.

\textsuperscript{7} Integrity Coordinating Group (ICG) was formed in 2004 to coordinate collaboration between four State agencies responsible for the promotion of integrity in the WA public sector. The members are the Auditor General, the Commissioner for Public Sector Standards, the Corruption and Crime Commissioner, and the State Ombudsman (http://www.ccc.wa.gov.au/prevention.php, retrieved 25/01/2008).
Chapter Two

Integrity Systems: the Australian Perspective

2.0 Introduction

Transparency International (TI) developed the concept of ‘national integrity systems’ (NIS) in the mid 1990s as a comprehensive package to ensure the integrity of public sectors internationally. The model involves eleven ‘pillars’ including institutions, regulations, rules and practices based on society’s values and public awareness and is presented as the NIS Greek Temple (see figure 2.1). The idea of the temple metaphor was to encapsulate and operationalise all institutions connected with combating corruption rather than relying on one particular approach. Australia was part of such developments.

This chapter will first present an overview of the development of the national integrity system concept of the TI, and then provide a synopsis of the Australian experience in promoting integrity in the public sector, the current situation of the integrity mechanisms in place, their shortfalls and the recent trends in evaluating their performance.

The chapter concludes that the development of the NIS by Transparency International was a reflection of the strategic approach to targeting corruption. The collective efforts of a society with various institutions, laws and procedures ought to produce a better result, and Australia is part of this movement. Because of this, and because integrity systems have become an essential part of governance over the last few years, they ought to be evaluated. Their increased numbers across the Australian States and Territories has created a complex institutional mix to the point where some argue that such diversity might reduce the overall effectiveness (Bernnan, 1999, p. 95; Brown & Head, 2004, p. 5; Prenzler, 2004; Sampford, Smith &
Brown, 2005, p. 96). The discussion in this chapter will lead into the evaluation of the three core integrity agencies that occupies the rest of the thesis.

2.1 Transparency International National Integrity Systems – Greek Temple

The TI integrity system, as stated earlier, represents a group of pillars of institutions that should be part of a country’s national integrity system and presents these pillars’ interactions to preserve such integrity as a way to sustain prosperity, rule of law, and to preserve the citizens’ quality of life (Brown, 2004, p. 4). This model, as constructed by TI, starts with the necessity of having the political will of both the Legislators and the Executive to fight corruption and maintain leadership, honesty and good governance. Then the Judiciary, with its independence and impartiality, can make well-informed decisions that support an accountable government. Another important pillar in the TI Greek temple is the Auditor-General, described as the spine of the national integrity system by scrutinising and preserving the financial accountability of the government. The Ombudsman, whose role is to investigate maladministration within the public sector, is also included as a vital part of the national integrity system to ensure that government agencies adhere to the procedures of good governance or to make recommendations to that end (Pope, 2000, pp. 41, 47, 59, 63, 75, 83).
The TI metaphor also acknowledges that with the improvement of government integrity systems, the corrupt would also tend to raise their level of sophistication in such a way that the conventional law enforcement agencies would not be capable of identifying or investigating such cases. Therefore, there is a need to introduce specialised watchdog agencies which have the abilities to deal with complex corruption cases. However, this system of integrity can not accomplish its intended goal if it is not supported by a public service that has a clear aim to serve only the public and not sectional interests. The media, as Pope argues, also has its role in this system, because it is believed that only an independent media can present objective information to the public. Regardless of the earlier steps, it is the responsibility of a civil society to take upon itself the task of providing protection and taking a leading role in preserving the integrity of its own values instead of letting others, especially those in power, do so (Pope, 2000, pp. 95, 105, 119, 129).

Another aspect of this temple is the necessity for updating the private sector’s responsibilities and obligations in the fight against corruption. This
system recognises the interlocking relationships between both the public sector and its counterparts in the private sector, and the importance of including corporate entities as an important partner in any scheme to tackle any illegalities in the government’s branches. Finally, the Transparency International integrity model recognises the importance of the global effort to curb corruption and preserve the integrity of our public systems by calling for international actors to introduce and participate in such a battle (Doig & McIvor, 2003, p. 318; Pope 2000, pp. 137, 153).

The movement toward a multi–agency approach was not intended solely to meet the more complicated public and private sector requirements, it was also a drive to emphasise the point that curbing corruption and preserving integrity should not be focused around ‘purely individualist explanations’ of the problem. For many years, ethics failures were treated as an individual’s failure and therefore were met with legal actions against those involved or with the introduction of more explanatory rules expounding the rightful path to integrity more accurately. The multi-agency approach acknowledges that institutions might be the reason that drives individuals to act unethically. The argument is that because societies are filled with institutions, it could be those organisations themselves that are creating the unethical opportunities for individuals through the absence of ethical cultures within those institutions (Porta, 2004, p. 35; Preston & Sampford, 1998, pp. 1–2; 2002, p. 67).

The idea is that the discretion enjoyed by public servants makes opportunities to act unethically widely available. This is hard to avoid unless public servants are supported by a strong ethical organisational culture that restrains such enticements toward misconduct and encourages people to make decisions in accordance with the accepted norms and values of the community (ICAC, 1998). Keating & Higgins stress this:
A culture of ethical behaviour is particularly important in the APS because of the discretion inevitably involved in the development and implementation of public policy…. Public servants must therefore be equipped by the culture in which they work to make judgments wisely and fairly (Keating & Higgins, 1996, p. 6).

The Australian experience during the 1980s and 1990s with the introduction of a number of external independent oversight agencies around the country was attributed in part to the ‘failure of institutions’ (Lewis & Fleming, 2003, p. 167). This extended the argument that, when governments are faced with a policy failure, they tend either to reform the current institutions or create a new one to secure the gaps. ‘The decision to form new institutions is sometimes motivated by the novelty of the policy problem confronting governments’ (Holland, 2003, p. 13).

2.1.1 Public sector ethics debate— the Australian perspective
Because of the frequent scandals in governments in the last quarter of the 20th Century — especially over police corruption in Queensland, New South Wales and Western Australia — Australian State Governments were obliged to introduce reform packages to create a more ethical public sector to gain the public’s trust in the system (Prasser, 2004, p. 94; Preston & Sampford, 2002, p. 4; Uhr, 2005, p. 31).

For a country known for its strong public sector integrity commitments, the 1980s and 1990s saw many cases that made corruption, misconduct, accountability and transparency continual subject matter for the media and parliamentary debates (Brown & Head, 2004, p. 2). The Queensland Fitzgerald Inquiry in 1987, for example, revealed that police corruption would never have flourished prior to the Inquiry were it not for the government’s policy of tolerance and the state politicians’ involvements. Fitzgerald also realised that both the police and politicians collaborated to
create an environment for corruption to flourish, characterised by the acceptance of patronage, graft and bribes (Fitzgerald, 1989, p. 30–31).

The experiences of New South Wales are another illustration of what Australia had gone through regarding unveiling corruption. The Wood Inquiry reached a similar conclusion in 1997 to that of the Fitzgerald Inquiry in Queensland. It related systematic police corruption to the hesitation within the political system to tackle such phenomena owing to a number of reasons, such as the unwillingness to challenge police misconduct for fear of embarrassment — if police corruption was exposed, there would have been a public sector failure (Wood, 1997, p. 203).

In Western Australia, the Kennedy Inquiry in 2002 into ‘Whether There Has Been Any Corruption or Criminal Conduct By Western Australia Police Officers’ exposed recurring corrupt conduct by police officers, specifically detectives, dating back as far as 1985 (Kennedy, 2004, p. 1).

Historically, in Australia, public scandals had generally been dealt with through temporary, ad hoc Royal Commissions (Ransley, 2001). These tended to focus on investigating individuals, with the aim of instituting prosecutions. But from the 1989 Fitzgerald Report onwards, there was a new initiative, in the form of the creation of permanent, independent anti-corruption agencies like the ICAC, CMC and the CCC, and the introduction, for example, of the Electoral and Administrative Review Commission (EARC) in Queensland that pursued electoral and administrative reforms such as the Public Sector Ethics Act 1994. Following the 1993 Royal Commission investigation into the involvement of high-ranking State officials (including previous Premiers) in unlawful business, Western Australia also established the Office of the Public Sector Standards Commission. Though this Commission was short-lived, it was able to present, monitor and train public servants in a broad ethical program
(Preston & Sampford with Connors, 2002, p.14). The difference between the old form of ad hoc, investigatory royal commissions, and the new permanent bodies was that the standing commissions could focus on sector-wide improvements in ethics, rather than simply on individual investigations. They were the mechanism by which the shift could be made to trying to create an ethical culture.

However, in the attempts to introduce these reforms, debates began on questions such as what constituted an ethical public sector; what the core ethics were, values and morals that reforms should be based on; how governments could rewrite their public sector rules; and lastly, how ethics could be at the centre of such changes. To accomplish this goal, a new wave of literature developed, centred on the study of public sector ethics and how they could be integrated into the decision making processes within Australian public departments. Some of the early literature towards that direction included Decision-making in Australian Government: the Cabinet and Budget Processes (1990) by Galligan, Nethercote and Walsh, and Program Evaluation: Decision-making in Australian Government (1991), edited by Uhr (Uhr, 1991).

The early 1990s witnessed an increasing focus by Australian experts on the study of ethics and how best it could relate to government. Bringing together the Australian contributions in this field, a number of studies were presented, mostly in the form of edited books, such as those by Coaldrake and Nethercote in 1989; Hede, Prasser and Neylan, 1992; Preston in 1994, and Sampford, Preston and Bois in 1998. However, it was not until the creation of the Electoral and Administrative Review Commission of Queensland in 1989, in the wake of the Fitzgerald Inquiry, that one could trace the real and most serious start in the ‘institutionalisation’ of ethics in the Australian public sector. This was despite the argument that the first and real Australian initiatives were the procedures that implemented the reform

The debate also extended beyond the issue of what had been the first attempt to ‘institutionalise’ public sector ethics in Australia, to incorporate the idea of what would constitute a more effective approach when defining what should be included within the public sector ethics reforms (Preston, 1995, p. 465). The Australian debate was no different to other debates around the world concerning the most effective mechanisms to preserve public sector integrity and who should make such reforms and how — see, for example, the same debates over internal versus external mechanisms between police and civil libertarians regarding police complaints and discipline in England and Wales, and Northern Ireland (Prenzler, 2004).

The general result of such debates was to recommend that such reforms should be customised to comply with each jurisdiction’s individual circumstances and needs, despite differences between them (Caiden & Sundarm, 2004, p. 373; Doig & McIvor, 2003, p. 317; Sampford, 1994, p. 18). Furthermore, the debate also included the idea that not only should these reforms be tailored according to the Australian community’s needs, but that they should also include more than one approach (Sampford, Whitton, Shacklock & Moore, 1994). For example, these mechanisms should be a combination of management regulations, ethics and standards supported by a robust institutional framework as was argued by Sampford:

… the way to improve the standards of government conduct lies in a combination of administrative laws, ethical standard setting, and institutional design. It is essential to approach these considerations simultaneously. Each one is insufficient, leading to failure and
despairing resignation when attempted by itself. The three must be tackled in a coordinated way (Sampford, 1994, pp. 20–21).

Australia came on board and joined the global movement to build what came to be known as an ethics regime or ethics infrastructure which was later portrayed by TI as the ‘National Integrity System’ (Sampford & Preston, 2002, p. 7). All these terms tended to support the notion that to curb the ethics breakdowns in government, one must not limit the efforts to a single strategy but instead should use a collective of combined strategies (Costigan, 2005, p. 41; Hicks & Scanlan, 1998, p. 113; Sherman, 1998, p. 16). Such regimes, infrastructures or integrity systems were intended to include ‘... institutions, laws, procedures, practices, and attitudes that encourage and support integrity in the exercise of power in modern society’ (Brown, 2004, p. 1). The trend toward a multi-component system to preserve integrity in the public sector came with the recognition of the limits of the single-body approach. In its pursuit of a multiple-integrity system, governments introduced new institutions, laws and regulations. These were designed to overcome current deficiencies and were more compatible with the NIS pillars as defined by Transparency International (Costigan, 2005, p. 40).

2.2 The Australian experience

Studying this Australian experience in trying to institutionalise ethics within the public sector will demonstrate that Australia was conforming with new international approaches to tackling governmental corruption. The earlier Australian experience had tended to be driven by outrage and by successive Royal Commissions and Inquiries that exposed corrupt and unlawful conduct. Therefore, it is no wonder that most of the reforms were established as a response to public protest in each of the particular states or territories and consequently were formulated differently one from another, ‘... the variety of these watchdog bodies exemplifies the different styles and
2.2.1 The roots of the Australian experience

Looking at the modern Australian experience in preserving public sector integrity, it features interconnected integrity systems that have developed over three main historical phases of restructuring beginning in 1970 (Brown, Uhr, Shacklock & Connors, 2004, p. 9). While the Auditor-General’s Office — as an independent institution to oversee the practices of public expenditure — has a long history in Westminster systems of government, Brown & Head (2004, p. 4) argue that by the 1970s it was given expanded responsibilities to tackle issues relating to the misuse of public funds, fraud and corruption claims. It gradually became an important element of the integrity system in Australia, especially with the development and the expansion of the ‘welfare state’ system, with its complicated eligibility provisions and rules, at the beginning of the 1970s. There was a need to introduce a more Inquisitorial type of system in a way that would grant the public the opportunity to contest the value and validity of the administrative activities taken against them by appointed public servants. For that, the introduction of the Scandinavian institution of the Ombudsman was also meant to simplify the administrative law, despite the fact that it was limited only to actions by appointed officials (Douglas, 2002).

The Ombudsman, as another concept of an independent watchdog of government actions, represented a worthwhile idea in the 1970s (Douglas, 2002). It was directed toward simplifying administrative law, so that aggrieved people could dispute government actions without battling the court process. The Ombudsman idea was not limited to the public sector only, but has also come to be used in the private sector in the activities of

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8 Adopted in many Commonwealth and ex-Commonwealth countries from the mid-19th Century.
commercial service delivery, banking and communication. In these areas an Ombudsman provided a vehicle for dissatisfied customers and members of the public to have their complaints or grievances independently investigated. Moreover, in the wake of the Australian Law Reform Commission inquiries in 1978 and 1981 into complaints against police and criminal investigation procedures, increasing attention was given to police misconduct during the same period⁹. Some State governments turned to the creation of an Ombudsman Office to act as an external independent oversight agency to preserve police integrity (Brown, Uhr, Shacklock & Connors, 2004, p. 4; Prenzler & Lewis, 2005, p. 77).

The increasing difficulties of detecting and prosecuting corrupt public officeholders and the growing sophistication of corrupt operations resulted in the introduction of specialised and independent anti-corruption commissions in a number of states in the late 1980s. As a result of accusations made against, the NSW Prisons Minister amongst others, of being bribed to discharge prisoners, the Independent Commission Against Corruption (ICAC) of NSW in formed in 1988. The Police Integrity

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⁹ Complaints Against Police (ALRC 1) and Complaints Against Police (Supplementary Report) (ALRC 9). Originated in May 1975 when The Australian Law Reform Commission was tasked to examine suitable means to insure the protection of individual's rights and liberties in connection to the creation of a single law enforcement agency. The ALRC produced its report that was accepted by Federal Parliament and the then Federal Government and was included in the Australia Police Bill 1975. However, owing to the dissolution of the Parliament later that year, the new government policy changed and the proposal of establishing a Commonwealth Police Force never came to light.

In 1977, the ALRC was instructed by the Attorney General to reexamine its pervious report taking into consideration the new changed political circumstances. The new final report, Complaints Against Police (ALRC 9) was tabled in June 1978 with much of its recommendations being implemented, including the implementation of a modern police discipline code, the importance of Commonwealth police officers in wearing identification numbers and the adaptation of Complaints procedures for Customs, the Narcotic Bureau and other Commonwealth officers.

Commission (PIC) was established in 1997 as a result of the Wood Inquiry into police corruption (Larmour, 2001, p. 14). Queensland also created its own Criminal Justice Commission (now the Crime and Misconduct Commission, the CMC) in 1990 in the wake of the 1987-89 Fitzgerald Inquiry (Lewis, 1997, p. 166). In Western Australia, the Corruption and Crime Commission was established in 2003-4 following the Kennedy Inquiry report of 2002 into police corruption. It replaced the Anti-Corruption Commission, which had been established in 1996, but was given substantially more powers and a broader mandate than the previous agency (Brown & Head, 2004, p. 4; Lewis & Prenzler, 1999; Prenzler & Lewis, 2005).

2.2.2 The current situation – diversity, complexity and the question of effectiveness

The rapid increase in the number of anti-corruption initiatives and the multiple organisations involved in dealing with misconduct within each State presented a complicated institutional matrix; each one of these mechanisms or bodies, despite their similar objectives, seems to tackle the same problem of corruption differently even within the same jurisdiction (Brown & Head, 2004, p. 5). Added to this is the complexity caused by multiple systems in a federal structure, each with their own agencies.

This move toward the creation of an accountability regime, together with the rapid growth in the number of integrity agencies around Australia, led to the questioning of that system’s effectiveness, its impacts, its consistency and more importantly, its workability and coordination between agencies (Brown & Head, 2004, p. 5; Smith, 2005, p. 54; Uhr, 2005, p. 69).

This multi-level system, with its goal to institutionalise integrity in the public sector and to eliminate government corruption, came to face obstacles such as lack of coordination and duplication of efforts, to the extent where it

According to this argument, anti-corruption initiatives create an extra financial burden on the public sector while not delivering cost-effective outcomes in reducing misconduct. They also limit effectiveness through the introduction of numerous rules, laws and procedures, and auditors limit creativity, weaken managers’ powers and reduce the efficiency in accomplishing targets, leading managers in the long-run to apply a ‘defensive management style’ (Kellogg 1998).

At the same time, doubts have arisen in recent years about whether the integrity regulations, laws, and mechanisms themselves add to the problem of corruption by over-regulation. The argument here is that with the implementation of more regulations, more public servants tend to find shortcuts to get around the law’s procedures (Small, 2004, p. 7). This point of view is articulated by Anechiarico & Jacobs in their book ‘The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective’ (1996). According to them, the problem with the anticorruption project is that it inhibits public sector managers in their quest for efficient and effective government. Laws, rules, forms, and auditors suppress creativity, undermine managers’ authority, and slow things down. They decry ‘hundreds of auditors’ who cramp managers’ style by demanding information and issuing recommendations. Managing government requires ‘flexibility, creativity, and risk-taking’, but with all these auditors around ‘it is hardly surprising that managers adopt a defensive management style’ (Anechiarico & Jacobs, 1996, p. 174).

Moreover, it has been suggested that we should not depend totally on the assumption that such anti-corruption bodies or introduced regulations are
the main reason behind any decrease of reported corruption, nor that we need more of these organisations and laws in light of the discovery and the investigation of some cases (Small, 2004, pp. 5–6). In particular, there is not yet a very clear or explicit method to judge or quantify the level of corruption prevented or inhibited by these institutions and regulations (Mackenzie & Hafken, 2002, p. 103). The absence of such accurate measurement of these mechanisms’ effectiveness casts some doubts on their suitability as was argued by Small:

No one knows for sure whether public sector corruption has diminished or increased overtime, particularly since the 1970s, and, if so, by how much. No corruption rate or trend has been calculated or even estimated. Nor do we know with any precision whether we are solving corruption problems or simply pushing them around and at what cost? If ‘solving’ one problem merely creates another, the result might be called a ‘band-aid’ but can hardly be called a success. Success should be a worthwhile achievement (2004, p. 6).

The primary issue for this diverse system of integrity in Australia is how well those mechanisms are equipped, resourced and empowered. No matter how diverse the system is, if its components are not provided with the ‘resources, skills, legal powers and organisational objectives needed to fulfil the different roles of independent watchdogs’, the ability of those institutions and mechanisms to reduce the corruption threat will be limited (Brown & Head, 2005, p. 85).

Coinciding with this, a recent discussion over what would constitute an adequate mechanism to deal with corruption in the Victoria Police, and another related to the scrutiny of the Australian Federal Police (AFP), triggered a national debate on the quality, the effectiveness, the potency and the limitations of the existing oversighting organisations in the whole country. This burgeoning discussion extended beyond the mere fact of the
existence of suitable integrity mechanisms. It also criticised the absence of any adequate measures that would check how well these bodies were functioning (Brown & Head, 2005, p. 86; Coulthart 2004, in The Centre For Public Integrity Country Report, Australia, p. 4).

For example, the Independent Commission Against Corruption (ICAC) model in NSW was sharply criticised for the inadequacy of the powers granted to the parliamentary oversight committee to inspect its work, while both the Crime and Misconduct Commission of Queensland and the Police Integrity Commission of NSW have inspectors — The Parliamentary Crime and Misconduct Commissioner and the Inspector of the Police Integrity Commission10 and the Inspector of the Police Integrity Commission11 (Coulthart, 2004, in The Centre For Public Integrity Country Report, Australia, p. 4).

The debate also took on a comparative dimension when the Victorian Government took what seemed to be an unplanned decision to increase the Ombudsman budget twice within three months. It appeared as if the government thought that the allocation of more financial resources for the same Ombudsman would boost its abilities to do the job. The Victorian Government’s decision was not in any way unique; instead, it was in-line with the then-ongoing debate supporting the notion that an active integrity system must have adequate staff and sufficient monetary resources (Brown & Head, 2005, p. 87).

10 The PCMC Commissioner is tasked with the following duties: to investigate and examine complaints against the CMC or its officers; to inquire into any allegations of possible unauthorised disclosure of confidential information or material; to carry out audits of the CMC’s records and operational files; attest the CMC’s explanations and reasons for withholding information from the committee; certify the accuracy and completeness of reports given to the committee by the CMC and assist the committee with the preparation of its three year review, (http://www.parliament.qld.gov.au/committees/view/committees/committees.asp, retrieved 25/01/2008)

11 The Inspector of the Police Integrity Commission’s main task is to investigate and assess complaints about the Commission or Officers of the Commission and to verify the Commission compliance with the State law. The Inspector is not an officer of the Commission. He is independent and reports to Parliament (http://www.inspectorpic.nsw.gov.au/, retrieved 25/01/2008).
Brown & Head, in their assessment of the institutional capacity of the Australian public sector integrity systems, do not dismiss staffing and finance as valid measures when comparing the established Australian integrity institutions. However, they also conclude that there are other elements apart from human and financial resources to be taken into consideration when deciding which ‘institutional options’ are more suitable than others, such as the ‘accountability of the integrity bodies themselves’ (Brown & Head, 2004, p. 22; 2005, p. 94).

### 2.3 Integrity systems and the anti-corruption policy assessment

There is a growing interest and a need in many countries with integrity mechanisms to come up with an adequate framework to assess the impact of these bodies. The OECD for example, acknowledged that the main negative aspect of its anti-corruption drive is its deficiency in relation to impact assessment (OECD, 2000, pp. 66–72).

Good governance requires proper assessment, and policies promoting integrity and preventing corruption are no exception. Developing an appropriate framework for assessing the impact of measures promoting integrity and preventing corruption are an emerging priority in OECD countries in order to verify policy effectiveness in this critical area of good governance (OECD, 2004, p. 2).

In Australia, efforts to evaluate the impact of the integrity bodies are often ad hoc and improvised, in some cases in response to public outrage. However, the agencies provide forms of regular reporting system either to sustain their resources or to rationalise their decisions (Brown, Uhr, Shacklock & Connors, 2004, p. 7).

In all, it seems that not only does Australia lack a well-grounded measurement method, but other countries, such as the OECD countries as
stated earlier, also lack an established form of evaluation mechanism (Uhr, 2005, p. 69). For example, the Prenzler and Lewis study of performance indicators for police oversight agencies in Australia (2005) and the Uhr assessment of Australia’s integrity systems (2004) conclude that despite the existence of some useful evaluation measures, there is a need for more developed instruments and measures that would create a more comprehensive picture of the performance of overseeing organisations (Prenzler & Lewis, 2005, p. 82; Uhr, 2005, p. 74).

2.3.1 The driving force for a policy assessment
Integrity systems have become an acceptable part of governance over the last few years; consequently, there is also an emerging interest around the globe to evaluate the performance of integrity systems. The National Integrity System Assessment Project (NISA) initiated by Transparency International, the World Bank, the Organisation for Economic Cooperation and Development (OECD) and the Centre for Public Integrity, all constitute what has come to be known as ‘a global industry in integrity systems assessments’ (Brown & Uhr, 2004, p. 4). This growing trend to assess integrity systems is attributed to four main drivers: economic, democratic, administrative and personal, discussed in turn below.

2.3.1.1 Economic drivers
A significant objective is to achieve a more reformed economy through the introduction of a number of measures to reduce public sector size, deregulation, privatisation and to open up the economy to market competition. The idea is that such initiatives would not only minimise corruption but would also be guardians for economic growth. In citing some of the successful experiences in dealing with corruption such as Hong Kong, Malaysia and Singapore, Kaufmann related in part their triumph and achievement to economic reforms including economic liberalisation, limiting discretion opportunities and regulation of public officials, simplifying tax
systems and initiating open trade policies. These initiatives and others tend to minimise bureaucrats’ and politicians’ abilities to abuse the system for their own personal benefits and curb opportunities for bribes and other forms of corruption (Kaufmann, 1999, pp. 89—95).

2.3.1.2 Democratic drivers
Democratic drivers are related to the notion that democratisation would always act as a barrier against the spread of corruption, and that it would prevent the expansion of any favourable grounds for such phenomena to exist (Elliott, 1997, p. 176; Pope, 2000, p. 1). Thus anti-corruption agencies and democratic institutions should work to reinforce each other.

2.3.1.3 Administrative drivers
Administrative drivers tend to focus on some of the administrative aspects, such as efficiency, effectiveness and responsiveness, with the objective of ensuring that any introduced reforms are meant to preserve the quality of the public services and the public policy decision process. This approach looks mainly into whether the established institutions deliver their intended goals. If this is satisfied, it means that those examined institutions have achieved the ‘effectiveness or implementation criteria’ (Brown, Uhr, Shacklock & Connors, 2004, p. 21; Brown & Uhr, 2004, p. 14).

2.3.1.4 Personal drivers
Personal drivers can be best described by Brown & Uhr:

The fourth and final approach to integrity systems assessment is one that redisCOVERs the essential humanity of integrity — a reminder that when talking of integrity, we are talking not just about institutions and processes but also people, individually and collectively going about their lives (Brown & Uhr, 2004, p. 20).

The idea is that none of the integrity models can guarantee their success without promoting integrity as a desirable personal quality. The main point
here is that the human factor is essential for the success of an integrity scheme. It concerns how individuals and officeholders see their office and how they conduct their lives accordingly. However, despite its importance, the human dimension tends to be over looked by the previously-mentioned economic, administrative and democratic drivers, which ignore the fact that the main reason behind establishing and creating laws, institutions and management systems is to ensure that individuals behave with dignity and honour. Therefore, a new approach that includes personal responsibility in relation to human behaviour needs to be developed together with the other elements, because none of these factors alone will be successful in promoting integrity (Brown, Uhr, Shacklock & Connors, 2004, pp. 23–25).

As part of the three tested Commissions’ proactive roles, they developed programs to educate the public through various methods, such as published materials, local community visits, conferences and training courses.

2.4 Assessing integrity measures

Although assessing integrity mechanisms as an idea is still in its formative stage around the globe, there are, nonetheless, three main forms of evaluation tools used as a base for assessment purposes. The most noticeable type of these three is the perception survey, which looks into stakeholders’ perceptions of a system. Transparency International uses this methodology every year in its well-known ‘Corruption Perception Index’. The second method used is the ‘general state of affairs’ survey, which concentrates on one particular measure to find any changes across time. Thirdly, the agency evaluations technique is used, which is viewed more as an attitude assessment rather than performance testing. These mechanisms tend to make sure that the organisation is affixing itself to the ‘legal and structural requirements’ (Gilman & Stout, 2004, p. 45).
2.4.1 Policy assessment measures in Australia

It has been acknowledged that Australia, in recent years, has reserved its place among the top ranked countries in the world for its strong commitment to public sector integrity. It scored 8th in the TI’s 2004 Global Corruption Report and came 3rd in the Centre for Public Integrity Index. However, Australia’s participation in such evaluations came as a first endeavour to test and map its integrity systems in an attempt to find strengths, weaknesses and gaps, to determine how the systems’ components interacted with one another and what reforms were needed to further secure their ability to guard against public sector corruption. The assessment was also meant to introduce innovative methods as a way of evaluating the total integrity system (Brown, 2004, p. 1).

In 1999, the five-year National Integrity Systems Assessment (NISA) project was launched to map and assess the effectiveness of Australia’s national integrity systems at Commonwealth, State and Territory levels, and also in the business sector. It examined six sectoral and jurisdictional integrity systems in Australia in five phases. It was grounded in three interconnected qualitative themes to examine the wellbeing of such systems. Those themes were ‘Capacity, Coherence and Consequences’. In 2004, the research team presented their completed study with twenty recommendations, intended to provide a holistic overview of what needed to be carried out in the areas related to the country’s integrity systems (Brown, 2004, p. 3).

2.4.1.1 Capacity

In examining the capacity of Australia’s integrity systems, it was recognised that there is much diversity in the system, and also noticeable differences in the way these agencies are resourced. The discrepancy in the ‘financial, human resources, legal powers, professionalism, and the political and the community determination’ were in part historically and politically attributed. Another reason behind such variations might be related to the types of
functions in the agency, with the older functions tending to get insufficient resources even if the agency was formulated at that time (Brown, 2004, p. 37).

The study identified the following deficiencies related to the capacity of the Australian Integrity System:

- The lack of an enforceable ethics scheme to oversee and investigate illegalities committed by parliamentarians and ministers
- The importance of introducing an advanced ethical framework to administer and check political parties’ and politicians’ functions, specifically in relation to monetary donations and parties’ financing
- The need to extend public sector values and traditions to include those of private sector organisations (Brown, 2004, p. 43).

2.4.1.2 Coherence

With a multiple Integrity System such as that in Australia, the need for coherence is important. This coherence is much needed to examine the interactivity between the different components of the Integrity System; to look at aspects of coordination both in regard to policy issues or those related to the more practical issues of operations; and lastly, to explore new venues to ease tensions and create opportunities to enhance the chances of building coherency between parliamentarians, ministers, the executive and the people (Brown, 2004, p. 44).

In articulating the final outcomes of the study of the Australian Integrity Systems coherence, the research outlined the following issues as restrictive elements in a more coherent integrity system:

- Similar to the study of the capacity of the system, the study of its coherence verified that the absence of reliable and compulsory
standards to regulate and scrutinise parliamentarians and ministers tended to be the least developed and the most contradictory aspect of the Australian Integrity System. Though most of the Australian Parliaments have in their capacity some sort of legislative and ministerial ethical regimes, not all of those initiatives were made obligatory.

- ‘The accountability systems governing Australian parliamentarians and ministers have not been keeping pace with equivalent developments in other institutions or with public opinion. It is rapidly becoming time for comprehensive reform in this area’ (Costigan, 2005, p. 41).

- The lack of a distinct code of conduct for ministerial staff has created an-going debate on why such a group was excluded from the accountability chain. There is a ministerial refusal for the introduction of special standards for their staff and assistants. Consequently, there have been calls that such a code of conduct must be linked to the ministerial code, with the possibility of bringing them under some kind of enforcement mechanism, comparable to those that have been assigned under other codes of conduct.

- Recommendation 19 in this assessment recognised the necessity to conduct an additional evaluation investigating the Australian business sector’s main integrity organisations that are in charge of mentoring the integrity of such systems, specifically in relation to the public sector.

- There is a need to run an assessment on the coherence of civil society organisations to look into their integrity capacity and coherence and their general well-being, examining in particular the possibility for
their duties to enhance the national integrity system (Brown, 2004, pp. 48–51).

2.4.1.3 Consequences

The third element in studying the Australian Integrity Systems was to examine such a system’s effectiveness and to look into whether the system delivers what should be delivered. This assessment was important, not only because it exposed shortfalls, but also because it produced a solid identification of whether or not new or more developed mechanisms ought to be introduced to further strengthen the current system.

The next part of this thesis will discuss in more detail the most common and currently-used measures and strategies used to evaluate the consequences of the Australian Integrity Systems. However, there are a number of recognised deficiencies in relation to the measures used to evaluate Australia’s Integrity systems, as follows:

- The need for more research into means to establish and improve the standards of activity and efficiency measures that would be related to the agency workload. The idea of having standardised performance activities is important not only for conducting a reliable comparative analysis to ensure the security of the functioning of similar organisations, but also in distinguishing and applying best practice.

- The study also recognised the limited number of performance indicators carrying a great qualitative weight and stressed the need to expand the search for more indicators.

- Performance measurement in Australian integrity agencies is still in a formative stage and often \textit{ad hoc}. Even regular reporting tends to be used to validate those agencies’ requests for resources or their application for new resources, or used politically to give an
explanation for previously-taken decisions. Therefore, there is a real need to produce a more effective and comprehensive policy assessment mechanism that results in a better understanding and evaluation of the integrity system.

- There is a lack of longitudinal research on the effectiveness of the integrity system (Brown, 2004, pp. 56–57).

2.5 Assessment tools — Australian version

The increasing attention given to assessing the consequences and successes of current integrity mechanisms resulted in the creation of what became known as Integrity Assessment Tools (IATs). These are designed to assess how successful integrity mechanisms are in strengthening ethical behaviour and integrity within their jurisdictions. Regardless of the fact that research on this area is still in its infancy, those tools are now used in both public and private sector evaluations. These tools usually involve the following: employee surveys, community attitude surveys, ethical culture surveys, analysis of corruption resistance guides, and a checklist audit of anti-corruption mechanisms. These tools are supposed to explore the institution’s capability to recognise and look into high-risk areas, test the existing mechanisms that work to discourage corruption, and to determine the awareness of the organisation’s personnel about its procedures and guidelines (Shacklock, Connors, Gorta & O’Toole, 2004, p. 2).

In Australia, most of the performance evaluation strategies evolve around four major measures exercised to evaluate the effects of the Australian integrity and anti-corruption schemes. First, implementation measures are considered as the least possible form of assessment requirements. Their main focus is to guarantee the application of major, one-off or occasional intended actions or reforms. Secondly, the main objective of activity and efficiency measures is to evaluate the daily activities of the integrity body
and ascertain that its system is performing and producing results compatible with the financial resources allocated to it. Thirdly, institutional effectiveness measures assess the general function of the entire integrity organisation or mitigate the establishment of others. Fourthly, the outcome measures look at the results of the integrity activities in a manner that makes certain that these actions are producing favourable outcomes that support and enhance integrity and preserve ethics (Brown, Uhr, Shacklock & Connors, 2004, p. 26).

2.6 Performance indicators
The involvement of more than one institution in developing and monitoring ethical regulations and regimes at different levels in the Australian Government represents the seriousness and the importance of this topic in this country. However, this study is limited in scope to examining only three Australian jurisdictions’ experiences in relation to their strategies to evaluate the effects and impacts of oversight bodies. The New South Wales Independent Commission Against Corruption (ICAC), the Queensland Crime and Misconduct Commission and the Western Australia Corruption and Crime Commission are the foci of this research.

The three tested Commissions use a number of performance indicators to report their activities and effectiveness. Chapters 5, 7 and 9 provide detailed information on these indicators.

2.7 Conclusion
This chapter has presented an overview of several aspects of the literature relevant to this research. The chapter set out to introduce the main theoretical and practical principles that affected the introduction of the National Integrity Systems as a holistic approach in dealing with public sector corruption and looked briefly at the importance of creating specialised anti-corruption agencies that have powers not available to
conventional law enforcement. It then looked at the process of assessing the impact of integrity measures. It has stressed that good governance requires proper assessment. There is an increasing global attention being devoted to the measurement of the various integrity mechanisms’ effectiveness and competency. The concept is that those agencies are the public’s instruments to demonstrate that the Australian public sector is functioning truthfully and with honesty, and that those mechanisms themselves are no exclusion.

It has been argued that despite the importance of the standard performance assessment approaches currently in use, the mechanisms have been portrayed as being firstly incomprehensive in providing a complete overview of the evaluated system. Secondly, most of those conventional’ measures tended to be reactive in nature as they focussed on investigation and punishment. Therefore, a more comprehensive performance measurement scheme would produce a better picture of how well the integrity systems are performing. Using a multiple indicators mechanism can highlight the various components in the operation of a system. This is in spite of the fact that neither one nor a host of measures might produce the actual effect in the integrity system of preventing corruption or how efficient it is in assessing allegations of illegality. The point is that since the indicators represent the operating characteristics of an agency, they tend to be a genuine measure of accomplishments rather than functions.
Chapter Three

Theoretical Framework

3.0 Introduction

The previous chapters have explored the historical background to the introduction of public sector integrity systems in Australia during the last two decades. This chapter explores the theoretical foundation upon which this research is based. It then provides a discussion of the rising demands to improve such systems by including and introducing new mechanisms to sustain their effectiveness in curbing public sector corruption by shifting towards a more proactive approach, particularly the anti-corruption agencies (ACA). After that, the chapter discusses various reactive and proactive strategies that could be used in the fight against corruption. It then defines some of the main factors used to promote national integrity systems. The last part of the chapter examines some of the major institutional options to be considered in the creation of an anti-corruption agency. Finally, laid out is what could be considered to be a general model for an anti-corruption agency that includes the core strategies, both reactive and proactive, which could be applied with variations in different jurisdictions. This includes a discussion of what might be needed to get the right mixture of strategies for an effective ACA. The chapter concludes with some notes on the difficulties that could arise when considering a model that would fit all societies and stresses that the focus should be directed to those factors necessary for the creation of the system.

Therefore, this chapter will not argue in favour of one particular system to be transferred and applied globally, because there is, as yet, no universal system. Even with the successful endurance of the Hong Kong ICAC model there remain some doubts surrounding its transferability and applicability to
other parts of the world. However, the chapter explores factors that could be crucial in deciding which strategies should be exercised to combat corruption and build integrity. The suggested model emphasises the importance of coordination, not only between agencies, but within each agency’s various departments in a way that would facilitate the smooth execution of its duties in the fight against public sector corruption.

**Theoretical overview**

This research is grounded in two main theoretical perspectives, the first dealing with notions of misconduct and its control in the public sector, and the second being that of responsive regulation, combined with the whole of government approach to public policy. They will be discussed in turn below.

**Misconduct and its control in the public sector**

One way that the literature has sought to understand public sector misconduct has been to see it as a form of organisational crime. Finney and LeSieur (cited in Simpson & Piquero, 2002, p.510) made one of the earliest scholarly attempts to develop a theory that would explain organisational crime by studying how demands for superior productivity, as set by goal-oriented organisations, could lead employees to illegal conduct, particularly if faced by obstacles that would hinder their ability to achieve their intended goal or performance targets set by their management.

Another early attempt that looked into examining organisational wrongdoing was the work of Vaughan in the mid-1980s. According to her research, there are several factors behind organisational deviance, such as the competitive environment, organisational complexity, the organisation’s transactions’ complexity and the absence of a counteracting system against such misconduct. Her findings suggested that when organisations feel threatened by the fact that they might not achieve their goals, there is a greater possibility that they will resort to unlawful means to accomplish
these goals, particularly if the previous factors are combined with an environment within the organisation that is supportive of illegal conduct (Vaughan, 1983, pp. 70, 72, 73, 76–78, 84).

On the same path, James Coleman tried to incorporate both the individual and structural causes into an integrated theory to define white collar crime. He looked at motivation and opportunity as the main elements behind this kind of illegality. According to his explanation, the existence of a competitive environment tends to a play vital role in decisions either by the employee or the organisation itself, as to whether to take a lawful or unlawful approach to achieve their goals (Coleman, 1987, pp. 406, 408, 414–420, 431–432).

Braithwaite also tried to examine differences in organisational illegality between private and public sector establishments. His analysis also centred on the idea that regardless of the type of sector, organisations tend to deviate to illegal action when the legal channels are blocked and other illegal alternatives are open. In his explanation he argued that when management was closely associated with the organisation’s subculture of illegality the whole organisation would be more inclined to engage in misconduct (Braithwaite, 1989, pp. 336, 338).

The work of the above researchers was grounded in the idea of goal orientation. In this, organisations that are formed based on the philosophy of goal orientation tend to use illegal means when lawful methods are blocked in their quest to attain their objectives. However, in their research, Vaughan, Coleman and Braithwaite all tend to believe that the possibility of detection, publishing and severe punishment will reduce government wrongdoing (Vaughan, 1983, p. 88; Coleman, 1987, p. 426; Braithwaite, 1989, p. 346). This view is extended to the private sector. The last decades of legislative change and research have also seen the boundaries between
public and private sectors blurring in the wake of growing private-public partnerships and, private sector corporations increasingly providing more public services (Stone, 1982, p. 1506)

Peter Grabosky introduced a provisional theory of government illegality. The theory consists of a number of elements that, according to Grabosky, are believed to be the cause of government irregularity. These elements are:

- **Weak external oversight**: the idea being that when establishments are not subjected to external examination they are more likely to commit illegal acts than those organisations that have their activities externally examined. Such external scrutiny helps in preventing those organisations from committing misconduct (Grabosky, 1989, p. 297).

- **Powerlessness of victims**: the notion that if the organisation’s main task is to provide services to the most disadvantaged members of society, the risk of illegal conduct is higher due to the fact that those people usually do not have adequate resources to challenge those organisations or seek help from anti-corruption agencies (Grabosky, 1989, pp. 297–298).

- **Poor leadership**: there is a greater possibility of illegal conduct in organisations where top management is itself involved in illegality or turns a blind eye to misconduct (Grabosky, 1989, p. 298).

- **Communication breakdown**: if the organisation lacks the ability to communicate its policy and procedures in a clear and adequate manner to the rest of its staff and employees across all levels, it increases the risk of corruption (Grabosky, 1989, p. 298).

- **Inadequate supervision**: if the middle management does not live up to its expected role of supervising how the daily routine activities of the
organisation are carried out and does not report back to the top management, there is a greater chance of misconduct (Grabosky, 1989, p. 299).

- Rapid organisational expansion: in some cases where an organisation witnesses a rapid, uncontrolled growth of its activities and staff, combined with an absence of any supervision regime and a breakdown in communication, corruption possibilities tend to open up (Grabosky, 1989, p. 299).

- Strong goal orientation: entities with strong goal orientation are more likely to offend as long that such actions will enable them to achieve their goals (Grabosky, 1989, p. 299).

Though the proposed theory might not be comprehensive in covering all the causes of misconduct (such as subcultural influences), it includes causal factors that are essential to explaining corruption.

For example, police corruption can be explained in many instances to be caused by a number of factors, including the kind and nature of work and society and organisational failures, rather than viewed as personal deviation. For the advocates of this point of view, the answer to police illegality should not be limited to repressive measures against those corrupt officers, but instead should involve a combination of measures that consider all the different aspects needed to tackle police corruption. These include strong police leadership, effective and well-resourced internal investigative units, proactively pursuing officers who are indicated to be part of possible corrupt involvement, and strengthening police organisations standards and codes of conduct (Punch, 2000, pp. 321–322).
As discussed, one response to public sector misconduct sees it as a form of institutional crime to be dealt with systemically. The second response, based on regulatory theory, is also concerned with systemic issues, but from a different perspective, focused on ideas of responsive regulation, compliance and governance.

The concept of responsive regulation was initially oriented towards business corporations and how government can best intervene and regulate these corporations’ methods of conducting business. Debates surrounding the effect of government intervention in the market diverge between those who support government regulation of businesses and those who favour deregulation (Grabosky & Braithwaite, 1986, p. 1).

Ayres and Braithwaite (1992), in their discussion of the regulatory state, rule out the idea that responsive regulation is intended to prescribe exactly how to regulate. Rather, according to their argument, it is intended to be an approach that produces different regulatory means and methods appropriate to specific regulatory problems (Ayres & Braithwaite, 1992, p. 5). To them, despite the fact that entities tasked with securing compliance can accomplish that through carrying the ‘big stick’ to punish the corrupt or non-compliant, they can also be effective if they can balance their effort by not using all their sanctions but by keeping them ready to be used when needed, and trying to promote more regulation through ‘moral suasion’ (Ayres & Braithwaite, 1992, p. 19).

To this end, Ayres and Braithwaite introduced their own model that would enable regulatory agencies to decide the best possible mixture of the two strategies of punishment and persuasion to ensure compliance. The illustration of his model comes in two pyramids. The first one is that of the ‘enforcement pyramid’, which constitutes a number of regulatory actions
starting at the foundation of the pyramid with persuasion, then enforcement action increasing to the next stage of writing a letter, and if this action is fruitless in securing compliance then by applying civil penalties such as monetary fines. The next level of enforcement is criminal prosecution, if it does not attain compliance, then follows the use of license suspension and lastly licence revocation (Ayres & Braithwaite, 1992).

The other pyramid is that of regulatory strategies, which is concerned with providing types of enforcement strategies in an appropriate mix. At the very base of this pyramid is the self-regulation strategy, meaning that government regulatory agencies could convince industry that the most desirable method of regulation is self-regulation by explaining its intentions behind such regulation and then giving the industry freedom about how to achieve that goal. However, if the industry fails to live up to their commitment of self-regulation then the government can escalate its intervention against their non-compliance by enforcing self-regulation, then to command regulation with discretionary punishment, to command regulation with nondiscretionary punishment (Braithwaite, 1985, pp. 120–142).

Responsive regulation has not been restricted to business or what might be identified as economic regulation, but increasingly has been extended to regulate various government services such as ‘health, safety, welfare, working conditions and environment’ issues, as part of what has come to be known as social regulation (Sparrow, 2000 p. 7). Also, there has been growing research, especially after the publication of Grabosky and Braithwaite’s study Of Manner Gentle: Enforcement Strategies of Australian Business Regulatory Agencies (1986), to develop a prescriptive theory based on the ideas of both responsive regulation of Ayres and Braithwaite (1992) and that of smart regulation of Gunningham and Grabosky (1998), in a quest to overcome the criticism that had been associated with regulatory practice which focused on regulatory failure only. Some of the main criticism was
under-enforcement, which was connected to inappropriate powers and resources, politicians’ intervention, being captured and influenced by organisations targeted by the regulation and the existence of a culture of under-enforcement (Prenzler, 2000).

The prescriptive theory works with responsive regulation, where efforts are made to consult agencies in both the public and private sector, and the public and other stakeholders are also approached to get their feedback on what would constitute strategies to secure compliance. Currently, agencies have come to embrace a number of different tactics in their drive to accomplish compliance. This ‘regulatory mix’ (Gunningham and Grabosky 1998; Prenzler, 2002; Sparrow, 2000) involves strategies such as:

- Seeking legal and technical consultation in support of compliance
- Using prosecution and jail as an option against serious and repeat offenders
- Bringing prosecution to the attention of the public and potential wrongdoers
- Confiscating possessions that have been unlawfully acquired
- Obtaining special powers to enter property and seize documents
- Profiling complaints to identify patterns and trends of possible illegality
- Educating the consumer and the public
- Surveying complainants and gauging their satisfaction with the handling of their complaint
- Using independent and external auditing mechanisms.
Other writers have taken responsive regulation theory further, suggesting that as governments no longer do everything, having devolved responsibilities for various functions and services to a range of state and non-state actors. This makes problematic the traditional notion of accountability, centralised around parliament and courts. With the recent complicated expansion of the administrative state that has resulted in the increasing delegation of discretion to ‘actors’ situated a long way from the government centre, including government and non-government agencies, such a notion of accountability is becoming problematic. The challenge here is to strike a balance between the autonomy granted to those actors executing public powers and services and proper controls over them, regardless of which sector they come from (Scott, 2000, p. 38).

The main point for Scott is how to ensure that delegating responsibility and services for those agencies will be used for the good of the public rather than deviating to serve private interests. After acknowledging that the new public management (NPM) has further disjointed the public sector, he called for the development new mechanisms that could be extended to supplement or replace the traditional accountability means. For that particular purpose, he developed two models to secure accountability, one of interdependence and the other of redundancy.

Interdependence is a situation where interdependent actors depend on one another in their actions, based on their need for authority, information, expertise, or legitimacy in a way that each one of them would still need to report and account some of their actions to others within the same group. Redundancy is meant to create an ‘overlapping form of accountability that would work to limit the significance of any one of these mechanisms, but at the same time allowing each to work by itself if the other fails to do so, to avoid catastrophe (Scott, 2000, pp. 50–53).
All these developments lead to a discussion of the notion of joined-up government. In recent years, there has been a growing tendency to take a holistic approach to deal with public sector activities, coordinating and supervising the efforts of various ‘nodal’ entities involved in delivering government services. ‘Joined-up government’ is a term that originated in the United Kingdom to improve the horizontal coordination and integration of diverse government agencies; and it has been taken up in other countries. In Australia, for example, the federal government established what might be considered ‘the largest-scale attempt to produce integration’, by combining the efforts and activities of a number of governmental agencies into one establishment for the purpose of providing a number of services to the public (Perri, 2004, pp. 103, 124).

In describing the whole of the government perspective, Shergold asserts that this notion of ‘nodal governance’ requires the integration of both the development and the implementation of public policy. To him they are the two sides of the same coin. He also stressed the point that one of the major elements of this perspective is the importance of informing the stakeholders (those influenced by policy) and taking their ideas into consideration when formulating or applying policy (Shergold, 2004, pp. 11, 12). Wilkins also shared his views when he stated that the joined–up government approach is meant to target organisational separation by setting up integrated and coordinated initiatives that take in community perspectives (Wilkins, 2002, pp.114–116).

For example, the last few years have seen the emergence of a new concept in policing rooted in the increasing diversity of new institutions and technology-providing policing services. These nodes not only brought the new term of nodal policing but they resulted in bringing into the police force new attitudes, new organisational compositions and new tools, which as a result, fostered new policing approaches and procedures that have
effected how policing is carried out, where it should be carried out, who carries it out, who is in charge of authorising policing and how police could be held accountable (Shearing, 2005, p. 58).

The argument is that these nodes could not be referred to as policing networks because they tend to represent a broader concept, which takes in the police as one node with other contributors that govern security singularly or in cooperation with other providers such as the military and the rapidly-increasing private sector security providers. Shearing expanded his argument to add that the increasing number of security services have put the police in a predicament of how to react and respond to this nodal diversity. For decades, the police tended to assume that they had the monopoly over policing, however, today, with the existence of other institutions and providers, such an assumption is no longer valid. The police face the choice of either being on the beneficiaries' side, or being a victim of such expansion and nodalisation. The outcomes all depend on how the police react to these developments (Shearing, 2005, pp. 59–61).

In relation to integrity matters, the implication here is that the common standards of ethics and accountability should apply across the nodal points of the public sector in a unified system. Corruption can also occur between agencies, especially where they work in partnerships — such as police and prosecutors or politicians and public servants — hence there is a need for anti-corruption agencies to have a wide jurisdiction, to share intelligence and coordinate prevention efforts. Therefore, anti-corruption agencies have, on the whole, been designed to take a whole-of-government approach, including the police, politicians, public servants and the local government. The particular problem of police corruption has led to specialist police anti-corruption agencies in some jurisdictions, such as the Police Integrity Commission in New South Wales. However, most agencies either deal with
misconduct across the whole of the public sector, such as the Queensland CMC and WA CCC, or most of the public sector, such as the NSW ICAC.

3.1 The need to shift direction
The ultimate goal behind creating a national integrity system is the prevention of corruption. This strategic objective was derived from assessing previous experiences in investigating and tackling corruption worldwide. It was found that one of the major factors behind the reoccurrence of such phenomena is the reliance, when making reforms, on introducing responses that are dependent upon the application of the law, and the rigidity of punishment leading to unfair outcomes and the potential for misuse of powers, which, in return, led to the re-occurrence of the corruption. The unfair application of the law, such as focusing on the common citizen but ignoring those of better social status and the abuse of the enforcement powers by those in charge, can create a tyranny that could result in a new form of corrupt behaviour (Langseth, 1997, p. 9; Langseth Stapenhurst & Pope, 1997, p. 9).

The argument is that neither the law — the investigation — nor the enforcement-punishment on its own could correctly combat corruption in the public sector (Johnston, 1999, p. 224). The basic foundation for this argument is that both are reactive in nature and focus mainly on the implementation of the law rather than preventing the occurrence of corruption in the first place (Langseth, Stapenhurst & Pope, 1997, p. 10). It is not surprising that calls for adopting a system comprising not only reactive methods but also proactive approaches to tackle public sector corruption have increased in the last twenty years, citing that an effective corruption fighting approach should be a combination of investigation, prevention and education (Kennedy, 2004, p. 111).
As a result, the real questions that should be addressed here in the wake of the earlier discussion are: can public sector integrity systems, in particular the anti-corruption agencies, get the right mixture of reactive and proactive strategies to combat corruption? What factors are important for determining the appropriate use of different reactive and proactive strategies in building integrity and combating corruption in the public sector?

It seems that the issue of searching for an ideal, universal, public sector integrity system might not be applicable in this area of research because each country and society has its own unique political system and a different cultural background and heritage (Brereton, 2000, p. 2; Langseth, Stapenhurst & Pope, 1997, p. 22). Therefore, what might appear to be an ideal model in one particular jurisdiction might not necessarily be workable in another. For example, the Independent Commission Against Corruption (ICAC) model in Hong Kong is admired globally, but strong doubts remain concerning the transferability of such a model to other jurisdictions, because the creation of that particular model was based on Hong Kong’s special social fabric and political climate (Doig & Riley, 1998, p. 52).

### 3.2 Defining terminology

In a presentation to the International Society for the Reform of Criminal Law Conference 2001, Brendan Butler, the then-Chairperson of the Criminal Justice Commission of Queensland, asserted that the way forward for an oversight system was to lean more to a proactive approach for tackling corruption and misconduct. His argument was that dealing proactively with the causes of corruption would ultimately result in more informed suggestions about making changes to prevent corruption in the first place (Butler, 2001, p. 9).
The question here is what do we mean by reactive and proactive approaches? What are the differences between the two approaches? What strategies do each of these approaches advocate?

According to the Concise Oxford English Dictionary, reactive means ‘acting in response to a situation rather than creating or controlling it’, while on the other hand, proactive means ‘creating or controlling a situation rather than responding to it’.

In applying these two concepts to a public sector integrity system, there might be a connection between the re-emergence of the corruption cycle and the shortfalls identified with the reactive approach. The idea is that depending solely on an investigative model would not deliver the hoped-for result of preventing and reducing misconduct, largely because of its reactive nature (Homel, 1997, p. 43). In this sense, the reactive approach takes the situation as it appears and formulates the organisational resources to respond to it accordingly (Sparrow, 2000, p. 182).

Other deficiencies associated with the reactive approach were also identified by Sparrow in his promotion for reforms to regulatory and law enforcement agencies as being, (i) an approach that depends strongly on imposing or enforcing a ‘state authority’, (ii) an approach that would tend to concentrate mainly on dealing with the issues presented to it rather than allowing itself to focus on exploring ‘long-lasting solutions’ for such problems, (iii) an approach that waits for the criminal act or the harm to accrue rather than initiating measures that would reduce it, (iv) an approach that would cripple the organisational functions after becoming overloaded by daily incidents and hence not promoting it to look into other more important issues, and finally, (v) a reactive approach through its dependence on ‘enforcement statistics’ might produce a misleading account of the organisation’s problem-solving achievements (Sparrow, 1994, p. 3; 2000, p. 182).
Traditionally, oversight system functions were formed around responses (reactive) to an ‘existing corruption or misconduct problem’ (Butler, 2001, p. 9). As an efficiency indicator of the agency work, the main objective of these systems was to examine and expose corruption within the scope of charges and convictions against those involved (Brereton, 2000, p. 17). However, in recent years, calls for those oversight systems to shift toward a proactive approach have increased in the wake of the serious obstacles faced when investigating and prosecuting corrupt actions and people. Redirection became essential for those systems to continue working and accomplishing what they had intended owing to a few reasons, such as the difficulties in satisfying the legal requirements to prosecute corruption cases because of the lack of solid evidence for a conviction. For example, a Queensland woman approached the then-CJC claiming that she was the subject of a sexual assault by a police officer when he was called to help her after a domestic violence incident. The Commission investigation could not be upheld by strong independent evidence to support such an allegation because of the lack of independent evidence, despite the fact that the investigation had revealed that there were previous similar un-prosecuted complaints against this police officer. The case was turned over to the Misconduct Tribunal and the officer was dismissed (CJC 2000, p. 32).

Another reason is that most of the corruption and misconduct investigations tended to run for a long time and usually involved huge amounts of financial resources. In its 2005–2006 report, the CCC projected an overspending for its next year financial budget because of the plans to run an inquiry into whether any public officer had acted corruptly during the investigation, prosecution, appeals and the later imprisonment of Mr Andrew Mallard in association with the murder of Mrs Pamela Lawrence in 1993. Part of the reason for the projected overspend was the Commission’s plans to conduct a public hearing as part of this inquiry and the uncertainty
of how long the inquiry would last (CCC, 2006, p. 2). Lastly, relying on punishment can cause a backlash thus creating either an ‘us-versus-them’ attitude amongst the employees or an aggressive application that would lead, in the long run, to repression and the reoccurrence of the corruption (Brereton, 2000, p. 17; Langseth, Stapenhurst & Pope, 1997, pp. 9, 10).

Similarly, such calls for the need of the oversight systems to change direction to a proactive approach matched a move towards a problem-solving model similar to that of the problem-oriented policing initiatives in the early 1990s (Butler, 2001, p. 10).

Herman Goldstein first introduced the idea of a problem-orientation to policing in his article ‘Improving Policing: A problem-oriented Approach’ (1979) and then outlined the concept in more detail in his book ‘Problem-oriented Policing’ (1990). The concept was initiated as a response to the criticisms raised at that time on what had been known as the professional model of policing. This model had been adopted in the USA to safeguard police effectiveness and police integrity and the misuse of police discretion (Bullock & Tilley, 2003, pp. 1–3). Theoretically, the main idea was to drive police work more into recognising recurring problems instead of dealing reactively to the day-to-day incidents and then trying to recommend a solution (Matassa & Newburn, 2003, p. 197; Sparrow, Moore & Kennedy, 1990, p. 98).

In detailing the basic elements of this concept, Goldstein acknowledged that problem-oriented policing created, among other objectives, a fine mixture of reactive and proactive methods for policing.

Problem-oriented policing grows out of the critique of the current state of policing…. In a narrow sense, it focuses directly on the substance of policing — on the problems that constitute the business of the police and how they handle them. This focus establishes a better
balance between the reactive and proactive aspects of policing (Goldstein, 1990, p. 32).

Taking this concept a step further, Eck and Spelman present four levels of ‘A Problem-solving Process’ through their introduction of the SARA. This acronym stands for the four main phases necessary for a problem-oriented program: Scanning, Analysis, Response and Assessment (Eck & Spelman, 1987, p. xix–xx; Knutsson, 2003, p. 1).

Accordingly, each stage has its own objectives. During the scanning phase, the problem needs to be identified and brought to the attention of the department before it accrues. In the analysis stage, the work is formed around understanding the problem and looking at its causes. The next phase of the response represents the appropriate strategy and a solution for tackling the problem, based on the previous analysis. The final stage in this cycle of actions is the assessment phase, where the agency assesses the effectiveness and the impact of its solution. The information at this stage might be used to improve, redesign or create a new set of responses (Bullock & Tilly, 2003, p. 3; Eck & Spelman, 1987, pp. 42–51; Thibault, Lynch & McBride, 1995, p. 79).

The notion is that regulatory agencies, including those dealing with corruption and misconduct, can best serve their social targets if they are structured towards finding the causes that breed problems in the first place and dealing with them at hand (Butler, 2001, p. 9).

3.3 Strategies and their application in public sector integrity systems

The previous section has identified reactive approach deficiencies and the emergent call to adopt a more proactive mode for tackling corruption. Nevertheless, one needs to identify the strategies associated with each of these approaches as a way of exploring the idea of whether these strategies
could be combined in a holistic system or an organisation to deal with
public sector corruption.

It seems that the drive toward a holistic approach is not as new as might
appear at first glance. The turn of the century witnessed a global trend
towards holistic approaches to corruption control and prevention. For
example, the OECD 1999 survey of measures used by the Organisation’s
country members to guard against corruption in their public systems
revealed a common growing trend in these countries towards using a group
of mechanisms instead of relying solely on one strategy in their fight against
corruption. This holistic approach tended to be a mixture of both reactive
strategies such as law enforcement, investigation and punishments and
proactive mechanisms like preventative measures, education and ethical
training (Mills, 1999, p. 7).

3.3.1 Reactive strategies

For years, reactive strategies have been the primary solution to deal with
corruption. The idea is that because the community rejects the phenomenon
of corruption, any person involved and caught in such activity ought to be
detained, prosecuted and punished if proven guilty (Miller, Roberts &
Spence, 2000, p. 127). These strategies are explained in the following
sections.

Investigation

It would not be a surprise to find that the overwhelming majority of
oversight bodies were created as a result of corruption investigations or in
reaction to a public outcry and, therefore, they tended to focus in their
formative years on responding reactively to these pending problems (Butler,
2001, p. 9). The three case studies in this dissertation represent precisely
that: the CJC, now the CMC, is the product of the Fitzgerald investigation
into Queensland Government misconduct, the ICAC was established to
resolve the NSW public outrage about the increasing number of allegations of corruption, and the CCC was set up after the Kennedy Inquiry into WA police misconduct.

Despite the diversity in the public sector integrity system components, there are always some commonalities in their reactive methods to combat corruption. The majority of OECD countries, for example, reported that in addition to the existence of legislation that describes corrupt activities and establishes penalties, special anti-corruption laws and the existence of many forms of oversight against public sector misconduct, these countries still relied on investigation as a major deterrent against corruption. Most of these countries used their police force, prosecutors and courts and, in some cases, specialised forms of investigative units formed specifically to that end (Mills, 1999, pp. 15–18).

In Australia, the creation of the Criminal Justice Commission in 1989 — now the Crime and Misconduct Commission — caused much controversy partly because of its investigative power to scrutinise both the police and the state politicians, two elements of the state system that had remained largely out of reach (Homel, 1997, p. 37). Former Queensland Premier Wayne Goss, in his opening presentation at the ‘Standing Commissions On Crime and Corruption in Australia’ conference in 1997 argued that the core task for Standing Commissions ought to be investigation and prosecution and that research and prevention should be secondary functions (Brereton, 1997, p. 1). However, investigations are seen to be implemented either reactively or proactively — reactively, when based on complaints or after revelations of some sort of misconduct have taking place. Proactive investigations are usually based on data analysis or resulting from an assessment of possible weaknesses that might invite misconduct in a particular area of work (O’Keefe, 2002, p. 8).
The reactive type of investigations are based on the notion that people, in fear of being identified and penalized, would refrain from conducting or being involved in any type of misconduct or corrupt behaviours. However, if the threat of exposure and punishment fails, then these people need to be convicted and removed from their positions. Investigations have always been a mainstay of criminal justice. What is new about anti-corruption investigations in the case of agencies such as the CMC is that they are carried out by a powerful specialised agency whose task it is to pursue allegations against public sector officials. In the past these investigations may not have occurred at all or not been carried out properly.

The main task of the investigation is usually to determine the responsibility rather than exploring the causes behind such wrongdoing. Up until a few years ago, investigation was seen and implemented by most of the anti-corruption agencies as the main corruption deterrent strategy, and was also used as a measurement tool to evaluate the effectiveness of these organisations’ work. Most of the anti-corruption agencies tend to include the number of their investigations in their annual reports to highlight their efficiency (Brereton, 2000, p. 17; Homel, 1997, p. 43).

The majority of investigations of this kind are a reaction to either a complaint or a disclosure by a third party that reveals the occurrence of some sort of misconduct. They rely on evidence that must fulfil the legal requirements for a prosecution and justify punishment against a convicted person. However, when these investigations reveal that the evidence is not strong enough to bring criminal actions against those implicated, taking other administrative disciplinary actions might be justified in some cases (Brereton, 2000, p. 17; O’Keefe, 2002, p. 8). Not taking the latter option is a potential shortfall in a reactive investigative model, resulting in low levels of prosecutions.
Another challenge for reactive investigations is the tendency for these investigations to run over a long time and at considerable expense. There are several drawbacks, such as the difficulty of providing solid evidence that could lead to a successful prosecution, and emerging evidence that a system that depends on the use of force and punishment to counter corruption might lead to the re-emergence of the same phenomenon and the appearance of the so called ‘us-versus-them’ behaviour amongst the employees. This, in turn, could lead to employees ignoring misconduct and not reporting it to their superiors under the assumption that their peers would be severely punished. This has led these agencies to rethink their strategies for tackling corruption and make more use of alternatives to prosecution and punishment, such as informal dispute resolution, mediation, counselling and re-training (Brereton, 2000).

3.3.1.2 Reactive surveillance

Corruption transactions are usually secretive in nature with few or no witnesses or traces as can occur with other crimes such as assault or murder. Because of this, agencies have usually found it very hard to collect solid evidence to support their cases when prosecuting. Consequently, they have needed to depend on covert surveillance to gather much-needed reliable evidence (ICAC, 2006, pp. 16, 17).

The investigative model usually comes tasked with other investigative techniques. However, the decision as to which of these techniques should be used is always decided case-by-case. Surveillance is one of these methods but requires, in most cases, a reliable justification and special approval because, understandably, the law restricts its use, particularly in regard to telecommunication surveillance. For example, in the NSW ICAC, the authorisation to deploy this particular technique rests with a multiple set of the organisation’s senior management. Any request to use surveillance requires the approval of the Executive Director and the Strategic Operations
Division, and must be reported to the Investigation Management Group, a unit that oversees investigations (ICAC, 2006).

Structurally, surveillance capabilities are usually run through small units within the agency’s investigation department. For example, the NSW ICAC uses its surveillance power through the Strategic Risk Assessment Unit (SRAU), which also includes the Product Management and the Intelligence sections. The surveillance section is charged with physically conducting surveillance operations and closely watching people of whom the agency suspects of being involved in corruption (ICAC, 2004, p. 27).

The CMC of Queensland structured surveillance to function under its Operations Support Division. However, the CMC has, within its capacity, two distinct surveillance units. One is the Physical Surveillance Unit (PSU) which has the responsibility of physically executing surveillance operations, such as mobile, on foot or stationary operations, and can take recorded images of movements and interactions using various types of cameras. The second unit is the Technical Surveillance Unit (TSU) which works to strengthen the CMC’s investigations by using more advanced electronic surveillance systems, such as the electronic tracking system supported by satellite technology (CMC, 2004, p. 57).

3.3.1.3 Prosecutions
Despite the variety of techniques available for investigations (including the use of undercover agents, wiretaps and forensic analyses) not all investigations lead to the uncovering of significant corruption or of criminal offences (Hammond, 2005, p. 24). The high standards required to prove allegations of criminal offending by public prosecutors in criminal courts require major resources and can lead to investigations running for a long period of time (Langseth, Stapenhurst & Pope, 1997, p. 10). Initiating criminal proceedings against corrupt officials has never been an easy task.
The burden of proof required by criminal law tends to be an obstacle to a higher rate of prosecution for anti-corruption bodies. The bodies, therefore, need to be selective about which cases to investigate in-depth, with a view to a likely successful prosecution, and alternative strategies have to be developed to deal in some kind of meaningful and accountable fashion with the remaining cases (Prenzler 2000).

3.3.1.4 Enforcement (penalties and sanctions)
The enforcement aspect of the reactive approach is built around the idea that the enforceability of laws against violators would lead to more reporting of unethical behaviours and to more conformity with the organisation’s codes of conduct because of fear of punishment. However, having an effective enforcement procedure ought not to be confused with having a severe enforcement programme. Drawing on the responsive regulation theory discussed earlier, the idea here is that if the designated punishments were never applied they would become useless and be ridiculed by the perpetrators. A greater impact and a better deterrent might result from imposing a reasonable monetary punishment rather than having a law dictating a long period of jail time that is rarely imposed (Gilman & Stout, 2004, pp. 48, 72, 73).

The idea is to create sense and certainty among the organisation’s members that any misconduct will be met with quickly and surely by a penalty that ensures their conformity with their organisation’s ethical procedures, not the severity of a punishment that is never imposed. A clear example of this is the Philippines’ approach of designating the death penalty for ‘public plundering’ — because it has never been imposed, it has little deterrent effect. In contrast, surveys indicate that people are more likely to comply with the law if they expect immediate but moderate punishment (Gilman & Stout, 2004, pp. 72, 73).
3.3.1.5 Intelligence

Intelligence gathering is considered one of the supporting investigative model strategies in most cases, where the intelligence team works within a larger investigative team in which the results of that investigation are assessed to create new investigation paths (CMC, 2006, 86; Hammond, 2005, p. 26; Roger, 1996, p. 5). It could be used proactively when these capabilities are used to assess and analyse information related to an area that might be more vulnerable to corruption. It could assist in uncovering corrupt activities committed by suspected people and help to recognise hazards, actual or potential, that might harm the community (CMC, 2006).

3.3.2 Proactive strategies

The earlier discussion suggests why, by the turn of the century, there was a move to proactive strategies to combat corruption. As with proactive police management, the aim was to prevent misconduct from happening via a number of strategies such as proactive investigation, corruption prevention measures, integrity capacity-building, education and training, and law reform.

3.3.2.1 Proactive investigation

Proactive investigation is becoming widely accepted as the other type of investigation used to combat corruption. The assumption is that while reactive investigations tend to be very costly, it is more cost-effective for these agencies to dedicate a noticeable part of their financial resources toward limiting the necessity of carrying out investigations in the first place (Brereton, 1997, p. 2).

Proactive investigation is fundamentally different from the reactive type of investigation and so are its investigative mechanisms. While reactive investigations are based on complaint or disclosure, proactive investigations are based on assessing and analysing data or information for possible weak
points that may provide opportunities for corruption in a certain area of the public sector. To that end and for conducting an effective risk assessment, anti-corruption agencies need to have a well-resourced research unit (O’Keefe, 2002, p. 9).

Another major difference between the two types of investigations is the quality of the investigators needed to carry out the investigations and the necessary skills they must possess. Taking into consideration that no complaint or disclosure has been made and that there are no suspects to trigger the investigation, the proactive investigation needs an investigator with special talents, such as the ability to explain and arbitrate human nature, with a questioning and analytical mind and of a naturally doubting disposition (O’Keefe, 2002, p. 10).

Despite the fact that a proactive investigation tends to look mainly for the reasons behind the occurrence of corruption, it will not replace the investigation of complaints and disclosures; thus, it is not suitable for determining culpability. However, if it is combined with the reactive investigation of claims and disclosures, it can form the basis of an effective preventative model (Homel, 1997, p. 43). The Parliamentary Crime and Misconduct Commission, in its Three Year Review, noted that as part of the CMC’s new approach toward proactive policy, all investigations should be dual-aimed, firstly, to assess culpability and secondly to determine the system failures that could be adjusted to provide more resistance to corruption (PCMC, 2004, p. 24).

3.3.2.2 Corruption prevention and building integrity capacity

In reporting the outcomes of its follow-up research in its ‘profiling the NSW public sector, functions, risks and corruption resistance strategies project’ to examine the developments in implementing main corruption prevention strategies from 2001 up to 2004 within NSW public sector organisations, the
ICAC reported a high rate of implementation of preventative measures across the New South Wales public sector (ICAC, 2005, p. 10).

The majority of the examined organisations confirmed that adopting a multi-faceted approach had strengthened their ability to control corruption. This approach included ‘ethical leadership, effective internal control mechanisms, corruption reporting systems and comprehensive policies and procedures’ (Moss, 2003, p. 65).

The issue of using prevention policies is driven by the efforts that result in the institutionalisation of values and procedures to combat corruption among the public and in the public sector organisations by exposing the harm that corruption practises can inflict at both the individual level and in an organisation (Johnston, 1999, p. 225).

The institution will not only drive people and government units to function ethically, but will also assist in building the capacity to guard against misconduct. The Crime and Misconduct Commission of Queensland, for example, initiated a ‘Capacity Development Coordination Unit’ as an extra arm to help its activities in capacity-building functions (Wilson, 2004, p. 80).

This multi-faceted approach might prove to be the appropriate path toward corruption prevention, ‘Successful corruption prevention work will depend much on the cooperation and whole-hearted involvement of the client organisation’s management and staff …’ (Findlay & Stewart, 1992, p. 71).

### 3.3.2.3 Education and training

Education and ethical training has become a common component of integrity systems in recent years. The need to sustain integrity systems on the one hand and the importance of laying out a long-lasting ethical support foundation on the other makes ethical education and training an important element in any integrity system (Johnston, 1999, p. 225).
Education should not be limited to public sector employees, but should include members of the public; training must not be confined to top-level management, but should cover the whole spectrum of the organisation’s staff. Educating the public and providing ethical training to employees regardless of its diversity will only reinforce both the public and the employees’ beliefs, values and commitment toward integrity and ethics (Gilman & Stout, 2004, p. 66; O’Keefe, 2002, p. 11).

The following chapters on each case study will explore in greater detail how each of these Commissions conduct their own educative function.

### 3.3.2.4 Research

Similar to intelligence importance in the reactive-based model, research is considered the supporting strategy for the proactive approach, the argument being that ‘research-based strategies’ can positively effect the work of the integrity systems through the evaluation of its activities’ efficiency and impact which can assist in articulating and forming strategies to prevent corruption. It can also provide greater assistance in the investigation of corruption by directing investigative teams to a new cycle of the area to be examined (Brereton, 1997, p. 2).

The vital role of research in fighting corruption has been recognised globally. Because of the secretive nature of its activities, the argument states that there is a great deal of corruption that continues undetected. The argument stresses the significance of research in identifying ways of intervention before corrupt acts occur. Basically, to be better prepared for prevention, one needs first to have more knowledge about this phenomenon (Gorta, 2001, p.11).

For years, anti-corruption agencies have tended to rely on their researchers to evaluate agency effectiveness, not only for advice on policy alternatives but also as a tool of validating their existence and their worthiness. Many of
these organisations are held accountable to their parliament; and to satisfy their accountability requirements, the need has developed for these organisations to provide solid evidence of their effectiveness through the presentation of statistical data on their activities (Brereton, 1997, p. 3).

Another area where research was found to be of vital importance was its contribution to these agencies’ efforts to effectively use their investigative resources. For example, by profiling complaints received by the agency, research could identify areas where there is a higher risk of corruption or discover patterns of misconduct in a particular area. Thus, the agency would have the opportunity to redirect its efforts either by focusing its limited resources towards the most vulnerable areas or by implementing some proactive schemes (Brereton, 1997, p. 6).

### 3.3.2.5 Integrity testing

Integrity testing is not a new tool in the fight against corruption. It has been used for many years not only to tackle police misconduct and corruption but also to examine other public officials in countries like the United States of America since as early as the 1970's. Some other large corporations also tend to use it in testing their staff’s conduct (Homel, 2002, p. 159). The basic idea of targeted integrity testing is to subject targeted officials of the public agency to a pre-constructed and monitored situation similar to their daily job task with a clear opportunity to act dishonestly and corruptly without any inducement or entrapment and to examine their behaviour in such a situation (Homel, 1997, p. 2).

Integrity testing could be conducted in two forms. Targeted integrity testing is carried out against specific individuals or a group and usually as a result of information or complaints indicating corruption when there not enough evidence to prove it or take criminal, administrative prosecution or disciplinary action. The other form of integrity testing is random testing,
which does not target a specific individual but rather is directed towards all of the organisation’s employees (Wood, 1997, pp. 510–513).

There is a debate in relation to the question of in what format should integrity testing be exercised. The discussion stems from different points of view, relating to the efficiency of both types of integrity testing in uncovering misconduct. After examining the NYPD random testing program in 1996, KPMG reported that random testing was not as effective in uncovering criminal wrongdoing or other procedural failure or in identifying corrupt police officers when compared to a targeted scheme. There is an issue of fairness relating to the application of random testing, with concerns have risen that random testing is unmerited and invasive on the part of examined individuals. The third aspect in this discussion derives from the issue of entrapment, with two opposing point of view. Those who would argue for integrity testing rule out the entrapment element as a problem as the individual, according to this argument, is given the opportunity to make a decision, and can make their own free choice. The opposing argument is based on the idea that integrity testing focuses on future crime rather than current or past crimes, which necessitates unjust and unwarrantable enticement for wrong doing, while in targeted testing such issues are reduced, because the suspicion of corruption is usually driven from either leads or information of corruption that need to verified by the test (Prenzler & Ronken, 2001, pp. 324–325).

In Australia, police unions and associations viewed positively the application of targeted integrity testing. For example, during the Wood Inquiry into NSW Police Service corruption 1994–1997, the Police Service submitted to the inquiry to use integrity testing as one of the mechanisms to curb police misconduct. At the end of the inquiry, amendments were made to the various police Acts and the Drug and Misuse and Trafficking Act to permit the use of the integrity testing and to provide legal protection for those
acting to execute the test. The Wood final report acknowledged the fact that
the New South Wales Police Service is now using integrity testing as a
regular practice, with the support of both the Service administration and

In Queensland, the Police Union was angered by the support shown by the
Queensland Council of Civil Liberties in 1996 for the introduction of
integrity testing. Following the outcome of Project Honour — a program
that reviewed ethical matters within QPS — the police have shown
widespread support for the introduction of such procedures in the Service

This strategy is considered to be holistic in its effect. It not only tests the
actions of the public official, but also examines the process and the system
in which they function. It provides a ‘deterrent’ to the rest of the
organisation’s employees (Newton, 1997, p. 223). In Australia, only the New
South Wales and Victorian Police were using ‘Targeted Integrity Testing’ in
the 1990s. In cooperation with the QPS during the Carter Investigation into
police involvement in organised crime in 1997, the CMC, then the CJC,
conducted a number of targeted testings (Prenzler & Ronken, 2001, pp. 327,
332). Currently, the CCC in Western Australia has the capacity to use this
strategy for dealing with public official corruption other than police
misconduct.

The hesitation over introducing this strategy to deal with public officials’
misconduct in most of the Australian jurisdictions stemmed in a large part
from ‘ethical and legal concerns’ such as issues of privacy, inducement,
entrapment and provocation versus the person’s legal rights. Accordingly,
Australia is predicted not to see the introduction of this strategy in its two
formats of targeted or random testing in the near future. The coming years
might see an increased implementation of targeted testing only (Prenzler & Ronken, 2001, p. 324; Homel, 2002, p. 161).

In discharging this strategy, the CCC reported that during 2005/2006 it had conducted three integrity test programmes, ‘with criminal charges resulting from some of these operations’ (CCC, 2006, p. 39). In its efforts to enhance its capacity in this area, the Commission, in cooperation with the Australian Federal Police, runs a special course aimed at enhancing the ability of any staff likely to be involved in applying this tactic. Special attention was given during this course to the WA legislative requirements. The Commission released no further details in this regard (CCC, 2006 p. 39).

3.3.2.6 Early Warning systems

The Early Warning system is yet another new proactive strategy used originally to deal with police corruption. It is considered a ‘data-based management tool’ to recognise officers with troubled behaviour. The measure proactively intervenes in ‘straightening up’ such problems before the behaviour leads to the point where formal disciplinary action needs to be taken (Walker, Alpert and Kenney, 2001 p. 1).

The idea of an early warning system means identifying, recording and analysing in an organised and detailed method the overall issues that might lead to an officer being involved in a corrupt act. Then, intervention procedures are designed that would avoid corruption being committed (Bassett & Prenzler 2002, p. 131; Walker, Alpert & Kenney, 2001 pp. 1, 2). It has been stated that this strategy is still in its infancy and its use has been limited to police misconduct (Bassett & Prenzler 2002). Police systems use citizen complaints, the discharge of firearms, litigation and other indicators to trigger interventions. The application of this mechanism to deal with public official corruption other than the police needs to be based on reliable ‘indicators’ to serve as a base for such a warning system, but citizen
complaints would be a major source. Given this mechanism is new and little research has been carried out to examine its applicability to misconduct other than with the police; it will take much time, probably years, to be fully integrated with other proactive strategies.

### 3.4 Institutional options

Beyond the question of a reactive or a proactive model, there are certainly some other issues that might be considered when attempting to formulate an institutional option for an integrity system for the public sector.

In his discussion on designing institutions of integrity, Uhr contended that any efficient ‘ethical’ control needs the cooperation of two kinds of institutions of integrity — one that seeks to explain values and another that sets out to confirm ‘performance’. According to his argument, neither one of these two institutions alone would be able to uphold the ‘merit-based democratic governance’ integrity if each is not supported by the other. The effectiveness of any ‘ethics regime’ can be valued in accordance with its ability to come up with mechanisms and policies that are strong enough to institutionalise procedures for the proper conduct of the bureaucrats (Uhr, 1999, p. 105).

To best illustrate these issues and as a result of their analysis of the public debate into what would be the most appropriate public integrity system for the State Government of Victoria in the wake of the Victorian Police corruption ‘crisis’ — particularly serious corruption within the drug squad — Brown and Head broke the issues into eight different yet overlapping categories (2004, p. 22). Table 3.1 illustrates briefly the different institutional options available to oversight systems.
Table 3.1: Institutional options for oversight systems

<table>
<thead>
<tr>
<th>Function</th>
<th>Institutional Option</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of investigation</strong></td>
<td>Public (such as Royal Commissions) versus less public approach (Ombudsman)</td>
</tr>
<tr>
<td><strong>Who is conducting the investigation</strong></td>
<td>Internal–in-house-examination (such as internal affairs departments) versus external review — outsider investigation (such as corruption commission investigations)</td>
</tr>
<tr>
<td><strong>Scope of Jurisdiction</strong></td>
<td>Agency-specific such as (particular government sector) versus sector-wide review jurisdiction such as (an overall public sector jurisdiction)</td>
</tr>
<tr>
<td><strong>‘Horizontal Jurisdiction’</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Who is included/investigated</strong></td>
<td>Limitation on who should be included for investigation under their jurisdiction; examples, Ministers, ministerial staff, politicians or only other public officials</td>
</tr>
<tr>
<td><strong>‘Vertical Jurisdiction’</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Way to approach corruption</strong></td>
<td>Investigation versus research and policy development</td>
</tr>
<tr>
<td><strong>Accountability</strong></td>
<td>Internal measures versus external accountability regime</td>
</tr>
<tr>
<td><strong>Resources</strong></td>
<td>Adequate financial &amp; administrative resources versus limited and controlled resources</td>
</tr>
</tbody>
</table>

### 3.4.1 Public versus less public approaches (types of investigation)

The last two decades of the 20th century have witnessed an increased number of ethical scandals around the globe. The most popular institutional responses to these outbreaks were the formation of either a ‘Royal Commission or a one-off special inquiry’. For example, Australia has a long history of creating Royal Commissions to examine matters of political and public wrongdoing because of their ability to uncover ‘systemic problems’, their coercive power, their independence from the current political regime and their ability to make and pave the way for reforms, and the surrounding public and media publicity (Ransley, 2001, pp. 1, 55).
On the other hand, there is another but lower profile institutional format that could be used to examine similar situations of wrongdoings, the Ombudsman. This authority comes with a similar kind of coercive power to that of the more famous Royal Commissions (Brown & Head, 2004, p. 17).

### 3.4.2 Internal versus external reviews

Though most of the integrity agencies are formed to be independent in the way they conduct their investigations, many of these tend to rely, over the years, on the examined organisation’s internal investigation capability (Brown & Head, 2004, p. 18). With the desire of the integrity agencies to alleviate their workloads so that they can use their resources in other areas, there is a growing awareness that public agencies’ management should be in charge of cleaning up their own mess and accepting the increasing responsibility of preserving the integrity and ethics in their organisation.

The institutional issue that should be under consideration in this situation is where to draw the line between what can be handled by the line agency (internal investigation) and at what stage the core integrity agency should intervene (external investigation) if deemed necessary. To overcome such an issue, we have seen some of the core anti-corruption agencies begin a cooperative liaison with line agencies with the aim of strengthening their internal capacities in handling complaints, but still maintaining their right to handle more important cases. Balancing these two approaches seems to result in a fruitful result, both in raising the line agencies’ confidence in dealing with its own misconduct on the one hand, and allowing the core agencies to concentrate more on other functions, such as research and prevention issues (Brown & Head, 2004, p. 18).
3.4.3 Scope of jurisdiction (agency-specific versus sector wide review) – horizontal jurisdiction

Another institutional factor is the scope of the anti-corruption agency authority. This scope is related to the issue of whether the agency should be limited to examining only some particular segments of the government branches or should be granted a wider responsibility that includes investigating misconduct across all government sectors and the private sector. For example, in the wake of the Wood Inquiry in New South Wales, Australia 1994, the Police Integrity Commission (PIC) was established exclusively to look at police misconduct in that state (Brown & Head, 2004, p. 19).

3.4.4 Vertical jurisdiction (who is included) – limited versus expansive jurisdictions

Not only might there be limitations on what the integrity agencies can oversee but there could be limitations on who they could investigate. In Australia, the Ombudsman’s authority does not extend to investigating ‘ministers, ministerial staff, politicians or judicial figures’, while on the other hand, most of the anti-corruption agencies have the authority to examine public figures and any person related to the matter being investigated, regardless of their position in the hierarchy (Brown & Head, 2004, p. 19).

3.4.5 Functions and responsibility – misconduct versus mal-administration

Creating an integrity oversight agency not only involves drawing up its boundaries in terms of the scope of its jurisdiction and who is to be included under its investigative authority, but it also must involve determining what is its main function of investigation. Should it be directed purely towards exposing and examining misconduct or should it focus more on the examination of administrative shortfalls?
The argument is that investigating corruption cases tends to be resource and time-consuming compared to dealing with maladministration, and therefore, combining both tasks within one agency might result in overloading that organisation with more responsibilities than it can appropriately handle or, on the other hand, it might be deflected from its original duties (Brown & Head, 2005, p. 93).

### 3.4.6 Investigation versus research and policy

For years, bringing corrupt people, both in the public or the private sector, to justice represented the sole and most popular function of integrity oversight agencies. However, the few last years have shown a gradual institutional process going beyond such limited functions, with the aim of strengthening the general integrity atmosphere and procedures and limiting the prospects and chances of corruption either in the public or the private sectors (Brown & Head, 2005, p. 93).

This institutional change is currently well represented by the adaptation in many integrity agencies of what have become known as the ‘research and policy functions’. The Australian example of the Crime and Misconduct Commission CMC, the Independent Commission Against Corruption (ICAC) and more recently, the Western Australia Crime and Corruption Commission (CCC) represent examples of this growing institutional trend towards a mix of investigation and research (Brown & Head, 2004, p. 21).

The integration of these newly-introduced changes within the ‘capacity-building and corruption prevention functions’ of the integrity bodies was intended to avoid the possibility of the integrity system becoming so overwhelmed with handling increasing numbers of complaints to the degree where complaint-handling became its ‘sole function’ (Prenzler, 2004, p. 109). To escape such a scenario, there could be the need to define this role of an
integrity system in its ‘statutory objectives and structures’ (Brown & Head, 2004, p. 21).

3.4.7 Integrity system accountability

Although most of the oversight bodies are formed to act and exist independently of the government of the day’s interference, there is an important institutional design question that remains to be answered relating to the accountability of these agencies themselves. How can we make sure that those who are in charge of guarding our public sector are themselves guard against falling into the same traps of misconduct?

One of the most common institutional answers is to make these bodies accountable to the parliament through specially designated parliamentary committees. For example, the ICAC of NSW is subject to several accountability mechanisms, (i) the Operation Review Committee (ORC) that secures accountability in the Commission’s decisions to examine the public complaints, (ii) the Parliamentary Joint Committee (PJC) which ensures the accountability of the ICAC activities and reports through monitoring and reviewing, (iii) the NSW Ombudsman’s inspections of telephone interceptions and the use of controlled operations and, (iv) the auditing of the ICAC expenditure of funds by the NSW Treasury and Audit Office (ICAC, 2004, p. 51).

The CMC in Queensland is made accountable through similar means. The Parliamentary Crime and Misconduct Committee and the Parliamentary Crime and Misconduct Commissioner are the key elements that hold the CMC accountable to the Parliament and the Queensland public. The Committee’s main functions are to supervise and examine the performance of the CMC, to report to parliament on issues related to the CMC and to play a vital role in the selection of the CMC Commissioner, whose role is primarily to investigate complaints against the CMC. Another form of
accountability measure applied to the CMC is the three-yearly review, in which the PCMC is required under section 292 (f) of the Crime and Misconduct Act 2001 to review the CMC’s work and report to parliament. The Commission is also accountable for some aspects of its activities to the Supreme Court and the Public Interest Monitor (CMC, 2004, pp. 64–65; PCMC, 2005).

The Corruption and Crime Committee in WA is also subject to similar scrutiny. The CCC is held accountable through several means, including the Joint Standing Committee on the CCC as the main accountability mechanism reporting directly to the parliament on its activities and aided by the Parliamentary Inspector. Both the Supreme and the Magistrates Courts of WA and the Federal Court are in charge of ensuring the proper use of some of the CCC powers, while the Attorney General and the Auditor General monitor its financial activities. The Ombudsman is yet to audit the CCC compliance with the Telecommunication Interception Acts (CCC, 2005, p. 7).

3.4.8 Resources

Another important element in integrity system design is the level of both the financial and staff resources allocated to the oversight bodies. The idea is that authorities might try to create the illusion of having in place the required integrity system, but in reality not providing it with the most needed resources, making system efficiency and capacity, such as it is, weak and limited (Brown & Head, 2004, p. 2).

The number of staff and the financial budget granted to an integrity oversight body have been recognised for years as essential ‘measures’ of such an organisation’s capacity. The capacity of the then Criminal Justice Commission, now the Crime and Misconduct Commission of Queensland for example, was affected when its budget was reduced by seven per cent in
1996. This led to a chain of reductions in its various activities, lay-offs in civilian manpower and the discontinuation of about 14 seconded police officers’ services (Lewis, 1997, pp. 284–285).

3.5 Towards a model
Assessing the outcomes of implementing anti-corruption initiatives in the last two decades, Jeremy Pope of Transparency International associated such experiences with a number of hindrances that might negatively affect any progress in the fight against corruption:

- The existence of a ‘corrupt bureaucracy’ had always played a vital role in jamming any serious efforts by governments to bring in changes

- Uncommitted political leadership

- The lack of coordinated and well-organised reforms that would sustain the required continual unshakable support of both the government and the public.

- Dependency on the legal reforms that resulted in cruelty, the abusive use of enforcement procedures and the re-appearance of more entrenched corruption in some cases

- Uneven application of reforms and laws, that tended to discriminate between rich and poor people

- The tendency to rely on governmental activities to bring about reforms, without any serious attempt to rally the general public behind the drive

- The quick evaporation of reform initiatives in light of achieving minimal rapid success or the departure of the reform leaders (Pope, 1999, p. 98).
As a result of past global experiences, there is a growing consensus that to effectively fight this phenomenon there should be a collective approach that encompasses multiple and different types of strategies designed to function in an interconnected way to achieve three main objectives. Firstly, limit corruption opportunities and their benefits. Secondly, strengthen the prospects of detecting such actions and thirdly, provide terms and measures that would ensure that the involvement in such illegal behaviours would not be tolerated but punished (Stapenhurst & Kpundeh, 1997, p. 4).

To work toward accomplishing these main objectives means the adaptation of what has become known as the ‘Holistic Anti-corruption System’, which takes in both reactive and proactive strategies. However, there are two main issues to be taken into consideration here. The first one is the competency of every single component of both reactive and proactive systems. The second issue is related to the degree of unity between those two systems’ elements; in effect, what is the level at which these systems would jointly complement, strengthen and support each other in curbing corruption? (Miller, Roberts & Spence, 2005, p. 150). A strong interrelationship is considered to play an important role in the effectiveness and success of a holistic system controlling corruption (Pope, 2000, p. 34).

Beyond integrating both reactive and proactive strategies in any holistic system, there are a number of factors that help in promoting an effective national integrity system. However, because of the diverse prototypes of corruption and because such patterns do change over time and are not the same in all societies, there are more global variations in anti-corruption policies (Doig & Riley, 1998, p. 45). This diversity also includes the setting up of the components of the integrity system, with more questions into the effects of society’s choices to favour one particular model/design or a strategy over others and the sort of factors that influence such decisions.
That being said, there are common factors contributing to an effective integrity system. It is well understood that the particular culture and social fabrics of the society are a major factor in the way those societies elect to combat corruption. Although the transferability of a successful model in a particular society to another is possible, it will not redeem the exact outcomes if it is not modified to suit the special aspects of the new society’s culture, social conditions and the national aim behind setting up the system (Langseth, Stapenhurst & Pope, 1997, p. 22). For example, there are some questions about the effectiveness of the Hong Kong ICAC model if it were to be transferred ‘as is’ to other larger jurisdictions with different political and social orders. The argument is that the ‘ICAC is unlikely to be right for every country’ (Johnston, 1999, p. 225).

Another factor that affects the workability of the integrity system in a society is the political leadership commitment and support for the creation and success of such a system (Kaufmann, 1998, p. 64). In Australia, and despite the fact that the country ‘is not generally regarded as rife with corruption’, one major challenge to most of the sectoral and jurisdictional integrity systems is the absence of a broad system that would clearly articulate and implement ‘parliamentary and ministerial standards’ to end the public’s doubts about the effectiveness of the so-called ‘parliamentary and ministerial self-regulation’ (Brown, 2005, pp. iv, 1, 73, 85). For years, the Australian legislatures were hesitant to produce and put into effect a code of conduct for themselves. ‘The Australian story of the development and enactment of parliamentary codes of conduct is a saga of avoidance, delay, resistance and doubt. That story is, of course, far from complete’ (Preston, 2001, p. 59). Hong Kong, on the other hand, is an example of how a committed political system can create a successful anti-corruption entity respected and supported by the public. The HK ICAC was a political creation to preserve the country’s reputation globally on the one hand and
on the other to assure the public that having an independent and specialised anti-corruption agency was the most effective way to deal with such phenomena (Doig, 1995, p. 159; Huberts, 2000, p. 213).

The involvement of the public, the civil service and other important elements of society is also another factor that could effect the implementation of a national integrity system. Such participation and the debating of suggested reforms would work to enhance the feeling of ‘ownership’ and strengthen the value of these reforms among all participating factions of society (Kaufmann, 1998, p. 65; Langseth, Stapenhurst & Pope, 1997, p. 23). Although governments can design and present an anti-corruption system, the hard task is to rally the public to support such initiatives. The common citizen’s support and involvement in their government’s drives to tackle corruption is of vital importance to the success of such plans, either by standing behind its implementation or even by assisting its implementation by direct involvement in anti-corruption activities initiated by the government or by ‘co-producing’ activities that strengthen their government initiative to that end (Grabosky, 1990, p. 125).

Citizen participation in corruption control activity is an important means of chilling the climate of apathy within which corruption flourishes, and citizen vigilance can be a deterrent to illicit transactions (Grabosky, 1990, p. 125).

For example, in Queensland, Australia, the Fitzgerald Inquiry’s recommendations in 1989 were widely appreciated and publicly accepted to the degree that the current government had no option but to implement all of the recommendations (Fleming & Lewis, 2002). The Independent Commission Against Corruption of Hong Kong has in its arsenal, the ‘Community Relations Department’ responsible, amongst other, things for strengthening the public support of its activities, with eight ‘regional offices’ acting as the front line to receive complaints, disseminate information and
act as a preliminary consultative body. The agency was able to generate enough public involvement to sustain its creditability as an effective anti-corruption organisation (Huberts, 2000, p. 216).

3.6 A road map towards a model
Before envisioning what might be needed to obtain the right mix of the two elements for a model that would work more effectively and efficiently than one based on a single approach, one must first draw a ‘road map’ for an anti-corruption system that contains the basic elements of what could be used as the foundation for establishing a public sector integrity ‘watchdog’ in most societies with a serious attention of having one.

It seems that to have an effective anti-corruption unit, there is a need for a balanced combination of reactive and proactive strategies (see Table 3.2). However, combing these two approaches into one agency will not be an easy task. The issue of how each of the anti-corruption agencies ought to obtain a balanced combination of both approaches remains one of the unanswered questions about the integrity system. Over the years, there has been a constant shift on the importance of each one of the strategies, where integrity organisations tend to lean towards one approach at certain points and to another in different circumstances. Table 3.2 summarises the main strategies for an oversight system.

Another issue to be considered is the level of financial and administrative resources needed to support each set of approaches. A continual balance is required to assure that neither one of the approach strategies is being overlooked for the benefits of the other. Having a clear guideline that clearly distributes the agency financial and staffing resources between each function might yield the needed balance for an effective public sector agency that implements both approaches.
Table 3.2: Proposed main strategies for an oversight agency

<table>
<thead>
<tr>
<th>Main Strategies</th>
<th>Reactive</th>
<th>Proactive</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>• Surveillance</td>
<td></td>
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<tr>
<td></td>
<td>• Investigation</td>
<td></td>
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<tr>
<td></td>
<td>• Prosecution</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Enforcement (Penalties &amp; Sanctions)</td>
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<tr>
<td></td>
<td>• Corruption Prevention</td>
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<tr>
<td></td>
<td>• Education</td>
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<tr>
<td></td>
<td>• Training</td>
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<td></td>
<td>• Integrity Capacity Building</td>
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<td></td>
<td>• Law Reform</td>
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<td></td>
<td>• Integrity Testing</td>
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<td></td>
<td>• Early Warning Systems</td>
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<table>
<thead>
<tr>
<th>Supporting Strategies</th>
<th>Reactive</th>
<th>Proactive</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Intelligence</td>
<td></td>
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<tr>
<td></td>
<td>• Research</td>
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<table>
<thead>
<tr>
<th>Central Coordination unit</th>
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</table>

<table>
<thead>
<tr>
<th>Other Supportive Elements to the Oversight System</th>
<th>Reactive</th>
<th>Proactive</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Police</td>
<td>• Training Institutions</td>
</tr>
<tr>
<td></td>
<td>• Commissions</td>
<td>• Organisation Internal ethics codes</td>
</tr>
<tr>
<td></td>
<td>• Public Prosecution office</td>
<td>• Organisation’s leadership</td>
</tr>
<tr>
<td></td>
<td>• Other investigative branches</td>
<td>• Office of Public Service</td>
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To put the above two approaches into a workable organisational structure, the proposed common model for an integrity agency would group the strategies into three main departments that would act as the foundation for the agency.

1. **The Operation Department:** this usually serves as the main hub for the agency’s crucial work of receiving, analysing and investigating corruption
allegations brought before it. In most cases, this department is also responsible for managing the intelligence function of the organisation. This inclusion is a result of the need to strengthen its investigative capacities with first-class reliable information related to the cases being examined. For example, the Independent Commission Against Corruption of New South Wales includes all these functions under the umbrella of its ‘Strategic Operations Division’, as does the Corruption and Crime Commission of Western Australia, in addition to the case of the Corrupt Practices Investigation Bureau of Singapore (ICAC, 2006; CCC, 2006; CPIB, 2006).

The work of this department is tailored in many cases to include most of the reactive approach strategies, beginning with surveillance of corruption suspects, to investigating corruption allegations and the presentation of a completed investigation for prosecution.

One of the latest trends with the work of anti-corruption agencies is the tendency to rely upon other investigative and enforcement agencies to carry out some of its obligations yet reserving the right to supervise their work. The CMC of Queensland tends to give the Queensland Police Service the responsibility of examining complaints of misconduct within its ranks (CMC, 2006, p. 93). This inclination toward establishing a constructive working relationship between anti-corruption agencies and other law enforcement organisations or those falling under their jurisdiction not only enhances these organisations’ sense of responsibility toward keeping their house in order in relation to preserving integrity, but it also takes the pressure off the integrity agency. The integrity agency can then concentrate on other aspects of its duties, such as research and building integrity capacity in public sector organisations (CMC, 2006, p. 68). However, for the anti-corruption agencies that lack the adequate financial and staffing resources to carry out work, such as surveillance or gathering of needed intelligence, they
can use this approach to form a solid workable relationship with these specialised organisations to carry out these duties on their behalf.

2. **The Prevention and Education department**: the increased establishment of anti-corruption agencies in recent years came as a result of governments’ efforts to improve their determination in preventing corruption before it happened. The realisation that putting preventative measures into action would yield better results than prosecution advanced the adaptation of a more comprehensive approach in dealing with corruption that can take in both investigation and prevention (Stapehurst & Petter, 1997, p. 324; Doig, 1995, p.159).

Consequently, most of these agencies tended to devote much of their resources to building integrity capacity and corruption resistance measures in public sector organisations through providing information and consultations, reviewing implemented procedures to fight corruption and making recommendations about how best to handle suspected acts of misconduct. For example, the Hong Kong ICAC, the NSW ICAC, the CMC of Queensland and the CCC of WA have departments with various titles devoted to conducting this aspect of their works (ICAC, 2006; CMC, 2006, 2006).

Educating the public and communities about public sector corruption has been a focal issue for these agencies. Activities range from pamphlets, posters, newsletters, TV commercials, youth education web sites, meet-the-public sessions, press releases, and audio-visual productions, to dedicated web-based TV channels, as is the case with the Hong Kong ICAC. The idea is that educating the public will always result in strengthening its support for these agencies’ efforts to fight corruption (Skidmore, 1996, p. 123; Gorta, 2001, p. 18).
Hammond, the head of the Corruption and Crime Commission of WA affirmed this point when he talked about the goal of his Commission, the CCC:

Of course, the Commission’s efforts are not solely focussed on prosecution or disciplinary action. Its corruption prevention and education function ensures a broader focus in terms of the implementation of systemic change within the public sector, with the ultimate aim of reducing the incidence of misconduct (Hammond, 2005, p. 1).

Research into corruption is another growing aspect of the work of the anti-corruption agencies. Because most corrupt transactions are secretive in nature, there is always the need for more information to be able to strike hard at this problem. To this end, research has been used as a tool to improve the understanding of the complexity of this phenomenon and to explore other associated issues with the aim of passing on the results to complement the investigative part of the agencies’ work (Gorta, 2001, p. 12; Hindess, 2004, p. vii; ICAC, 2005, pp. 16, 17).

In conducting research, agencies examine different venues varying from surveys, focus groups, examining current literature, investigating employees’ points of view and profiling public sector components, such as the case with the NSW ICAC ‘Profiling The NSW Public Sector’ and the CMC of Queensland ‘Profiling The Queensland Public Sector’ research projects to explore their public sector organisation’s misconduct risks and efforts to provide a counter-attack against corruption. These venues provide them with the necessary help to minimise such risks and implement strategies in how to prevent and deal with corruption (Butler, 2004, p. iii; Moss, 2003, p. iii). However, there is still a need to conduct ‘Complaints Profiling’ in an effort to comprehensively analyse, in an aggregated method, the types of the reported allegations made to determine prototypes and tendencies in a way
that would identify the most vulnerable areas of corruption within the public sector. This would also bring up issues that might be linked with corrupt behaviours across a wider number of organisations. Though this approach might be used by some, if a limited number, of anti-corruption agencies such as the NSW ICAC as part of their research initiative, it still remains limited in scope and needs further development (Gorta, 2001, p. 18).

Another, as yet not fully explored, research area is public perceptions of government conduct and integrity levels. Few jurisdictions have shown an interest in developing this element of research. The Queensland CMC, for example, started to conduct the ‘Public Perceptions of the Queensland Public Service and Local Government survey’ as a part of its public perception series. This started with studying the public perception of the State Police service. Initial results showed a general positive attitude and perceptions toward both the QPS and Queensland public sector. The Commission, in its 2005 public perception survey published in 2007, confirmed that its latest survey results were in line with the findings of the previous five surveys (in 1991, 1993 and 1995, which focused on public attitudes toward the Queensland Police Force, and those of 1999 and 2002, together with the latest one in 2005, which included public perception of the Queensland public service and local government) and reported that public perception in relation to the behaviour of both the Queensland public servants and those of the local Government ‘generally remains favourable ’ (CMC 2007a, pp. vii, 6, 36).

3. **Central Coordination Unit:** the rising of the ‘holistic’ or comprehensive anti-corruption approach in recent years was driven by both reactive and proactive systems’ needs to complement the work of each other to create an effective anti-corruption agency (Miller, Roberts & Spence, 2005, p. 150). Taking into consideration this fact, questions remain not only in regard to what degree these two systems will support each other but also
how they will function in a way that can achieve the intended goal of successfully fighting corruption.

The OECD, in its ‘International Survey of Prevention Measures’, that was implemented in 15 of its member countries to avert national public sectors falling into corruption traps, acknowledged the popularity of employing a ‘multi-dimensional’ anti-corruption arrangement in most of the surveyed countries. However, the same report specified that the application of this multiple approach came with its own predicaments. One of these was the issue of coordination, to the degree that a country like Hungary stated that strengthened coordination between the different implemented strategies was an act in itself to prevent corruption. The report also highlighted the increasing interest in these countries to introduce new ‘coordination bodies’ in their quest to get around this problem (Mills, 1999, pp. 24, 25).

Also, the final report of the Australian National Integrity Systems Assessment (NISA) project recognised that one of the major concerns of the coherency of the Australian integrity systems was the lack of ‘operational coordination’ among its different components. According to the same report, states such as Queensland and WA in an effort to overcome this impediment formed special units to work as coordinating points and to facilitate a smooth cooperative relationship between various integrity system agencies. In Queensland, they founded the ‘Integrity Committee’ and in WA the ‘Integrity Coordination Group’ in 2004, while in NSW an informal type of coordination was substituted for the non-existence of a formal coordinating body (Brown, 2005, pp. 86, 87).

The importance of coordination is not limited to national and sectoral integrity agencies, but it is important that the anti-corruption agency’s internal departments work together. For an agency’s various sections to reinforce the work of other sections and for the agency to establish a
consistent and efficient working relationship with other departments that
deal with issues of corruption, there is a need for some sort of coordination
mechanism installed within the agency itself to foster such an objective.

It is understood that effective efforts to tackle corruption should be formed
as an organised, continual process to avoid being treated in a singly
unrelated manner or efforts with no coordination between them. For that
end, two types of ‘central coordination units’ are required. One is required
within anti-corruption commissions to coordinate the efforts of their
different internal elements. The other should exist at the jurisdictional level
to coordinate State agencies responsible for tackling misconduct. Ideally,
this would not only assure the existence of the operational coordination, but
it would work to make the coordination smooth and prevent overlap of
efforts, thus avoiding chaos in the fight against corruption.

3.7 Conclusion
There will always be a debate about corruption and anti-corruption
strategies. At present it would be good to see more examples of successful
anti-corruption measures strongly supported by scientific evidence and also
examples of the successful transfer of anti-corruption initiatives to different
societies. The fact that strategies seem to work in one jurisdiction or culture
may not necessarily mean that they are required in other locations. However,
this chapter has canvassed examples of anti-corruption measures that show
degrees of success and of core structures and powers likely to be required by
anti-corruption agencies in most democratic countries. In the road-map
outlined in this chapter the intention was to combine some of the reactive
and proactive components that appear to have global relevance, with some
variations across time and place at the level of advocating one factor over
another — depending on the types of corruption that may be dominant.
Such a model tries to emphasise the importance of the following elements in the fight against public sector corruption:

- The need to pay extra attention to measuring public perceptions not only on the government’s overall ethical conduct and integrity levels, but also the implementation of more resources to the study of one of the most ignored issues, complaint profiling at an aggregated level.

- The expansion and the rising number of integrity organisations on the one hand and the complexity of obtaining a balance between various strategies to combat corruption on the other led to a situation some scholars have called ‘chaotic’ when describing the growing number of anti-corruption initiatives and organisations. The model stresses the importance of placing the Central Coordination Unit (CCU) at the heart of the any anti-corruption agency, not only to facilitate its cooperation with other organisations but also to oversee the workability and the smoothness of its own different departments’ coordination.

Although the different institutional options mentioned above are not by all means conclusive, they provide a general overview of what governments should be looking for when creating oversight bodies. However, the way ahead for integrity systems is for a combined reactive and proactive model that supports all the elements of investigation, prosecution, research and prevention.

The Australian experience is one of the richest around the world. Close examination of the development of its different jurisdictions’ integrity systems will not only reveal the richness of their experience but, it is hoped, will aid in drawing a general and better picture of the ways to improve how
integrity systems ought to be formed and tasked for the better control of public sector corruption.

The next chapter will examine the first case study in this research, the Queensland Crime and Misconduct Commission. It will start by looking broadly at public sector integrity systems, before it returns to examining the CMC and how it tackles its responsibility for keeping the integrity of the Queensland Public Sector intact and firm. It will investigate what type of strategies have been implemented over time by the CMC to control public sector corruption, the level of financial resources devoted to each of those strategies and will attempt to investigate the factors that affected the adoption of those particular strategies.
Chapter Four

Crime and Misconduct Commission (CMC)
Structures, Functions and Powers

4.0 Introduction

The previous chapter outlined the theoretical framework for the suggested model of the creation and the function of an anti-corruption agency. The Crime and Misconduct Commission of Queensland will be the first case study to be examined against such a proposed model. However, before such an examination, one needs first to explore broadly the State’s integrity systems and then to study the beginning of the CMC by investigating the background to its creation, structures, legislations, functions and accountability mechanisms.

The chapter concludes with the challenges that might affect the CMC’s drive in combating public sector misconduct and preserving its integrity, such as the legal limitations on investigating a politician’s misconduct, the proposal for extending its jurisdiction over private bodies exercising public functions and the added challenge that such new responsibilities might bring to its other functions.

4.1 The Queensland integrity system – an overview

According to the Office of the Public Service Commissioner, the Queensland public sector has an actual population of 201,011 public officers as of June 2006 working in more than 44 government departments, agencies or offices. This sector is administered and guided by the Public Service Act 1996, which created the Public Service Commissioner, Section 32(2). Among other responsibilities, the Commissioner has been given the task of offering professional guidance and opinions for the state public sector departments and agencies’ workforce on issues relating to ethical conduct.
and behaviour in accordance with the values and ethical requirements as stated in the Public Sector Act 1994 and the Whistleblowers Protection Act 1994 (OPSME, 2005, pp. 7, 10, 11, 12, 49).

The Queensland drive toward creating an ethical public service and safeguarding its integrity through the introduction of a number of legislative frameworks over the past two decades has its originality in the milestone Fitzgerald Inquiry in 1987 (Needham, 2006, p. 119).

The Fitzgerald Inquiry was initiated in 1987 by the then-Deputy Premier Bill Gunn in light of increasing media exposure of police corruption. Both the articles in The Courier-Mail by Phil Dickie and the Moon Light State segment in the ABC Four Corners program in the same year provided the necessary public foundation to begin examining those allegations (Needham, 2006, p. 119; Ransley, 2001, p. 191).

The inquiry was designed to last for six weeks, with the specific goal of reporting back as to whether there was proof to support the stated allegations of police illegalities from 1 June 1982 to June in 1987. However, it was soon realised by the Fitzgerald Commission that police corruption stemmed from of a wider problem of government corruption (Fitzgerald, 1989, p. 357).

The Inquiry revealed how politicians and government ministers abused the State public sector. Problems included hidden political donations in return for ‘preferential treatment’ within government contracts, ministers avoiding disclosing conflicts of interest and politicians interfering with government work to enhance their own personal interests or for those associated with them. There were also cases of interference with the appointment of public officers in the public sector on the basis of their political loyalties to the then-government or the Minister. The relationship between police and the government was also too close. For example, Police Commissioner Lewis
was part of a ‘kitchen cabinet’ that had undue influence on the Premier, and the Police Union also provided public support for the government in return for reduced scrutiny of police behaviour (Fitzgerald, 1989, pp. 85–97, 129–134).

Despite the doubtful prospects when first originated that it would not be able to achieve any major outcomes: the inquiry lasted for over 18 months. It investigated 339 witnesses, collected 2,304 exhibits, created 21,429 pages of transcripts and was considered to be one of the most successful investigations into government corruption to be carried out in Australia (Dickie, 1989, p. xi; Ransley, 2001a, p. 5).

The Commission’s report revealed and detailed many years of police corruption. The most senior police officer in the Service, Commissioner Lewis, was identified as corrupt, was tried and imprisoned for a long time, for being, amongst other things, corruptly paid to protect unlawful commercial businesses. Other forms of police misconduct were also revealed, particularly in areas such as the Licensing Branch. The final Fitzgerald Report described the Police Service as an organisation that was incapacitated by corruption, ineffectiveness and with corrupted leadership (Brereton, 2000, p. 3; Fitzgerald, 1989, p. 200; Lewis, 1997, pp. 148–150).

As for state corruption, the Inquiry implicated a number of politicians in corruptly abusing the government system for their own benefits, and as a consequence, some of these Ministers were brought to court and were sent to jail for their misconduct (Brereton, 2000, p. 3).

At the end of its investigation, the Commission proposed extensive recommendations that gained overwhelming support from the public and were conclusively accepted by the State Government. The Fitzgerald recommendations came in parallel schemes. The first targeted the renovation of the Queensland political, electoral and administrative systems,
through the introduction of the Electoral and Administrative Review Commission (EARC) to independently review public service and other administrative systems, such as the Public Accounts Committee Act 1988, the Election Act 1983–85 and the functions of the Parliamentary Council (Fitzgerald, 1989, pp. 370–371).

The Electoral and Administrative Review Commission conducted broad reviews on a number of characteristics and parts of the state ‘electoral and political administration’ in accordance with its main establishment objectives stated in the Fitzgerald Report (Fitzgerald 1989, p. 370). The idea was that with the introduction of the CJC to guard against misconduct and to raise the possibility of such acts being uncovered and disciplined, there was a need to motivate public servants not to fall into the same traps of corruption by creating the necessary ethical atmosphere to encourage ethical conduct. By the end of the EARC work in 1994, the commission proposed the *Public Sector Ethics Act* to function as a foundation for all government agencies to pursue an ethical working environment for their employees (Brereton, 2000, p. 9).

Subsection (2) of the Act acknowledged five ‘ethics principles’ to guide the public sector in Queensland toward good public management which included, (i) respect for the law and the system of government, (ii) respect for persons, (iii) integrity, (iv) diligence and, (v) economy and efficiency (*Public Sector Ethics Act, 1994*).

The Act not only designated the ethics principles for the Queensland Government public sector, but also created the Office of the Public Service Commissioner to administer the application of these principles. The Commissioner, who reports straight to the State Premier, is the head of the Office of Public Service Merit and Equity (OPSME), which now administers, in addition to the *Public Sector Ethics Act 1994*, the Equal

The other outcome of the Fitzgerald recommendations was the creation of the Criminal Justice Commission (CJC) — now the Crime and Misconduct Commission (CMC) — through introducing the Criminal Justice Act 1989. This functioned as the investigative body also tasked with supervising, examining, organising and taking the lead for permanently reforming the State’s police and criminal justice system (Fitzgerald, 1989, pp. 372).

4.2 The Criminal Justice Commission (CJC)

After almost two years of investigations, the Fitzgerald recommendations for reforms were comprehensively formulated in a way that, in theory, would leave no scope for avoidance of essential changes (Lewis, 1997, p. 157). To accomplish this goal, Fitzgerald called for the creation of the Criminal Justice Commission (CJC) as, (i) an independent organisation accountable only to the citizens of the State through an all-party Parliamentary Committee and, (ii) one which would have sufficient resources to carry out what both the police and the government had previously failed to conduct in their administration of the State’s criminal justice system (CJC 1994, p. 2). The Criminal Justice Act 1989 was approved on 31 October 1989 with the CJC being entrusted with a wide spectrum of functions (CJC, 1994, p. 2).

4.2.1 The organisational structure

Together with such an enormous task of reforming the management of criminal justice in Queensland came the challenge of creating a practical model that could encompass the various duties with which the CJC was tasked and one that would be capable of executing its aims and objectives. The exposure and the investigation of official corruption and misconduct both in the Police service and other State public sector agencies and the
reduction of the occurrence of such incidents was one of the main objectives for the newly established Commission (CJC, 1990, pp. 1, 2).

To that end, the *Criminal Justice Act 1989* structured the CJC in accordance with the Fitzgerald recommendations. The CJC is chaired by one full-time chairperson, who is also the Commission’s Chief Executive Officer, and four part–time Commissioners. The Commission started with five organisational divisions, namely, (i) The Official Misconduct Division and the Misconduct Tribunal, (ii) the Witness Protection Division, (iii) the Research and Coordination Division, (iv) the Intelligence Division and, (v) a Corporate Services Division; all created to facilitate the operations of the Commission (CJC, 1990, p. 4).

In addition to the previous Divisions, the Act, particularly Section 19 (2) (a), furnished the creation of the Office of General Counsel responsible for,, (i) providing policy advice on strategies and legal issues to the Commission, (ii) representing and acting on behalf of the Commission before juridical institutions and, (iii) to head the Commission’s hearings and administratively manage misconduct tribunals (CJC, 1994, pp. 167–169; PCJC, 1995, p. 6). Table 4.1 summarises each of the CJC Division functions and responsibilities.
Table 4.1: CJC Divisions: functions and responsibilities

<table>
<thead>
<tr>
<th>Division</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Official Misconduct Division</td>
<td>Receive, investigate and deal with complaints of official misconduct in the public sector, including that of the police service members.</td>
</tr>
<tr>
<td>The Misconduct Tribunal</td>
<td>To independently determine cases of official misconduct that need not be dealt with through legal prosecution but using any format of administrative discipline and to monitor and review such charges against police officers.</td>
</tr>
<tr>
<td>The Witness Protection Division</td>
<td>In charge of providing protection to people helping the Commission or other law enforcement agencies.</td>
</tr>
<tr>
<td>The Research and Coordination Division</td>
<td>To be responsible for making recommendations in reforming the management of the criminal law and criminal justice, researching issues that might have an effect on the administration and the application of such sector and law in Queensland, and acting as a liaison branch with other relative departments carrying out the same functions.</td>
</tr>
<tr>
<td>The Intelligence Division</td>
<td>To function as a specialised unit to provide intelligence beyond the capacity of the police for the Commission on Organized and Major Crime.</td>
</tr>
</tbody>
</table>

(Source: CJC, 1991, pp. 7, 55, 64, 66, 76)

Figure 4.1 represents the Commission’s organisational structure in its first year of functioning (CJC, 1991, p. 94).
Over the years, the Commission’s structures have undergone some restructuring in accordance with changes, developments and challenges to the way it performs its functions. For example, in late 1997, the Criminal Justice Act 1989 was extensively amended in such a way that the Commission’s responsibility to examine organised and major crime was removed to pave the way for creating the Queensland Crime Commission (QCC), according to the Crime Commission Act 1997. The reason for this change was partly because of the increasing media and public concern over claims that the Commission was not set up to fight paedophilia and organised crime; ultimately, the newly-created QCC was tasked with this function (CJC, 1998, p. iii; PCJC, 1998, pp.10, 18).

The CJC also saw changes in the structure of parliamentary oversight. The responsibilities of the Parliamentary Criminal Justice Committee were transferred by the Labor government to the Legal, Constitutional and Administrative Review Committee in 1995. However, this decision was reversed in 1996 by the new conservative government (PCJC, 1998, p.4).

In 1998, in another example of restructuring, the CJC went under the Parliamentary ‘three-year review’. The Parliamentary Criminal Justice Committee (PCJC) recommended that the Commission’s Research Division research on criminal justice needed to be refocused and prioritised around misconduct prevention (PCJC, 1998, p. 115). Consequently, the CJC reviewed its organisational structure; this resulted in the merging of ‘research’ and ‘corruption prevention’ into one new Division of ‘Research and Prevention’. The review also recommended, (i) the establishment of the ‘Office of the Commission’ to be accountable to the Commissioner, (ii) the facilitation of the Commissions accountability procedures and its corporate governance and, (iii) the organisation of its communications with its
Parliamentary Committee (CJC, 1998, pp. 7, 11, 1999, p. 5). To accommodate the new changes, the Commission changed its organisational structure as illustrated in Figure 4.2.

Figure 4.2: CJC Organisational Structure
(Source: CJC, 1999, p. 4)

In 2001, the government of the day tabled the Crime and Misconduct Bill, which merged both the CJC and Queensland Crime Commission (QCC) into one broader entity called the Crime and Misconduct Commission. At the beginning of 2002, the new Crime and Misconduct Act 2002 began its functions by bringing together the CJC and the QCC into the CMC (PCMC, 2004, p. 3).

Premier Beattie described the merger as an act to strengthen both agencies’ ‘efficiencies’ and use financial resources for ‘crime fighting’ (Beattie in *The Courier-Mail*, 2001, p. 4). The Queensland Bar Association and the Queensland Law Society also embraced the amalgamation as an opportunity to avoid the duplication of the agencies’ functions. In addition, the newly created CMC in theory provided a basis for responding more effectively to
Fitzgerald’s disclosure of a relationship between corrupt police and organised crime (Devlin & Reidy, 2001, p.4).

Accordingly, the new Commission’s organisational structure was created to incorporate and represent its newly merged core functions of crime, misconduct and integrity, and witness protection. The following organisational chart depicts the CMC’s current organisational structure (CMC, 2006, p. 10).

![Organisational Chart](image)

**Figure 4.3: The current CMC organisational structure**

### 4.3 Legislation and Jurisdiction

The 1989 Criminal Justice Act (CJA) and the Crime and Misconduct Act 2001 (CMA) functioned as the CMC’s backbone, defining its duties and jurisdiction. The first CJA Act provided the CJC with the three main responsibilities of, (i) reporting on the ‘effectiveness and the impartiality’ of the management of the Queensland criminal justice system, (ii) to take over the Fitzgerald Commission official and police misconduct investigations and, (iii) to be responsible for examining any future reported complaints of official misconduct and taking rightful action against it. The CJC initially
also investigated organised or major crimes that neither the police nor other governmental organisations could handle properly or efficiently (CJC Act, 1989, Section 2, PCJC, 2004, p. 3).

For its part, the CMA 2001 furnished the CMC with two main objectives. The first was to examine and reduce incidents of organised or major crime and paedophilia. The second was to work toward minimising public sector misconduct and preserving the sector’s integrity, with further duties connected to that of civil confiscation of the proceeds of a crime in accordance with the Criminal Proceeds Confiscation Act 2002 (Crime and Misconduct Act, 2001, Sections 4 (1), (2) and 7).

In 2004 and in the wake of public fears of terrorism after the 9/11 New York World Trade Centre terrorist attacks in 2001, the Bali 2002 bombings — which witnessed Australian casualties — and then the Madrid 2004 and the England transport bombings in the following year, the Terrorism (Community Safety) Amendment Act came into effect. The Act amended the CMA and provided the CMC with the statutory duty for the investigation of ‘terrorism-linked major crime’. Under this Act, the CMC was requested, through the use of its extraordinary powers, to assist at the request of the Queensland Police Service (QPS) in investigating terrorist threats and activity of a criminal nature committed to further political, religious or ideological objectives that might put public life in danger or which might undermine government authority (CMC, 2005, p. 14; PCMC, 2006, p. 23).

The CMC’s jurisdiction extended to examine the misconduct of officials in State Government departments, statutory bodies and agencies, State-run prisons and private prisons operating in Queensland, local governments and its councils, schools and universities and the Parliament (Legal Aid Queensland, 2006).
The CMC jurisdictions and those of its predecessor, the CJC, also extended to the Queensland Police Service. Fitzgerald hesitated in giving the Police Service complete authority in investigating complaints against its own members. His findings convinced him that authorising the Police Service to manage such complaints alone would be a serious mistake (Lewis, 1997, p. 168).

Therefore, under the CJC model, the Commission was given the responsibility of investigating complaints of misconduct and official misconduct received from any sources. The QPS dealt, internally through its disciplinary procedures, with breaches of discipline that had been identified by the Police Service Administration Act 1990 or those matters decided by the Commissioner of Police, such as violations of the Code of Conduct or Code of Dress and Appearance; however, not with the same degree of seriousness as that for misconduct (CJC, 1997a, p. 9; 2001, p. 3).

The CMC Act 2001, on the other hand, had recognised the QPS efforts and initiatives in implementing reforms to its complaints-handling processes and strengthening its ethical standards. For example, the establishment of the Ethical Standards Command (ESC) in 1997 saw a boost to internal anti-corruption measures. The ESC provides ethical training, conducts internal investigations, and monitors compliance with policies and guidelines. Another initiative implemented by the QPS was Project Resolve in 2000, which emphasised managerial resolutions to deal with breaches of discipline and incidents of minor misconduct. The idea was that more complaints against police could be dealt with ‘internally’ if adequate external oversight was provided (CMC, 2004a, p. 8).

Accordingly, the CMA 2001 required the QPS to have the prime responsibility for handling police misconduct, with the CMC still charged primarily with dealing with allegations of official misconduct and having an
overall monitoring power for the way the Service managed such complaints (CMA, 2001 Section 35 (c), Section 47; 2004a, p. 9).

However, the CMC, and the CJC before it, by giving the QPS the main responsibility of investigating complaints against its personnel, could have rendered their complaints management system capable of being ‘captured’. For example, Prenzler (2000, p. 667) argued that police internal loyalties might mean they did not properly investigate complaints, even in the post-Inquiry environment. The CMC has responded to such allegations by arguing that it retains the option of investigating any matter itself and that it closely monitors internal investigations, with a capacity to criticise and intervene (CMC, 2004a, p. 9).

4.4 Politicisation and institutional tensions

As stated earlier, both the CJC Act 1989 and the CMC Act 2001 had jurisdiction over examining allegations of misconduct by politicians and parliamentarians of the State in addition to any official holding a ‘unit of public administration’ (Criminal Justice Act, 1989 Section 1.4(1), Section 2.2, Section 2.23). This comprehensive functionality tended to create a tense relationship between the Commission and the politicians, and the misuse of the Commission by politicians to achieve certain goals (Fagan, 1996, p. 22; Lewis, 1997, pp. 1, 2).

Institutional tensions between the Government and an external oversight agency can hinder the latter’s efficiency. This is the case with the CJC (now the CMC), which, from its inception, has encountered difficulties with the Queensland Government. During its early years, the agency saw successive governments trying to influence its mission — not so much on police reform but rather on its public misconduct function — especially concerning politicians. For example, its early investigations and reports on ‘gaming machines, prostitution and parliamentarians’ travel expenses’

The most serious conflict involved a clash with the Borbidge Government over the Carruthers Inquiry in 1996 when investigating a Memorandum of Understanding between the Opposition coalition and the Queensland Police Union of Employment (QPUE). The substance of the first inquiry involved a possible secret deal between the then Opposition and the Police Union. In effect, the Union promised support for the Opposition election campaign in return for fulfilment of a log of claims if the Opposition won government. The log of claims included reducing the CJC’s powers. The government, for its part, instigated the Connolly-Ryan Inquiry under accusations that one of the CJC Directors had leaked information of an investigation to a person accused of fraud. The Connolly-Ryan Inquiry truncated the Inquiry into the Memorandum of Understanding (Preston, Sampford & Connors, 2002, p. 129). There was also a controversial cut to the CJC’s budget and claims by the Borbidge Government that it had failed to tackle paedophilia and organised crime.

In 1998 the CJC was stripped of its organised crime function in favour of the newly-created Queensland Crime Commission (QCC). The QCC was made accountable to the Attorney General, thus making it accessible to political influence. Another step, arguably designed to allow more government control over the CJC, was the introduction in 1997 of the Parliamentary Commissioner to oversee and examine the CJC’s accountability (Preston, Sampford & Connors, 2002, p. 129).

Events like these proved, regardless of the fact that the Commission was formed to be independent of the executive government and accountable only to Parliament, that its investigative powers in connection with investigating politicians had repeatedly caused heated relationships with
them. This reached the degree where it became, on many occasions, the subject of harsh political criticisms and attacks, with serious attempts to bring it to an end or, in some cases, to ‘neutralise’ it (Homel, 1997, p. 41).

In recent years, such open confrontations with the government have lessened, but investigating misconduct by State and local politicians remains controversial. The ‘legal limitations’ imposed upon the Commission’s powers hindered its ability to effectively carry on with such matters. Its investigation into the 2004 Gold Coast City Council election and allegations of official misconduct by some of the candidates and others revealed that the electoral procedures of the city were fuelled by corruption. However, most of its recommendations to reform such processes were not endorsed by the State Government (CMC, 2006, p. 4).

The CMC’s power to investigate a politician’s misconduct was limited to the case only when such actions constituted a criminal offence. The idea behind such restrictions was derived from the view-point that the parliamentarian or councillor were elected by the public and if their behaviour did not amount to a criminal offence, their removal from office should be made by the people through the ballot box (CMC, 2005, p. 2; 2006, p. 3).

4.4.1 Jurisdiction over private organisations exercising public functions

In recent years and for reasons beyond the scope of this research, there was an increase in out-sourcing government work to the private sector, where private organisations were contracted to deliver what used to be a government functions; in this respect, Queensland was not an exception (PCMC, 2006, p. 53).

The CMC acted from the point of view that such out-sourcing usually involved public money; therefore, those corporations needed to be brought under its jurisdiction and subjected to its external oversight. Both the PCMC
and the government supported the Commission proposal in principle, but they were cautious about an early approval and implementation of such an event without a very thorough examination. They claimed that not only would the extension increase the Commission’s workload, but that it would also require more financial resources to enable both the CMC and the private bodies to carry out this function adequately (PCMC, 2004, p. 35).

In its drive to gain the oversight responsibility over private entities carrying out public functions, the Commission suggested the adoption of a ‘public authority’ definition (see Table 4.2) similar to that adopted by the New South Wales ICAC Act 1988 and also that of the ‘public official’ (PCMC, 2004, pp. 34, 35).

**Table 4.2: The CMC public official definition**

<table>
<thead>
<tr>
<th>A person or body in relation to whom or to whose functions an account is kept of administration or working expenses, where the account:</th>
</tr>
</thead>
<tbody>
<tr>
<td>i) is part of the accounts prepared under the Public Finance and Audit Act 1983, or</td>
</tr>
<tr>
<td>ii) is required by or under any Act to be audited by the Auditor-General, or</td>
</tr>
<tr>
<td>iii) is an account with respect to which the Auditor-General has powers under any law, or</td>
</tr>
<tr>
<td>iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the audit of accounts if requested to do so by a Minister of the Crown.</td>
</tr>
</tbody>
</table>

(Source: PCMC, 2004, p. 34)

### 4.4.2 The functions

With such structures and legislation, the CJC started its official journey on 22 April 1990, with much anticipation and the eagerness of the Queensland public that, finally, there would be a chance for them to lean on an honest and impartial system to deal with their grievances in relation to misconduct. However, the beginning was not an easy one. For example, the Complaints Section started its first day of business by dealing with the backlog of 66
complaints made to the dissolved Police Complaints Tribunal, many of which had never been investigated, and others requiring different levels of attention (PCJC, 1991, p 27).

The CJC was not given the luxury of turning a blind eye to complaints. It was required by its charter to investigate all complaints without discrimination. However, the influx of complaints in its initial establishment years, combined with staff limitations, sent a clear message that the Commission would not be able to deliver in a timely and acceptable manner the desired outcomes of tackling misconduct if changes were not made to how the Commission handled its complaints. In May 1992, an amendment was brought to the Criminal Justice Act 1989 that established the Commission’s right to decide at its own discretion which complaints it would investigate. This eased not only the financial burden but also the administrative burdens on the Commission to examine every single complaint it received (PCJC, 1992, pp. 8, 18).

After the amendment, the Commission restructured its assessment procedures. The ‘Initial Assessment Committee’ was given the responsibility of conducting a preliminary review of complaints after they were received by the CJC. This was in order to decide, without going through the more comprehensive normal assessment process, the urgency of the matter and the steps needed to deal with such complaints and to make certain that only the important complaints would be forwarded for further investigation by the investigative teams (CJC, 1992, pp. 18–19).

These changes had an immediate, positive effect on the work of the Complaint Section; the Commission was able to handle its workload of complaints more efficiently and to devote more time to its cooperative relationships with the Queensland Police Service in areas such as organised crime (PCJC, 1992, p. 9).
With the old processing system, the Commission had more than 800 not-fully-examined matters and investigations needing to be handled; but after the restructuring that figure was reduced by almost half. Also, the Commission reported that before restructuring it needed about 73 working days to finalise complaints while the majority could not be finished in less than 12 weeks after their receipt.

After the restructuring, it was able to finalise about 65% of complaints within an average time of four weeks (CJC, 1993 p. 17). In its annual reports, the Commission had noted that the Queensland Police Service (QPS), the local governments and the public sector agencies, such as the correctional service, usually accounted for the majority of these complaints (CJC, 2000/2001, p. 38). Table 4.3 summarises the Commission’s total received complaints since 1991.

<table>
<thead>
<tr>
<th>Year</th>
<th>Total of Standard Complaints received</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990/91</td>
<td>1793</td>
<td>CJC1992/93, p. 21</td>
</tr>
<tr>
<td>1991/92</td>
<td>2612</td>
<td>** &amp; CJC 1991/92, p. 30</td>
</tr>
<tr>
<td>1992/93</td>
<td>2183</td>
<td>**</td>
</tr>
<tr>
<td>1993/94</td>
<td>2332</td>
<td>CJC 1993/94, p. 11</td>
</tr>
<tr>
<td>1994/95</td>
<td>2319</td>
<td>CJC 1996/97, p. 21</td>
</tr>
<tr>
<td>1995/96</td>
<td>2335</td>
<td>**</td>
</tr>
<tr>
<td>1996/97</td>
<td>2673</td>
<td>**</td>
</tr>
<tr>
<td>1997/98</td>
<td>2512</td>
<td>CJC 1998, p. 27</td>
</tr>
<tr>
<td>2000/01</td>
<td>3148</td>
<td>CJC 2000/01, p. 38</td>
</tr>
<tr>
<td>2001/02</td>
<td>2795</td>
<td>CMC 2001/02, p. 45</td>
</tr>
<tr>
<td>2002/03</td>
<td>2920</td>
<td>CMC 2002/03, p. 32</td>
</tr>
<tr>
<td>2003/04</td>
<td>3964</td>
<td>CMC 2003/04, p. 28</td>
</tr>
</tbody>
</table>
The increase in complaint numbers was explained by the Commission as a result of an increase in public awareness and its successful efforts in capacity building that focused on strengthening ‘principal’ officers’ understanding of their duties to report misconduct.

** Extracted from the same previous source.

### 4.4.3 Powers

The secrecy surrounding corruption and misconduct usually made it difficult for such activities to be discovered using only the traditional investigative tools. Recognising this fact, both the CJC Act 1989 and the CMC Act 2001 provided the Commission with special coercive powers to strengthen its investigative work against misconduct and major crime and to enhance its witness protection work (PCMC, 2006, p. 57).

Therefore, the Commission’s responses to complaints were not confined to the mere task of traditional investigation only. The Act laid out a number of other powers and supportive investigative tools that could be used by the Commission, including:

- The authority to force the presentation of paperwork/files/records and items in connection with an investigation (Sections 72, 74, 74A, 75)
- The power to order a person to appear before the Commission for the purpose of providing and giving evidence related to an investigation (Section 82)
- Application to the Supreme or Magistrate Court to be issued a surveillance warrant (Section 121, 137)
- Application to the Supreme or Magistrate Court to be granted the authority to monitor and suspend financial transactions (Section 119C, 119I)
• Obtain the approval of the Supreme or Magistrate Court to enter and search premises (overt search warrant) (Section 86)

• The power to enter public departments, examine records or ‘things’ with the ability to make copies and get hold of any document or thing that might relate to an investigation (Section 73)

• Request the Supreme Court’s permission to enter premises covertly and search in relation to a major crime investigation (covert search warrant) (Section 148)

• Apply to the Supreme Court for an arrest warrant to detain a person (Section 167)

• The power to obtain evidence connected with an investigation (Section 110, 110A, 111)

• The option to ask the Supreme Court to grant extra powers, such as to confiscate travel documents and passports (additional powers warrant) (Section 158).

The Commission was also given the authority to use powers under the Police Powers and Responsibilities Act 2000 (PPRA) through the police officers attached to the Commission. However, in recent years and after reviewing the application of some of these powers, the Commission has come to realise some shortfalls exist, related to the following areas:

• **Hearings:** the CMA provides that only the CMC chairperson can conduct hearings. This was of concern to the Commission, which expressed the practical difficulties associated with such a restriction in its submissions to its Committee, specifically those relating to the situation where there was a need to hold more than one hearing at the same time. The Commission recommended the Act be amended
in a way that would allow its other senior officers to chair its hearings in addition to the chairperson (PCMC, 2006, p. 58).

- In August 2006, the Crime and Misconduct and Other Legislation Amendment Bill 2006 included this issue, and now the CMC hearings can be presided by the Chairperson or the Assistant Commissioner for Misconduct or the Assistant Commissioner for Crime, and gives the CMC the ability to conduct more than one hearing at the same time (PCMC, 2006, p. 58).

- **Spousal privilege:** after the Court of Appeal decision in 2004 which recognised spousal privilege as a ‘reasonable excuse’ to refuse answering CMC questions in the Callanan v. Bush case (PCMC, 2006, p. 58). The Commission proposed an amendment to the CMA that would make it clear that such a privilege was not applicable in its investigations. A woman witness appearing before the Commission refused, under this privilege, to reply to questions about allegations of her husband’s association with unlawful drug activities (PCMC 2006, p. 58).

- **Telephone interception powers:** as a result of Queensland being the only jurisdiction in Australia that does not have telephone interception legislation, consequently the Crime and Misconduct Commission did not have it either. For many years, the CMC progressively requested the establishment of adequate legislation for telecommunication interception and to be granted the rightful funds to establish its own secured interception facilities. The CMC Committee, for its part, supported the request, adding the need for monitoring the application for such warrants by a suitable mechanism such as the Public Interest Monitor (PCMC, 2006 p. 60).
It must be stated that the implementation of these powers was associated, in most cases, with internal and external accountability mechanisms, control and monitoring.

4.5 Accountability

4.5.1 External Accountability

The 2002 merger between the CJC and the QCC has not only modified the functions of the CMC — it has renamed the old PCJC, the body that oversees the Parliamentary Crime and Misconduct Committee (PCMC), created ‘under Sections 9, 11 and 291 of the *Crime and Misconduct Act*’. This is an ‘all-party’ standing committee in Parliament with the specific role of ‘monitoring and reviewing’ how the CMC carries out its responsibilities. Under the PCMC, the CMC is held accountable to Parliament (Fitzgerald, 1989, p. 372; O’Regan 1995, p. 375; PCMC, 2002). Table 4.4 summarises the CMC powers and controls in their usage.

**Table 4.4: CMC powers and their control**

<table>
<thead>
<tr>
<th>Power</th>
<th>Control Mechanism</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hearings</td>
<td>• Decision to hold hearings made by the five members of the Commission, not by the Chairperson.</td>
<td>PCMC 2004, p. 46</td>
</tr>
<tr>
<td></td>
<td>• Witnesses have the right of legal representation</td>
<td></td>
</tr>
<tr>
<td>Surveillance warrants &amp; covert search warrants</td>
<td>The applications for and the use of such warrants assessed by the Public Interest Monitor (PIM).</td>
<td>CMC Act 2001, section 156</td>
</tr>
<tr>
<td></td>
<td>• A written report to the issuing Judge and the PIM on how the warrant was exercised within 7 days after its execution</td>
<td></td>
</tr>
<tr>
<td>Notice to produce or discover powers.</td>
<td>The Commission had created registers on how it used these powers, and could be audited by the Parliamentary Commissioner at the request of its Committee</td>
<td>PCMC 2004, p. 45</td>
</tr>
<tr>
<td>Notices to attend hearings</td>
<td>ethyl</td>
<td></td>
</tr>
<tr>
<td>Power to enter a unit of public administration</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Over the years, the PCMC has developed different mechanisms to fulfil its supervisory functions.

4.5.1.1 Monitoring and examining the CMC’s performance

- Accepting complaints and reviewing complaints made against the CMC
- Examining the Commission’s procedures and providing ideas to improve its outcomes.
- Examining the Commission’s annual reports and research reports
- Asking the CMC to provide reports on issues noticed by the Committee through the media or through another venue
- Calling for regular meetings with the Commission Chairperson, other Commissioners and the Commission executives
- Taking action on different issues as they occur
- Carrying out audits on the Commission’s use of its powers
- Seeking and requesting advice from other professionals and experts on issues related to the improvement of the work of the CMC (PCJC, 2001, pp. 213–219).

4.5.1.2 Reporting to the Parliament

This is considered to be the second major duty of the Committee. The PCMC is tasked with the responsibility of reporting to the Parliament on how the CMC carries out its functions and details its activities as a measure for the Commission being accountable to the Parliament and the people of Queensland (PCMC, 2004, p. 105). The Committee also has the function of commenting on issues referred to it by the Parliament. Yet, its main report is
the Three-year Review, which is usually conducted and reported prior to the expiration of its three-year term (PCJC, 2001, p. 217).

4.5.1.3 Appointment of the Chairperson and part-time Commissioners
The Committee is entrusted with the duty of participating in the selection process of both the full-time Chairperson and the CMC part-time Commissioners. To do that, the ‘Minister/Premier’ is requested to confer first with the Committee and then, before any nomination can be made, the nominees needs to gain ‘bipartisan support of the Committee’ (PCMC, 2004, p. 105).

4.5.1.4 Complaints against the CMC and its employees
While Section 329 of the CMA Act 2001 sets out the conditions and situations whereby the Chairperson ought to notify the Committee about any of the Commission officers that become involved in any inappropriate behaviour, Section 295 sets out the disciplinary choices that could be used by the Committee in dealing with such cases (PCMC, 2004, pp. 105–106).

4.5.1.5 The Office of the Parliamentary Crime and Misconduct Commissioner
In 1997, the third PCJC reported its concerns about the ‘accountability arrangements’ of the CJC of that time, and how governments tended to ignore implementing most of its recommendations relating to issues of the Commission’s accountability, to the degree where it had started to limit the ability to monitor the Commission (PCJC, 1997).

After reviewing deficiencies in the CJC’s accountability measures, the third PCJC reported its findings and its recommendations in ways to enhance the accountability of the CJC to the Committee in its Report No. 38, tabled in May 1997 (PCJC, 2001, p. 221). One of the recommendations was the appointment of a ‘Judicial or Parliamentary Commissioner’ with extensive powers to examine for the Committee specific issues as requested by a ‘bi-
partisan majority of the Committee’ and to write back to the Committee on
the findings so that the Committee could communicate these findings to the

The main shortfalls concerning the third PCJC were connected with the
inability to review confidential materials and information with the CJC, the
necessity of actively examining complaints against the Commission and the
ability to review (PCMC, 2004, pp. 108–109). As a result, the Office of the
Parliamentary Criminal Justice Commissioner was established in 1997 in
accordance with the Criminal Justice Legislation Act 1997 to overcome these
deficiencies. However, this position was changed in 2001 when the CMA
Section 303 introduced the Parliamentary Crime and Misconduct
Commissioner to perform similar functions (PCMC, 2006, p. 108).

4.5.1.6 The Supreme Court and associated mechanisms
The Supreme Court is able to consider appeals brought against the
Commission by people who believe that they have been examined unfairly.
It can also review claims of privilege by persons who allege they are not
subject to the authority of the CMC (CMC, 2006, p. 24).

The Crime and Misconduct Act (CMA) also added two methods for monitoring
the CMC’s functions. First, the Public Interest Monitor (PIM) deals
primarily with surveillance warrants and covert search warrants by the CMC
(CMA 2001 Sections 11, 326; PCMC, 2004, p. 116). Second, a ‘responsible
Minister’ is required to assess both the CMA and the CMC’s ‘operational
and financial performances’ within two years of the provision’s
implementation (PCMC, 2004, p. 117).

4.5.2 Internal Accountability

4.5.2.1 The Commission
The Commission is considered to be the most influential internal
accountability mechanism that the CMC has. It comprises all five
Commissioners, the Chairperson, the two full-time Assistant Commissioners and the Executive Director. It is primarily tasked with drawing up strategic corporate policy and the Commission’s direction and reviewing how different divisions of the organisation perform their functions strategically (CMC, 2006, p. 17).

4.5.2.2 The Strategic Management Group (SMG)
The SMG is responsible for the implementation of corporate policy and the strategic directions identified for the CMC by the Commission. Its membership includes the Chairperson, the Assistant Commissioners and the Directors (CMC, 2004, p. 61). The Commission also has internal management committees tasked with ensuring that the agency acts in accordance with its corporate governance objective of effective management and ascertaining that its overall performance is in accordance with best practice. Table 4.5 summarises these committees.

<table>
<thead>
<tr>
<th>Committee</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit Committee</td>
<td>Identify area of weakness to the CMC and advice the Commission about the most needed area to be targeted and audited</td>
</tr>
<tr>
<td>Finance Committee</td>
<td>Tasked with managing the CMC financial resources and the existence of appropriate financial practice with the agency</td>
</tr>
<tr>
<td>Information Steering Committee</td>
<td>In charge of assessing and advising on the improvement of the agency’s information system</td>
</tr>
<tr>
<td>Legislation Committee</td>
<td>To watch over changes in state and federal legislations that might touch the Commission functions</td>
</tr>
<tr>
<td>Equal Employment Opportunity Consultative</td>
<td>A consultative forum to advice on issues related to discrimination and other EEO concerns within the agency</td>
</tr>
<tr>
<td>Risk Management Committee</td>
<td>To guard against potential risks of fraud and provide advice on strategies to limit such threat</td>
</tr>
<tr>
<td>Workplace Health &amp; Safety</td>
<td>Insure that the agency provide a safe and healthy environment</td>
</tr>
<tr>
<td>Operational Committees</td>
<td>Special committees that deals with specific operational functions of the Commission work</td>
</tr>
</tbody>
</table>
4.6 Conclusion

Though the Commission might have been instituted as an integral part of the Queensland system, such an accomplishment was not an easy task. The rough beginning, especially in relation to the initial year’s research reports and its function to investigate politicians’ misconduct brought it, in some cases, to the verge of being dismantled. However, the ability to perform its functions in other areas, such as police reforms and public misconduct, together with the constant supervision of its Parliamentary Committees over the years and the continuous amendments to its legislations with the aim of improving its functionality, have brought it to the stage where it could be safely said that it has passed through an era of uncertainty and conflicts with its superiors to some degree.

Challenges still remain for the CMC when it comes to dealing with public sector misconduct. Growth in the size of the public sector requires an increased effort by the agency in all of its multiple functions of investigations, prevention and education. The data show that the reporting of allegations of misconduct is increasing annually. This is probably at least partly attributable to the CMC’s efforts in publicising its work and encouraging complaints — as it has suggested. Levels of public trust in the Commission are fairly high. The next chapter will discuss these issues in more detail.

Another challenge that the Commission needs to be prepared for in the coming years is the proposal for extending its jurisdiction over private agencies performing public duties. This will definitely bring an extra workload to the Commission and if combined with the functions and jurisdiction it has now, it might — if not guarded against — have a negative impact and possibly dilute the Commission’s other duties. Another point to
be considered here is that the CMA 2001 is still in its early years of application; after adding terrorism functions to it during 2004, it could be wise to wait till the introduction of another major change as a method for taking the time to evaluate and assess the outcomes.

The Commission should focus during the near future on what was stated in its Strategic Plan 2006–10 for the need to establish an ‘effective framework’ that would assist the CMC in its overall obligation of supervising the integrity, and examining the rightfulness and the eminence of the public sector bodies’ procedures and processes in managing their misconduct complaints. The CMA 2001 main goal is for the agency to have a wider role in dealing with its reported misconduct through the adaptation of the two main principles of devolution and capacity building.
5.0 Introduction
The previous chapter has described the Crime and Misconduct structures, legislations, jurisdiction, functions and its accountability mechanisms and outlines some of the challenges that the Commission could face in the near future if not guarded against.

This chapter will examine the Commission’s strategies across time, and how these have been changed over the years, with the aim of finding out how the Commission over the years balanced the two types of reactive and proactive strategies in achieving its goals.

The findings seems to indicate that the Commission’s concentration on investigation, specifically in the early years of its establishment, might have served at that time a purpose for the Commission to be recognised and for publicity reasons. However, integrating its reactive investigative work with its given proactive powers became necessary for it to reach its wider goals in preserving the integrity of the Queensland public sector in the long run. Its efforts were not always smooth and trouble-free; instead, it had to overcome a number of hurdles. Its recent drive in devolution and capacity-building is still in its infancy and should be applied with caution.

5.1 The CMC Strategies
5.1.1 Reactive Measures
The main reactive strategy adopted by integrity commissions is that of investigation, prosecution and punishment. In this system, ‘complaints’ are received and investigated. Those with prima facie evidence of misconduct
are prosecuted and guilty verdicts result in punishment. This strategy is intended to remove the more serious offenders, and provide a deterrent effect to other members.

For the reactive approach by anti-corruption commissions to function properly, in many cases it needs the support of other investigative organisations, such as police, commissions, Office of the Public Prosecution and other investigative bodies like the Ombudsman that would take some of the investigative workload of the Commission. In recent years, for example, the CMC has adopted the devolution principle by which public sector organisations and the police service tend to take greater responsibility in handling complaints of misconduct.

5.1.1.1 Investigation

Investigation has been identified as being one of the major reactive approach strategies. For the CMC, investigating misconduct is one of its core functions. Its initial years saw a concentration on investigating complaints, to the point where the CJC came to be viewed by the public as an investigative agency only. Both the increasing number of complaints, and the Criminal Justice Act 1989 provisions which emphasised that the Commission ought to continue what the Fitzgerald Inquiry had started, played an important role in the organisation’s commitment to investigations and the public perception of its role (Homel, 1997, p. 39).

Within a short time of its establishment the Commission was flooded with complaints from the public, which reached the level of 45 complaints per week (CJC, 1990, p. 18). This situation limited the Commission’s ability to develop approaches other than the investigative one, at least during its first few years. With the number of complaints that the Official Misconduct Division (OMD) received each year growing, it is no wonder that a substantive proportion of the Commission’s budget was consumed with the
costs of investigating complaints (CJC, 1991, p. 14; Homel, 1997, p. 39; PCJC, 2001, p. 21). For example, in 1994, the PCJC reported that the OMD budget amounted to half of the Commission’s overall annual budget of over twenty million dollars (PCJC, 1995, p. 34).

The Commission’s approach to investigating complaints was centred on the creation of the Complaint Section on 22 April 1990 within the Official Misconduct Division (OMD). It started with only six investigators. It was not before August of that year that an additional 15 inspectors were attached to the Section upon their successful completion of the vetting process (CJC, 1991, p. 15).

Over the years the OMD staff increased and continued to take the majority of the Commission’s staff establishment. In 1994, the OMD had a staff of 132, who were evenly distributed between the complaints section and the multi-disciplinary teams (PCJC 1995, p. 34). This trend continued over the years; by 2005, about 85 staff were assigned to the Commission’s misconduct function out of the total 299 CMC staff (PCMC, 2006, p. 10). Table 5.1 summarises the staffing structure of the Commission over the last few years.
Table 5.1: Staffing structure

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>5</td>
<td>10</td>
<td>15</td>
<td>12</td>
<td>14.2</td>
<td>14</td>
<td>13.5</td>
<td>19.1</td>
<td>19.2</td>
</tr>
<tr>
<td>Crime</td>
<td>N/A*</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>34.1</td>
<td>39.5</td>
<td>38.4</td>
<td>38.8</td>
<td>49.8</td>
</tr>
<tr>
<td>Misconduct (OMD)</td>
<td>114.9</td>
<td>140.6</td>
<td>89</td>
<td>91.3</td>
<td>82.4</td>
<td>85.5</td>
<td>76.4</td>
<td>83.6</td>
<td>87</td>
</tr>
<tr>
<td>Witness protection</td>
<td>25.4</td>
<td>25.8</td>
<td>50.4</td>
<td>46.4</td>
<td>48.4</td>
<td>47.0</td>
<td>48</td>
<td>45</td>
<td>47.8</td>
</tr>
<tr>
<td>Research &amp; prevention</td>
<td>17.4</td>
<td>30.9</td>
<td>29</td>
<td>26.6</td>
<td>24.6</td>
<td>27.6</td>
<td>26.2</td>
<td>27.2</td>
<td>24.4</td>
</tr>
<tr>
<td>Intelligence</td>
<td>17</td>
<td>21</td>
<td>46.8***</td>
<td>42.7</td>
<td>53.8</td>
<td>51.4</td>
<td>46.2</td>
<td>20.7</td>
<td>20.4</td>
</tr>
<tr>
<td>Corporate</td>
<td>38.8</td>
<td>37</td>
<td>15</td>
<td>15</td>
<td>19</td>
<td>19.4</td>
<td>20.3</td>
<td>50.8</td>
<td>56.5</td>
</tr>
<tr>
<td>Total</td>
<td>225</td>
<td>265.3</td>
<td>245.2</td>
<td>234</td>
<td>276.5</td>
<td>284.4</td>
<td>269</td>
<td>285.2</td>
<td>305.1</td>
</tr>
</tbody>
</table>

*Organised crime function was removed from the CJC upon the establishment of the Queensland Crime Commission QCC in the same year.

**Both ‘Research’ and ‘Corruption Prevention’ were merged as of July 1998 to create the ‘Research & Prevention Division’.

***The increase in staffing numbers was due to the transformation of the ‘Information Management’ function to be amalgamated with Intelligence to form the ‘Intelligence and Information Division’. However, as of January 2005, the Commission restructured the Intelligence organisational structures in accordance with a recommendation of Mercer Group who was appointed by the Commission to review the intelligence structures. The recommendation came to separate Information Technology and Records Management functions to be part of the Corporate Service and to keep the Intelligence ‘a stand alone function’, which explains the increase in the staffing number of the Corporate service and the decrease of the Intelligence staff for 2004/2005 (CMC 2005, p. 64).


The Queensland Council for Civil Liberties, The Queensland Law Society and the Criminal Law Association of Queensland were some of the organisations that criticised the CJC in this matter. These criticisms were noticed by the PCJC which called for the CJC Act 1989 to be amended in a way that would guard against any misuse of the Commission’s powers (PCJC, 1995, pp. 56–60).
The Commission’s approach to investigating misconduct has changed over the past few years. In its early years, the CJC had aggressively pursued investigating misconduct complaints and organised and major crime allegations using its coercive powers, such as the investigative hearings and summons.

For example, in 1993/94, the Commission reported that it had issued about 520 summonses pursuant to S.74 of its Act 1989. However, its overuse and reliance on this power was criticised by some of the State bodies in their submissions to its Parliamentary Committee for the purpose of the statutory revision of the Commission’s work. Table 5.2 illustrates the Commission’s usage of its powers in the last five years in its investigations.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Power to enter</td>
<td>2</td>
<td>5</td>
<td>6</td>
<td>6</td>
<td>15</td>
</tr>
<tr>
<td>Notice to discover information</td>
<td>149</td>
<td>231</td>
<td>224</td>
<td>158</td>
<td>223</td>
</tr>
<tr>
<td>Notice to attend hearing</td>
<td>22</td>
<td>45</td>
<td>42</td>
<td>39</td>
<td>71</td>
</tr>
<tr>
<td>Search warrant application</td>
<td>31</td>
<td>44</td>
<td>34</td>
<td>17</td>
<td>22</td>
</tr>
<tr>
<td>Surveillance warrant application</td>
<td>4</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

(Source: CMC annual reports 2002/03, p. 12; 2004/05, p. 37; 2005/06, p. 58)

Table 5.2 provides a noticeable increase in the CMC usage of its powers granted to the Commission under the CMC Act and under the Police Powers and Responsibilities Act 2000 in 2005–2006 compared to the previous year 2004–2005. This was a reflection that during 2005–2006 the CMC received 3924 complaints. The same year observed the beginning of its Strategic Plan 2005–2009, which emphasised several main objectives including initiating and conducting timely and effective multidisciplinary...
misconduct investigations and inquiries, identifying investigative opportunities through proactive intelligence and research activities, ensuring an effective and efficient complaints handling process (including assessment) and undertaking effective monitoring functions to oversee the management of anti-misconduct strategies in public sector agencies. The Commission reported that it had used its proactive, covert investigative techniques and intelligence-driven investigations when dealing with allegations of organised crime, pedophilia and misconduct (CMC 2005, p. 15, 2006, pp. 31 & 58).

One recent example of a CMC investigation into public sector probity was the investigation into ‘an offer made by the Premier of Queensland to the Palm Island Aboriginal Council’. These allegations stated that the Premier promised to waive the Aboriginal Council debt of $800,000 in return for the Council members accompanying him to the opening ceremony of the Palm Island Youth Centre on 17 February 2005. The Councillors had already expressed their unwillingness to attend the ceremony because they were still mourning the death of Mr Doomadgee while in police custody in November 2004 (CMC, 2005d, p. 2).

After the investigation, the Commission stated that the Premier’s action did not amount to misconduct. In its explanation, the CMC said ‘for his conduct to be corrupt, it would have had to go beyond the legal limits imposed by the criminal law on the extent to which politicians may, in our democratic system, seek to secure influence, strike compromise and gain advantage for themselves and others. In the Commission’s view, this was not the case’ (CMC, 2005c, p. 2).

As the years progressed, the Commission recognised the need to change its approach through undertaking more proactive investigations and through
other means, especially in dealing with the increasing number of complaints against the police.

For example, in early January 2007, the CMC and the Ethical Standards Command (ESC) of the QPS jointly investigated claims by Aurukun resident Warren Bell that the police battered him while he was in their custody. His allegations caused unrest at Aurukun resulting in damage to the police station there (CMC, 2007, p. 1).

The joint investigation reported ‘significant inconsistencies’ in Warren Bell’s statements, with no concrete evidence to support it. The Commission could not find any base for referring the case to the DPP for criminal charges, but it did refer it to the QPS to consider disciplinary action against the police officers for their ‘failure’ to video-record Bell in his cell (CMC, 2007, p. 27).

In mid 2000 and in cooperation with the QPS ‘Project Resolve’, the CJC initiated a new way to handle complaints against the police. The project’s overall aim was to give the QPS wider responsibilities when dealing with complaints against its personnel, while retaining its right to monitoring, reviewing, auditing and, when necessary, taking over the investigation. The Commission expressed its support for such an initiative, which includes the limited devolution of its responsibility to the Police Service and to applying a number of administrative solutions to complaints against police (PCJC2001, p. 30).

In line with this new approach, the Crime and Misconduct Commission had indicated in its 2006–10 Strategic Plan that devolution would be one of its main principles in its drive to strengthen public sector integrity in Queensland (CMC, 2006b, p. 14).

5.1.1.2 Surveillance
Recognising the importance of surveillance in the work of anti-corruption organisations, Fitzgerald’s recommendation was to equip the newly-created
body with this capability. Therefore, when the CJC was established in 1989, the OMD comprised four main units, one of which was the Surveillance Section. The first surveillance unit had a staff of 15 officers; the majority of its operations then were in tackling major drug investigations. For example, in 1991/92, it conducted 25 operations mostly in connection with the Commission’s organised and major crime investigations, with some of those operations performed in cooperation with AFP and QPS (CJC, 1991, p. 10; 1992, p. 48).

The location of the surveillance unit has changed over the years. It started with the OMD, but it now works as a unit within the Witness Protection and Operations Support functions of the Commission. However, the CMC Act 2001 and the CJC Act 1989 had both recognised how intrusive surveillance could be. Therefore, the CMA 2001 has drawn very rigid restrictions upon the application and execution of surveillance warrants.

For example, CMA 2001 section 121 requires the Commission to apply to a Supreme Court judge for a warrant by providing all information to justify such an application. Also, it gives the PIM the authority to monitor the application and the use of the warrant and oversee the CMC compliance with the CMA provisions. The PIM can also be present during any hearing conducted in relation to verifying the legality of such application; he can also organise statistical data on the use and the efficiency of using the warrant (PCMC, 2006, 46).

An example of using this function is the investigation of a ‘correctional centre psychologist’, where it was revealed through the use of the surveillance camera that she was having a sexual relationship with two inmates, giving them alcohol and drugs, among other things. Though at first she denied such allegations, she later pleaded guilty on four charges of perjury and was sentenced to 16 months in prison and for every single
charge to be served simultaneously, with the imprisonment to be held after
four months ‘for an operational period of two years’ (CMC, 2002, p. 52).

5.1.1.3 Prosecution
In relation to its official misconduct function, the CMC Act 2001 section 49
provides that it can only refer matters to the Director of Public Prosecution
(DPP) upon the completion of its investigation if the discovery leads to
illegalities with a recommendation for criminal prosecution, or it can
forward the matter to the appropriate chief executive officer to give
consideration for disciplinary action. The Commission can also lay official
misconduct charges against a public officer through a Misconduct Tribunal
(CMC, 2004/05, p. 37; CMC web site, 2007).

Over the years, two major concerns came to light in relation to the
Commission’s investigation referrals to the DPP. The first one is the issue
of a relatively low rate of prosecution in its cases. When examining the
Commission’s police oversight function, Prenzler noted that, despite an
increasing number of cases being recommended for prosecution, the high
burden of proof required in criminal proceedings reduced the success rate
considerably. He was critical of the Commission’s pursuit of ‘the glamour of
high profile investigations’ prosecuted in the courts at the expense of a
larger number of prosecutions pursued in misconduct tribunals where more
success was likely (Prenzler, 2000, pp. 666, 673).

Similar to other anti-corruption bodies, the Commission came to face the
issue of satisfying the higher legal standards required to obtain a prosecution
(Brereton 2000, p. 17). Though the Commission supplies, in its annual
report, the number of recommended charges in its investigations, it does not
extend beyond that to regularly report the number of cases prosecuted, and
those rejected by the ODPP and why. The CMC confirmed that it does not
make this information publicly available.
The second matter stemmed from the Commission’s practice in recent years of referring all cases being determined for prosecution to the DPP for advice before laying charges against a person. This resulted in the accumulation of these cases in the Office of the Director of the Public Prosecution, which ultimately caused considerable delays in finalising matters (PCMC 2004, p. 37).

To overcome this situation, the Department of Justice and the Attorney-General recommended amendment of the CMC Act 2001 in a way that would give the CMC the right to decide whether it should lay criminal charges or not. However, the CMC and the DPP met together and drew up a protocol for dealing with CMC recommendations that the CMC was satisfied would give stronger support to its recommendations for prosecution. The protocol included allowing police seconded to the CMC to initiate prosecutions (PCMC, 2006, p. 55).

5.1.1.4 Penalties and sanctions

It was stated previously that according to its statutory functions, the Crime and Misconduct Commission is not entitled to decide if people are guilty or not guilty in the context of its misconduct investigations, nor can it impose disciplinary action upon anyone. It can only refer the matter either to the DPP or to the head of the public sector organisation with recommendations either for prosecution or disciplinary action or through the Misconduct Tribunal (CMC web site, 2007).

For example, in 2005/2006, the Commission referred about 73.5% of its total received complaints of 3900 back to the relevant public organisations. However, it was reported that those agencies’ handling of these complaints was as follows: in 13% of the referred cases it was decided that no further action was needed; in 57% of the matters, the complaint was not considered substantiated by those agencies, with the relevant agency taking some
measures to determine those complaints. The remaining 30% was dealt with through some sort of disciplinary or ‘other’ action for resolving the original complaints (CMC, 2006, p. 50).

The CMC, in its drive over the last few years to build public sector agencies’ capacity to handle their own misconduct complaints, has emphasised the principle of devolution. However, the way that these organisations elected to deal with the complaints referred to them must be re-evaluated by the Commission, as the majority of these complaints have been rejected or dealt with using measures that could be considered weak and ineffective. There is fear that such a strategy will mean that these organisations will fail to properly deal with their own misconduct. The CMC needs to re-examine this direction before the situation deteriorates further.

5.1.1.5 Intelligence

Intelligence has been identified as a supportive strategy for the reactive approach. In the case of Queensland, the Fitzgerald Inquiry uncovered the ineffectiveness of both the Information Bureau and the Bureau of Criminal Intelligence (BCI) of the State Police Service (Fitzgerald, 1989, p. 270).

In recommending the formation of the CJC, Fitzgerald acknowledged the important role of intelligence in supporting the function of the Commission and in supervising the QPS information and intelligence functions (Fitzgerald, 1989, p. 37).

Therefore, his recommendation was incorporated through the establishment of the Intelligence Division within the Criminal Justice Commission. In the CJC Act 1989, Sections 23(d), 58, 59 and 60 all dealt with the establishment of this division, its roles and responsibility.

The Division had 19 staff when it first commenced functioning; it was tasked with creating a database of information gained internally through the function of the Commission’s different divisions or externally such as
through the Queensland Police, the Federal Police or other sources. The second task was to supervise the performance of the QPS BCI and the Service coordination in such matters with other law enforcement agencies. The third task was to report, at the Commission discretion, to the Premier and the Minister of Police on issues related to criminal intelligence or those in relation to government policies and projects (CJC, 1991, p. 64).

Over the years, the Intelligence Division became actively involved with the Commission’s organised crime and misconduct functions by, (i) providing strategic analysis about groups of organised crime and, (ii) taking part in the Commission’s investigations either by forwarding analytical input to the investigative teams or when it was part of the Joint Organised Crime Task Force (JOCTF) (CJC, 1994, p. 34).

In 1997 for example, the Commission reported that its Intelligence Division has participated in 42 investigations, of which 15 were misconduct investigations and the rest (27) were JOCTF operations into organised crime. It also provided ‘analytical support’ for 52 of the OMD official misconduct investigations and published and produced 85 ‘tactical and strategic intelligence reports’ (CJC, 1997, pp. 58–60).

Despite an active participation and function, some concerns have surfaced that there might be a duplication of functionality and resources by having both this Division and the BCI in the QPS. In the 1995 review of the Commission’s activities both the then-Commissioner of Police and the Queensland Justices and Community Legal Officers argued against the Commission and the QPS having the same intelligence function toward organised crime and misconduct, with the latter recommending that such a function be limited exclusively to the QPS (PCJC, 1995, p. 145).

The Commission, on its part, refused such claims providing that the two entities’ intelligence functions complemented each other and that there were
a number of strategies being implemented to guard against any overlapping
through means of cooperation, coordination and various liaison activities
between the two organisations. There was no recommendation made to
change such arrangements (PCJC 1995, pp. 146, 147).

The intelligence function of the Commission had to be altered in the wake
of removing the organised crime function from the CJC in 1998 to the
QCC. The responsibility in this matter was refocused to deal with
misconduct; the sections dealing with intelligence in the CJC Act 1989 were
amended to reflect the changes in jurisdictions (PCJC, 2001, 78). However,
the removal was restored in 2002 as a result of merging both the CJC and
the QCC to create the current CMC. In fact, the government justified such
an amalgamation by stating that improving the ‘efficiency and effectiveness’
of the two joined agencies’ intelligence resources was one of the main
factors behind the merger. It called upon the CMC to have its own
intelligence capacity (PCJC, 2004, p. 65).

Currently, the intelligence capability is used widely in the work of the
Commission to tackle both misconduct and organised crime. The
Commission depends on intelligence assessments provided by the Division
to decide its priorities in combating organised crime by tackling the ‘most
serious crimes’ identified through the intelligence function. It also uses this
function in its misconduct investigations by incorporating the evidence and
information provided by the Division with its other resources and powers
(CMC, 2005, pp. 20, 37).

The Strategic Intelligence Unit (SIU) in recent years, besides working with
investigative teams, has been carrying out assessment projects and sharing
information with the concerned bodies or publishing unclassified
information for the purpose of strengthening the public awareness of
organised crime and misconduct. For example, in its 2005/2006 annual
report, it stated that it had produced and distributed its intelligence through ‘Crime Bulletins’ directed to the general public or through the ‘Intelligence Digests’ to be used by law enforcement agencies (CMC, 2006, p. 34).

The SIU carries out in-depth strategic assessment projects, such as the ‘organised stolen property crime market in Queensland’ assessment. The evaluation disclosed that the majority of property crime offenders worked independently with no attachment to known organised crime groups. There was no indication that any of these groups were controlling the stolen property market (CMC, 2005, pp. 8–10).

Another strategic assessment project conducted by the SIU in the reported year of 2005-6 was the ‘prominent outlaw motorcycle gang’ (OMCG). This examination exposed that some of the gang members were involved in crimes such as drug trafficking, money laundering, violence and other criminal activities. These revelations were disseminated to other concerned departments as a way of presenting them with the different threats posed by this gang (CMC, 2006, p. 34).

5.1.1.6 Other supportive elements to the reactive approach
In discharging the reactive side of its work, on some occasions the CMC tended to work with the assistance of other organisations. For years, the Commission has been working with the Queensland Police Service in different aspects of its functions either cooperatively or in accordance with its legislation. Police officers seconded to the Commission make up a noticeable part of the Commission’s overall staff establishment, and at the same time the Commission is required by its Act (CJC 1989), and now the CMC 2001, to monitor reforms in the Service. The Commission has been conducting joint investigative operations with the QPS since its inception, with such a cooperative relationship being fostered and facilitated by the Joint Executive Team (JET), which comprises executives from both
organisations who meet every three weeks. The decisions of this team are usually put into operation through the QPS’s operation management board, which has in its membership representatives from the CMC (CMC, 2005, p. 18; CMC web site, 2007).

Another supportive element in the CMC’s reactive approach is its working relationship with the Office of the Director of Public Prosecution. In contexts with its official misconduct functions, the CMC is required by its Statutory Act 2001 to refer matters to the DPP with a view to criminal prosecutions (PCMC, 2004, p. 37). The variations in this relationship during the past years have been previously stated, specifically in relation to delays in deciding matters referred by the Commission to the DPP for advice on charges.

On some occasions, the Commission had established its own inquiry to support its functions. One example is the ‘Carruthers Inquiry’ into investigating a Memorandum of Understanding between the Queensland Police Union of Employees and the Coalition parties. Another was the initiation of the ‘Carter Inquiry’ to examine allegations of police involvement with drug trafficking (CJC, 1997, pp. 34, 35).

The ‘Shepherdson Inquiry’ in 2000 into allegations of electoral fraud by some local Australian Labor Party (ALP) members, found no evidence of wide-spread efforts to make ‘consensual false enrolments’ in public elections; rather, the inquiry found the conduct was an attempt by some family members to enhance the electoral chances of their preferred candidate (CJC, 2001, p. 21).

Despite such findings, this inquiry resulted in amendments to the electoral system. The Electoral Act and Other Acts Amendment Act 2002 was a direct result of this investigation, as well as being behind the reforming of the internal pre-selection process of the ALP (CMC, 2002, p. 52).
5.1.2 Proactive measures

In its submission to the PCMC for the purpose of the three-yearly review of the Crime and Misconduct Commission 2006, the CMC acknowledged the importance of expanding its work beyond its investigative role in fighting misconduct, to ways of providing leadership, guidance and rewards for the development of public sector agencies’ wellbeing and to strengthen its commitment to the prevention and capacity-building drives to resist misconduct threats (CMC, 2006, p. 129).

In 1998 the then-CJC engaged an outside commercial consulting group to review its approach to executing its functions, including an examination of its investigative processes. The review outcomes and recommendations were implemented through what came to be recognised as the ‘Strategic Implementation Group’ (SIG). The group presented a ‘practical blueprint’ in which a more proactive and integrated approach was introduced to the CJC functions including its investigations of misconduct (PCJC, 2001, p. 22).

In broad terms, the Committee applauds the efforts of the CJC in reassessing its approach to investigations and in introducing initiatives aimed at improving service delivery and enhancing the emphasis on prevention and a proactive integrated approach (PCJC, 2001, p. 24).

The restructuring of the CJC’s approach was not a surprise, taking into consideration its bitter relationship over the first few years with State politicians, and the fact that it had been overwhelmed since its inception with a large number of complaints, which in return had hindered its ability to take proactive stands in many aspects of its jurisdiction.

The proactive approach used different strategies (different to those of the reactive measures) ranging from corruption-prevention activities, to education and training, to building up public sector agencies’ capacities and reforming laws to safeguard against misconduct. The main supporting
strategy behind these strategies was research. Research has become a vital aspect in combating corruption in recent years. Organisations such as my current case study and the NSW ICAC have been working to have policy reforms based on its research findings.

The proactive approach had its own secondary but relatively important supportive elements. In strengthening their proactive role, these agencies tended to rely on training institutions, organisational leadership, an organisation’s internal ethic codes and the Office of Public Service.

5.1.3 Corruption Prevention
Considering the Commission’s organisational charter and structure, the responsibility in the early stages of the CJC to educate, initiate prevention schemes and carry out and monitor reform proposals had always been distributed mainly between the two Commission divisions of the Research and Co-ordination Division and the Corruption Prevention Division, and with the Intelligence Division to a smaller degree. Investigations into major complaints tended to come with significant research that might result, in some cases, in making recommendations for reforms (Homel, 1997, p. 41).

The CJC Act 1989 also tasked the OMD in its investigative function with the advisory role of providing directions and help to public sector agencies through education and by forming a workable relationship for detecting and preventing official misconduct (Section 2.20 (2) (f)). The idea was to situate the CPD, which had an educative and preventative role, within its investigative body. This would provide the advantage of formulating its prevention and education initiatives based on the information drawn from its investigative activities. This advantage would not be available if it was positioned as an external corruption prevention unit (Lewis, 1997, p. 230).

The Commission’s approach to fulfilling its preventative function was based on the notion that ‘prevention is better than cure’. For example, there was a
commitment to targeting managerial and administrative shortfalls that might create avenues for corruption by employees (CJC, 1991, p. 51). Lack of training in ethical obligations is an obvious example, along with lack of supervision. In line with this perception, the CJC’s first step to initiate its Corruption Prevention Program was the appointment of its corruption prevention officer in August 1991 (CJC, 1992, p. 46). In March 1993 the CPD was officially created to be the educative arm of the Commission, to take on the additional responsibility of designing a proactive approach in accordance with the Fitzgerald Report recommendations. It was given four main areas of concentration:

- Public Sector Liaison
- Management System Reviews
- Education and Training

5.1.4 Public sector liaison
The Commission started its liaison works with the public sector by setting up ‘a three-strategy approach’:

- ‘Management Training Workshops’ were offered to top-line management leaders, detailing the Commission’s roles with specific attention dedicated to the CPD functions and programs. It was also used to highlight certain elements of the prevention tools. One of the major outcomes of this strategy was the development of a network of liaison officers in these organisations to act as liaison officers between the organisation and the Commission. The aim was to use these continual contacts to foster advice into how best organisations can tackle problems related to misconduct (CJC, 1992, p. 47).
The second strategy was the ‘Teaching Corruption Risk Assessment’, in which the CPD developed the ‘Corruption Prevention Manual’ as a firm tool and a reference to be used by managers willing to introduce measures to prevent corruption in their organisations (CJC, 1992, p. 47).

The third strategy was designed to help managers develop their own measures and strategies to prevent corruption specific to their own organisations. In 1993/94, representatives of about 50 organisations were presented with information to broaden their knowledge on issues such as white-collar crime, official misconduct and how a corruption prevention strategy for the public sector could best be developed (CJC, 1994a, p. 46).

Tables 5.3 and 5.4 provide typical examples of the Commission liaison activities and their scope in the last twelve years. The work of the CMC in relation to its deferent liaison activities continues to be an important part of its proactive strategies to enhance integrity of the public sector over the years.

### Table 5.3: Liaison activities

<table>
<thead>
<tr>
<th>Meetings with QPS</th>
<th>Responding to requests for advice &amp; assistance</th>
<th>Meetings with other agencies</th>
<th>Regional visits</th>
<th>CMC Liaison Officer Meetings</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not recorded</td>
<td>83</td>
<td>25</td>
<td>3</td>
<td>1</td>
<td>95/96</td>
</tr>
<tr>
<td>28</td>
<td>61</td>
<td>15</td>
<td>N/A**</td>
<td>1</td>
<td>96/97</td>
</tr>
<tr>
<td>21</td>
<td>57</td>
<td>12</td>
<td>N/A</td>
<td>1</td>
<td>97/98</td>
</tr>
<tr>
<td>Frequently</td>
<td>55</td>
<td>4</td>
<td>N/A</td>
<td>1</td>
<td>98/99</td>
</tr>
<tr>
<td>Frequently</td>
<td>88</td>
<td>N/A</td>
<td>6</td>
<td>2</td>
<td>99/2000</td>
</tr>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>2</td>
<td>2000/01</td>
</tr>
<tr>
<td>Weekly meeting with QPS ESC*</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>01/02***</td>
</tr>
<tr>
<td>Weekly</td>
<td>N/A</td>
<td>N/A</td>
<td>5</td>
<td>2</td>
<td>02/03</td>
</tr>
<tr>
<td>Weekly</td>
<td>N/A</td>
<td>10</td>
<td>4</td>
<td>2</td>
<td>03/04</td>
</tr>
<tr>
<td>Weekly</td>
<td>N/A</td>
<td>14</td>
<td>5</td>
<td>2</td>
<td>04/05</td>
</tr>
<tr>
<td>Weekly</td>
<td>105</td>
<td>19</td>
<td>4</td>
<td>2</td>
<td>05/06</td>
</tr>
<tr>
<td>weekly</td>
<td>71</td>
<td>23</td>
<td>4</td>
<td>2</td>
<td>06/07</td>
</tr>
</tbody>
</table>
To facilitate its liaison work, the Commission established the ‘Liaison Officers Network’ during 1999, comprising liaison officers representing government bodies, local governments, universities and other public agencies. The aim was for those officers to participate in meetings organised twice a year, which were hosted by the Commission to broaden their knowledge on matters that were relevant to the prevention of corruption. The first two meetings were conducted in early and late 2000, with the focus on managing internal complaints and ways of strengthening the ability of organisations to report and investigate complaints (CJC, 2001, p. 53).

(Source: CJC, 1997, p. 41; 1998, p. 57)

Another prevention initiative was the creation of the self-funded, non-profit organisation, the ‘Corruption Prevention Network’ — similar to the one in NSW — as a means of building a forum through discussions, meetings and building up contacts for the benefit of the people interested in or responsible for the prevention of corruption in their organisations (CJC, 2001, p. 54).

5.1.4.1 Local government liaison
As part of its liaison function, the Commission had also initiated ‘quarterly meetings’ for the purpose of sharing information and looking for long term ‘opportunities’ for a workable relationship with the Department of Local Government and Planning and the Local Government Division in the office of the Queensland Ombudsman (CMC, 2002, p. 56).

In recent years, the Commission has conducted various outreach activities, like visiting rural and regional centres across the State, to conduct seminars,
to hold meetings with the heads of the regional public bodies and to conduct workshops and presentations to staff there. In 2006, the Commission officers visited places such as Cairns, Karumba, Inglewood and Caloundra, with these visits varying from a day to a few days (CMC, 2006, p. 52).

As a part of its liaison function, the Commission created the ‘Aboriginal and Torres Strait Islander Liaison and Education Program’, aiming to establish a workable relationship between itself, the police and the Indigenous people. For that purpose, it employed two officers responsible for coordinating the required work in those particular communities, such as arranging visits for investigative and complaint officers to work out problems between the community and the police, assisting people with complaint lodgement, and facilitating presentations to assist cultural awareness with the Commission. The CMC also hosted bi-monthly meetings with the Aboriginal and Torres Strait Islander Consultative Committee. It also printed and distributed the ‘On the right track’ booklet that was designed to provide practical advice and information on ethical matters and situations and to give these communities’ councillors and employees directions and insights on how to deal with ethical issues (CMC 2003, p. 48; PCMC 2004, p. 81).

In accordance with its 2006–2010 Strategic Plan, in December 2005 the Commission abolished its Indigenous Community Consultative Committee to comprehensively pursue its duties toward such communities through more extensive strategies, such as, (i) conducting four visits every year to Indigenous communities, (ii) establishing community liaison through its liaison officers, (iii) the CMC’s participation in the NAIDOC (National Aborigines and Islander Day Observance Committee, now an acronym for a week of celebration of Indigenous culture), (iv) meetings with the Commission’s liaison officers, (v) taking part in the Indigenous Police Review and Reference Group, (vi) attending the Justice Entry Program

5.1.4.2 Management system reviews

The Management System Reviews element of the work of the CPD was first introduced in August 1993. The objective of this program was to investigate and examine the administrative procedures of the organisations that were scrutinised by the Commission because of allegations of misconduct (CJC, 1994, p. 46).

These ‘management audits’ were not limited to financial issues; rather, the focus was on examining whether the administrative systems had failed to shield the organisation against corruption. It reviewed aspects such as power misuse, neglect of duty, criminal behaviours and errors, and examined the systems in place to counter these types of acts and the reasons behind its failure to detect such breaches. The audits looked for weak spots that might be exploited. The management reviews also made recommendations on how best such loopholes could be detected, dealt with and prevented in the future and provided methods to improve the system through more internal control and by the adoption of effective corruption prevention measures (PCJC, 1995, p. 170; CJC, 1994a, p. 46).

The Commission reported an increase in the number of its misconduct risk management reviews over the years associated with an overall high level of client satisfaction. For example, in 1994, the Commission conducted six management misconduct reviews and in 1997 performed eight reviews, such as a risk analysis of ‘purchasing and asset management and inventory’, a risk analysis of ‘internal audit procedures’; and a risk analysis of ‘the hiring

As a result of State-run corrective services being brought under the Commission’s jurisdiction in 1997, the CJC in collaboration with the Department of Corrective Services (DCS) conducted a review into threats of corruption associated with prison industries. The review recognised a number of corruption risks attached to various prison industries in areas such as corporate governance, management and other operational areas. At the end of this review, the DCS took it upon itself to implement the review recommendations (CJC 2000a, p. 44; 2001, p. 53).

5.1.5 Education and training

In conducting its educational component, the Commission structured its first year’s program around four initial public schemes:

- Electronic Media, which included producing and running a series of short television and radio advertisements
- The distribution of ‘posters and brochures’ to various public sector departments and agencies, including schools, libraries and community groups
- Lectures and presentations by CPD officers and other people in the Commission to Government departments, educational institutions and through participation in professional conferences and seminars
- The commencement of the liaison with the educational institutions for the purpose of introducing corruption prevention education, lectures, tutorials and units into Justice Studies, and Accountancy and Ethics courses (CJC, 1991, p. 52; 1992, p. 48; 1994a, p. 45).

Table 5.5 summarises the Commission’s educative activities during the five years between 1995-2005 as an example of the various education projects.
and activities. The education part of the CMC continues to play a vital role in its strategy to enhance integrity in Queensland.

**Table 5.5: The Commission’s educational activities**

<table>
<thead>
<tr>
<th>Year</th>
<th>QPS workshops/presentations</th>
<th>Presentations to TAFE and state school staff</th>
<th>Workshops/presentation for public sector agencies</th>
<th>Presentations to years 11 &amp; 12</th>
<th>Lectures: Universities &amp; TAFE Colleges</th>
<th>Conference papers</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>95/96</td>
<td>13</td>
<td>13</td>
<td>76</td>
<td>42</td>
<td>11</td>
<td>20</td>
<td>95/96</td>
</tr>
<tr>
<td>96/97</td>
<td>50</td>
<td>2</td>
<td>40</td>
<td>5</td>
<td>14</td>
<td>11</td>
<td>96/97</td>
</tr>
<tr>
<td>97/98</td>
<td>75</td>
<td>0</td>
<td>46</td>
<td>1</td>
<td>8</td>
<td>16</td>
<td>97/98</td>
</tr>
<tr>
<td>98/99</td>
<td>64</td>
<td>N/A</td>
<td>38</td>
<td>N/A</td>
<td>10</td>
<td>3</td>
<td>98/99</td>
</tr>
<tr>
<td>99/2000</td>
<td>31</td>
<td>N/A</td>
<td>59</td>
<td>N/A</td>
<td>10</td>
<td>3</td>
<td>99/2000</td>
</tr>
<tr>
<td>2000/01</td>
<td>36</td>
<td>Distributed 350 multimedia kits</td>
<td>7</td>
<td>N/A</td>
<td>1</td>
<td>6</td>
<td>2000/01</td>
</tr>
<tr>
<td>01/02*</td>
<td>N/A</td>
<td>Conducted training on ethical decision-making process</td>
<td>13</td>
<td>N/A</td>
<td>4</td>
<td>6</td>
<td>01/02*</td>
</tr>
<tr>
<td>02/03</td>
<td>N/A</td>
<td>1</td>
<td>8</td>
<td>N/A</td>
<td>1</td>
<td>19</td>
<td>02/03</td>
</tr>
<tr>
<td>03/04</td>
<td>N/A</td>
<td>7</td>
<td>N/A</td>
<td>N/A</td>
<td>16</td>
<td>14</td>
<td>03/04</td>
</tr>
<tr>
<td>04/05</td>
<td>9</td>
<td>N/A</td>
<td>11</td>
<td>N/A</td>
<td>1</td>
<td>17</td>
<td>04/05</td>
</tr>
<tr>
<td>05/06</td>
<td>9</td>
<td>N/A</td>
<td>20</td>
<td>2</td>
<td>7</td>
<td>6</td>
<td>05/06</td>
</tr>
<tr>
<td>06/07</td>
<td>20</td>
<td>3</td>
<td>21</td>
<td>13</td>
<td>1</td>
<td>2</td>
<td>06/07</td>
</tr>
</tbody>
</table>

*Information is not reported statistically

Sources: (CJC & CMC annual reports of 95/96, 96/97, 97/98, 98/99, 99/2000, 2001/02, 02/03, 03/04, 04/05, 05/06, 06/07)


In accordance with the recommendation of the Commission’s third Parliamentary Committee in 1998, the education function of the Corruption Prevention Division was made to change direction. The PCJC recommended that each State department be responsible for its own training function and the Commission’s Prevention Division should ‘refocus’ on preventative measures by diverting more of its capabilities into performing the misconduct risk and systems reviews (PCJC, 1998; Recommendations 38, 39, 40, p. 138).
In doing so, the Commission shifted its focus from ‘training individuals’ to a ‘training the trainer’ approach. It started printing and disseminating ‘train the trainer’ kits on ethical decision-making, the ‘prevention pointer’ series targeting specific elements of the public sector like local government, information about practical preventative measures and publishing the ‘prevention pays’ newspaper (PCJC, 2001, p. 129).

5.1.6 Proactive investigation
Following the 1998 PCJC Review, the Commission decided to take another approach in which investigation needed to go together with prevention and that official misconduct was to be tackled proactively (CJC, 2000, p. 11). In applying this new approach, the Commission’s Investigation Division began to apply more efforts toward proactive investigations. In describing this type of investigation, the Commission stated that these investigations were initiated by complaints but were to be dealt with through proactive means and tactics (CJC, 2000, p. 27).

The initiation of a proactive investigation usually begins after analysing both the intelligence and complaints information and establishing the relationship between the different leads and the suspected misconduct. In the CMC, these types of investigations were normally carried out by the multidisciplinary teams (MDTs), which included ‘police and civilian investigators, financial and intelligence analysts, lawyers and support staff’ (CJC, 2000, p. 27).

An important example of proactive investigation is ‘Project Shield’ which carried out 54 proactive investigative operations related mainly to police misconduct across Queensland in connection with drug crimes. The project was headed by retired Supreme Court Judge Carter and included a long secret examination of police officers’ involvement in drug-related activities. The various investigative operations resulted in a number of successful
prosecutions and others in disciplinary action against the police officers involved (CJC, 2000, pp. 28–29).

The Commission also applied other measures to strengthen its proactive preventative approach, such as establishing the Proactive Assessment Unit. This Unit was intended to function as part of the Intelligence and Information Division, and proactively develop the different intelligence and data available for research and prevention efforts. A research officer was appointed within the complaint section to determine which complaints could be researched in-depth to inform prevention strategies. The Executive Assessment Committee, with the Director of Research and Prevention as a member, was created to meet on a daily basis (CJC, 2000, p. 28; PCJC, 2001, p. 125).

5.1.6.1 Integrity capacity building
This is another strategy that has been identified as part of a more vigorous proactive approach. The idea is best explained by the notion that though the public sector ought to be externally overseen by bodies like the anti-corruption agencies they still needed to develop their own internal set of safeguards against misconduct and be responsible for preserving their own integrity (PCMC, 2004, p. 25).

For the Crime and Misconduct Commission, the CMA 2001 section 34 (b) placed an obligatory function on the Commission to support public sector agencies in creating their own capacity to prevent and deal with misconduct to the best of their capability. In fulfilling this function, the CMC assists public sector organisations to build their capacity through various means, such as, (i) regional visits, (ii) CMC liaison officers’ forum, (iii) distributing a number of publications such as the ‘Building Capacity Series’ and ‘facing the facts’, (iv) profiling the Queensland public sector and reporting the findings, (v) organising strategic seminars, workshop and presentations and finally,
(vi) carrying out organisational system reviews with the emphasis on local government (CMC, 2004, pp. 42–45; 2005, pp. 32–35).

### 5.1.7 Law Reform

The work of the CJC was supported by legislation introduced in the 1990s that helped establish a network of policies, laws and institutions that would cover all the complex ethical issues in public sector and minimise loopholes of unethical conduct. The Public Sector Ethics Act 1994 provided a means of encouraging positive administrative attitudes in the State public sector and providing the needed guidelines for a code of conduct. Another law introduced in conjunction with those two Acts was the Whistleblowers Protection Act 1994. The idea was that once the foundation for ‘good government’ had been created, there would be a need to create the necessary safe ‘environment’ that would persuade public officers to come forward to report misconduct without fear of revenge (Brereton, 2000, pp. 8–12).

Another development in laying the groundwork for good government practice was the creation of the Office of the Queensland Integrity Commissioner in 1999. This followed the amendment of the Public Sector Ethics Act 1994 to provide advice and consultation in relation to matters of ‘conflicts of interest’ to Ministers and other officials (the Office of the Queensland Integrity Commissioner, 2001).

In 2000, the new Witness Protection Act 2000 (Qld) was introduced in place of the old provisions within the CJC Act 1989 which had limited the form of protection granted to people assisting the Commission or other law enforcement agencies (PCJC, 2001, p. 153).

One of the recent law reforms that affected the functions of the Commission was the Terrorism (Community Safety) Amendment Act 2004 (Qld). The amendment provided more powers to a number of the State organisations, including the CMC, in dealing with terrorism. The previous
chapter has explained in more details the Commission’s role in combating terrorism-related major crime matters.

5.1.8 Integrity Testing

Integrity testing has been identified as one of the most promising proactive strategies used to combat public sector corruption. Though it is mainly used to investigate police misconduct, recognition of the opportunity to apply the same strategy to examining public sector corruption is increasing.

In Queensland, the Commission first used this strategy for the purpose of the ‘Carter Inquiry’ into police involvement in drug dealing (Project Shield). This investigation was conducted jointly with the Police Ethical Standards Command of the QPS and involved a number of proactively-initiated investigations and operations starting in 1995 and through 1997 (Carter, 1997, p. 3; CJC, 1998, p. 37).

One of the operations conducted during this inquiry was ‘Operation Lime’, which successfully used the integrity-testing strategy. This operation started in June 1997 after information provided by an informant exposed the involvement of two police officers in the production and trading of drugs, and their desire to obtain firearms. To verify the reliability of these allegations, the police officer was given information on a drug dealer residing in a local motel ostensibly in possession of the drugs and firearms they wanted. Upon receiving the information the two police officers decided to break into the place to obtain what they were after. However, they did not execute their plan after suspecting that other police might already have investigated the matter and entered the property (Carter, 1997, p. 64). However, covert recordings of the conspiracy resulted in the dismissal of both police officers from the service, with one of them being sentenced later to five years in prison without parole (CJC, 1998, p. 38).
Another example of using integrity testing other than as part of Project Shield was ‘Operation Earl’. This was a result of information provided by a member of the public about one police officer selling drugs. The Commission, after confirming the validity of the information, decided to conduct an integrity test on the officer. The plan included leaving valuable items in a manner that would be easy for the officer to locate them. The officer took the articles for himself instead of dealing with them according to the appropriate procedures. As a result and after resigning from the service, he was found guilty of stealing (CJC, 1998, p. 21).

One of the Carter Inquiry recommendations was the need to consider providing oversight agencies with the ability to conduct integrity testing as part of their function to combat police misconduct (Carter, 1997, pp. 108, 109). In its report No ‘45 ‘of a review of the activities of the Criminal Justice Commission pursuant to s.118 (1) (f) of the Criminal Justice Act 1989 to the Legislative Assembly and after reviewing the CJC activities’, the PCJC acknowledged the limited use in public sector misconduct investigations and the need to apply proactive investigative strategies similar to those used to deal with police misconduct for the investigation of public sector corruption. However, the Committee did not specifically mention integrity testing, but gave an example of using ‘random audits of the tender process’ (PCJCa, 1998, pp. 48-50).

In the wake of the Carter Inquiry the Commission requested the ability to use ‘properly authorised and supervised integrity tests’, through an amendments to the CJC Act. Apparently, such power was not granted, probably because of the legal restrictions that do not permit drugs to be used in integrity testing to determine how an officer will react (CJC, 1998, p. 93).
In a survey into the Australian Police Force’s use of integrity testing conducted in 2000, Prenzler and Ronken found only two — NSW and Victoria — of the eight police services in the country used targeted integrity testing, with the Queensland Police among the jurisdictions that have not used such a strategy. The same study revealed that none of the surveyed forces use random integrity testing (CJC, 1998, p. 93; Prenzler & Ronken, 2001, p. 327).

5.1.9 Complaints profiling and early warning systems
Complaints profiling and early warning systems, like the integrity testing, were originally used to profile complaints against the police. Though this mechanism is still in its infancy and mostly used for proactively helping with the prevention of police misconduct, it could be beneficial in tackling public sector corruption. It fundamentally looks at previous ‘activities’ to recognise the possible future threats of misconduct (Bassett & Prenzler, 2003, p. 131).

In accepting its obligation with the QPS, the CMC acknowledged that during examining, supervising and auditing complaints against police, it came to recognise emerging trends and leads in a possible misconduct risk area. To deal with such emerging issues, the Commission, in cooperation with the Police Service, introduced a number of projects aimed at establishing an early warning system. These projects included ‘predictors of complaints against police’ and the ‘Attrition from the Service’ (Project Barossa) (CMC, 2006, p. 71).

Another example of applying this strategy in Queensland was the Commission’s examination of QPS vehicle pursuits, first in 1998 and then in 2003. The examination explored the persisting risks related to police pursuits. The study examined and analysed QPS pursuits from 1997 to 2002. The outcome was that eleven people were killed in those pursuits during the examined time and despite QPS efforts to restrict policies dealing with this
issue, there remained the need to provide stricter rules and regulations to control police pursuits (Hoffman, 2003, p. ix, and x).

The Queensland experience with regard to applying integrity testing as a strategy in dealing with corruption has been so far limited to the police and has not extended into dealing with public sector misconduct.

5.1.10 Research
Research for the proactive approach, similar to intelligence for the reactive approach, is treated as the primary supportive strategy that assists in powering the functions of all the proactive strategies mentioned above.

Upon the establishment of the CJC in 1989, the Research and Co-ordination Division (RACD) as it was first named, was one of its main Divisions created with the aim of giving the CJC the power to independently conduct reviews, research and report to the Parliament on police performance and the broader criminal justice system. However, in 1997, the Criminal Justice Legislation Amendment Act 1997 renamed the Division the Research Division and removed its coordination function. It was argued by the Commission that it was not given sufficient statutory authority by the CJC Act 1989 to carry out an active coordination role with other components of the Queensland Criminal Justice System (PCJC, 1995, pp. 118–119; 1998, p. 79).

In fulfilling its obligations, the Research and Coordination Division, in relation to the research and reform of the criminal law and criminal justice system, conducted and presented reports that were intended to work toward reforming Queensland criminal law. However, some of its early reports encountered some criticism, such as the 1990 Gaming Machines Concerns and Regulations Report. Critics of the report said it was unbalanced in its analysis, lacking the right facts and ignoring the rightful privileges of ‘natural justice’ to people under investigation. Its 1991 Report Review of Prostitution Related
Laws in Queensland was another early report that was also criticised as being poorly conducted and presented (CJC, 1990, p. 25; 1994, p. 26; Lewis, 1997, p. 226; PCJC, 1995, p. 110).

The first few years also witnessed hard times between the Commission and its Parliamentary Committee over its research. At certain stages in its reviews of the Commission’s works, the Committee expressed its concerns that the RACD research function needed to concentrate more on issues that were relevant to the improvement of the State Criminal Justice System. The Committee called upon the Commission neither to take research initiatives nor to publish reports in areas not directly related to its specified function, given that this research could be easily conducted by other agencies (PCJC, 1995, pp. 112–116).

As for police research, some of its early research produced reports on issues and topics related to reforming the police. The Commission, in accordance with the Fitzgerald inquiry recommendation regarding the necessity of carrying out a review on police powers in Queensland, started its research in 1990. The results of such review were reported in three volumes, the first and the second volumes were released in 1992/1993, with the first volume dedicated exclusively to explaining the nature of police powers, its effects on police efficiency and work and explained terminologies associated with police power along with listing the different police powers granted by the various Parliament Acts. It also laid out the Commission's research methods in reviewing the subject. The second volume dealt with police powers of entry, search and seizure prior to arrest and made recommendations of changes and clarifications to laws that govern the application of these powers in Queensland. The third volume in this series of reports dealt with issues related to the Arrest Without Warrant, Demand Name and Address and Move-on Powers and Volume IV on Suspects’ Rights, Police Questioning and Pre-Charge Detention in 1993 (CJC, 1993, pp. 26, 29, 30).
The early years also saw calls and proposals to remove the Research Division from the Commission and have it transferred to the Law Reform Commission. However, the Committee rejected this idea, which drew much attention during the PCJC review of the Commission activities in 1998. Scholars like Lewis did not support the suggestion of taking its law reform research from the Commission, arguing in her submission:

… if this part of the CJC’s function is hived off to a government controlled body the executive would control a section of the agenda which Fitzgerald strongly argued should be given to an independent body. Hiving off parts of the Commission will also destroy the CJC’s ability to tackle the cause of police and public sector misconduct rather than simply the symptoms. A reactive, proactive, integrated approach would no longer be possible, yet it is this integrated approach to police and public sector misconduct which sets the CJC apart from other oversight bodies. Without an independent Research Division and discreet Corruption Prevention Division the Commission would be nothing more than a reactive accountability institution. If this were to happen accountability in general and police accountability in particular, would be the loser (PCJC, 1998, p. 111).

Over the years and in accordance with the Commission’s shift to a more preventative approach in its different functions, the research changed its means and objectives by using more of its complaints database in its research to trace trends and identify official misconduct risk areas, improving its mechanisms in supervising cases of official misconduct in the public sector and working to recognise any system or procedure that would lead to a reduction in official misconducts (PCJC, 2001, p. 113).
Table 5.6: Summary of prevention-oriented research 2000–2005

<table>
<thead>
<tr>
<th>Report/ Project/Review</th>
<th>Year</th>
<th>Aim/Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Safeguarding Students: minimizing the risk of sexual misconduct by Education Queensland staff</td>
<td>2000</td>
<td>A review of Queensland Education regulations &amp; processes against allegations of sexual misconduct by the education staff toward their students. The review concluded that the majority of education employees behave decently with their students. However, procedures needed to be improved and extra training into how to handle these allegations needed to be provided (CJC, 2000c, pp. v, 1–4)</td>
</tr>
<tr>
<td>E-policing: the impact of information technology on police practices</td>
<td>2001</td>
<td>A research paper on the impact of information technology on police accountability. Results reported positive usage of IT within some of the QPS functions, but has not ‘led to a major change in how the QPS deals with crime and disorder issues’ (CMC, 2001a, p. vii, 1).</td>
</tr>
<tr>
<td>On the Beat: An evaluation of beat policing in Queensland</td>
<td>2003</td>
<td>The Commission was asked by the Department of the Premier and Cabinet to conduct an evaluation on beat policing in the State. Results revealed a general public support for this type of policing, that the beats are effective in dealing with crime &amp; disorder problems and ‘it’s a worthwhile investment’ for the police (CMC 2003, pp. ix, xii).</td>
</tr>
<tr>
<td>Profiling the Queensland public sector: functions, risks and misconduct resistance strategies</td>
<td>2004</td>
<td>A survey of 234 public sector organisations in Queensland to provide the CMC with information that would assist in building public sector capacity to deal with misconduct (CMC, 2004, p. 1).</td>
</tr>
<tr>
<td>Fraud and Corruption Control: Guidelines for best practice</td>
<td>2005</td>
<td>A guideline developed in response to the CMC research that identified fraud as the most common reported corruption threat to the public sector. It combined both proactive preventative measures and reactive strategies (CMC, 2005d, pp. x–xi)</td>
</tr>
<tr>
<td>OC Spray: Oleoresin capsicum (OC) spray use by Queensland police</td>
<td>2005</td>
<td>A comprehensive review on the QPS usage of the OC spray. Results reported appropriate disposal of the OC spray in most cases. However, the review identified the need for the QPS to strengthen procedures for the safe use of this method of force (CMC, 2005, p. x).</td>
</tr>
</tbody>
</table>

(Source: CJC, 2000b)

One of the initiatives that focused on prevention is the Police Strip Searches Inquiry in 1999. The Inquiry was driven by the public distress and anxiety in relation to police power to conduct strip searches (CJC 2000, p. 37). The general findings of the inquiry reported no illegalities on the part of the
police officers conducting the strip searches but made more than sixty recommendations that dealt primarily with improving procedures and identifying areas of potential risk (CJC, 2000b, p. v). Table 5.6 provides a summary of some of the prevention-oriented researches during the last few years.

5.1.11 Coordination

In its Strategic Plan 2006–10, the Commission has recognised a number of future challenges as its ‘priorities’. One of those challenges is ‘strengthening partnerships’ internally and externally in its pursuit of continual effectiveness. This should be achieved internally by combining the efforts of the different Commission’s Divisions through cooperative and well-coordinated approaches and externally by working cooperatively and collaboratively with other local and national public sector organisations in discussing issues in relation to combating government misconduct (CMC, 2006b, p. 16),

Currently, the Commission’s overall policies and strategies are set and implemented by its Strategic Management Group (SMG) headed by the Chairperson, the Chairperson Assistants and the heads of the CMC Divisions. Another important coordinating mechanism provided to the Commission is the Crime Reference Committee, which was set up by the CMA 2001 to facilitate coordination in the investigation of major crime between the CMC and other law enforcement bodies (PCMC, 2004, p.6).

The Commission also coordinates its work with the QPS through the Joint Executive Team (JET). The team membership includes the two organisations’ executives tasked with formulating the strategic direction for the combined operations between the two agencies. The directions of this team are usually implemented through the QPS’s Operations Management Board (CMC, 2006d, p. 38).
5.1.12 Internal performance indicators

Both the *CJC Act 1989* and the more recent *CMC Act 2001* require the Commission to report regularly to its Parliamentary Committee on its activities’ performances (CJC Act, 1989 Section 2.14 (2); 2001 Section 64, Section 293(f), to the Minister and Queensland Treasury, to the public and through its website.

One of its reporting mechanisms is the annual report. The Commission uses its reports as its main method of reporting its functions. This statistical quantification includes a number of activities, such as complaints investigations, finalised complaints, timelines for complaints finalisation, research reports, prevention programs, the use of the Commission coercive powers, and other activities that each Division of the Commission has accomplished during the reported year.

The Commission uses its reporting duty to provide a descriptive picture of its achievements, and the success of its various programs; it uses quantitative performance measures to indicate how well it performed its functions against its own self-set performance indicators and targets (CMC, 2002, p. 102).

Those performance measures were identified in the Commission’s Strategic Plan 2006–10 as being formed around the four major categories of ‘quantity, quality, timelines and cost’ with each of these groups having its own objectives (CMC, 2003, p. 68; 2006d, p. 7).

Apparently, the Commission’s intention is to measure its success or failure in achieving its strategies by a number of quantitative elements associated with each one of these four major categories. Table 5.7 summarises those categories and their intended measuring elements.

Though these performance indicators and their measuring elements may present a bigger picture of the Commission’s levels of achievement, it is
quantity-oriented, meaning it gives a quantitative picture of the CMC function, but it neglects the other side of the equation. In other words, it does not account for the Commission’s customers or the persons who went through the CMC investigative processes and their reactions or levels of satisfaction about the experience. There might be a need for the Commission to establish a means of testing this aspect of its work to gain a complete picture of its achievements.

Table 5.7: Measuring the success or failure of the Commission’s strategies

<table>
<thead>
<tr>
<th>Performance Indicators</th>
<th>How it is measured</th>
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</table>
| **Quantity**           | • The number of investigations and crime operations undertaken  
                        | • The number of capacity-building and monitoring projects  
                        | • The number of research, prevention and intelligence projects  
                        | • The number of accepted people under the Witness Protection Program |
| **Quality**            | • Tactical-crime investigations finalised with charges, restraints or forfeitures  
                        | • Numbers of scrutinised investigations that qualify at a high standard of quality  
                        | • Total value of criminal proceeds that have been retained  
                        | • The satisfaction of the stakeholder with both the intelligence and prevention reports  
                        | • The Commission publications quality  
                        | • The percentage of the protected witnesses who meet court commitments. |
| **Timelines**          | • The percentage of misconduct assessments completed within four weeks and investigations being finalised within 12 months  
                        | • Timelines and percentage of people offered interim protection |
| **Cost**               | • The total expenses and income for and from all three outputs |


5.1.13 The media as an external performance indicator

In Queensland during 1987, two items of news coverage revealed the spread of corruption inside the Queensland Police Service, particularly concerning
their management of gambling and prostitution. First, Phil Dickie wrote a series of newspaper articles in the *Courier Mail* early in the year; then the ABC ‘Four Corners’ programme, *The Moonlight State*, aired on 11 May. The Fitzgerald inquiry ensued from this coverage (Fitzgerald, 1989, p. 2).

For a long time, the Queensland local media had tiptoed around the Government on issues such as corruption. The Dickie series and *The Moonlight State* marked a change. Many saw this break from tradition as the media’s attempt to pull away from Queensland Government control. Like most Queensland institutions, the local media had been considered a part of ‘the system’. The media’s failure in their professional role of objectively reporting, criticising and exposing corruption inside state institutions could be attributed to their fear of Government sanctions:

… anyone who criticised Queensland was a ratbag. Any media outlet who did, could expect reaction and retribution, both official and unofficial. Such retribution embraced certain ridicule, possible loss of audience or circulation, loss of access to information, and loss of revenue from government sources (Coaldrake, 1989, p. 98; Grundy, 1990, p. 32).

Nevertheless and despite these constraints on the media, some argued that the media should take responsibility for their shortcomings. Peter Coaldrake (1989, p. 103) expressed this point of view when he stated:

The media must accept its share of the blame for the situation in which the government, with apparent impunity, was able to dismiss critical opinion. Perhaps the media perceived no need to adopt a critical perspective. The state’s media institutions were, after all, an established part of Queensland society …

Fitzgerald, despite his acknowledgment of the role the media had played in exposing corruption in the state, also stressed the idea that, for some time,
the media had contributed negatively to the decline of integrity within the State public system (Fitzgerald, 1989, p. 141).

This is not to say that the media never tried to expose the situation. The Fancourt-Campbell report on the ABC in March 1982 linking senior police officers with corruption helped to bring about what became known as the Police Complaints Tribunal. Tony Koch’s coverage in *The Courier-Mail* about male brothels in Brisbane led to the 1985 Sturgess Inquiry, and finally, to the Phil Dickie articles of January 1987 in *The Courier-Mail*. Dickie attributed the news success to the fact that both the local and national media collaborated in exposing the same story (Dickie, 1990, pp. 52–54).

At the end of the Fitzgerald Inquiry, the final report did not mention the reforms needed for the media in Queensland, but it did stress the vital role the media played as a control mechanism against corruption:

> The media is one of the most important and effective mechanisms for the control of powerful institutions and individuals by reason of its ability to sway public opinion. Those who wish to mould public opinion must do so largely through the media (Fitzgerald Report, 1989, p. 141).

In the early years of the Parliamentary Criminal Justice Committee, the first PCJC in Report No.13 of its review on the operations of the Commission argued that for the reform process to be successful, it was important that all organisations in Queensland take part in such a drive, including the media (PCJC, 1991, p. 188).

In the years after, the media, as it did in exposing the corruption that led to the Fitzgerald Inquiry, continued to play an important role in following the reform implementation and the work of the Commission. For example, in 1999, Phil Dickie, the reporter who was behind the establishment of the Fitzgerald Inquiry through his investigative reports on corruption in 1987,
criticised the Commission, in particular, its concentration in the narrow functions of investigation. Dickie accused both the Queensland Government and the Commission of losing the wider Fitzgerald ‘picture’:

The Fitzgerald report on official corruption in Queensland gave the state an opportunity for reform and clear directions as well. Sadly, Queensland Government largely fluffed it. While there were many minor reforms in a whole range of areas, the Queensland Government and the media lost sight of Fitzgerald’s big picture. The Fitzgerald vision was for a research-based assault on crime but the Criminal Justice Commission decided to play cops and robbers. Major crime research is done in a fashion by the Crime Commission that is a recent arrival in an already crowded criminal justice scene (The Courier-Mail, 3 July 1999).

In another aspect of the media reporting corruption, some journalists had brought up the issues of the media being silenced by the Government when it came to reporting corruption. McGregor reported what he thought of the government’s forms of ‘muzzling’ the media in relation to exposing corruption in recent years, claiming that those governments were abusing the recently-introduced terrorism-related privacy laws to suppress any attempt to reveal misconduct. His comments were based on studying the level of the ‘court suppression order’ (Media Monitors, 23 March 2007).

5.1.14 Public opinion/perception surveys as an external performance indicator

The Fitzgerald Inquiry and its repercussions had shaken the public trust and ‘confidence’ in the State public sector agencies and departments. The establishment of the Commission was then meant to be the one assurance that such sectors would never fall into the corruption traps again. Not only were the reform initiatives recommended by the Inquiry — like the one directed to the QPS, the electoral system and the public sector institutions
as a drive to strengthen those institutions and the system integrity framework — but also, it was directed at restoring the public’s confidence in those systems.

As a practical approach and with the aim of ascertaining that those reform processes were accomplishing their targets, particularly the public’s confidence in the system, the Commission had started its perception surveys series as early as 1991 with the public attitudes toward the QPS, which were designed to achieve the following objectives:

- Examine how the public perceived the QPS and measure where such attitude has changed since the beginning of the reform process
- Help the Service (QPS) in finding out how successfully it was achieving its ‘corporate objectives’ with a special focus on improving the safety of citizens and gaining their approval for the quality of the services provided
- Recognise areas that needed more attention in the work of policing (CJC, 1995, p. 1).

The main themes of these surveys were questions related to the public perceptions of the overall crime in the State, the Police Service, the Commission and the available complaints systems. The first survey was conducted in July 1991 and then was carried out every two years in July 1993, June 1995, June 1999 and June 2002 with the last survey being in July 2005 (CMC, 2006 c, p. iii).

Over the years, the general findings of most of these surveys have shown an improvement in the public perceptions towards the Queensland Police Service. For example, in the last survey in 2005, the majority of the participants expressed a ‘positive view’ toward the Service, with most of them considering the police officers to be ‘honest’. However, the same
survey showed an alarming decline in the confidence in the complaints processes between the years 1995 to 2005. Only 59% of those participating in the 2005 survey expressed their confidence that their complaint would be properly investigated in comparison to the 66% in the 2002 survey. Most of them expressed doubts that police officers would be caught committing misconduct in the Police Service (CMC, 2006c, pp. 7, 9, 23, 25, 26).

The surveys also showed overwhelmingly that the participants held the view that complaints against the police ought to be investigated by an ‘independent body’ instead of having the police examine those complaints themselves (CMC, 2006, p. 27).

For the Public Service and Local Governments, the first public attitudes survey in relation to the public’s attitudes was not conducted until 1999 and then again in 2002 (CMC, 2003, p. 1). The survey was meant to measure the confidence, the knowledge and the satisfaction of the public in initiating a complaint against the police, public servants and the local government’s employees (CJC, 2000, p. 3).

The findings of these two surveys reflected a positive view toward both the public service and the local council’s employees, with most of them people who were ‘honest and generally behave well’ (CJC, 2000, p. 4; 2003, p. 1). The survey also reported a favourable level of confidence in the investigation process, with 55% of the 1999 and 67% of the 2002 respondents expressing that they were ‘very’ or ‘fairly confident’ that such a complaint against public servants would be investigated in a proper manner, with a similar ratio for complaints against local governments employees (CJC, 2000, pp.4, 7; CMC, 2003, pp. 18, 30).

The public survey’s findings provided a reasonable picture of the effect of the Commission’s strategies over the last few years. For example, combining the fact that the majority of the respondents believed that complaints
against the police should be handled by an independent agency, the QPS concerns shed some doubts on the Commission’s drive toward devolution and the police investigating their own complaints.

It also gives an indication that public sector organisations might not be fully ready to deal with misconduct alone. The Commission’s integrity initiatives during the last few years may have strengthened those agencies’ abilities to detect misconduct, but surely that has not them self-reliant in their capacity to tackle corruption yet. The need for the Commission’s building capacity work in those organisations still remains strong, and could remain so for years to come.

5.2 Conclusion

In recent years, the CMC tended to explain the increase in the number of complaints it had received as a result of its capacity-building initiatives and the increasing public awareness and understanding of its misconduct function (CMC, 2005, p. 27).

Though the Commission might have been instituted as an integral part of the Queensland system, such an accomplishment was not an easy task. The rough beginning, especially in relation to the initial year’s research reports and its function to investigate the politicians’ misconduct brought it, in some cases, to the verge of being abolished. However, the ability to deliver on its functions in other areas — such as police reforms and public misconduct, together with the constant supervision of its Parliamentary Committees over the years and the continuous amendments to the legislations with the aim of improving its functionality — has brought it to the stage where it could be safely said that The Commission has passed through an era of uncertainty and conflict with its superiors.

The CMC’s efforts to integrate both its reactive and proactive strategies and use its preventative powers will play a vital role in shifting the Commission
to adopting a more holistic approach for executing its functions. Although the CMC will always have a major role in investigating complaints and auditing internal investigations within the State public system, there is a genuine call to devote much of its resources towards being more proactive in dealing with potential misconduct problems, by moving to identify risk areas and minimising the chances of corruption re-emerging.

The CMC’s increasing emphasis in recent years on building the capacity of the Queensland public agencies was strengthened by the CMA 2001, which states explicitly this role and requires the Commission to apply the ‘principle of devolution’, recognising the fact that the agencies should be given the opportunity to tackle the misconduct that takes place within their ranks and other administrative levels. Though this has come to be one of the CMC’s priorities, the Commission should be cautious in such a drive. There remains the need to reach a balance between ensuring that its role in supervising the conduct of these agencies in dealing with misconduct is very well understood and recognised by the public and its stakeholders, and its needs to maintain an effective working relationship with the agencies that come under its jurisdiction.

Another area of concern for the Commission’s future is the way it reports its performance. Despite constant improvements and the inclusion of various performance indicators over the years, the Crime and Misconduct Commission Strategic Plan for 2006–10 acknowledged the need for the CMC to re-examine ‘its current performance measures’. The dependence on statistical information is not necessarily providing the actual picture of effectiveness. While recognising the difficulty of how to report such effectiveness, the CMC needs to develop more comprehensive performance indicators, which might include a public perceptions survey as it does with the QPS and the Queensland Public Service.
The following chapter examines the Independent Commission Against Corruption (ICAC) of NSW. It will compare the strategies it used to combat public sector misconduct with those used by the Queensland CMC.
Chapter Six

Independent Commission Against Corruption (ICAC) Structures, Functions and Powers

6.0 Introduction
The previous two chapters have explored the experience of the first case study of this research — the Queensland Crime and Misconduct Commission’s structures, functions, powers and its strategies — against the proposed basic model of an anti-corruption agency. This chapter and the next will review the work of the Independent Commission Against Corruption of New South Wales over the past years. This chapter in particular will be devoted to the ICAC structures, functions and powers. It will take the same format as the previous one, by starting with a general overview of the State integrity system components. It then looks at the roots behind the creation of the Commission, its structures and its legislation. The chapter then examines the legislation, the functions, the different powers and the various types of accountability measures.

The findings indicated similar patterns to those of the CMC development. There were the problems in the first few years of establishing itself, the issues of credibility and convincing the community it was a valuable asset for the preservation of NSW public sector integrity, and a similar pattern of tensions with its political masters. The recent amendments to its Act came to further enhance its accountability regime.

6.1 The NSW Integrity System – an overview
The NSW public sector is the largest Australian public sector employer with a population of over 485,000 employees, working in about 119 agencies (Brown 2005, p. 24; Gellatly 2005, pp. 2, 4).
Management Act 2002 is the main foundation that administers such a huge sector. However, it is worth mentioning that this Act was enacted to repeal the Public Sector Management Act of 1988 and to amend the Government and Related Employees Appeal Tribunal Act of 1980 (Public Sector Employment and Management Act 2002).

Unlike the Queensland public sector, which based its reform on the Fitzgerald Report, the NSW public sector development before the 1970’s was mainly improvised and grew to meet the growing demands for more staff and resources by both the Treasury and the then-powerful and independent Public Service Board (PSB). However, the governments in power after the 1970’s were convinced that there was a need to change the policies and to establish a new direction for its public sector. One of the initial steps was to strip the PSB of its power, which was accomplished by the Wran Government (Smith, 2003, p. 55).

In a recent study to map the NSW public sector integrity system as part of the comprehensive Australia National Integrity System evaluation, Smith revealed the complexity of such a system, despite its apparently well-defined division of core, secondary and specialised agencies. His argument was that because of the various numbers of integrity agencies, such a multiplicity tended to reflect negatively on all. The ‘complainants, integrity agencies and agencies under their scrutiny’ provided the lack of coordination between these organisations and he questioned the coherence of such a system (Smith, 2004, p. 2).

The NSW part of the National Integrity System assessment looked at 23 different integrity agencies and organisations, divided into three main categories, as detailed in Table 6.1.
By the end of the study, there was a recognition that NSW appeared to have, by means of the number of ‘integrity institutions’, the most robust integrity system in Australia.

Table 6.1: NSW Integrity System agencies

<table>
<thead>
<tr>
<th>1. Central Core Agencies</th>
<th>a. Ombudsman</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>b. Independent Commission Against Corruption (ICAC)</td>
</tr>
<tr>
<td></td>
<td>c. Audit Office</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Less central but still important</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premier’s Department</td>
</tr>
<tr>
<td>Parliamentary Committees</td>
</tr>
<tr>
<td>Courts</td>
</tr>
<tr>
<td>Police Force</td>
</tr>
<tr>
<td>Administrative Decision Tribunal</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. Less important organisations with general oversight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police Integrity Commission (PIC)</td>
</tr>
<tr>
<td>Health Care Complaints Tribunal</td>
</tr>
<tr>
<td>Office of the Children’s Guardian</td>
</tr>
<tr>
<td>Privacy Commissioner</td>
</tr>
<tr>
<td>Cabinet Office</td>
</tr>
<tr>
<td>Coroner</td>
</tr>
<tr>
<td>Police Integrity Commissioner Inspector</td>
</tr>
<tr>
<td>Official Visitors</td>
</tr>
<tr>
<td>Royal Commissions</td>
</tr>
<tr>
<td>Joint Investigative Response Teams</td>
</tr>
<tr>
<td>Judicial Commission</td>
</tr>
<tr>
<td>Director of Public Prosecutions</td>
</tr>
<tr>
<td>NSW Crime Commission</td>
</tr>
<tr>
<td>Community Relations Commission (Brown, 2005, p. 25).</td>
</tr>
</tbody>
</table>

However, the same study presented some deficiencies that might hinder public sector integrity, such as:

1. Concerns about the independence and the capacity of the Electoral Funding Authority that supervised financial donations, the funding and the spending by political candidates. These concerns were built around two of this Authority’s members being nominated by the Premier and the Opposition leader (Brown, 2005, p. 29).

2. The absence of a legislative framework that would specify the required basic public sector employees’ ethical conduct, especially after the elimination of the Public Service Board (PSB) in 1988. This
made NSW the only government that did not have a statutory code of conduct for its public sector (Brown, 2005, pp. 29, 63).

3. Questions regarding the efficiency of the overall number of integrity agencies, with some suggesting fewer institutions would eliminate repetition and encourage effectiveness (Brown 2005, p. 29).

4. The lack of cooperation between the integrity institutions owing to the political, legal and budgetary constraints (Brown 2005, p. 30; Smith 2004, p. 11, 13).

5. The need for a balanced approach between investigation, enforcement, education and prevention to deal with public sector corruption (Brown 2005, p. 30; Smith 2004, p. 18).

6.1.1 The Independent Commission Against Corruption (ICAC)

In 1988, the newly elected Greiner Government came to power and brought the PSB to an end, giving the ministers and agency heads more powers and authority on decisions related to staffing, financial and other necessary resources (Smith, 2003, p. 55). The Greiner Government was elected on the promise that it would take the initiative to establish the Independent Commission Against Corruption. Supported by the Opposition, and receiving overwhelming backing from both Houses of Parliament, the Independent Commission Against Corruption (Amendment) Bill was introduced on 6 August 1988 after extensive Parliamentary deliberations and amendments. It was royally assented on the ninth of the same month but the Commission did not officially start operating until 13 March 1989 (Heilbrunn 2004, p. 7; ICAC 2006; Larmour 2001, p. 14).

The establishment of this Standing Royal Commission came after allegations of corruption included the involvement of a former prison minister for accepting bribes to discharge prisoners, a magistrate’s imprisonment after
similar misconduct revelations, and other senior officials’ involvement in taking money from drug traffickers. These scandals, and others, had seriously damaged the public trust in the government (Boylen 1988, p. 4; Heilbrunn 2004, p. 7; Justice Cripps 2005, p. 11).

The ICAC was created as part of an effort by the government to preserve the integrity of the NSW public system (Grealy, 1988, p. 5). Premier Greiner argued, while introducing the ICAC Act into the Parliament, that:

This initiative is a component of the government’s program to restore the integrity of the public administration and public institutions in this state. Nothing is more destructive of democracy than a situation where the people lack confidence in those administrators and institutions that stand in a position of public trust. If a liberal and democratic society is to flourish we need to ensure that the credibility of public institutions is restored and safeguarded, and that community confidence in the integrity of public administration is preserved and justified (Greiner 1988).

Though there were some consultations with the ICAC’s counterpart in Hong Kong during the formalisation of the idea of NSW creating a similar organisation, the fact remains that the NSW ICAC is not a duplication of the Hong Kong model, apart from its name (Sturgess, 1994, p. 114). Justice Jerrold Cripps, Commissioner of the ICAC since 14 November 2004, in his speech to the Transparency International Australia Annual General Meeting 2005, identified the main differences between the two agencies in terms of their functionality, as follows:

- The NSW ICAC’s principal function is the exposure and the investigation of corruption.
- Its other main function is the prevention of such corruption through the means of education and research.
• The ICAC’s jurisdictions are limited to the public sector only, unless such acts by the private sector cause an act of corruption by a public servant.

• Another major difference between the two organisations is that the NSW ICAC was entrusted with collecting evidence that might help in the prosecution of a corrupted public servant, as one of its minor functions. This is contrary to the Hong Kong ICAC whose prime function is to gather and put together evidence that could be used in a court of law against the implicated persons (Justice Cripps, 2005, p. 1).

The Hong Kong Independent Commission Against Corruption was begun in February 1974 after decades of corruption being an accepted norm of life in the territory. The escape to England on June 8 1973 of Peter Godber — a Chief Police Superintendent in the Hong Kong Police, who was under investigation for being suspected of unlawful and unearned wealth that had been accumulated corruptly and illegally — sparked public rage against the government, demanding the government to take serious action against him and condemning it for failing to tackle such a problem. (http://www.icac.org.hk/new_icac/eng/cases/godber/html/, retrieved 26 January 2008).

The government quickly formed a commission led by Sir Alastair Blair-Kerr, a Senior Puisne Judge, to investigate the Godber escape. The results of his work were compiled into two reports, the first dealing with the Godber escape, and the second, providing advice for the formation of an independent agency apart from the police force to deal exclusively with corruption in Hong Kong. Since its inception, the ICAC has striven to fight corruption using a three-pronged approach of law enforcement, prevention and education. The Commission currently employs about 1200 staff,
working in the agency’s three main departments of the Operation Department (Law enforcement), Corruption Prevention Department (Prevention) and Community Relation Department (Education), all supported by a central Administration Branch to investigate corruption both in the public and private sectors of Hong Kong (http://www.icac.org.hk/new_icac/eng/abou/history, retrieved 26 January 2008; 2006 Annual Report, Independent Commission Against Corruption, Hong Kong Special Administrative Region, retrieved 26/01/2008 from http://www.icac.org.hk/en/about_icac/p/index.html)

6.1.2 The organisational structure

The ICAC structure is based on the Independent Commission Against Corruption Act 1988. The first year was dominated by setting up the actual organisational structures of the agency in accordance with the ICAC Act 1988. A decision was taken between the then-‘Commissioner-designated’ and the Premier, being the Minister in charge of administering the Act, that the agency staff population should not need to be more than 150 (Temby QC, 1989, p. 24).

On the first day of the official commencement, 13 March 1989, the Commission started its operations with only 25 staff; by 30 June 1989, it had 61 staff (Temby, 1989, pp. 12, 70, 75).

As for the organisational structures, the Commission’s first organisational charter started with the four main positions of Director of Operations, Director of Administration and Public Affairs, Commission Secretary and the General Counsel. Together with the Commissioner and Assistant Commissioner, this group functioned as the ‘senior management group’ tasked with planning for the Commission, implementing work systems and in selecting its staff (ICAC, 1989, pp. 27). Figure 6.1 represents the ICAC’s first organisational structures.
Over the years, the Commission’s structures have undergone some restructurering in accordance with changes, developments and challenges in the way it performs its functions. For example, in 1995, an organisational change brought the ICAC’s first Strategic Plan 1995–1998. The increased demands on the Commission’s efforts to expose corruption became apparent when the Assessments Unit was brought into the Investigation Directorate and the investigative aspect of its work continued to consume most of its resources. This gave priority to an ‘integrated approach’ in conducting investigations by enhancing the prevention and education abilities to rapidly counter any ‘systemic’ deficiencies uncovered during its investigations. One example of the results of this approach was the ICAC investigation of the former State Rail Authority (SRA), which found the SRA to be rife with corruption. As a result, not only did the new SRA management positively take in the Commission’s recommendations, but also it and other agencies like Freightcorp and Railway Service Australia worked...
cooperatively with it in formulating preventative measures and setting up
time-limits to implement such strategies (ICAC, 1999, p. 3).

The changes also combined both the corruption prevention and the
education functions of the Commission into one program (ICAC, 1995, pp.
4, 16). Figure 6.2 illustrates these organisational changes.

![ICAC organisational changes 1995–96](source: ICAC, 1995, p. 82)

Figure 6.2: ICAC organisational changes 1995–96

In 2001, the Commission underwent another major ‘structural and
functional’ review. The findings of this review resulted in the restructuring
the Corporate Service Division into three units instead of the previous seven
units. The Operation Division was also restructured in a way that gave
prominence to financial investigation skills and strategic risk assessment.
This structural and functional rearrangement was followed by examining the
Commission staff skills, conducted in 2001 by Ernst and Young. This
evaluation recognised deficiencies in areas such as risk assessment and
leadership. As a result, the ICAC introduced the ‘Learning and Development’ (L & D) program to upgrade staff skills (ICAC, 2002, pp, 66–67). Accordingly, the ICAC organisational chart was changed to include these new improvements; Figure 6.3 illustrates these changes and the current ICAC organisational format.

(Source: ICAC 2006, p. 117)

Figure 6.3: Current ICAC organisational format

6.1.3 Legislation and Jurisdiction
The ICAC was established in March 1989 through the Independent Commission Against Corruption Act 1988. Section 13 of the Act set out in detail the
Commission’s responsibilities. These functions could be categorised into five major areas including:

- Investigating corruption complaints
- Reviewing policy, work procedures and laws
- Playing an advisory role
- Performing an educative function
- Communicating with appropriate authorities the results of its investigations (ICAC Act, 1989; ICAC, 1989, p. 15).

The Act provided the Commission with a wide range of responsibilities, aimed at tackling corruption comprehensively. However, the Act has been subject to a number of amendments in recent years. The first significant amendments were made almost a year after its commencement and were a result of the Commission’s investigations and its power to make findings in its reports.

The Commission’s investigation findings were legally challenged as early as its first investigation. The Waverley Municipal Council investigation findings were subjected to a number of legal actions by plaintiffs challenging among, other things, the Commission’s power to make any findings or report that a person had committed or was guilty of a criminal offence or had behaved in a manner that would be considered a criminal offence. They also challenged the legality of the hearings on the ground that the conducted hearings’ extent and rationale were beyond its power (ICAC, 1990, pp. 42–46).

The High Court ruling came out in favour of the plaintiff’s arguments, with five Judges collectively arguing that the ICAC role was to ‘investigate and assemble evidence’ but not to decide the criminality of such findings, confirming that the Commission ‘is not a law enforcement agency and it exercises no judicial or quasi-judicial function’ (Blunden, 1990, p. 4).
The litigation against the ICAC findings continued with other investigations, to the point where defending such lawsuits was considered an impediment to the Commission’s original functions, causing delays in furnishing reports for up to 12 months in some cases and constituting a wastage of its financial resources during the process of defending these allegations (ICAC, 1990, pp. 4, 62).

The court decisions in these cases, and in the cases over the years to come, supporting such allegations not only undermined the Commission’s work and effectiveness but it also started new precedents for future investigation results to be challenged. For example, in 1992, the Metherell/Greiner/Moore investigation, was referred to the ICAC by the NSW Parliament accusing both the then-Premier Greiner, the Minister of Environment, Mr. Moore, and Dr Terry Metherell, a member of the NSW Parliament, of acting corruptly by orchestrating the resignation of Dr Metherell from the Parliament by offering him a high public service post (ICAC, 1992, p. 5).

The allegations in this particular case were that such a resignation was fabricated between the parties so that the Greiner Government would maintain a political lead within State Parliament after Metherell threatened to vote against the Government (ICAC, 2006).

The Commission’s investigations revealed that both the Premier Greiner and his Environment Minister had behaved corruptly within the meaning of the ICAC Act (ICAC, 1992, p. 64). These findings were litigated by the NSW Court of Appeal in which the Court decided that the Commission’s findings regarding the then-Premier and the Environment Minister involvement in a corrupt conduct were outside the ICAC’s jurisdiction (ICAC, 1993, p. vi).

The effect of the Court of Appeal ruling in this case was considered as a ‘negative aspect’ of the work in the Commission’s early years. Its first
Commissioner, Ian Temby QC, contended that this put a large group of public sector employees beyond its ‘jurisdiction’. Together with the Commission’s Parliamentary Committee scrutinising the *ICAC Act 1988* and recommending some changes (ICAC, 1993, pp. vi, vii), the Commission saw the necessity of making ‘statutory changes’ to its Act. In his address before the Australian Bar Association Conference 1990, the Commissioner stressed the idea:

… could I conclude on this note. A body such as the ICAC which exists to serve the community can function in such a way as to protect in a proper way the interests of individuals who appear before it. However, it cannot, unless enabled to bring down reports which are not just thorough but which are also prompt. Presently, the statute and the judgment upon it are such as to invite further litigation and accordingly there will certainly be further long delays so far as future reports are concerned. The position can and should be rectified by statutory changes which state precisely what our rights and responsibilities are when it comes to the preparation of reports (ICAC, 1990, pp. 62, 63).

As a result of this situation and before the end of 1990, the Parliamentary Committee on the ICAC examined the Commission’s procedures for public and private hearings and how it would deal with its witnesses. The Parliamentary Committee of the ICAC (PCICAC) investigation came to support the ICAC’s investigative procedures and the use of public hearings. It also advocated the adoption of procedures that would minimise any damages to its witnesses that could be caused by public hearings including the amendment of s31 of the ICAC *Act* that would give it more options and choices to perform private hearings (ICAC, 1991, p. 57).

Another result of the litigation against the Commission was the commencement of the amended ICAC Act in December 1990, which was a
The amended Act touched on, among other things, the Commission’s reporting powers, the expansion of its summons powers to include people located interstate through a court order and then using the Commonwealth Act of 1901 that permitted court services and processes to be used at an interstate level (ICAC, 1991, pp. 60–66).

One of the major challenges to the Commission’s investigative function was the way the ICAC conducted its investigations. The ICAC’s investigative function’s main purpose was to reveal the truth as related to public sector corruption to pave the way for a ‘systemic change’. It was beyond its responsibilities to criminalise its findings as was the case with other criminal justice systems. However, in its pursuit of the truth, the ICAC’s investigations and hearings shared a number of the characteristics found in both the inquisitorial and the adversarial judicial models. Generally, its conduct of private investigations and public hearings to reveal corruption concur with the inquisitorial judicial model, while using public hearings as an investigative tool ‘in their own right’ leans to the adversarial judicial model (McKillop, 1994, pp. 4, 32; PCICAC, 2002, p. 5).

For many years, the Commission viewed public hearings as its most favourable investigative tool in tackling corruption. This point of view came as a reflection of s.13 of the ICAC Act, which considers publicly exposing corruption and upholding the merits of public sector ethics more important in some cases than proving criminality (ICAC Act, 1988 s.13; ICAC, 1990, p. 41; ICAC Committee, 2001, p. 10).

The ICAC is also known to use such a mechanism — public hearings — as a method of investigation to attract more witnesses into its investigations and as a method to distance its inquiries from scepticism and unfounded information (ICAC Committee, 2002, pp. 2, 12). However, using public hearings was associated with concerns related to the damages that this
A good example of such concern would be what has happened to Mr Brian Preston during the ICAC’s North Coast Inquiry in 1990. Mr Preston was publicly accused by Mr Frank, one of the landowners on the NSW north coast, in relation to how Mr Preston gave evidence during the inquiry, for soliciting a bribe from Mr Frank as a way to stop court proceedings against the witness. After airing such allegations on the television news, the accusations turned out to be baseless and Mr Preston had no knowledge of such things (CICAC, 2002, p. 15).

To guard against these kinds of incidents, in 1990, the Joint Parliamentary Committee on the ICAC reviewed the Commission’s procedures in relation to witnesses and other persons appearing in its investigations. In its final report titled ‘Openness and Secrecy in Inquiries into Organised Crime and Corruption: Questions of Damage to Reputations’, the Committee, in spite of acknowledging the positive effects of public hearings, asserted that they had negative consequences as well. Its recommendations came to provide the foundation to amend the ICAC Act 1988 to include precautions and measures to the way public hearings were conducted that would prevent damage to people’s reputations. The Commission was given greater discretion in deciding whether the matter would be investigated publicly or in private hearings. These recommendations were implemented after both the Legislative Assembly and the Legislative Council passed the bill in late 1991 (CICAC, 2001, p. 13).

Legal changes affecting the Commission’s operations continued over the years. This was either at the recommendation of the Commission and its Committee or as a result of litigation brought forward against it or in some cases as a result of a review by the legislature of some aspects in other legislation. For example, the Act was amended in 1996 because the Police Integrity Commission Act 1996 transferred the ICAC responsibility of
investigating complaints of police corruption to the newly established Police Integrity Commission (PIC), and limited the ICAC’s role to advising and assisting the Police Service on issues related to corruption prevention and education (ICAC, 1996, p. 7).

These changes represented one of the main characteristics of the ICAC experience. The ICAC Act went through more than seven amendments after its establishment in 1989, many of them touching upon specific aspects in the Act, but the latest one was the most significant to date. Assented to on 26 May 2006 it abolished the Operations Review Committee, which was charged with advising the Commission on whether or not to initiate or to discontinue an investigation. The creation of the office of the ICAC Inspector in 2005 with its very wide responsibilities over the Commission’s functions rendered the ORC work as insignificant, so it was officially disbanded in June 2006 (ICAC, 2006, p. 5; Kelly 2006, pp. 1, 2; The Legislature of New South Wales, 2006).

As for the ICAC jurisdiction, the Commission’s jurisdictions are limited to the public sector only, unless such acts by the private sector cause an act of corruption by a public servant. The Commission was created with both an investigative and a preventative role supported by ‘unusual powers’ that covered more than 130 governmental organisations with an estimated population of more than 360,000 employees, making it about 10.5% of the total New South Wales labour force. Its jurisdictions also extended to more than 159 local councils, employing up to 1800 councillors and over 40,000 staff. In addition, more than 10 universities within NSW come under the ICAC authority and an additional 1000 boards and committees across the state (Hewett 1988, p. 3; Small 2004; p. 1; Gellatly 2005, p. 2).
6.1.4 Powers

Understanding the secrecy and the complexity associated usually with unravelling and investigating corruption allegations, the ICAC came into existence gifted with special coercive powers to be used in its investigations. The ICAC Act 1989 provides the following special powers, as illustrated in Table 6.2.

### Table 6.2: Powers granted by the ICAC Act 1989

<table>
<thead>
<tr>
<th>Powers</th>
<th>ICAC Act 1989 Provision or other statutory legislations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hold public inquiries, compulsory examination*</td>
<td>Sections 30–31</td>
</tr>
<tr>
<td>To compel people to appear before its hearings and/or produce documents or other things</td>
<td>Section 35</td>
</tr>
<tr>
<td>Search warrants</td>
<td>Section 40</td>
</tr>
<tr>
<td>Listening devices</td>
<td>Under <em>Listening Devices Act 1984</em></td>
</tr>
<tr>
<td>Telephone interception</td>
<td>Under <em>Telecommunications (Interception) Act 1979</em> (Commonwealth)</td>
</tr>
<tr>
<td>Surveillance techniques</td>
<td>Subject to authority of the Executive Director, SOD** and IMG***</td>
</tr>
</tbody>
</table>

* These terms replaced the old public and private hearings as per the ICAC Amendment Act 2005.

** Strategic Operation Director

*** Investigation Management Group

(Source: ICAC Act 1989 & ICAC website)

The use of the above powers and techniques usually requires adequate rationalisation and proper authorisation. Search warrants need to be applied for and approved by a judicial authority in the local courts. Using listening devices requires the approval of a Justice of the Supreme Court. The use of telephone interception needs to be approved by a member of the Administrative Appeals Tribunal and use of the surveillance techniques
must be authorised by the Commission’s Executive Director, the Strategic Operation Director and needs, in addition, to be reported to the Investigation Management Group that oversees ICAC investigations (ICAC, website www.icac.nsw.gov.au, retrieved 10 May 2007).

The Commission never hesitated to use its powers. For example, the use of the Commission’s coercive powers during the course of its formal investigations was very noticeable during its first full year of operation. Table 6.3 summarises the extent of ICAC’s different powers used in its first year of function. These numbers are very significant for a fledgling organisation.

Table 6.3: ICAC powers – first year

<table>
<thead>
<tr>
<th>Statutory Power</th>
<th>Total Usage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Search Warrants</td>
<td>52</td>
</tr>
<tr>
<td>Statement of Information</td>
<td>73</td>
</tr>
<tr>
<td>Document produced</td>
<td>212</td>
</tr>
<tr>
<td>Enter Public Premises</td>
<td>9</td>
</tr>
<tr>
<td>Summons to give evidence/produce documents at hearing</td>
<td>287</td>
</tr>
<tr>
<td>Public Hearing Days</td>
<td>235.5</td>
</tr>
<tr>
<td>Private Hearing Days</td>
<td>29.5</td>
</tr>
<tr>
<td>Warrant for listening device</td>
<td>1</td>
</tr>
<tr>
<td>Person granted indemnity</td>
<td>1</td>
</tr>
<tr>
<td>Witness Protection arrangements</td>
<td>1</td>
</tr>
</tbody>
</table>

(Source ICAC, 1990, pp. 28–29)

6.1.5 Accountability

In 2000, the ICAC Parliamentary Committee started the first ever examination of the Commission’s accountability structures. The review resulted from the increasing number of complaints filed against the ICAC operations and its officers, including an officer involved in a sexual
relationship with an informant under investigation (Ellicott 2000, p. 4; Hatzistergos, 2000, p. 5).

By the end of the review, the Committee reported, among other things, a noticeable deficiency in the way complaints against the ICAC and its employees were administered. Committee Chair John Hatzistergos claimed there were numerous complaints against the ICAC itself that were neglected and not properly independently investigated. He argued that the ICAC Committee was not adequately equipped to deal effectively with those complaints (AAP 2000; Hatzistergos, 2000, p. 5; Perry & O’Brien 2003, p. 3).

Since its establishment in 1989, the ICAC has had a number of internal and external accountability mechanisms to guard against the misuse of its coercive powers and to ascertain that it functions in a manner that ensures community confidence and maintain its independence from the government of the day.

6.1.6 **External Accountability**

- The Parliamentary Joint Committee is generally charged with monitoring and examining the way the Commission is conducting its functions, activities, and reports and examining corruption trends and practices for the reason of advising the Parliament of any changes which needed to be added to the Commission functions or procedures to meet such trends (Part 7, Section 64, subsection (1), ICAC Act, 1988).

- Meanwhile, subsection (2) clearly states that the Committee is not authorised to review the Commission’s findings, recommendations or decisions on a particular investigation or particular conduct (Part 7, Section 64, subsection (2), ICAC, Act 1988). In general, the
Committee’s role is to provide an ‘oversight of a policy and procedural nature’ (Hatzistergos, 2000, p. 14).

- **The Operation Review Committee (ORC)**

  For many years, the ORC functioned as a ‘consultative mechanism’ to the Commission by advising whether or not it should conduct an investigation or discontinue the investigation of a complaint. The ICAC Act 1988 s.20 (4) requires the Commissioner to obtain the ORC’s advice before deciding not to investigate or to discontinue a complaint of corrupt conduct made by the public (ICAC Act 1988).

  - In conducting its functions, the Committee had eight members, including the ICAC Commissioner and a nominated Assistant Commissioner, the Police Commissioner, a person appointed by the Governor on the recommendation of the Attorney-General and four community representatives appointed by the Governor on the recommendation of the Minister responsible for the ICAC Act, after consultation with the ICAC Commissioner (Hatzistergos, 2000, p. 20).

  - Though the ICAC Act made it the responsibility of the Commissioner to consult with the ORC before taking the decision to commence or discontinue an investigation, the Committee’s recommendations are not compulsory on the Commissioner (Hatzistergos, 2000, p. 23).

  - The Committee of the ICAC, during its review of the ICAC accountability arrangements, raised two main concerns in relation to its work. The first was its inability to advise on issues categorised by the Commission as information or reports, which in return gave the ICAC ample opportunity to classify matters before it. The second concern was the increasing number of cases and reports needing to
be examined by the ORC at each meeting, casting some doubts on the comprehension and the thoroughness on deciding each matter (Hatzistergos, 2000, p. 25).

- After a judicial review carried out by Mr Bruce McClintock, the NSW Premier, Bob Carr, announced on the 8 June 2005 that the ORC would be abolished in accordance with Mr McClintock’s recommendations. The abolishment of the ORC paved the way for the creation of the ICAC Inspector position recommended by McClintock. The inspector was to monitor, audit, investigate and report on the activities of the ICAC. Accordingly, the ICAC Act was subjected to changes to accommodate the new post. The Office of the ICAC Inspector was created under the Independent Commission Against Corruption Act (Amendment) 2005, which was concurred to on the 14 April 2005 (AAP 2006; ICAC, 2006, p. 57).

- **Inspector of the ICAC**

  The findings of Mr Bruce McClintock SC’s review concluded that there was an absence of a proper accountability mechanism to deal with allegations and complaints of misconduct by the ICAC or its employees (see section 6.1.6 above). Therefore, there was a need to establish an Office of the ICAC Inspector, with the necessary statutory ‘powers’ authorizing them to tackle these matters (Kelly 2006, p. 1; Totaro, 2004, p. 3).

- The Independent Commission Against Corruption Amendment Act 2005 No 10, assented to on 14 April 2005, established the Inspector of the ICAC, with the main duty of scrutinising the ICAC’s usage of its investigative powers, examining complaints made against the Commission and its officers, supervising any maladministration such as delays in the investigation or unjustified invasion of privacy and to
measure the effectiveness of the Commission’s activities (Cripps 2006, p.57; Part 5A, Section 57A & 57B, ICAC Amendment Act, 2005).

- On 8 June 2005 NSW Premier Bob Carr made the announcement that Mr Graham Kelly, a businessman and a lawyer, was appointed as the ICAC Inspector — a position recommended in the judicial review of the ICAC Act. The Inspector commenced his duties on 1 July 2005 (AAP, 2005; Kelly 2006, p. 1; ICAC, 2006, p. 57).

- During his first year of operation, the ICAC Inspector received 35 complaints in relation to the ICAC operations and its officers. Twenty-one matters were finalised, three were referred for re-examination by the ICAC while 11 of those complaint were ‘still active’ (OICAC, 2006, p. 13). Table 6.4 illustrates the ICAC Inspector’s disposition of complaints against the Commission in its first year of functioning.

<table>
<thead>
<tr>
<th>Table 6.4: First year complaints against the ICAC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints received</td>
</tr>
<tr>
<td>Complaints determined as not warranting further investigation</td>
</tr>
<tr>
<td>Complaints referred back to the ICAC</td>
</tr>
<tr>
<td>Complaints still active as at 30 June 2006</td>
</tr>
<tr>
<td>Complaints finalized within six months</td>
</tr>
<tr>
<td>Average time taken to finalise complaint (months)</td>
</tr>
<tr>
<td>Complaint received by mail</td>
</tr>
<tr>
<td>Complaints received by email</td>
</tr>
<tr>
<td>Complaints received by facsimile</td>
</tr>
<tr>
<td>Complaints received by telephone</td>
</tr>
<tr>
<td>Complaints referred to the Office by the Committee</td>
</tr>
<tr>
<td>Other correspondence and enquiries received</td>
</tr>
</tbody>
</table>

(Source: OICAC, 2006 p. 20)
When examining how the ICAC inspector actioned the finalised complaints, they could be categorised into the following three main categories:

**Table 6.5: Finalisation of the ICAC inspector's complaints**

<table>
<thead>
<tr>
<th>Total No of finalised Complaints</th>
<th>Final action</th>
</tr>
</thead>
<tbody>
<tr>
<td>21</td>
<td>13 complaints — No evidence supports the allegation.</td>
</tr>
<tr>
<td></td>
<td>5 complaints — Not within the Inspector’s jurisdiction</td>
</tr>
<tr>
<td></td>
<td>3 complaints were withdrawn</td>
</tr>
</tbody>
</table>

(Source: OIICAC 2006, pp. 13–17)

These major external accountability measures usually worked in conjunction with other methods of accountability imposed upon the Commission, such as limiting the Commissioner to a single non-renewable term, the financial scrutiny by the Treasury, the ability of the Ombudsman to examine its telephone interception powers, protecting disclosures in connection with misconduct inside the Commission and administering petitions under the Freedom of Information Act (Heilbrunn 2004, p. 9).

### 6.1.7 Internal accountability

Internally, the Commission had created a ‘committee system’ to monitor its main functions, such as the ‘Investigation Management Group’ to supervise its investigative work, the ‘Prevention Management Group’ to review its preventative, education and research development and the ‘Executive Management Group’ in charge of directing, improving and applying
procedures to enhance the organisational output of the Commission (ICAC, 2006, p. 59).

6.2 Conclusion

Although the ICAC, for the last seventeen years of its life, has gone through different phases from overcoming the teething difficulties of introducing itself to the community and establishing its credibility, it has become an essential part of and a driving force in preserving the integrity of the NSW public sector. When asked to comment on his Commission’s success, former Commissioner O’Keefe said, among other things, ‘the word is out there that people can come to NSW and do business and they’ll be fairly dealt with, and if they’re not, that there’s someone you can go to and complain’ (O’Keefe, 1997 as cited in Fagan, 1997, p. 24).

This view was repeated in the Commission's annual report of that particular year (1997), by stating that NSW became a better business hub in Australia largely because of the work of ICAC, with business leaders expressing their satisfaction toward the existence of ICAC as a mechanism to insure that public officials in NSW abide by the law, and for ICAC to be a front runner in the preservation of the integrity of NSW public sector both nationally and internationally (ICAC 1997, p. 12).

Examining ICAC structures, legislation and its special powers presented almost an identical picture to that of my first study case of the Queensland CMC. Though it was not a product of an inquiry, as was the CMC, the ICAC’s overall framework, beginning with its roots, shares similar political backgrounds because it was created by its political masters. Unlike the National Party Government in Queensland, the creation of the ICAC in NSW came to further the interest of the Greiner Government of New South Wales as a government that upheld its promise during the election of creating such agency to the public of NSW and its political alliance, if it was
elected. The ICAC bill was received with enormous support by both Houses of Parliament of NSW (ICAC 1989, pp. 8 & 9).

Its legislation, its jurisdiction and its powers are similar to those of the CMC, with the exception that it does not have powers over the police. That power was removed from its jurisdiction in 1996 in what has been seen as a failure on its part to deal with matters. The other difference between the two Commissions is that the ICAC has been designed exclusively to deal with corruption, while the CMC has the organised crime function as well as its misconduct function.

There is no evidence so far that the CMC’s extra function of organised crime has negatively effected its other functions, apart from the fact that such a function was removed for a while when the Queensland Crime Commission was created to exclusively tackle organised crime. However, despite this lack of evidence it can be argued that the ICAC has an advantage over the CMC is that it functions with a single focus on corruption, while its counterpart in Queensland tends to get new duties or tasks from time to time, such as paedophilia and currently, terrorism. It is possible to argue that all these inclusions might divert the Commission from its original track of combating public sector corruption. This notion will be further examined in a later stage of my study, when examining my third case of the functions of the Corruption and Crime Commission (CCC) of WA. The CCC shares the same dual responsibility of corruption and crime as does the CMC.

The next chapter will examine what strategies the ICAC has been implementing in order to combat corruption in the NSW public sector. What kind of reactive and proactive measures of combating corruption are found to be more effective than others? The chapter will also be examining the ICAC’s performance indictors.
Chapter Seven

Independent Commission Against Corruption (ICAC) reactive and proactive strategies

7.0 Introduction

The previous chapter has described the Independent Commission Against Corruption’s structures, legislations, jurisdiction, functions, powers and its accountability mechanisms. This chapter examines the different types of strategies implemented across time and the circumstances that have led to the changing of these strategies over the years. The agency was designed as a fact-finding organisation. This meant, over the years, a greater focus on the investigative function, particularly in its formative years. However, the wiser the Commission grew, the more it realised the need to restructure its directions. In recent years, a more integrated approach was applied to cope with corruption investigations, with corruption prevention taking a greater part in its inquiries, specifically, those expected to result in more prevention measures.

The ICAC study, similarly to my first case, lacks a formal coordination mechanism between its large integrity system components; it has also experienced similar situations to that of the CMC in Queensland with the DPP in relation to its prosecution cases. However, in general, the ICAC has most of the strategies, both reactive and proactive, contained in the proposed model, except for the integrity testing, complaints profiling and early warning systems.
7.1 Strategies

7.1.1 Reactive Measures

The previous chapter identified investigation, prosecution, surveillance and enforcement (penalties and sanctions) as the major reactive mechanisms that could be used as part of the reactive approach to corruption.

Intelligence plays an important role when dealing reactively with misconduct. It has been recognised as the main supportive strategy. In many reactive investigations, intelligence experts tend to take part and provide a vital supportive assistance to the investigative team. Some of their functions when they participate in the investigation of corruption are to examine and assess results and investigation outcomes, thus providing analysis, advice and direction to areas that need to be examined by the team in charge of the investigation.

There are also other supporting elements that complement the work of the reactive approach of the ICAC. These include organisations such as special commissions, police services, the Office of the Public Prosecution, or other anti-corruption bodies such as the Ombudsman or (in the case of NSW) the Police Integrity Commission (PIC). These organisations play an important role in reinforcing the effectiveness of the ICAC’s reactive strategies and easing the workload of different anti-corruption commissions.

The use of these supporting elements and agencies might very much fit the current trend with anti-corruption bodies to give public sector organisations and the police service greater responsibilities in handling complaints of misconduct.
7.1.2 Investigation

During the past few years of the ICAC’s work, investigations were and still are the corner stone of its functionality. The reason behind this might be because the agency was formed as a fact-finding organisation. The idea was that the results of such investigations not only expose corruption and lay the foundation for any further legal actions by the concerned authorities, through putting together evidence that might be acceptable by the court of law, but also that they are closely related to the preventative work of the agency through the application of such investigations and recommendations to prevent the recurrence of misconduct in the future (Larmour 2001, p. 15; ICAC, 2005, p. 4; Cooper & Mills 2006, p. 2).

Though the ICAC Act 1989 allows the Commission the privilege of deciding which cases to investigate, the investigative work of the Commission started immediately after its commencement. The first year of the ICAC was devoted mainly to the establishment of the Commission’s multiple departments and functions; the investigation of corruption was given the same attention. This commitment to the investigative work of the Commission was a response to the public outcry for the need to have such an agency in NSW to tackle corruption, and to convey the message that the newly formed agency was serious about tackling such a problem.

By the end of June 1989, the Commission had seven official matters under investigation, with only two of those cases brought to the public, but none were completed and therefore none led to any legal or disciplinary action (ICAC, 1989, pp. 38, 41).

The Waverley Municipal Council investigation was one of the first publicly heard cases by the Commission. The investigation started in mid-March 1989 into whether there were linkages between the Waverley Council Chief Engineer and town planner personnel and family business dealings. Mr
Donald G Stait with the developer Dainford group for the latter had received favourable treatment from the Council. The findings of this investigation were subject to legal challenge, as was stated in the previous chapter, over the Commission’s power to report findings of criminality against the people it investigated (ICAC, 1990, p. 43; The Sydney Morning Herald, 1989, pp. 3, 6).

Another early major case was the Tweed Shire Council, in which there were allegations of bribes being given to consultants and local politicians by developers interested in the development of the Northern Rivers region of NSW. The investigation confirmed such illegal payments. The Commission’s report was followed by several legal proceedings (ICAC, 1989, pp. 42, 48; The Sun Herald, 1989, p. 6; The Sydney Morning Herald, 1989, p. 4).

In all, by the end of its first full year of operating, the Commission had 14 official investigations in hand, as a result of assessing 1091 ‘approaches’ alleging corrupt acts requesting the ICAC to examine such allegations. Both local governments and the police had the largest number of these complaints, with the first having 36.5% and the latter 15.9% of the total complaints, while about a quarter of such approaches fell outside the Commission’s jurisdictions (ICAC, 1990, pp. 22–23).

In the years to come, the flow of complaints continued to increase rapidly. Table 7.1 illustrates the expansion for both the ICAC’s received complaints and the number of formal investigations. It must be noted that using the term ‘formal investigation’ was meant to represent matters/cases of misconduct that were believed to be uses of the Commission’s special powers. It is important to examine such allegations and uncover the corrupt conduct in accordance with s20 of the Act. The authorisations to formally investigate claims of corruption have their own processes, where the
allegations are weighted against various elements, such as the significance of the claims, the complications, what chance the preventative measures had in dealing with such allegations and whether the Commission, by investigating those claims, could send a message in relation to corruption (ICAC, 1991, p. 24; 1992, p.18; 1996, p. 27). Table 7.1 is an illustration of the ICAC’s expanded investigative functions.

Table 7.1: Expansion of the ICAC complaints and formal investigations numbers

<table>
<thead>
<tr>
<th>Year</th>
<th>Matters Received</th>
<th>No of Investigated Cases</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>To June 1989</td>
<td>N/A</td>
<td>7</td>
<td>ICAC 1989 Report, pp. 3, 41</td>
</tr>
<tr>
<td>To June 1990</td>
<td>1091</td>
<td>14</td>
<td>ICAC 1990 Report, pp. 14, 22</td>
</tr>
<tr>
<td>To June 1992</td>
<td>4088</td>
<td>19</td>
<td>ICAC 1992 Report, pp. 11, 12, 40</td>
</tr>
<tr>
<td>To June 1993</td>
<td>5152</td>
<td>12</td>
<td>ICAC 1993 Report, pp. 20, 26–32</td>
</tr>
<tr>
<td>1996/1997</td>
<td>6643</td>
<td>16</td>
<td>ICAC 96/97, pp. 41,43</td>
</tr>
<tr>
<td>2002/2003</td>
<td>1882</td>
<td>38</td>
<td>ICAC Report, pp. 7, 21, 22</td>
</tr>
<tr>
<td>2003/2004</td>
<td>2886</td>
<td>48</td>
<td>ICAC Report, pp. 7, 12, 19, 27</td>
</tr>
<tr>
<td>2004/2005</td>
<td>2511</td>
<td>61</td>
<td>ICAC Report, pp. 6, 10, 18,19, 27</td>
</tr>
<tr>
<td>2005/2006</td>
<td>2191</td>
<td>78</td>
<td>ICAC Report, pp. 16, 17</td>
</tr>
</tbody>
</table>

* Involving formal hearings. Note that no explanations were provided for fluctuations in numbers of investigations.
For deciding which matters to investigate, the Commission established the ‘ICAC Assessment Panel’, comprising the Director of Investigations, the Commission Solicitor, the Director of Corruption & Education and assisted by the Manager of Assessments. The panel has created a number of criteria to help it make decisions on which matters to examine. These criteria include: whether the matter lies within the Commission’s jurisdictions, whether there are any indications of systemic deficiencies in that particular public organisation, and if so, what the seriousness is of such weakness, what its effects are, particularly those concerning public safety, and whether it is related to financial aspects (ICAC, 2000, p. 29).

The panel can take one of four major actions regarding each matter reviewed. First, it can either take ‘no action’ if the matter does not warrant corruption charges or immediately refer it to other investigative organisations such as the Ombudsman, the Health Care Complaints Commission or the Department of Local Government. Secondly, it could require the agency against which the matter or the complaint is made to investigate the allegations if the Commission was satisfied that that agency had adequate facilities to do so. In this case, the agency would be required to report back to the ICAC on its findings. Third, the ICAC could decide to conduct a preliminary investigation if the issues were judged to be worthwhile. Though this kind of matter might not lead to a formal investigation, through examination it may later be decided to refer it to another agency or deem it to be ‘not for investigation’. The fourth option is for the Commission to conduct a formal investigation if the issue has the potential for exposing major systemic corruption (ICAC, 2000, p, 29). Table 7.2 provides an example of the panel actions taken during 1999/2000 to illustrate the different outcomes possible.
Table 7.2: ICAC Assessment Panel – panel decisions 1999 to 2000

<table>
<thead>
<tr>
<th>ICAC Action</th>
<th>Matters received from the general public</th>
<th>From employees</th>
<th>From principal officers</th>
<th>Total</th>
<th>% of total matters</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘Immediate referral’ or ‘no action’</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>409</td>
<td>81</td>
<td>358</td>
<td>848</td>
<td>74.3</td>
</tr>
<tr>
<td>Request agency investigation &amp; report back</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>14</td>
<td>8</td>
<td>2</td>
<td>24</td>
<td>2.1</td>
</tr>
<tr>
<td>ICAC Preliminary investigation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>112</td>
<td>46</td>
<td>66</td>
<td>224</td>
<td>19.6</td>
</tr>
<tr>
<td>Formal ICAC investigation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>39</td>
<td>3</td>
<td>4</td>
<td>46</td>
<td>4.0</td>
</tr>
<tr>
<td>Total # of matters acted upon by ICAC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>165</td>
<td>57</td>
<td>72</td>
<td>294</td>
<td>25.7</td>
</tr>
<tr>
<td>Total # of matters</td>
<td>574</td>
<td>138</td>
<td>430</td>
<td>1,142</td>
<td>100</td>
</tr>
</tbody>
</table>

(Source: ICAC, 2000 p. 30)

An example of the matters referred to public agencies for investigation is the ICAC’s decision to refer to the Department of Health a few matters it had received about drugs disappearing from hospitals. The agency investigations found some loopholes in the procedures concerning the handling of drugs and presented 19 recommendations touching different aspects of handling drugs, such as managing drug safes, procedures related to entries for drug registers, training and drug deliveries (ICAC, 2003, p. 28).

The Commission, in ensuring that its investigations and recommendations were implemented, had established the Recos on the web program. This initiative was intended to monitor and report the level of implementation of ICAC investigative reports by the public departments concerned.

For example, in 2003–2004, the ICAC made 92 recommendations to various departments in ten of its investigation reports that particular year. In their obligation to report back, the involved public departments showed a high
percentage of implementation rates of the Commission’s recommendations (ICAC, 2004, pp. 37, 92).

The ICAC was formed to act as a fact-finding body, consequently, its investigative functions continued to take up most if its resources. Looking at its staffing distribution across its different divisions, it is most noticeable that its Strategic Operation Division takes most of its staff. Table 7.3 provides an illustration of its staff profiling over the last few years.

<table>
<thead>
<tr>
<th>Division</th>
<th>99/00</th>
<th>01/02</th>
<th>02/03</th>
<th>03/04</th>
<th>04/05</th>
<th>05/06</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>5.4</td>
<td>N/A</td>
<td>5.1</td>
<td>5</td>
<td>4.9</td>
<td>4</td>
</tr>
<tr>
<td>Corporate service</td>
<td>29.5</td>
<td>N/A</td>
<td>18.8</td>
<td>21.5</td>
<td>20.8</td>
<td>18</td>
</tr>
<tr>
<td>Prevention, Education &amp; Research</td>
<td>23.5</td>
<td>N/A</td>
<td>19</td>
<td>21.9</td>
<td>22.8</td>
<td>21.8</td>
</tr>
<tr>
<td>Legal</td>
<td>11.7</td>
<td>N/A</td>
<td>9.5</td>
<td>10.7</td>
<td>9.6</td>
<td>9.3</td>
</tr>
<tr>
<td>Strategic Operation</td>
<td>56.9</td>
<td>N/A</td>
<td>39.2</td>
<td>39.8</td>
<td>41.4</td>
<td>40</td>
</tr>
<tr>
<td>Assessment</td>
<td>N/A</td>
<td>N/A</td>
<td>9.6</td>
<td>12.4</td>
<td>13.1</td>
<td>11</td>
</tr>
<tr>
<td>Total</td>
<td>127</td>
<td>112</td>
<td>107</td>
<td>111</td>
<td>113</td>
<td>110</td>
</tr>
</tbody>
</table>


### 7.2 Surveillance

Surveillance, as stated previously, is one of the ICAC’s investigative techniques at the disposal of the SOD. It is not a given statutory power as is the case with the Queensland CMC. For the Strategic Operation Division to use this technique, it must be authorised by the Executive Director and it must be reported to the Investigation Management Group (IMG) which directs, advises and monitors the Commission’s investigations (ICAC. 2003, p. 32).

Surveillance has been always part of the Commission’s investigative branch, the SOD. For many years, surveillance officers were incorporated within the
investigation unit. However, during 2001–2002, the Strategic Operation Division was restructured to reinforce the ICAC’s investigative function. The restructuring brought the Strategic Risk Assessment Unit (SRAU) to be responsible for the ‘intelligence, physical and counter surveillance, technical services, and management of electronic surveillance and assumed identities’ (ICAC, 2002, p. 26).

In 2005 and as a result of another internal assessment, the name of the SRAU was changed to the Investigation Unit when the intelligence function was removed. The current Surveillance and Technical Unit came into effect in April 2005. It was tasked with undertaking physical surveillance activities to recognise and watch persons that were considered of interest to an ICAC investigation (ICAC, 2005, p. 27).

A good example of an investigation using the capacity of the surveillance and technical unit was the allegation of offering a bribe to an officer working with the Centennial Park and Moore Park Trust. The offer was made by a commercial painting business in their effort to win a large maintenance contract. The officer reported the offer to the ICAC, which began its investigations by conducting a controlled operation that included setting up a meeting between the officer and a business representative. The situation was under physical and electronic surveillance and the ICAC was provided with the ‘listening device and to intercept telephone communication’ warrant. This operation resulted in gaining concrete evidence proving the bribe, including the $1000 cash offered during the meeting. The case was referred to the DPP for possible prosecution (ICAC, 2003, p. 34).

7.2.1 Prosecution
Because the ICAC was set up as a fact-finding and investigative agency, it was not allowed to prosecute or apply disciplinary action against those who
underwent its investigations. However, the ICAC investigations could lead to different outcomes. First, it could seek the advice of the Director of Public Prosecution (DPP), particularly when dealing with the results of serious corruption cases, for a prosecution against the people being investigated for specific criminal offences. Secondly, it could recommend disciplinary action including dismissal or termination of employment be taken by the employer against the offender. Third, it could provide an opinion that action should be taken ‘for a specified disciplinary offence’ against the person (ICAC, 2006, p. 40).

It is the responsibility of the DPP to consider each prosecution action and initiate prosecution proceedings and for employers to consider and apply disciplinary actions. However, in 2004 after examining the ICAC 2002–2003 Annual Report, the Committee on the Independent Commission Against Corruption issued a recommendation that the ICAC and the DPP needed to coordinate efforts. The aim of this recommendation was to explore workable ways to promote faster decision-making processes to ‘initiate proceedings’ on the Commission’s briefs. In his foreword in the Committee on ICAC examination of the Commission report, the Chairman Kim Yeadon expressed the Committee’s concerns over the increasing number of cases in which the DPP was reluctant to initiate proceedings owing to deficiencies in the ‘admissible evidence’ (Yeadon, 2004, pp. vii, xi).

The problem of the lack of admissible evidence that would support the DPP taking legal actions in the ICAC cases was considered one of the ‘low points’ in the work of the Commission in 2002–2003. The Hon Fred Nile, a member of the ICAC Committee, questioned the matter at the public examination on 23 February 2004 after referring to the DPP decision not to initiate proceedings in nine out of ten ‘possible prosecutions’ in Operation Jommelli. (This was a combined investigation between the Commission and
the NSW Police Strike Force on ‘car re-birthing’.) The reason given was lack of admissible evidence (in Yeadon, 2004a, p.7).

Though the Commission acknowledged such a problem was one of the challenges to its work in the last few years, it explained that it had taken a different approach in its investigations and focused on gaining more admissible evidence through means other than hearings. The ICAC argued that this would increase the possibility of later successful prosecutions. Examples were initiating an extensive and broad evidence collection before conducting public hearings and working with other departments, such as the NSW Police, as was the case in the Operation Trophy on Rockdale City Council, which investigated their corrupt deals with ‘developers and go-betweens’ (ICAC, 2002, pp. 27, 28).

The ICAC Commissioner also argued during the annual Parliamentary examination of its annual report of 2001–2002 that the Commission, according to section 13 of the ICAC Act 1988, was mainly a ‘fact-finding body’ and that the collection of admissible evidence that might be used in prosecutions came under sub-section (1) in section 14 under ‘other functions of the Commission’. It also added that the ICAC rate of prosecution would be higher if evidence obtained during compulsory procedures, such as public hearings, could be admissible in court proceedings. It stressed the point that criminal law has generally protected against self-incrimination, and was unlikely to change (Moss, 2004a, pp. 51–54).

The current Commissioner of the ICAC, The Hon Jerrold Cripps QC, in his presentation during the 2nd National Conference of Parliamentary Oversight Committees of Anti-Corruption/Crime Bodies 2006, focused on the matter, suggesting that it would be unreasonable under the
circumstances to judge the ICAC’s successes based on the number of prosecutions:

A very common criticism levelled at the Independent Commission Against Corruption is that it has a low success rate in achieving criminal convictions. Others question whether the Commission should have any part in the prosecution of persons for criminal offences other than simply making available what evidence it does have to a prosecuting authority … it would seem to me therefore that it is unwise for people to attempt to assess the performance of the Independent Commission Against Corruption by reference to the number of criminal scalps (Cripps, 2006, pp.112–115).

7.2.2 Penalties and sanctions
The Independent Commission Against Corruption, as stated previously, is not designed as a court or disciplinary tribunal. Therefore, it cannot proceed with prosecution nor can it take a disciplinary action. The ICAC experience has shown that in many cases the DPP has refused to pursue prosecution or that it was not successful in prosecutions. For example, the Commission reported that only 29 (42%) out of 69 persons investigated between 1998 and 2003 and reported to the DPP for prosecution were found guilty of an offence; most of those convictions were because of a criminal offence committed during the Commission inquiries, such as lying under oath or perjury. In more than half of the other cases (58%) the DPP decided not to prosecute or the cases failed during the trial (Yeadon, 2006, p. 21). Comparative information about DPP actions in other, non-ICAC matters is not publicly available.

7.2.3 Intelligence
Intelligence plays an important role within the ICAC’s reactive approach. The intelligence function has always rested with the investigative arm of the Commission, the Strategic Operations Division. Looking at its
organisational chart, it is most noticeable that intelligence was and still is within the scope of the SOD. The only variation was that it sometimes worked within its investigative unit and some other times was attached to its surveillance and technical unit (ICAC, 1989, p. 81; 2002, p. 108).

For example, in 2002, the Strategic Operations Division underwent a major reshuffle, resulting in the establishment of the Strategic Risk Assessment Unit (SRAU). The newly created SRAU was given the intelligence responsibility. The intelligence section came to work as part of the bigger unit. However, the section was remodelled and enhanced with more staff in a way that would support the new ICAC approach of an ‘intelligence-led approach to investigation’ (ICAC, 2002, p. 26).

Currently, the intelligence function is re-attached to the investigation teams, as a result of the 2004/2005 assessment of the function of the SRAU. This restructuring meant that intelligence projects would be dealt with by multi-skilled teams (ICAC. 2005, p. 27).

7.2.4 Other supportive elements in the reactive approach

In the ICAC, in conducting its different tasks, there was always the need to establish working relationships with other agencies that were involved in dealing with corruption in NSW. For example, the Commission, under its ‘Strategic Partnerships and Liaison with other agencies’ scheme, shares intelligence with the NSW Police, the Police Integrity Commission (PIC), the Australian Federal Police, the Australian Crime Commission and the NSW Crime Commission (ICAC, 2006, p. 38).

In 2002, the Commission signed a Memorandum of Understanding with the NSW Police which paved the way for better trained and more experienced police to execute its search warrants as a measure to limit any physical hazard, such as assault, to the Commission’s staff and the public (ICAC, 2003, p. 39).
Another example in this aspect is the development of close relationships with the Police Integrity Commission (PIC), both individually and organisationally. At the organisational level, it continues to share information and intelligence in different areas of its work with the PIC and in some significant investigations also receives special technical help. In addition to that, officers from both organisations participate in joint exercises and training courses to further enhance their technical capabilities (ICAC, 2003, p. 39; 2005, p. 32).

7.3 Proactive strategies

7.3.1 Corruption prevention
The Independent Commission Against Corruption Act 1988 established that investigation and corruption prevention would act as the Commission’s two arms working ‘hand-in-hand’ within the ICAC to succeed in its objectives (ICAC, 2005, p. 8).

Part 4 of the ICAC Act 1988 indicated explicitly the dual role of the Commission’s functions in investigating and preventing corruption together with educating the public and the people associated with managing the public sector agencies of NSW (ICAC Act, 1988, s13(1)).

In implementing its prevention duties, the Commission can review laws, procedures and practices used to manage and administer public sector establishments; it can also provide advice and consultations in ways to minimise the possibility of corruption (ICAC Act, 1988, s13(1)d, e, f, g, h, I, j, k).

With respect to the prevention side of its duties, the Commission, in its efforts to build a suitable corruption prevention strategy, started by writing to the foreign countries’ diplomatic representatives in Australia advising them of its existence and requesting their respective countries’ experiences in dealing with and preventing corruption. It also corresponded with New
South Wales ministers to identify the type of procedures they had in place against corruption in their ministries (ICAC, 1990, p. 64).

In early 1990, the first Director of Corruption Prevention was appointed. After receiving responses from foreign diplomatic missions and ministries, the Commission was able to formulate its first corruption-prevention strategy based on three main pillars of:

- ‘prevention is better than cure’
- ‘corruption prevention is a management function’

Based on the previous principles, the Commission started identifying the necessary work in this aspect of its function internally and externally. Internally, it was initiated by the results of the Commission’s investigations that might indicate an institutional failure that led or would lead to corruption. Other internal sources for its prevention works were the result of complaints that were made to the Commission but not officially examined, but which at the same time reflected an organisational malfunction that permitted or would permit the appearance of corruption (ICAC, 1990, p. 65). Externally, its preventative functions were driven from a number of sources, such as calls by government departments to develop or help in establishing codes or creating ‘guidelines’ or providing advice on how better to improve the workability in areas identified with weaknesses and problems. The Commission’s cooperation with similar agencies, such as the Ombudsman and with local governments, was also another source for its corruption-prevention work (ICAC, 1990, p. 65). Practically, the Commission’s activities in this aspect during its first year of full operation can be summarised in Table 7.4.
As the ICAC matured, its experience in corruption prevention also matured and it was able to establish an ‘expertise’ in this area. Research played an important role in developing strategies to foster an ethical culture in the NSW public sector. Its current research uses a number of methods to that end, such as:

… exploring the employee’s point of views about corruption. The idea is that the employees are in the best position through their daily interactions and dealing with the public to identify the socially more accepted and commonly used definition of corruption in the public sector domain. Identifying such definitions would help in the efforts to put together plans to suppress corruption (Gorta, 2001, p. 17).

The ICAC’s preventative work extended to include research projects conducted in collaboration with other ‘industry partners’, such as Transparency International. An example would be the major ‘Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organisations’ project, led by Griffith University and including another 14 industry partners and six universities (www.griffith.edu.au/whistleblowing 2007).
In describing the project, the official project website summarises its main objectives as the following:

The project is the first national study to examine and compare procedures within organisations managing and protecting whistleblowers and other insider’s witnesses on public sector corruption and misconduct, with the aim to produce better strategies that would prevent and minimise the risks of whistleblowers and internal witnesses being subjected to any act of vengeance or retaliation for reporting misconduct ((www.griffith.edu.au/whistleblowing, 2007).

In a broader context, the ICAC’s prevention and research functions seem to have focused during the last few years on the following general themes:

- promoting a clear public ‘understanding’ of the nature of what is involved in corrupt conduct
- recognising and confronting the reasons commonly used to tolerate and overlook misconduct
- the necessity for the public sector administration to tackle corruption through the adoption of serious and robust measures
- the importance of the management’s commitment in fighting corruption and providing a leading role in doing so
- introducing an efficient internal procedure for the organisation’s employees to report corrupt actions securely and without fears of reprisal
- scrutinising the public sector ‘organisational cultures’ and fostering an ethical managerial culture within these organisations (Gorta, 2001, pp. 28, 29; Cripps 2006, p. 57).
7.3.2 Education and training

The first year of the Commission’s work in this particular aspect focused on introducing the Commission to the public by instigating an awareness campaign, making country trips, distributing information brochures and starting what became known as a public attitude survey to understand the general public’s views of corruption and their attitudes to the existing measures for tackling it (ICAC, 1989, p. 51; ICAC, 1990, p.75).

In performing its educative function, the ICAC created a number of educational and training initiatives. Its first education strategy was formalised in 1990 based on three main principles:

- knowledge empowers; aimed at making the public aware of their rights and responsibilities, as a step towards bringing them into an alliance with the Commission in preventing corruption
- collective responsibility; by emphasising that tackling corruption is the responsibility of every citizen in NSW
- permanent change can be achieved through changing public attitudes (ICAC, 1991, pp. 121,122).

The strategy sets out the process of educating the public through means of hearings, reports, targeting the young, reaching minority groups, providing community speakers, country visits, media liaison and community announcements (ICAC, 1991, pp. 123–124). Since then, the Commission’s education work has flourished and over the years the ICAC has initiated a number of educative programs, such as:

- producing audio and video resources to be used in primary and secondary schools
- publishing the ICAC’s newspaper ‘Corruption Matters’
- distributing the ‘introducing the ICAC’ brochure
• promoting the ‘corruption is wrong’ campaign directed to non-English speaking communities

• providing ICAC publications in about 30 foreign languages other than English

• starting the Non-English Speaking Background project (NESB) targeting NSW NESB communities and these communities’ leaders, aiming to raise their awareness and strengthen the means of communication with them (ICAC, 2005, p.46)

• issuing booklets and making resources available to target community leaders (ICAC 2007)

• launching the ICAC website on the World Wide Web in March 1999 as another means of educating the public and presenting its work, functions and achievements (ICAC, 1999, p. 11)

• initiating training programs targeting middle and senior managers in the NSW public sector organisations, and special training programs for NSW universities officials (ICAC, 2006, pp. 48, 49)

• in taking its education responsibility a step further and as a result of its accumulated experience during the first ten years of it existence (the ICAC officially started on 13 March 1989) in 1998, the Commission, in association with the Australian National University (ANU), commenced a post-graduate course in corruption and anti-corruption. This course targets national and international middle and senior public sector managers and combines both the academic excellence of the ANU with the practical expertise of the ICAC (ICAC, 2005, p. 9; 2006, p. 49; Larmour & Wolanin 2001, p. xiii).
7.3.3 Rural and Regional Outreach Strategy (RAROS)

One of the major projects introduced during the last few years by the ICAC is the Rural and Regional Outreach Strategy (RAROS). It is another venue for the ICAC to spread the benefits of its research and education work. Beginning in 2001, the Commission delivered its corruption prevention work to ‘non-metropolitan areas of NSW’. Since then, the ICAC has conducted twelve programs, with two visits every year. The main program objectives are:

- to introduce the ICAC and provide its services to local areas
- to gain in-depth information on the type of problems in every area.

Each visit always runs for one week and includes workshops, discussion groups, school visits and briefing sessions (ICAC, 2004, p. 43; 2005, p. 10). In its examination of the 2002–2003 annual report of the ICAC, the Parliamentary Committee responsible for overseeing the ICAC praised the initiative and its success (Yeadon, 2004, p. 5).

7.3.4 Proactive investigation

In recent years, the Commission has not only restructured its Strategic Operation Division, but has also equally reorganised the way it conducts its other functions, particularly its investigative work. In the late 1990s, the ICAC took steps to further distance itself ‘from a rigid structure’ in which its investigative work was carried out separately from its other functions and was the main objective of the agency.

The Commission’s new approach is to integrate the work of its SOD with its corruption prevention function. The corruption prevention participation begins in the early stages of its formal investigations with the aim of developing inquiries that might produce results that are targeted toward prevention (ICAC, 2002, p. 26).
One of the major investigations that used most of the Commission’s powers was the investigation into corruption at the Rockdale City Council 2001/2002. The investigation also represented the integrated approach to examining matters; it included the work of the Operation and the Corruption, Education and Research Divisions. The allegations related to the conduct of two Rockdale City Council councillors with developers. After using powers, such as telephone interception, listening devices, search warrants and notice to produce information, the allegations were confirmed and the ICAC made recommendation to the DPP to consider charges against the two councillors and the other four people involved. It also resulted in amending the *ICAC Act 1989* and the *Local Government Act 1993* to provide means for the ‘suspension and the eventual dismissal’ of councillors upon the recommendation of ICAC and their removal if systemic corruption were proven (ICAC, 2002, p. 28).

### 7.3.5 Integrity Capacity Building

The ICAC’s integrity capacity building is best represented through its training strategy. In its capacity building efforts, the Commission training initiatives usually target middle and senior managers because they are in charge of formulating policies and are decision-makers. It also focuses on the people in charge of preserving their public organisation’s integrity and preventing corruption, or those carrying out tasks such as auditing, and the handling and investigation of complaints (ICAC, 2006, p. 48).

Some of its capacity building initiatives include the Corruption Resistance Reviews (CRRs), which have been working since 2000 in examining the broader NSW public sector agencies’ main ‘corruption resistance’ mechanisms and providing ideas and suggestions to reinforce them. The other major project is the Local Government Strategy, which focuses on the development of local government’s corruption resistance capacity. The
Commission also provides corruption prevention advice to public sector organisations (ICAC, 2003, pp.57–67; 2004, p. 44).

### 7.3.6 Law Reform
Since the introduction of the ICAC Act 1989, many law reforms were presented as a result of the ICAC investigations and its other functions. One of the recent major ICAC investigations that introduced some law reforms was ‘Operation Trophy’ in 2002. This investigation’s outcomes amended the Local Government Act 1993 to allow the suspension and the dismissal of councillors based on its recommendations. The outcomes also made amendments to the Environmental Planning and Assessment Act 1979 to permit the appointment of a planning administrator to the council in the case of systemic corruption being evident (ICAC, 2000, p. 28).

### 7.4 Integrity testing, complaints profiling and Early Warning Systems
It has been stated in the CMC’s strategy chapter that integrity testing, complaints profiling and early warning systems are newly-developed proactive strategies to deal mainly with police corruption. The ICAC, not being responsible for police corruption since 1997 after the establishment of the PIC in the wake of the Wood Inquiry 1997, has never reported the use of such strategies.

#### 7.4.1 Research
Understanding the importance of research, in 1994 the ICAC initiated its first major research project studying NSW public sector employees’ perspectives of corruption and testing their readiness to act against it; it conducted the second study in 2001. The ‘Unravelling Corruption: A Public Sector Perspective. Survey of the NSW Public Sector Employees understanding of Corruption and Their Willingness to take action’ randomly questioned over a thousand public employees each time the survey was
conducted by presenting them with twelve ‘scenarios’ and asking them to determine if those cases involved a corrupt conduct and what sort of action they would be willing to take if they were in the same situations (ICAC, 1994, pp. 8, 9; 2001, p. 4).

In 1999, after realising that more than 50% of its investigations in the previous years involved individuals from the private sector, the Commission acknowledged that such a sector was an important element in the fight against corruption (ICAC, 1999, p.3).

In 1998 the ICAC surveyed 204 ‘private contractors and management consultants’ that had had dealings with the NSW public sector in the previous 12 months and asked about their perspectives on doing business with the NSW public sector (ICAC, 1999, p. 4), as follows:

- studying successfully-implemented measures/strategies by managers in their own organisations and forecasting the possibility of spreading them to other agencies
- examining the available literature that might help to build up a corruption-resistant culture
- analysing the collective corruption allegations reported to the Commission as a way to identify ‘pattern and trends’ of suspected corruption conducts (Gorta 2001, pp. 17, 18).

Another important part of the ICAC’s research was the ‘Community Attitudes to Corruption and the ICAC Survey’, which was established in 1993 and has since become a periodically-conducted survey. It was established in accordance with the Commission’s functions and its first Corporate Plan 1993–1995 for two reasons, to aid in keeping the public informed about the Commission’s work and to assist in formulating its preventative and educative function (ICAC, 1994a, p. 1). The survey uses a
random sample of an average of 400–500 NSW adults as the population to find out community perceptions about corruption, their general knowledge of the existence of ICAC and its work and effectiveness in the fight against corruption in the NSW public sector (ICAC, 1996, p. 1).

There have been seven Community Surveys conducted by the ICAC since 1993, with the last one performed in 2006. The findings of these surveys present a general consistency over the years in some aspects, such as:

- Although there were some reductions during the last few years, the fact remains that there is stability concerning the perceptions of corruption being a problem in NSW. In 2006, 72% thought of it as a problem in NSW (ICAC, 2006, p. 12).

- Despite the decreasing level of fears that the possibility of people reporting corruption would be subject to reprisals for their actions, the results continued to show that the majority of the participants thought otherwise. In the 1999 survey, 70% agreed that those who reported corruption were likely to suffer for it compared to a higher percentage in the previous survey in 1996 of 76% (ICAC, 1996, p. 21; 1999a, p. 12).

- Another consistent finding was that having the ICAC was a ‘good thing for the people in NSW’. All seven surveys showed a strong agreement — always above 90% — on the benefit of having an agency such as the ICAC, accompanied with favourable perceptions of the ICAC’s success in exposing corruption (ICAC, 2003, p. 15).

- In relation to the ICAC’s success in reducing corruption, all surveys indicated that just above half of the respondents believed that it was successful in minimising corruption (ICAC, 2006, pp. 27, 28).
Another important research project pursued by the ICAC was to formulate its preventative work, ‘Profiling the NSW Public Sector: Functions, risks and corruption resistance strategies’ project. It began in 2001 to establish a general overview of the corruption threats faced by the NSW public sector and the strategies being implemented to tackle them, with the aim of laying the foundation to strengthen and introduce resistance measures that might be tailored precisely to each organisation (Moss 2003, p. iii; Waugh 2004, p. 4; Yeadon 2004, p. vii). The outcome of this NSW project, the first of its kind, examined more than 260 organisations and delivered a positive general picture of the way the NSW public sector recognised, responded to and managed corruption threats (Moss 2003, pp. iii, 65).

At the end of the Parliamentary examination, the Committee recommended that the ICAC should perform ‘follow-up’ research during the next four years and report on how its 29 recommendations were being implemented, to what degree such implementations were successful in reducing corruption in those particular organisations, and at what cost (ICAC, 2003a; Yeadon, 2004, p. ix).

In 2005, the Commission reported on its first follow-up examination. The follow-up focused on the existence or the absence in the examined organisations of the ‘core corruption prevention policies and procedures’ that should be the cornerstones of any corruption resistance framework. These were:

- Codes of conduct
- Corruption risk management
- Internal audits
- Gifts and benefits
- Internal investigations (ICAC, 2005, p. 6).
Table 7.5: Implementing corruption prevention strategies in the NSW Public Sector, 2001 and 2004

<table>
<thead>
<tr>
<th>Corruption prevention strategy</th>
<th>2001 Response</th>
<th>2004 Response</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In place</td>
<td>Not in place</td>
</tr>
<tr>
<td>Code of conduct</td>
<td>99%</td>
<td>1%</td>
</tr>
<tr>
<td>Corruption risk management strategy</td>
<td>67%</td>
<td>33%</td>
</tr>
<tr>
<td>Internal audit plan</td>
<td>93%</td>
<td>7%</td>
</tr>
<tr>
<td>Internal auditor</td>
<td>87%</td>
<td>13%</td>
</tr>
<tr>
<td>Gifts and benefits policy</td>
<td>85%</td>
<td>15%</td>
</tr>
<tr>
<td>Internal investigation system</td>
<td>79%</td>
<td>21%</td>
</tr>
</tbody>
</table>

The findings of the follow-up research reflected some ‘improvements’ in relation to implementing the indicated ‘core corruption strategies’ from the time when the first profiling was conducted in 2001. Table 7.5 compares the level of implementation of these strategies in 2001 and 2004.

7.4.2 Coordination

One of the main findings of the National Integrity Assessment (NISA) of Australia in 2005 after examining the NSW integrity system was the lack of cooperation among the various agencies. Two major reasons were cited for this problem. The first one was legally driven and was particularly related to the Privacy Act that restricted those bodies’ abilities to exchange information. The second barrier was related to the financial aspect of these organisations’ constitutions, which rejected the idea of allocating financial recourses to ‘cooperative projects’ which were to be conducted jointly by these agencies (TI, 2005, p. 30).
Consequently, the lack of a cooperative relationship between the different agencies resulted in the lack of coordination. Transparency International Australia’s report described the NSW integrity system as:

… the result has been a proliferation of bodies with clear and distinct problems of coordination, including Jurisdictional gaps, ‘buck-passing’ between organisations, increased ‘gaming’ of ‘forum-shopping’ by complainants, confusion in the eye of citizens and end-users, and alienation of line agencies having to contend with multiple requirements and investigations’ (TI, 2005, p. 87).

This deficiency in coherence itself was a drive toward a more informal kind of coordination over the last few years. Depending on personal relationships, this informal cooperation and coordination is doing each department good. However, despite its positive outcomes so far, the NSW integrity system, like its counterpart in Queensland, still lacks a formal coordination mechanism. One of the reasons brought up as a barrier to that is the government’s unsupportive approach to ‘Complaints NSW’ which is a proposal for a ‘one-stop shop’ system to receive and refer all allegations, complaints and inquiries related to all NSW public sector employees, including health and legal specialists, and organisations including community services (TI, 2005, 87).

7.5 Internal performance indicators

7.5.1 Current performance measures in the ICAC

In its 2003–2004 annual report, the ICAC confirmed that there was a need to expand and include more measures that would present a more reliable overview of its performance and efficiency. One way to accomplish this target was through the enrichment of the agency’s internal reporting processes (ICAC, 2004, p. 55).
The agency also identified several performance measures used in relation to its investigative roles, including: the number of cases reported, the matters that were examined within adequate timelines, the formal investigations conducted, the cases handled and finalised in a six-month time-limit, the number of its public or private hearings, and the number of produced reports (ICAC, 2003, p. 9; 2004, p. 55).

ICAC has a number of performance measures to assess how it is functioning when it comes to preventing corruption, such as number of advices on how to prevent corruption to other organisations. It also reports the number of ‘Corruption Resistance Reviews’ it carries out to other agencies each year, and its accomplishments relating to the community by reporting the numbers of visits in accordance with its ‘Rural and Regional Outreach’ initiative (ICAC, 2003, p. 9). The ICAC uses self-initiated research projects and the fulfilment of its organisational legislatives requirements, such as reports to Parliament, as another performance measure of its efficiency (ICAC, 2003, p. 71; 2004, p. 55).

Although they are not reported as a performance indicator in the agency’s annual reports, the ICAC has been conducted a number of surveys, such as the Community Attitude Survey, the Profiling the NSW Public Sector survey and the Corruption Resistance Review. In addition to these surveys, the Commission is actively involved in producing guides, tools and in initiating projects related to the study, assessment and building of anti-corruption environments within its jurisdiction. Examples would be the ‘Do-It-Yourself Corruption Resistance Guide’, the ‘Ethical Culture Survey’, ‘What is Ethical Culture?’ brochure, ‘Key Issues to Consider in Building an Ethical Organisation Kit’, and the ‘Local Government Risk Profile’ (ICAC, 2005; Shacklock, Connors, Gorta & O‘Toole, 2004, pp. 8–10).
The Independent Commission Against Corruption’s performance is also assessed by other means, such as its annual reports, the final report of its investigative results, its website and its staff skills development programs (ICAC, 2003, pp. 8–9). In its Strategic Plan 2006–2010, the Commission affirmed the use of these statistical measures as an indicator of its performance for the coming years. The ICAC seems to be in line with other Commissions in using numerical evidence as the main method to provide a picture of their effectiveness and efficiency to stakeholders ICAC 2006, pp. 8–9).

The accountability of the agency is also overseen by the Parliamentary Joint Committee (PJC), which monitors and reviews its activities and its reports. The ICAC Commissioner is also required to participate in public hearings before the PJC, twice every year. Another form of scrutinising the Commission is through the Operations Review Committee (ORC), which looks into the accountability of the ICAC’s judgments on investigating the grievances presented by members of the public. The ORC decisions play a vital role in whether the agency ought to terminate or start to investigate complaints of assumed corruption (ICAC, 2005).

Another accountability mechanism available to the ICAC is the Prevention Management Group (PMG), which ensures that the ‘corruption prevention work of the Commission is consistent with the Commission’s key strategic objectives and statutory responsibilities’. To complement the other part of its investigative responsibilities, the ICAC receives direction in matters related to its investigations from the Investigation Management Group (IMG) in a manner that guarantees that the investigative procedures are in accordance with its goals. The IMG also acts as a supervisor for the overall investigation processes and ensures that all the required resources have been allocated for such an issue (ICAC, 2005).
The current accountability and performance indicators used by the ICAC seem to provide a fair view of its activities and the degree to which it adequately uses its resources to fight corruption within the NSW public sector. However, measuring efficiency might need the development and increased use of measures other than the quantitative indicators previously mentioned, such as measuring public perceptions, parliamentary hearings and more a qualitative assessments of its performance.

7.6 Conclusion
The establishment of the NSW Independent Commission Against Corruption in 1988 was in accordance with most other Australian anti-corruption Commissions. It was the product of a public outcry taken up by State politicians for different reasons, one of which was to further their own political interests in gaining control of the government.

The structure of the ICAC is similar to that of the CMC, except that the ICAC was designed and remained to exclusively look into public sector corruption, including the Police force, until 1997. This jurisdiction was removed after the creation of the Police Integrity Commission as a result of the Wood Inquiry in 1997. Though the removal of police misconduct from the ICAC might be interpreted as a failure by the Commission to effectively deal with police corruption, it could be seen the other way around: that police corruption in NSW was so entrenched that it needed a specialised agency to look into it. It could also be argued that the removal of police misconduct from the ICAC led to a stronger focus and more resources for the rest of the public sector agencies.

Since its inception in 1988, the ICAC’s approach to corruption has alternated between reactive and proactive strategies. The formative years were dominated by reactive measures, with a focus on investigation. However, as it gained experience, the Commission started to lean towards a
more integrated approach, where its investigations were no longer performed in isolation from its other functions. Recently the capacity of the NSW public sector organisations to resist and deal with corruption themselves has increased.

The strategies the Commission has used seem to incorporate most of the suggested models in this study, except for those of integrity testing, complaint profiling and early warning systems. These mechanisms are still new to the field of public sector corruption, apart from police misconduct.
Chapter Eight

Corruption and Crime Commission (CCC) – Structures, Legislations and Powers

8.0 Introduction

The four previous chapters have looked into the experiences of the two leading Australian Commissions in the fight against public sector corruption. The next two chapters will focus on the path of the comparatively newly created Corruption and Crime Commission (CCC) of Western Australia (WA), and how it might be of benefit in its quest to tackle public sector corruption within its jurisdiction, based on the extensive experiences of both the CMC of Queensland and the ICAC of New South Wales. This chapter will start with an overview of the WA integrity system, explaining the roles of the major components of the system; then it will provide the historical background to the establishment of the CCC in 2004, paying specific attention to the experiences of the abolished Anti-Corruption Commission (ACC). After that, it will examine its organisational structures, legislation and jurisdictions, and its functioning during its relatively brief existence. Finally, it will explore its powers, which are argued by some in WA, to make the Commission ‘one of the most powerful crime and corruption fighting bodies in Australia’ (McGinty, as quoted in Peachment, 2006, p. 238).

Compared with the NSW ICAC and the Queensland CMC, the CCC is still in its infancy. However, its experiences over this comparatively short amount of time are interesting to observe. The Commission is equipped with one of the most comprehensive statutory legislations. The CCC Act 2003 empowered it with extraordinary powers that are equal to, if not
greater, than those that have been allocated to other oversight agencies. It certainly does not lack the necessary financial resources and has been given the ability to function reactively and proactively.

The CCC’s operations over the last three years seem to have met expectations so far: investigating high profile cases of government public sector misconduct and politicians, reaching out to the WA public in metropolitan and regional areas, examining government procedures and recommending changes, and joining with other major public sector integrity preservation institutions in initiatives to promote operational coordination and collaborative research to deal with public sector misconduct.

8.1 The WA Integrity System – an overview

According to the annual report of the Director of Equal Opportunity in Public Employment, the total number of all employees in the WA public sector was 128,052 in 2006 (Taylor 2006, p. 73), meaning that the government was employing about 12% of the WA total labour force to provide services to an estimated resident population of 2,010,000 as at June 2005 (Australian Bureau of Statistics 2007; Wauchope 2005, p. 1).

The Western Australia public sector is administered by the Public Sector Management Act 1994, which repealed the older Public Service Act 1978, and was assented to on the 29 June 1994. The Act established the Office of the Public Sector Standards Commissioner (OPSSC) as a permanent mechanism to secure the appropriate application and commitment of the various bodies of the public sector in Western Australia (Public Sector Management Act 1994, Section 35). In conducting its functions, the CCC must act in accordance with this Act and other legislations in WA, such as the Public Interest Disclosure Act 2003, the Surveillance Devices Act 1998 and the Telecommunications (Interception) Western Australia Act 1996.
The Public Sector Management Act charges the Commissioner for Public Sector Standards with the following responsibilities:

- establishing standards in human resources management and codes of ethics for the Western Australia public sector
- assisting public sector bodies to comply with these standards
- monitoring and reporting to Ministers and Parliament on compliance
- offering assistance to public agencies and employees on compliance with the Public Interest Disclosure Act 2003 and reporting to Parliament on this compliance
- helping government bodies to accomplish ‘equal employment opportunity’ in accordance with part IX of the Equal Opportunity Act 1984, examining how they conduct themselves, and providing reports to the Minister for Public Sector Management
- providing advice on the appointment of persons for CEO posts (Murray 2006, pp. 6, 7; OPSSC, 2007).

The Commissioner for Public Sector Standards is not the only independent mechanism to maintain the integrity of the WA public sector and the proper functioning of the government agencies. There are a number of other accountability systems, including:

- the Electoral Commissioner, who is in charge of ensuring the rightful conduct of elections and defining the ‘electorates’ boundaries’
- the Ombudsman, who is responsible for examining administrative misconduct within State and local government bodies, and providing recommendations on how best to deal with this misconduct and how to stop it from occurring again
• the Auditor General, who is considered to be the main source for the Parliament to gain an ‘independent and impartial’ insight into the public sector integrity and performance, and who provides suggestions as to how to overcome any deficiencies

• the Information Commissioner, who supervises the administration of the Freedom of Information Act by public sector organisations and the public, provides advice on their rights and responsibilities according to the Act, and reports to Parliament on any required modifications to the Act

• the Inspector of Custodial Services, who is responsible for scrutinising the functions of the State Prison and Detention centres, reporting to Parliament on their performance, and recommending any suggestions to improve their services (CCC, 2004, pp. 7, 8; Murray 2006, pp. 5, 6).

8.2 The ‘previous’ Anti-Corruption Commission (ACC)

The CCC is not the first attempt at preserving the integrity of the WA public sector. Long before the establishment of the current Crime and Corruption Commission, Western Australia had two previous anti-corruption agencies that dealt with allegations of public sector misconduct. The first was the Official Corruption Commission (OCC) established in 1988, substituted in 1996 by the Anti-Corruption Commission. The Anti-Corruption Commission came into existence as a result of legislative amendments in 1996. The ACC replaced the OCC, which was created under the Official Corruption Commission Act of 1988 (OCC Act) and was limited in size and functions. A major objective was to receive and evaluate complaints of ‘official corruption’ and disseminate these to governments departments.
or other agencies such as the police, for investigation and resolution (Tomlinson, & Thomas, 1997, p. 2).

Because the OCC was initially established with inadequate powers and little resources, the OCC Act was subjected to changes. The OCC Act was first amended in 1991, then again in 1994, to expand its jurisdictions and functions. Finally in 1996 it was renamed the Anti-Corruption Commission (ACC), and the Act was renamed as the Anti-Corruption Commission Act 1988.

In addition to giving the Anti-Corruption Commission ‘extensive coercive powers’ and strengthening its independence, it was given the status of a ‘body corporate’. The Police Commissioner was removed from the body responsible for the appointment of its Commissioner. Its authority was also extended through the inclusion of new crimes, serious improper conduct and Members of the Parliament, Government Ministers and Parliamentary Secretaries was included as a public officers (Tomlinson & Thomas, 1998, pp. 3–5).

The ACC was tasked to investigate corruption and ‘serious improper’ conduct within the WA public sector, including the Police Service. The ACC Act 1988 set up the Commission to be independent of the Government of the day with the power to perform its investigations in private. However, the Commission was accountable to the WA people through the Joint Standing Parliamentary Committee established 18 June 1997. This could oversee the Commission’s overall performance but could not re-examine its decisions, take part in its ‘operational matters’, or gain access to ‘operational data’ (Tomlinson & Thomas, 1997, p. 2, 1998 p. vi).

The work of the ACC drew public attention and debate as early as its first year of function, specifically about its ‘secrecy and confidentiality provisions’ and its work to oversee the Police Service. The Commission came under fire after it completed its investigation into police corruption. The Miller Report
1997, which included the findings of the first ACC ‘Special Investigator’, Mr Geoffrey Miller QC, recommended severe punitive procedures be implemented against six WA police officers for suspected corrupt conduct. The Commissioner of Police had suspended these officers without pay as the result of these investigations (Tomlinson & Thomas, 1998a, p. 5).

The concerned police officers approached the Supreme Court. The court ruled that the ACC was acting beyond its authority when it found the police officers guilty, because it was only an investigative agency. Consequently, the Police Commissioner’s action to suspend the aggrieved police officers was found to be unlawful because the action had been based on the ACC’s results (which had been ruled to have acted beyond its authority in this case) (Tomlinson & Thomas, 1998a, p. 6).

The continual legal challenges in the Supreme Court and the High Court against the Commission’s work and the numbers of unsuccessful prosecutions fuelled the public’s increasing discomfort and doubts about the ACC’s efficiency. In 1998 the second special investigator, Mr George Tannin was appointed, and was given wide terms of reference to examine corruption allegations within the currently abolished Police Armed Robbery Squad. This prompted furious hostility from the Police Union.

The Police Armed Robbery Squad was under investigation by the Police Internal Affairs Unit (IAU) for the involvement of some of its officers in corrupt actions linked to drugs. For example, on the 5th of November 1998, the IAU officers, during their investigations, searched the squad offices and found over three grams of amphetamine in the office of the acting head of the squad (Tomlinson, 2006, p. 224).

The Director of Public Prosecution’s (DPP) decision to dismiss and drop the charges in this case, as well as in another case conducted as a combined investigation in 1999 between the ACC and the police Internal Affairs Unit
(IAU) into police officers and drug corruption, contributed to the worsening
of the Commission’s image and public distrust of its functions (Tomlinson,
2006, pp. 223, 224).

The local media also played a vital part in fuelling public discomfort and in
damaging the Commission’s reputation. The media focussed on
investigation wrongdoings, although in most cases, the ACC was not
responsible for such irregularities. However, the media continued to lay the
blame on the Commission. For example, in June 1998 and as a result of the
media dispute over the ACC’s hypersensitivity to criticism related to its
investigation findings, Mr Trevor Boucher, a former Australian Taxation
Office Commissioner, conducted a special inquiry into allegations
concerning possible media leaks by the ACC in relation to its break-in to the
residences of Commander Bob Ibbotson and Senior Sgt Paul Ferguson. The
ACC was also suspected of leaking information about the charging of Senior
Sgt Ferguson with several counts of giving it false evidence, along with other
accusations relating ACC’s chairman to the issue of conflicts of interest in
some of its investigation. There were media claims that this conflict had not
been settled in the rightful manner and that two ACC officers were
suspected of being connected to the ‘criminal underworld’ (Mallabone,

In his findings, Mr Boucher found no basis for such allegations, but he was
alerted to the Commission's sensitivity to public critique of its work and its
view that such condemnations were an effort to hamper or weaken it. He
recommended that when the Commission answers such criticisms it should
focus on the core matters but not the intentions; he also suggested that the
Commission should establish rules that deal with the issue of conflicts of
interest in relation to its investigations (Mallabone, Pryer, & Malatesta, 1998,
p. 7).
In all, the ACC’s seven-year operation was categorised as one that was hampered by continual media confrontations and legislative condemnations fuelled by constant scuffles with other government bodies dealing with public sector corruption and public criticism, to a degree where the Commission was captured by ‘its maladministration and operational bungling’ (Peachment, 2006, pp. 235–237).

8.3 The Corruption and Crime Commission (CCC)

The 2001 change of government in Western Australia laid the foundation for the establishment of a Royal Commission into police corruption, which represented the last blow for the ACC. On the 12th December 2001, the Royal Commission into ‘Whether there has been any corrupt or criminal conduct by Western Australian Police Officers’ was established, headed by Commissioner G A Kennedy AO QC. The Royal Commission’s terms of reference were to examine not only allegations of police corruption since 1985, but also to report on the efficiency of the ‘existing’ organisations that dealt with police corruption (Kennedy, 2002, p. 1; 2004, p. 4).

Kennedy, in his Interim Report in December 2002, made 18 recommendations. The first and most vital recommendation was to establish a new body to replace the ACC, to be known as the Corruption and Crime Commission, and, to assure its effectiveness, to grant it the necessary powers similar to those granted to other anti-corruption agencies in other states (Kennedy, 2002, pp. 3, 105; 2004, p. 22).

In rationalising his recommendation to establish a new oversight agency to replace the ACC, Kennedy said:

In the circumstances, it has been possible at this stage of the work of the Commission to conclude that the identifiable flaws in the structure and powers of the ACC have brought about such a lack of public confidence in the current processes for the investigation of corrupt
and criminal conduct that the establishment of a new permanent body is necessary … (Kennedy, 2002, p. 3).

8.4 The Organisational Structure
The Commission was corporately organised to carry out its functions through the following structures (see Table 8.1):

Table 8.1: The CCC’s structural organisation

• **The Commissioner:** to be in charge of all functions and actions carried out by Commission employees under his directions. According to Section (9) of Division 1, the Governor appointed the Commissioner upon the recommendation of the Premier, with the first Commissioner to be excluded from such procedures, but all future Commissioners were to be selected from a list of three nominees presented through a nomination committee (The CCC Act, 2003).

• **The Acting Commissioner:** to act as the Commissioner when the actual Commissioner was absent, on holiday leave or unable to perform the duties of the position of Commissioner. Section (14) of the Act sets out the procedures for the appointment of the Acting Commissioner. The appointment of an Acting Commissioner derives from the requirement that the function of the Commission must not be subject to interruption or come to an end in the event that the Commissioner is not able, for any reason, to carry out their duties.

• **Executive Director:** considered to be the chief officer, responsible for running all of the Commission’s activities and operations as directed by the Commissioner (CCC, 2004, p. 8).

• **Director, Operations:** charged with assessing and examining complaints, and the investigative teams on police and public sector corruption (CCC, 2004, p. 9).

• **Director, Corruption Prevention, Education & Research:** responsible for discharging the Commission’s functions in assisting public sector agencies to develop their own capabilities to combat corruption and illegalities, and to conduct educational activities that would work to increase the public authorities’ knowledge of the
Commission’s functions and abilities to deal with misconduct and corruption (CCC, 2005, p. 29).

- **Director, Business Services:** trusted with the effective management of the available ‘resources and systems’ for the corporate function of the Commission, and the security of the Commission (CCC, 2004, p. 10).

### 8.4.1 Changes to corporate structures

Over the last few years, the Commission, as a result of its expanding activities, has been able to look into which aspects of its operational work needed enhancing with more staffing resources. A review of the Commission’s corporate structure was conducted on several occasions by its various Directorates, but mainly by the Operations Directorate. These reviews and changes have been praised by the Joint Standing Committee on the Corruption and Crime Commission (JSCCCC) on the grounds that because the Commission has recently begun to function, it should be given the opportunity to find the most suitable structure to ensure the most efficient use of allocated resources (Hyde, 2006, p. 4).
Table 8.2 illustrates the main changes in the corporate structures over the last two years.

**Table 8.2: Changes to corporate structures 2004–2005**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Operations</td>
<td>Remove Security Branch to Business Service Directorate</td>
<td>The creation of two multi-disciplinary investigative teams under the leadership of two newly-recruited investigation managers</td>
</tr>
<tr>
<td></td>
<td>New Intelligence Unit created</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Renaming the Special Operation Directorate to Operation Support Directorate, which was then ‘disbanded’.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The relocation of the Operation Support Unit to the Operation Directorate</td>
<td></td>
</tr>
<tr>
<td>Prevention &amp; Research</td>
<td>N/A</td>
<td>The Directorate underwent a major restructure with the aim of increasing its staff by 75% to 14</td>
</tr>
<tr>
<td>Legal Service</td>
<td>N/A</td>
<td>As a result of a general review, a new additional post was created for a Senior Lawyer</td>
</tr>
</tbody>
</table>


### 8.5 Legislation and jurisdiction

The Crime and Corruption Commission was founded on the *Corruption and Crime Commission Act 2003 (CCC Act 2003)*. Following the recommendations made in Kennedy Royal Commission Interim Report in late 2002 to establish a more effective, external oversight body to replace the more controversial Anti-Corruption Commission, the government supported and accepted the recommendations and tabled the report in Parliament in late February 2003. After deliberations throughout the rest of 2003 that focused mainly on the powers of the Commission’s Parliamentary Inspector, the *CCC Act 2003* was proclaimed on 1 January 2004, and the CCC became

The *CCC Act 2003* tasked the Commission with the objectives of:

- combating and reducing the incidence of organised crime
- continuously improving the integrity of, and reducing the incidence of misconduct in the public sector (CCC, Act 2003 Section 7A).

To achieve these objectives, the Commission was entrusted with three functions:

- The Misconduct function
- The Prevention and Education function
- The Organised Crime function (CCC Act 2003, Division 2, Sections (17, 18, 21).

The Act also established the Parliamentary Inspector of the CCC to function as a parliamentary oversight mechanism on how the Commission conducted its affairs (CCC Act, 2003, Sections 195–198).

The Jurisdiction of the Commission extended to cover more than 115,000 public officers representing more than 500 public departments, including government agencies and boards, universities and local governments and councils (CCC web site www.ccc.wa.gov.au, retrieved 30 June 2007).

### 8.5.1 The functions

The work of the Commission began in January 2004 with three staff, at the same premises used previously by the Kennedy Royal Commission. The abolished ACC Commissioner, Mr Terence O'Connor, raised his concerns and expressed his dislike of the action. He stated that the decision not to employ ACC staff in the newly created CCC would be a lost investment. However, despite the delays caused by the need to comply with ‘public
sector standards in human resource management’, the CCC was able to recruit about 97 staff by the end of June 2004, most of whom had been employed by the previous ACC (Hammond, 2004, p. 1; Tomlinson, The Hon. & Hyde, 2004, p. 2).

Over the last three years (2004–2007), the Commission has worked harder to reach its total intended staff establishment figure of 153. At the last count, the CCC staff was 151.6 in comparison to the previous reporting year of 140.8 staff (CCC, 2004, pp.11, 24; 2005, p. 41; 2006, p. 57). Table 8.3 illustrates the Commission’s staff numbers and allocations for the period 2004–2006.

### 8.5.2 Powers

The *Corruption and Crime Commission Act 2003* conferred wide-ranging powers on the Commission, but at the same time applied suitable ‘checks and balances’ constraints. Table 8.4 briefly illustrates the Commission’s exceptional powers and some of the statutory restrictions applying in their usage.
Table 8.3: Personnel locations

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Short</td>
<td>Long</td>
<td>Total</td>
</tr>
<tr>
<td>Executive</td>
<td>2</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Operation</td>
<td>31</td>
<td>2</td>
<td>33</td>
</tr>
<tr>
<td>Prevention, Education &amp; Research</td>
<td>4</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Legal service</td>
<td>0</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Business services</td>
<td>15</td>
<td>3</td>
<td>18</td>
</tr>
<tr>
<td>Special Operation (2004)*</td>
<td>29</td>
<td>4</td>
<td>33</td>
</tr>
<tr>
<td>Totals</td>
<td>81</td>
<td>16</td>
<td>97</td>
</tr>
</tbody>
</table>

*This Directorate was ‘dissolved’ on 17 June 2004 (CCC, 2005, p. 13)

One of the important features of the Act is that it did not grant the CCC the power to examine either serious crime or organised crime on its own. This was contrary to the Kennedy Royal Commission’s recommendation supporting a CMC model. The Commission’s function in relation to these types of crimes is limited to considering the Police Commissioner’s requests to grant the police authority to use the Commission’s ‘extraordinary powers’ (CCC, 2005, p. 3; Hammond, 2004b, p. 13).

For example, the Act allows the CCC Commissioner to authorize the removal of fortifications on a premise used for organized crime and to authorise police officers to work undercover by adopting an ‘assumed identity’. To grant these powers to the Commissioner of the Police, the CCC Commissioner needs to be absolutely certain that there are reasonable
grounds for the police request. They can also place restrictions upon the police usage of such powers and set up reporting requirements (Hammond, 2004b, 11; the CCC Act, 2003).

Table 8.4: CCC’s powers and statutory restrictions

<table>
<thead>
<tr>
<th>CCC Powers</th>
<th>CCC Act Section</th>
<th>Constraints</th>
</tr>
</thead>
<tbody>
<tr>
<td>To force persons to produce statements of information or evidence during an investigation</td>
<td>Part 6, Powers. Division 1.section 94</td>
<td>Evidence obtained is not accepted against that person in any civil or criminal proceedings</td>
</tr>
<tr>
<td>To require the production of documents, other evidence, information, gain access and search public sites</td>
<td>Sections 95 &amp; 100</td>
<td>To be used only when dealing with misconduct allegations</td>
</tr>
<tr>
<td>To obtain search warrants</td>
<td>Section 101</td>
<td>Only after judicial approval that there are reasonable grounds to do so</td>
</tr>
<tr>
<td>The power to use assumed identities</td>
<td>Sections 102–118</td>
<td>Approved only by the Commissioner and must be used for the specific terms of issue</td>
</tr>
<tr>
<td>The power to conduct controlled operations to obtain or facilitate evidence of misconduct*</td>
<td>Sections 121, 122 &amp; 128</td>
<td>Granted by the Commissioner only. Participants protected from criminal charges. Must not induce other persons to engage in misconduct</td>
</tr>
<tr>
<td>The power to conduct Integrity-testing programmes</td>
<td>Section 123</td>
<td>It must be targeted and must not be performed randomly. Only for misconduct allegations</td>
</tr>
<tr>
<td>The power to intercept telecommunications and use surveillance devices</td>
<td>In accordance with the Commonwealth Telecommunication (interception) Act 1979, The WA Surveillance Devices Act 1998</td>
<td>To be authorised by judicial warrants only</td>
</tr>
</tbody>
</table>

* The CCC Act 2003 introduced ‘Controlled Operation’ as an operation that involves a controlled activity to be conducted for the purpose of obtaining or facilitating the obtaining of evidence of misconduct (CCC Act, 2003, Division 4 Section (120 a, b). (Source: CCC Act, 2003).
8.6 Accountability

8.6.1 External Accountability

8.6.1.1 External measures

The CCC is structured as an independent body that reports directly to the Parliament, and because of its exceptional powers, the CCC Act 2003 has drawn significant accountability measures that would protect against the risk of misusing such powers in contradiction to the purpose for which the CCC was set up.

The Act Parts 13 and 13A provide the Parliamentary Joint Standing Committee, aided by the Parliamentary Inspector of the CCC, as the major external oversight mechanisms (CCC Act, 2003). Table 8.5 summarises the functions of both the JSCCCC and the PI:

<table>
<thead>
<tr>
<th>JSCCCC</th>
<th>Parliamentary Inspector</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monitor and report to the Parliament on how both the CCC and the Parliamentary Inspector conduct their functions</td>
<td>Audit the operation of the Act</td>
</tr>
<tr>
<td>Investigate and report to the Parliament on the best way to strengthen corruption-prevention measures within the public sector</td>
<td>Audit the operations of the Commission for the purpose of monitoring compliance with the laws of the State</td>
</tr>
<tr>
<td>Carry out any other functions conferred on the Committee under the CCC Act 2003</td>
<td>Deals with matters of misconduct on the part of the Commission, officers of the Commission and officers of the Parliamentary Inspector</td>
</tr>
<tr>
<td></td>
<td>Audit any operation carried out pursuant to the powers conferred or made available by this Act</td>
</tr>
<tr>
<td></td>
<td>Assess the effectiveness and appropriateness of the Commission’s procedures</td>
</tr>
<tr>
<td></td>
<td>Make recommendation to either the House of Parliament or the Standing Committee</td>
</tr>
<tr>
<td></td>
<td>Perform any other function given to the Parliamentary Inspector under this Act</td>
</tr>
</tbody>
</table>

(Source: The CCC Act, 2003, Sections 195 & 216A)
According to the CCC Act 2003, the Parliamentary Inspector of the Corruption and Crime Commission (PICCC) is appointed based on the Premier’s recommendation ‘by the governor by commission under the Public seal of the State’. However, for the first appointment, the Premier needs to nominate one person out of three candidates presented to him by a nomination committee. The ‘nominating committee’ is comprised of the Chief Justice (Supreme Court of WA), Chief Judge of the District Court of WA and a person appointed by the Governor to represent the interests of the community. The recommended person then needs to gain the overwhelming support of the Standing Committee and bipartisan support. The PICCC reports their findings to the Parliament or to the Standing Committee (CCC Act, 2003, Part 13, Section (189), Nguyen 2008).

For the first PICCC appointment, section 189 (2) did not apply. Mr. McCusker, in his answer to the researcher inquiry about his appointment, stated that he was firstly approached by the Attorney General to make sure that he would agree to the position of being the first Corruption & Crime Commission Parliamentary Inspector if offered the post. After his positive response, the Attorney General gained the approval of both the Cabinet and the Joint Standing Committee for his appointment, before attaining the then-Premier’s recommendation. His appointment then accepted by the Governor and he was officially appointed to the position (McCusker 2008).

The Joint Standing Committee is established by the Parliament and comprises the same number of members appointed by each House. The Committee is to monitor and report to the Parliament on how both the Commission and its Parliamentary Inspector conduct their functions. It can also examine and report to the Parliament on how preventative measures against corruption in the public sector could be strengthened (CCC Act, 2003, Part 13A, Section 216A).
The other functions of the Commission are held accountable by other governmental oversight agencies. For example, the WA Supreme and Magistrates Courts and the Federal Court of Australia administer its search and telephone interception requests. Additionally, and for budgetary issues, it is answerable to the Attorney-General.

The Auditor-General audits the Commission’s financial statements, while the Ombudsman audits the Commission’s compliance with the Telecommunications Interception Act (CCC, 2006, p. 10). Figure 8.1 best illustrates the external accountability measures of the Commission.

![Figure 8.1: The CCC's external accountability measures](image)

(Source: CCC, 2006, p. 10)

8.6.2 Internal accountability

8.6.2.1 Internal accountability mechanisms

Over the last few years, the Commission has established an internal accountability means as a foundation for its ‘strategic planning and efficient
decision making’. Table 8.6 provides a summary of the CCC’s internal accountability measures.

**Table 8.6: The CCC’s internal accountability measures**

<table>
<thead>
<tr>
<th>Committee</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directors’ Management Committee</td>
<td>Supervises the coordination of the CCC’s main functions to achieve the Commission’s strategic objectives</td>
</tr>
<tr>
<td>Operations Review Committee</td>
<td>Overseeing the investigative function of the CCC and insuring that the Commissioner’s instructions are met. In some circumstances, investigation officers are given the opportunity to address the Commissioner on specific cases</td>
</tr>
<tr>
<td>Administration and Resource Committee</td>
<td>Managing Commission usage of its resources and ascertaining that those resources are used effectively</td>
</tr>
<tr>
<td>Capability Management Committee</td>
<td>Oversee the Commission’s purchases and the administration of its capabilities</td>
</tr>
<tr>
<td>Audit Committee</td>
<td>Charged with examining the CCC’s annual financial statements, supervising the Commission’s ‘risk management’ procedures and approving the internal auditing arrangements</td>
</tr>
<tr>
<td>Occupational Safety and Health Planning and Advisory Group</td>
<td>Manages and provides advice on the application of ‘occupational safety and health matters’ in the Commission</td>
</tr>
<tr>
<td>Equity and Diversity Committee</td>
<td>Develops impartiality and ensures diversity in the Commission and supervises the result of plans implemented in this aspect</td>
</tr>
<tr>
<td>Commission System Committee</td>
<td>To look after the improvements and the management of the Commission’s information system</td>
</tr>
<tr>
<td>Commission Consultative Group</td>
<td>Tasked with strengthening ‘effective communication’ between the various parts of the Commission for a better ‘performance and working environment’</td>
</tr>
</tbody>
</table>

(Source: CCC 2006, p. 20)
8.7 Conclusion
The Corruption and Crime Commission is still in its formative years. However, over the last few years of its life, the Commission seems to be trying to establish a firm reputation as a commission capable of taking on the extremely challenging task of dealing with public sector corruption in Western Australia. The next chapter discusses recent key investigations into a complex network of inappropriate influence involving State government ministers, a private lobbying firm, and federal government politicians.

The Commission’s structures, powers and functions were set up to reactively tackle not only corruption but also to play an important proactive role in preventing misconduct. Changing the public sector culture and educating its members are vital for establishing a public sector that is resistant to corruption. The functions, structure and the powers of the Commission should, if rightly implemented, produce such a result.

The Commission does not lack the necessary resources. It is equipped with the most comprehensive powers than could be allocated to an anti-corruption agency. Its financial resources seem to be adequate for its functions, and it does not lack the WA public’s support. Finally, its current structures ensures ‘less secrecy’ in relation to its operations, with the existence of both the Standing Joint Committee and its Parliamentary Inspector.

The next chapter will examine how the CCC has conducted itself during the last few years by examining the strategies it has used for its investigative work and the measures used proactively to prevent the reoccurrence of corruption. It will examine how the CCC’s organisational structure fits in with its functions to investigate, prevent and educate the public sector to guard against misconduct and organised crime. It will also examine whether
there are structural deficiencies. Finally, the chapter will examine whether these structures are compatible with the model suggested in my research.
Chapter Nine

Corruption and Crime Commission (CCC)
Reactive and Proactive Strategies

9.0 Introduction

The previous chapter has identified the CCC structures, power and functions. The Commission seems to have adequate overall resources that enable it to perform its multiple functions appropriately. This chapter will examine the CCC’s strategies to combat public sector corruption and provides a sample of its reactive operations and preventative projects and initiatives.

The chapter begins by outlining the reactive measures and strategies, starting with investigations, surveillance, prosecution, and penalties and sanctions. Then, the role of intelligence is explored, as it is considered to be the main supportive strategy for reactive measures, as will its use by the CCC for its reactive functions.

The second part of this chapter deals with the proactive approach and strategies that have been implemented to date by the Commission. How the CCC works to prevent corruption is examined, as are its education functions and projects, its efforts to build the capacity of the public sector organisations to deal with misconduct, the affect of its work on other laws, and the effect of its integrity testing. Lastly, whether or not the Commission is using complaints profiling and early warning systems as proactive measures to tackle corruption is determined.

The end of this section will investigate how the CCC conducts its research, because research has been recognised as the main supportive strategy for the proactive approach. Because the proposed model focuses on coordination
as a major component of any successful anti-corruption agency, it then examines how this factor is being dealt with in the function of the CCC. Finally, the Commission’s performance indicators are investigated to provide an overview of what type of indicators the CCC uses to report its performance.

9.1 The CCC’s strategies

9.1.1 Reactive Measures

As indicated in the previous chapters, reactive measures have been identified as those of investigation, surveillance, prosecution, penalties and sanctions. Intelligence has been recognised as the main supportive strategy for the reactive approach.

9.1.1.1 Investigation

Investigation is one of the major functions of the CCC. It is based on and was specified in the CCC Act 2003 as a purpose and outlined how to achieve that purpose. Sections 7A and 7B clearly state that, for the Commission to pursue its purpose, it should be able to:

- authorise the use of investigative powers not ordinarily available to the police service to effectively investigate particular cases of organised crime
- help public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so while retaining the power itself to investigate cases of misconduct, particularly serious misconduct.

9.1.1.2 Sources of misconduct notifications

Aided by the required extraordinary powers, the Act identified four major sources in which the Commission could be advised of any alleged misconduct:
• Individuals reporting allegations in accordance with Section 25 of the Act

• Being notified of misconduct allegations by a public sector agency, pursuant to Section 28 of the Act

• Being notified by the Commissioner of the Police about suspected police officer misconduct in reviewable police actions in accordance with Section 21A of the Act

• The Commission, based on its ‘own experience and knowledge or assessment of received matters’, can initiate an investigation if there is a basis for suspected misconduct, pursuant to Section 26 of the Act.

Over the last few years of the CCC’s operation, allegations and notifications from individuals and public sector agencies have been reported to the Commission as being the main sources of information on misconduct. Referrals from the police are recorded as the second major source for such allegations and notifications in accordance with Section 21A of the ‘reviewable police action’ (CCC, 2005, p. 16; 2006, p. 25). Table 9.1 compares the source and number of notifications received during the last two reporting years of operation.

**Table 9.1: Notifications for the period 2004 to 2006**

<table>
<thead>
<tr>
<th>Misconduct Notifications</th>
<th>2004–05</th>
<th>2005–06</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 25: Reports of misconduct from individuals</td>
<td>582</td>
<td>472</td>
</tr>
<tr>
<td>Section 28 Notifications from notifying authorities</td>
<td>518</td>
<td>757</td>
</tr>
<tr>
<td>Section 21A: Reviewable police action (excludes allegations against police under sections 25 and 28)</td>
<td>1,310</td>
<td>1,132</td>
</tr>
<tr>
<td><strong>Total Notifications</strong></td>
<td><strong>2,410</strong></td>
<td><strong>2,361</strong></td>
</tr>
</tbody>
</table>

(Source: CCC, 2006, p. 22)
Table 9.2 summarises the total matters received by the Commission during its first two full years of work, 2004–2005 and 2005–2006. For the first six months of the Commission’s operations, from January–June 2004, the CCC received a total of 1383 matters, of which the majority were notifications from notifying authorities of the public sector.

<table>
<thead>
<tr>
<th>Misconduct Notifications</th>
<th>Number of Notifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reports of misconduct from individuals, Section 25</td>
<td>208</td>
</tr>
<tr>
<td>Notification from notifying authority, Section 28</td>
<td>1175</td>
</tr>
</tbody>
</table>

(Source: CCC, 2004, p. 13)

The Commission’s three annual reports, 2003–2004, 2004–2005 and 2005–2006, have highlighted several organisations in the WA public sector as being the main recipients of many of the allegations of misconduct reported to the CCC. Those include the police, education, justice, local governments and the health department. The Joint Standing Committee on the CCC made this observation during the examination of the Commission’s 2005–2006 annual report (JSCCCC, 2007, p. 18).

The CCC justified this trend as being a result of three main factors:

- Their size compared to other public sector departments; both the Department of Education and the Department of Health employ about 60% of the WA public sector manpower (JSCCCC, 2007, p. 18)
- The power imbalance in these sectors between public sector servants and those from the public who benefit from the services provided by these agencies. In the case of the education and health departments,
both students and those people seeking medical help were subjected, because of their weakness and their age, to increasing control by other people (teachers/health care workers) working in these two sectors. The police and other justice bodies and employees exercised their statutorily-granted powers to restrict an individual’s freedom and to apply ‘physical force’, while local governments tended to experience ‘conflict of interest’ issues in relation to development projects and the use of land (JSCCCC, 2007, p. 18).

- The existence of reasonable and well-defined structures to manage misconduct assists in the recognition and the reporting of any misconduct allegations to the Commission. The CCC, when elaborating upon this point, acknowledged the presence of sound and effective misconduct management structures in the police and most of the justice bodies, but reported discontent in its reports to the Parliament after reviewing Department of Education and Training (DET) procedures concerning sexual contact between children and the department employees (CCC, 2006, pp. 47, 50). It also reported dissatisfaction with the way misconduct was handled by the Department for Community Development (DCD), with the absence of an efficient misconduct management strategy and procedures (CCC, 2007, p. 19). On the other hand, after reviewing procedures applied by the Department of Consumer Employment Protection (DOCEP), the Commission praised the department’s commitment and efforts to establish the rightful procedures to handle misconduct (CCC, 2007a, p. 11).

9.1.1.3 Allegations assessment

Section 33 of the Act provides different actions that the Commission can take against allegations once information about suspected misconduct has been received. These include:
• investigating the matter itself

• investigating the matter jointly with an independent agency or the rightful public sector authority

• referring the matter to the associated public sector body/agency to investigate

• referring the matter to be investigated by independent agencies such as the Ombudsman or the Auditor General

• taking no action in the matter.

According to Section 32 of the Act, upon the receipt of such allegations, to assess those allegations the Commission forms an opinion as to whether these allegations contain misconduct, pursuant to Section 22. The Commission also makes an assessment on what further action needs to be taken against the reported allegations in accordance with Section 33 of the Act (CCC Act, 2003; CCC, 2005, p. 16). Table 9.3 summarises the CCC’s assessment decisions taken over the last two reporting years.

In Table 9.1 and based on the number of notifications for the period 2004 to 2006, it can be noted that the rate of misconduct notifications received by the Commission has steadily risen over the last few years of its functioning and has remained almost the same for the last two years.
However, the CCC investigated only a very small percentage of those notifications provided in Table 9.3 of the CCC’s assessment decisions, 2004 to 2006. The number of cases investigated by the Commission’s investigative unit has decreased to 1.9% of its total received allegations. This has been in line with its commitment to give the public sector agencies greater responsibility in dealing with their own complaints while reserving its statutory right to monitor and examine their procedures. This is consistent with the CMC model, adopted in the Kennedy recommendations, emphasising public sector capacity building and the importance of internal investigations with external oversight. The Joint Committee on the CCC concurred with the Commission’s approach in giving the heads of public sector organisations more responsibility to deal with their own misconduct complaints (JSCCCC, 2006b, p. 1).

The Commission also started a programme that reviews the WA public sector agencies’ ‘misconduct management mechanisms’. The idea is that for those organisations to deal effectively with misconduct, they should have an efficient misconduct system. For example, the Commission examined the Department of Local Government and Regional Development (DLGRD) misconduct management system and is currently examining the Department

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### Table 9.3: the CCC’s assessment decisions, 2004 to 2006

<table>
<thead>
<tr>
<th>Decision</th>
<th>2004–05</th>
<th>Percentage</th>
<th>2005–06</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Referred to home agency for investigation</td>
<td>1,516</td>
<td>63.6%</td>
<td>1,504</td>
<td>63.7%</td>
</tr>
<tr>
<td>Referred to WA Police PSIU</td>
<td>55</td>
<td>2.3%</td>
<td>57</td>
<td>2.4%</td>
</tr>
<tr>
<td>Referred to both home agency and WA Police PSIU</td>
<td>15</td>
<td>0.6%</td>
<td>12</td>
<td>0.5%</td>
</tr>
<tr>
<td>Outside of jurisdiction</td>
<td>170</td>
<td>7.1%</td>
<td>170</td>
<td>7.2%</td>
</tr>
<tr>
<td>Take no action</td>
<td>570</td>
<td>23.9%</td>
<td>571</td>
<td>24.2%</td>
</tr>
<tr>
<td>Referred to Commission Investigations Unit</td>
<td>53</td>
<td>2.2%</td>
<td>45</td>
<td>1.9%</td>
</tr>
<tr>
<td>Referred to independent authority</td>
<td>7</td>
<td>0.3%</td>
<td>2</td>
<td>0.1%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,386</strong></td>
<td><strong>100%</strong></td>
<td><strong>2,361</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

(Source: CCC 2006, p. 27)
of Consumer and Employment Protection and the Department of Community Development (CCC 2006, p. 36).

Though the majority of received complaints are referred back to the associated notifying authority for them to conduct their own internal investigation, some matters are referred to the Police Public Sector Investigation Unit (PSIU) to conduct a criminal investigation. Also, in a very small number of cases, the CCC refers matters for investigation by an ‘independent authority but with central coordinating role’ – such as the Department of Local Government and Regional Development (CCC, 2006, p. 25). Overall, the Commission retains its statutory right of monitoring the progress and assessing the accuracy of agencies’ investigative procedures (CCC, 2004, p. 14). Table 9.4 illustrates how the CCC has handled matters assessed, monitored and reviewed.

<table>
<thead>
<tr>
<th></th>
<th>2004–05</th>
<th>2005–06</th>
<th>Change</th>
<th>Change %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessed</td>
<td>2,410</td>
<td>2,361</td>
<td>-49</td>
<td>-2.0%</td>
</tr>
<tr>
<td>Monitored</td>
<td>1,125</td>
<td>1,884</td>
<td>+759</td>
<td>+67.5%</td>
</tr>
<tr>
<td>Reviewed</td>
<td>1,212</td>
<td>2,083</td>
<td>+871</td>
<td>+71.9%</td>
</tr>
<tr>
<td>Total Matters</td>
<td>4,747</td>
<td>6,328</td>
<td>+1,581</td>
<td>+33.3%</td>
</tr>
</tbody>
</table>

(Source: CCC, 2006, p. 36)

The CCC explained that the noted increase in the total misconduct-assessed matters and the work of 33.3% in 2005–2006, compared to the previous reported year 2004–2005, was the result of reducing the backlog and the clearing of the cases that had been transferred to the CCC from the abolished ACC and those from the Ombudsman (JSCCC, 2007, pp. 2, 3).

When assessing allegations of misconduct, the Commission can use various methods, depending on the nature and the complexity of allegations. In some cases, the assessment process can be limited to the basic inquiry of
examining only those documents provided by a single officer; while in other
cases, it might involve more than one officer, it might consume more time,
it might need to use the statutory powers conferred on the Commission or
might even make ‘field visits’ to places of suspected misconduct (CCC,
2005, p. 17).

An example of the type of assessment procedures performed by the
Commission would be the assessment taken by the Commission in dealing
with allegations that Western Power Corporation (WPC) paid the Australian
Service Union (ASU) the sum of $35,000, which could have been used to
campaign against the State Government initiative to dismantle that
particular company (WPC). The assessment of these allegations included a
preliminary inquiry involving the use of its power of Notices to produce
documents and records of such transaction, conducting interviews with a
number of both organisations’ staff and then forming its own investigative
team to further examine this case (CCC, 2005, p.18)

In its final report on a ‘Case Study 1: Assessment Example –Western Power’
(see below), the Commission, though confirming a payment of funds,
reported that its investigation did not reveal any illicit prior agreements that
the funds would be used by the ASU to protest the government reforms of
the WPC. However, the ASU ultimately used a portion of that money in its
campaign against the government-proposed reforms of the WPC.
Unfortunately, because of ‘conflicting circumstances’, the Commission was
unable to find any evidence of misconduct comparable to the CCC Act 2003
definition (CCC, 2004, p. 9). It seems there were no legal proceedings that
were pursued after the presentation of the Commission’s report. Neither the
CCC records, including its website, nor its SJCCCC and the WA parliament
web sites, showed any trace of what was the final disposal of the
investigation’s outcome. The researcher contacted the CCC media section
for more information about this, but no answer was provided.
Case Study 1

**CASE STUDY 1: ASSESSMENT EXAMPLE - WESTERN POWER**

The Commission was notified that Western Power had made a payment to the Australian Services Union (ASU) in the amount of $35,000. Documentation associated with the notification suggested that the payment might have been used to fund a campaign in opposition to the Government’s policy to break up Western Power.

The Commission assessed the matter by making preliminary inquiries, in accordance with section 32(2) of the Act. These inquiries involved the following steps:

- Notices to produce issued under section 95 of the Act were issued to the ASU and Western Power to produce records in relation to the transaction. Relevant documents were subsequently produced and examined.
- An interview of Western Power’s Risk Assurance and Audit Manager in order to establish the relative significance of the documents and any relevant policies and procedures.

As a result of these steps, the Commission formed a suspicion that serious misconduct may have occurred, pursuant to section 4 of the Act. In the light of the significance of the matter the Commission determined to conduct its own investigation pursuant to section 33(1)(a) of the Act and the matter was passed to an investigations team, which conducted an extensive investigation.

The lengthy investigations concluded without the Commission establishing any evidence of misconduct. A final report Investigation into Western Power: Suspected misconduct concerning a payment of $35,000 made by Western Power Corporation to the Australian Services Union was presented to Parliament on 17 December 2004.

In a similarly reported case – ‘Case Study 3: Example of an Assessment’, concerning a suspected leak of confidential information – the Commission had to close the case without pursuing further legal proceedings. Its investigation could not produce concrete evidence in relation to the release of confidential information (see below).
Case Study 3

Case Study Three: Example of an Assessment

The City of Subiaco (the City) notified the Commission of suspected misconduct in relation to the release of confidential information.

The City was conducting rent reviews for a number of properties that comprise part of its investment property portfolio. As part of this review, the City considered confidential staff reports and recommendations at two meetings held on 8 November and 22 November 2005. Councillors and staff attended these meetings. No members of the public were present. Subsequent to each meeting, comments made by members of the public indicated that aspects of these meetings had been disclosed to them. In particular, the lessee of one of the properties forwarded emails to various people containing information in relation to outcomes reached at the 22 November 2005 meeting.

Pursuant to section 32(2) of the Act the Commission assessed the matter by making the following inquiries:

- Interviewing the author of the email.
- Serving a notice on the author of the email to obtain any correspondence, documents, diary entries or other information relating to the council meetings.
- Interviewing the Chief Executive Officer of the City.
- Serving notices to obtain documents on the City, including the telephone and email records of councillors.
- Interviewing a councillor.

The Commission’s assessment identified that, although the information might have been leaked, it was also possible that the tenant had pieced together the outcome of the meetings by analysing publicly available information from a number of different sources. In the circumstances, the Commission closed its file.

(Source: CCC, 2006, p. 29)

In investigating the matters that required further investigative work, the Investigation Unit, a ‘multidisciplinary’ structure that includes criminal investigator and analysts, lawyers and forensic experts, usually uses a number of powers and various investigating techniques.

Table 9.5 summarises the Commission’s use of its statutory powers in its investigations, specifically those related to the investigation of serious misconduct in the last two reported years.
Since its inception in early 2004, the CCC investigations have not lacked publicity. The immediate effects and consequences of its hearings upon the persons involved were clearly noticed. The most recent well-publicised case, the investigation of former Premier Brian Burke’s role as a lobbyist for a development firm, ‘shocked the country’. This was not only because it revealed a chain of disgraceful actions ranging from threats to paying ‘kickbacks’ to politicians that might have influenced the decision process in favour of the developers, but it also went beyond its local domain to include some federal government ministers (ABC net, 2007).

As the investigation continued, the revelations forced a number of local and federal politicians to either step down or to be sacked from their ministerial positions. For example, the Liberal MP, Anthony Fels, gave up his ‘Opposition portfolio as a result of being exposed by the CCC’s investigation after delivering a speech written by Burke in the Parliament

### Table 9.5: The CCC’s usage of statutory powers in investigations, 2004 to 2006

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 94: Power to obtain information from a public authority or officer</td>
<td>20</td>
<td>24</td>
</tr>
<tr>
<td>Section 95: Power to obtain documents and other things</td>
<td>216</td>
<td>223</td>
</tr>
<tr>
<td>Section 96: Power to summon witnesses to attend and produce things</td>
<td>76</td>
<td>81</td>
</tr>
<tr>
<td>Section 100: Power to enter and search public premises</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Section 101: Search warrants</td>
<td>14</td>
<td>24</td>
</tr>
<tr>
<td>Section 103: Assumed identity approval</td>
<td>66</td>
<td>11</td>
</tr>
<tr>
<td>Section 121: Authority to conduct controlled operation</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Section 123: Authority to conduct integrity testing programmes</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>Section 148: Arrest warrants</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Surveillance Devices Act 1998 warrants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(includes two extensions)</td>
<td>8</td>
<td>14</td>
</tr>
<tr>
<td>(includes one extension)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Telecommunications (Interception) Act 1979 (Cth) warrants</td>
<td>22</td>
<td>79</td>
</tr>
<tr>
<td>Total</td>
<td>436</td>
<td>442</td>
</tr>
</tbody>
</table>

(Source: CCC, 2006, p. 38)
favouring the developer. The Environment Minister was forced out of his governmental post after it was revealed that he had influenced a ‘planning decision’ in return for personal gains from Burke’s business partner, Julian Grill (The Australian 29 March 2007, p. 12).

The Local Government Minister was also forced by Premier Alan Carpenter to resign after it was revealed that he has leaked a ‘confidential committee’ report to Grill, who had made some changes to the report which at later stage helped the mining company, Precious Metals Australia, to win a $20 million legal case against Xstrata, a Swiss mining company (AAP, 28 February 2007).

Another Minister was also sacked for his involvement in this scandal. Norm Marlborough, the Small Business Minister, had to abandon his ministerial post in the wake of the revelation that he was instructed by Burke in parliamentary questioning to advance Burke’s nominee to the government board (APP, 11 February 2007).

In a media statement on the 2 April 2007, the CCC Executive Director confirmed that the Commission had finished its report on the Smiths Beach development investigation. However, as the statement explained, before tabling the final report in the parliament and in accordance with the CCC Act 2003, all public officers whom the Commission decided were ‘to be subject to an opinion of misconduct’, and other accused people, needed to be advised and given the opportunity to reply before the report was finalised (Silverstone, 2007).

The investigation, which cost the taxpayers $8 million of the CCC’s $27 million annual budget, is awaiting the forthcoming release of the Commission’ report into the corrupt lobbying practices of the $330 million Smiths Beach development project. Another report will be released by the end of the year in relation to Burke’s behaviour. Despite the fact that those
investigations were financially ‘resource intensive’ as declared by the CCC’s newly-appointed Commissioner Robert-Smith, the Commission tried to use public interest in these investigations for its corruption prevention educative program by discussing the various themes brought up during the public hearings of the investigations (APP, 24 May 2007; Australian Financial Review, 9 July 2007; The Advertiser, 25 May 2007, CCC 2007, p. 2).

9.1.2 Surveillance
As stated earlier, the CCC has a wide range of coercive powers including surveillance. It is a statutory power, as is the case in the Queensland Crime and Misconduct Commission in accordance with its CMA 2001 Section 121 and 137. The CCC uses this power in accordance with the Surveillance Device Act 1998, but needs a judicial warrant to approve such an application (CCC, 2006, p. 38; Silverstone, 2006, p. 133).

Under this Act, the CCC must apply to a Supreme Court judge (for optical, listening, and tracking warrants) and to a magistrate if it is applying for tracking warrants only. The Act requires the Commission merely to convince the court of reasonable grounds for suspecting the relevant offence rather than ‘believing it’ (CCC, 2006, p. 13).

9.1.3 Prosecution
The Commission’s investigations resulted in an increasing number of charges against public sector officers. In 2005–2006, the CCC reported 144 charges were laid against a total of 21 public officers and other persons (JSCCCC, 2007, p. 3).

Table 9.6, detailing the CCC’s major misconduct function activities, 2004–2006 indicates a noticeable increase in the number of total charges in 2005–2006 compared to the previous year. In explaining such a sharp rise, the Commission referred to the fact that in 2005–2006, there were some cases in which more than one charge had been laid against the same person, most
probably in cases where systemic and more serious corruption had been identified. For example, in one case there were 54 charges laid against a single public officer and 20 charges against another (JS CCC, 2007, pp. 3, 17).

Neither the CCC in its annual reports nor the JS CCC in its examination and questioning of the Commission reports have provided any details in relation to the types of charges, types of people charged or any other information on the prosecution aspect of its work.

### 9.1.4 Penalties and sanctions

According to the CCC Act 2003, the Commission can only make assessments and form opinions on whether misconduct had occurred, was occurring about to occur, or was likely to occur. However, such an assessment or formed opinion can be considered as a finding that the person has committed, or is committing, or about to commit a criminal or disciplinary offence (CCC Act, 2003, Section 22(1), 23(2)).

The Commission may also make recommendations as to whether consideration should or should not be given to a prosecution or disciplinary action or other action to be taken against a person according to its assessment and formed opinion (CCC Act, 2003, Section 43(a)).
Table 9.6: The CCC’s major misconduct function activities, 2004–2006

<table>
<thead>
<tr>
<th>Activity</th>
<th>2004–05</th>
<th>2005–06</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 41: Reviews of appropriate authorities’ investigations</td>
<td>1,212</td>
<td>2,083</td>
</tr>
<tr>
<td>Section 26 Commission’s own propositions about misconduct</td>
<td></td>
<td>26</td>
</tr>
<tr>
<td>Joint agency investigations</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Reports tabled in the Parliament</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Statutory powers used</td>
<td>436</td>
<td>442</td>
</tr>
<tr>
<td>Number of public officers charged</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Number of total persons charged</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td>Number of charges against public officers</td>
<td>30</td>
<td>144</td>
</tr>
<tr>
<td>Number of total charges</td>
<td>43</td>
<td>147</td>
</tr>
<tr>
<td>Charges discontinued (accused deceased)</td>
<td></td>
<td>54</td>
</tr>
<tr>
<td>Number of public officers convicted</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>Number of total persons convicted</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>Persons before the court at 30 June 2006 on:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commission charges</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>Other agency Commission-related charges</td>
<td></td>
<td>2</td>
</tr>
</tbody>
</table>

(Source: CCC, 2006, p. 22)

The CCC can refer allegations to either the Parliamentary Commissioner or the Auditor-General after prior consultation with them (CCC Act, 2003, Section 38 (1)).

### 9.1.5 Intelligence

The first Intelligence Unit of the Commission was established in September 2004 to analyse and assess information that would help to effectively combat misconduct. Its Investigation Unit currently uses such functions in its investigations. The intelligence is employed in three different ways. Firstly, it provides ‘tactical intelligence’ to reinforce and strengthen the Commission’s current operations and investigations. Secondly, it provides ‘operational intelligence’ to develop new opportunities to be targeted. Thirdly, it is used to provide ‘strategic intelligence’ that deals with assessing and analysing information to determine trends of misconduct (CCC, 2006, p. 40).
The intelligence function of the Commission can be proactively used. Section 26 of the Act provides the CCC with the ability to make a ‘proposition’ of misconduct, having its foundation in its own experience, knowledge or as a result of assessing the matters it has received or allegations referred to it (CCC Act, 2003, Section 26).

In 2004 the Commission reported that it had developed two propositions, each of them focusing on one specific type of misconduct, and consequently conducted a number of investigations. In 2005–2006, these propositions increased in number. The CCC reported the development of 26 propositions dealing specifically with misconduct themes to do with public sector organisations, which led to a number of operations aimed at performing ‘post-operational’ assessments to identify developing misconduct trends (CCC, 2004, pp. 25–26; 2006, p. 40). However, there is no published information about these propositions and the investigations the Commission have undertaken in their regard.

9.1.6 Other supportive elements in the reactive approach

In conducting its misconduct function, the CCC, over the last few years of its operation, was able to branch out into other government organisations. Through a Memorandum of Understanding with agencies such as the WA Police, the Ombudsman, the Customs Service, the Australian Crime Commission and the Australian Federal Police, the Commission enhanced its cooperative relationships, using these arrangements to further coordinate, consult, exchange information and, in some cases, use the benefits of these organisations’ facilities. In return, these agencies used the CCC facilities. For example, in 2005, the Department of Planning and Infrastructure (DPI) used the Commission’s specially-equipped interview rooms for its own investigation (CCC, 2004, p. 26; 2006, p. 43).
During the examination of the Commission’s annual report, the JSCCCC ‘endorsed’ these strategic partnerships and liaisons with the state and federal organisations (JSCCCC, 2006, p. 3).

9.1.7 Proactive measures
Previous chapters have identified these proactive measures of corruption prevention: education and training, proactive investigation, integrity capacity building, law reform, integrity testing and complaints profiling, and Early Warning Systems. These strategies are mainly supported by research.

The idea of proactive mechanisms derives from the premise that prevention is better than cure. It focuses on dealing with the roots of misconduct through research, analysing intelligence, examining procedures and regulations and by enhancing the ability of public sector organisations to deal with misconduct and develop their own anti-corruption regimes.

9.2 Corruption prevention
The CCC Act 2003 made Prevention and Education one of the three main functions of the Corruption and Crime Commission. Section 17 detailed the means by which it should carry out its preventative and educative functions:

- analysing the intelligence it gathered in support of its investigations into organised crime and misconduct
- analysing the results of its investigations and the information it gathered in performing its functions
- analysing the systems used within public authorities to prevent misconduct
- using information gathered from any source in support of its prevention and education functions
In its first report, the CCC Commissioner stated that the Commission was the first ever attempt in Western Australia to implement an anti-corruption agency that had prevention and education as one of its main goals (CCC, 2004, p. 1).

This feature is regarded as an advantage and a great asset in the work of the Commission. The abandoned Anti-Corruption Commission was not given the corruption prevention function. This was considered one of its main defects (Kennedy, 2004). The Corruption Prevention, Education and Research Directorate (CPER) was tasked with this function in the Commission. In performing its duties, the CPER usually dealt with agencies in the WA public sector and local government, and coordinated with other oversight bodies in the State (CCC, 2006, p. 29; JSCCCC, 2006, p. 1).

In recognition of the importance of its preventative and educational role, the Commission, has recently reorganised the CPER and enhanced its staff capacity by 75% to comprise 14 full-time employees. This restructuring was seen as important, because the Commission needed to change the education
branch activities more into ‘corruption resistance’ and expand its ‘materials development programme’ (CCC, 2006, p. 45).

### 9.2.1 Education and training

Over the past few years, the Commission’s preventative drive focused on providing educational programs and initiating awareness projects. The aims of these were to foster integrity and ensure that public sector agencies were aware of their obligations to report misconduct allegations and deal with them. To meet these objectives, the Commission created the following educative programs and schemes.

**Education seminars:** The Commission commenced its work in relation to this function by conducting an ‘educational programme’ as a means of introducing itself to the wider State public sector community and to provide insights into its statutory obligations to report suspected corruption and misconduct. During its last reporting year of 2005–2006, the Commission conducted 96 educational seminars with an audience of approximately 2,680 people. 37 of those seminars were delivered in ‘regional locations’ and the other 59 sessions were held in urban and city areas (CCC, 2006, p. 45).

**‘Risky Business’ presentations:** another educational activity performed by the Commission’s CPER was the series of ‘Risky Business’ presentations, designed for public sector organisation executives, with the intention of widening their knowledge of their duties to inform the CCC of suspected misconduct. Recently however, these presentations have been customised for a particular agency and have focused on its particular corruption matters (CCC, 2005, p. 29; 2006 p. 45).

Following the revelations of Operation Jakarta in 2005 relating to an investigation of suspected misconduct by high-ranking ministerial staff, the Commission initiated an education program specifically targeting ministerial staff across the public sector, aimed at ensuring their familiarity with the
corruption threats and weaknesses connected with their work. So far, the Commission has conducted 12 of these ministerial staff briefings in 12 different ministerial offices. The briefs usually take a developed form of the Risky Business’ presentation but are tailored for each ministerial office, and focus on informing them of ‘notification requirements’ and providing an overview of the ways of detecting and recognising misconduct (CCC, 2006, p. 46).

**Rural & Regional Outreach Program:** this initiative was formulated as part of the CCC’s educational activities and has two main objectives:

- to ensure that the public sector population in the regional areas of the State are informed of the Commission’s functions and responsibilities
- to inform them of their legal duties according to the CCC Act 2003 in reporting misconduct (JSCCCC, 2006, p. 1).

During 2005–2006, the Commission designated ‘two corruption prevention and education consultants’ from its staff to each of the State’s regional divisions of the North, the Midwest and the South. Each team was tasked with visiting their allocated region, giving presentations and establishing a working relationship with its local public sector officers (CCC, 2006, p. 45).

The Joint Standing Committee on the Corruption and Crime Commission has welcomed such programs and has praised the Commission’s drive to establish ‘tailored regional services’, stating that this strategy would result in giving the designated officers an in-depth look at and familiarity with their allocated region’s public sector problems and challenges for one part, and strengthening trust and working relationships between those consultants and these areas public officers for a second part (JSCCCC, 2006, p. 3).
It is expected that the Commission’s prevention and education officers could use the information they gathered during these visits and encounters with local public sector officers in different ways, such as:

- designing and providing educative programs that suited the particular requirements of their specific region public sector
- identifying through research any rising threats of systemic misconduct that need to be treated either locally or at the State level.

Because of the educative and consultative nature of the outreach program, both the public sector and the public in those regions were expected to help the Commission’s long-term corruption prevention objectives (JSCCCC, 2006, p. 4).

In its 2005–2006 annual report, the CCC reported, for example, that its consultative team assigned to the northern part of Western Australia commenced its work with introductory visits to the region and then followed up with a more in-depth visit to address the specific issues of the particular public sector bodies there (CCC, 2006 p. 45).

### 9.2.2 Proactive investigation

In accordance with its responsibility for assessing public sector agencies’ systems in its work in preventing misconduct, the CPER tended to participate in reviews and investigations conducted by the Commission’s other departments through research, performing misconduct prevention analysis or by providing suitable recommendations. However, it also initiated its own preventative inquires, such as protecting personal data in the public sector.

As a result of increasing complaints of the misuse of personal information stored in the various government departments’ electronic databases, the Commission reached the conclusion that this was a widespread problem.
On the 5 November 2004, the CCC initiated its own inquiry into the ‘unauthorised access and disclosure of confidential personal information held on computer databases of public sector agencies’. After a year of inquiry, which included, submissions from the public and some public sector agencies, testing information provided by the sample government bodies and conducting staff awareness and attitudes surveys, the CCC confirmed in a report on the 29 September 2005 the extent of this violation, and presented 23 recommendations to deal with the matter (CCC, 2005b, pp. 1–4, 70).

In following up the extent to which the Commission’s recommendations are being implemented, the CCC has requested that all agencies involved in its investigations report back on the implementation of its recommendations. The Commission is statutorily required to report on how the examined agencies implemented the recommendations. Section 91(2)(C) of the CCC Act 2003 requires the Commission to evaluate the rate of implementing its recommendations by the ‘appropriate authorities’ (JSCCCC, 2007, p. 6).

The Joint Standing Committee on the CCC inquired about this matter and why the Commission did not report the implementations in its 2004–2005 annual report despite the fact that the CCC has indicated in the ‘Budget Estimate Papers’ for that year that it was developing its own system to monitor the adoption of its recommendations. The Commission acknowledged that it had requested all agencies to report on their implementations and it would then examine their effectiveness. The CCC stated that such a process would require a minimum of 12 months to give those agencies sufficient time for the implementation and these recommendations to ‘mature’. The CCC projected that its evaluation would commence during 2006–2007 (CCC, 2006, pp. 47, 48; JSCCCC, 2006, p. 3; 2007, p. 6).
9.2.2.1 Western Australia Police Property Management

This inquiry was performed together with the WA Police Service after a series of events exposed the deficiencies in the police ‘property management practices’. One of these events was the disappearance of the sum of $14,650 stored in a safe at the North Perth Police Station. Because many people had access to the safe, it was difficult to pinpoint who had stolen the money. Another major case behind initiating this inquiry was the disappearance of two kilograms of cannabis from the Fremantle Police Station in August 2004. In this case it was also determined to be too hard to identify who was responsible for the theft (CCC, 2005c, p. 1). After examining a large variety of information, interviewing police personnel, reviewing procedures and conducting a survey, the inquiry’s main findings were that there was an absence of recognisable national standards into police property management — the leading factor behind the incidents — and there was a duplication of efforts through which the properties were processed and other procedural complications. The report came with 42 recommendations spanning issues related to the handling of police properties, such as the policy, systems, storage facilities, practices, resourcing, and training of police personnel dealing with these properties and organisational matters (CCC, 2005c, pp. viii–xiv).

The implementation of these recommendations was not reported back to the CCC, as was the case with the other investigation recommendations stated earlier.

9.2.2.2 Government Employees Housing Authority (GEHA)

After receiving allegations from the GEHA — an agency providing housing for state government employees in regional areas of WA — relating to the abuse of its housing scheme by some of its tenants, the Commission and the GEHA conducted a joint investigation that resulted in the removal of three tenants from the GEHA housing. One of the tenants was found guilty and
receiving a ‘suspended imprisonment order’. However, after the investigation, the CCC reached a conclusion about the importance of conducting corruption prevention reviews. This was its first corruption prevention review as a result of an investigation and was conducted to update the GEHA management procedures for dealing with such issues and to minimise any misconduct opportunities. The review detailed six recommendations dealing with eligibility issues and policy, procedural matters and those related to continual monitoring aspects (CCC, 2007a, pp. 1–3). According to the Commission’s plans, the evaluation of the implementation of these recommendations is to be conducted in 2009 (CCC 2006, p. 48).

9.2.3 Integrity capacity building

9.2.3.1 Western Australia police reform

At the end of conducting his investigation into 'corrupt or criminal conduct by Western Australian Police Officers', Commissioner Kennedy recommended in his final report that the CCC should be in charge of monitoring the application of his Royal Commission recommendations to reform the WA Police Service (WAPOL). The Commission accepted this recommendation (KRC, 2004, pp. 1, 338).

To facilitate such a long-term working process, the WAPOL created a ‘Joint Agency Steering Group’ to coordinate and facilitate work aspects between the two organisations and to further discuss the progress of police reforms through regular meetings (CCC, 2006b, p. 5).

After receiving and examining the WAPOL report on the application of reforms during the first two years, the CCC acknowledged in its report to the Parliament WAPOL’s efforts and initiatives to reform the Service. It also warned against challenges that might hinder the WAPOL reform strategy in the long run (CCC, 2006b, p. 4).
Though the Commission praised such progress in the police reforms, it also made clear that when it came to the strict reporting requirements placed upon the police, such reporting on the reform program should remember that those reforms are still in their early stages and that there are more measures still to be implemented. Therefore, it recommended that stringent reporting requirements should not be reduced, regardless of the reductions in police-related complaints tabled in the Commission’s 2005–2006 annual report (CCC, 2006b, p. 5; JSCCCC, 2007, pp. 1, 20).

9.2.3.2 Commission recommendations
Reporting on the implementation of the Commission’s recommendations to public sector agencies subjected to investigation is another statutory obligation conferred on the Commission by the CCC Act 2003. However, it also functions as a measure of building the capacity of the public sector to deal effectively with corruption.

In evaluating these organisations’ implementations of its recommendations, and as a vital indicator, the Commission also considered testing its efficiency in capacity building and minimising misconduct within the State public sector. However, the CCC recognised that to examine the effectiveness of the recommendations, the associated agencies needed an appropriate time frame necessary for the application of such recommendations before reporting back. The Commission had already requested all agencies to write back concerning such implementations, with the aim of conducting its assessments after the implementations had had time to work (CCC Act, 2003 Section (2)(c); 2006, p. 48).

9.2.4 Law reform
The Corruption and Crime Commission Act 2003 and particularly Section 91(2)(q) gives the Commission the statutory power to report and recommend, as a result of its investigations or work, any changes to the
State laws that affected its functions. In accordance with Section 226, the Act also requires the Attorney-General to review the operation and effectiveness of the Act after three years from its commencement.

In addition, the Commission’s Act 2003 Section 226 requires the Act to be subjected to a statutory review after three years in action as a way of examining its operations and efficiency. For this reason, 2007 is a very important period in the CCC’s operations as it marks three years of commencement (JSCCCC, 2005, p. 3).

In preparation for this statutory review and for the Attorney General’s review, the Commission put forward nine amendments, ranging from amending definitions such as that of organised crime, a public officer, and the misconduct definition, to that of the principal officer of a notifying authority. It also proposed the clarification of the offence of ‘knowingly making a false report or making a malicious report’. It recommended that it should be given the authority to provide a report about a proposed commissioned police officer to the Commissioner of Police. It proposed making it an offence under the Act for people, not being public officers, to disclose ‘restricted information’ that they had obtained through being interviewed by the CCC. The proposed amendments also included a recommendation that witnesses, interpreters or ‘anyone providing assistance’ during its investigations be paid witness fees in accordance with S.146, and finally, proposed to amend a drafting error in S.27A(3) that caused some confusion when dealing with allegations relating to Members of Parliament (JSCCCC, 2006a, pp. 3–6).

In its Interim Report on amendments to the CCC Act 2003, the Joint Standing Committee on the CCC supported the Commission’s proposed amendments and endorsed those not supported by the CCC, such as: those of a multi-person Commission, appointing Assistant Commissioners, adding
private entities undertaking public functions in its jurisdictions, the introduction of public interest monitors, providing a witness-protection function, granting the responsibility of confiscating the proceeds of crime from the DPP, adopting in WA legislations similar to those in Queensland (JSCCCC, 2006a, pp. 7, 8).

Another recommended change affecting the Commission’s work relates to the amendment of the witness protection programs in WA. The JSCCCC decided by the middle of 2006 to conduct an inquiry in relation to the future of these programs. However, at the time of writing there are no updates available on what has been accomplished (JSCCCC website, 2007).

9.2.5 Integrity Testing
According to Section 123 of the CCC Act 2003, the Commission is permitted to conduct an integrity testing program to examine the integrity of a specific public officer or a group of public officers, and can do that through the use of its controlled operations statutory powers under Section 121.

Integrity testing programs include creating scenarios that have been formulated under real circumstances and in which the tested public official has the opportunity to behave in a corrupt manner. These testing programs are usually designed to be implemented under strict controls (CCC, 2005, p. 24).

In developing integrity-testing programs, the Commission undertakes significant intelligence gathering and assessments. This represents one proactive use of intelligence and is usually directed against public officials with alleged misconduct behaviour patterns (CCC, 2006, p. 39).

The CCC reported that it had conducted 10 integrity-testing programs during 2004–2005, compared to only three in the 2005–2006 functioning
year. No details were provided on the nature and the consequences of these programs except that some of them resulted in criminal charges (CCC, 2005, p. 24; 2006, p. 39).

9.2.6 Complaints profiling and Early Warning Systems
To date, this strategy has been applied to police misconduct as stated earlier. The CCC, for its part, does not use such a mechanism. However, its stringent reporting requirements for the Police were designed to ensure that minor misconduct complaints did not go without investigation.

The Commission believes that these strict police reporting requirements are most necessary owing to a number of factors (CCC, 2006). First is the history of public discomfort concerning police behaviour. Second is the fact that serious corruption is often rooted in minor misconduct. Third is the historical fact that police organisations have never been sufficiently capable of dealing satisfactorily with misconduct by their own members. According to the CCC, the provision of independent external supervision should ensure that misconduct never goes unchecked. It would identify ‘problematic police officers’ that might require the intervention of the police management before contemplating moving into serious corruption (CCC, 2006, p. 30).

9.2.7 Research
As part of its preventative function, the Commission was involved in two major research projects. To use its resources efficiently, the CCC tended to carry out its research projects in ‘partnership’ with academic institutions such as universities, or with organisations that shared the same type of responsibilities.

9.2.7.1 Surveying the WA Public Sector
The Commission initiated this research project in 2004–2005 and continues to gather data on the current public sector integrity procedures and anti-
corruption measures used across Western Australian Government organisations. The Commission has reported on the WA public sector’s perception of misconduct, what misconduct prevention mechanisms have and are being used and how public sector agencies might combat misconduct. The project is organised into two phases, to survey the executives of 237 government bodies and then to enlarge the survey to include 1000 staff. The Commission anticipated that this project would provide a clear picture of the patterns, strengths and/or drawbacks of the WA public sector misconduct regime. It would also help to establish its preventative strategies to guard against corruption and misconduct. It would also compare these findings with those of the NSW ICAC and Queensland CMC public profiling of their respected jurisdictions (CCC, 2006, p. 48).

9.2.7.2 The CCC partnership in the National Whistleblower research
This was a national three-year research project where the Commission was involved as a ‘partner investigator’. The project is the first joint nation-wide research into the administration and the protection of whistleblowers and witnesses to misconduct and public sector corruption. The research aims was to obtain information about practices across the Australian public sector, the strategies applied to provide security and protection to internal witnesses and employees who ‘blew the whistle’ on misconduct, and to guard them against reprisals and revenge. The ‘Whistling While They Work: enhancing the theory and practice of internal witness management in public sector organisations’ research project’s main objective was to use the findings to provide better and more efficient mechanisms to prevent, reduce and deal with reprisals and issues related to whistle-blowing (Australian Research Council, 2007; CCC, 2004, p. 31).

9.2.7.3 Corruption prevention consultancy
According to Section 17(2)(b) of the CCC Act 2003, one of the Commission’s preventative responsibilities is to provide information to, to
consult with, and to make recommendations to the WA public authorities. In so doing, the Commission has been working to develop a consultancy network that would provide easily-conveyed advice and consultations on matters related to the better management of the WA public sector. This consultative role can be performed in different formats. It could be a systems review, the production of information on preventative measures, or jointly working with other agencies to publish materials on corruption prevention.

To meet this objective, the Commission created three advisory teams. Each has the duty of dealing and consulting with a group of public sector bodies to offer advice on misconduct prevention, to examine systems and to work jointly with those agencies to publish misconduct prevention information (CCC, 2006, p. 49).

9.2.8 Coordination

In 2004, the four Western Australian organisations in charge of preserving and promoting integrity in the State public sector established the Integrity Coordinating Group (ICG). The Auditor General, the Commissioner for Public Sector Standards, the Corruption and Crime Commissioner and the Western Australian Ombudsman formed a team to work towards improving integrity in public sector agencies through cooperative research, examination and supervision, and through promoting operational cooperation and continual communication amongst the agencies (JSCCCC, 2007b, p. 1).

The establishment of the ICG was in accordance with the recommendations presented at the end of the National Integrity Systems Assessment (NISA) Australia research project between Griffith University of Queensland and Transparency International, Australia. The second recommendation of the project report called upon each Australian jurisdiction to establish ‘Governance review councils’ as a mechanism to foster stronger
coordination and cooperation between the State’s core integrity institutions (TI Australia, 2005, p. 93).

The group’s terms of reference were set to represent the same objectives as those suggested by the project:

- Strengthening cooperation amongst the institutions of public sector integrity
- Promoting collective and coordinated research, examination and supervision of implemented integrity and accountability measures
- Supporting collaboration in operations and calls for continual communication, training and aiding public sector agencies
- Acting as a government advisor in matters related to reforming organisations and preserving the integrity of its public sector
- Financially assisting in the conduct of comparative research across different WA public sector agencies or other jurisdictions (JSCCCC, 2007b, p. 2).

The team’s working strategy was to present several integrity topics that would allow the public sector agencies to deal with them collaboratively. In 2005, the group identified conflicts of interest as the main theme and, for that item, organised a joint seminar with the Institute for Public Administration, Australia (IPAA). About 200 public sector officers attended, representing the majority of the WA public sector agencies. To complement the success of the seminar, the group developed guidelines to help public sector officers identify and deal with issues related to conflicts of interest (CCC 2006, p. 49; ICG, 2007).
9.2.9 Internal performance indicators

In its first report, the Commission acknowledged that because the Corruption and Crime Commission was still in its formative years, a report of any types of results or performance indicators achieved during the reporting period would be meaningless. The report also stated that the inclusion of the 2004–2005 performance indicators, the current one, was meant to give an overview of what would be expected in the following year for those interested users and evaluators from the Commission (CCC, 2004, p. 54).

The CCC report also limited the scope of the Commission’s future success to achieving two main results: ‘improved integrity and reduced incidence of misconduct in the public sector’ and ‘appropriate use of powers to address organised crime’. The success of the Commission in reaching these goals was based on the publication of its three main performance indicators:

- Public Sector misconduct investigations
- The investigation of organised crime
- The fulfillment of its corruption prevention review and awareness function (CCC, 2004, p. 53).

Nevertheless, the report did include some indications of the Commission’s achievements during the reported period. For example, it summarised the number of complaints sent to the CCC and the type of actions taken, the number of cases investigated and completed by the Commission, the number of its Legal Service Directorate activities, the number of activities related to its Media Liaison function, and also reported the number of powers exercised by the Commission (CCC, 2004, pp. 13–29).

In its 2005-2006 annual report, the Commission stated that it had created its ‘Outcome Based Management’ system, after consultation with the
Department of Treasury and Finance and the Office of the Auditor General, to develop ‘the Commission’s Agency Level Government Desired Outcomes’ and Key Performance Indicators (KPIs) to measure its ‘effectiveness and efficiency’. The Commission reported that this approach is in line with the WA State Government’s drive for ‘Better Planning, Better Services: A Strategic Planning Framework for the Western Australian Public Sector’ (CCC, 2006, p. 67).

According to this structure, the CCC will work towards assessing its performance based on using both internal management data and evaluating objective ‘survey-based’ questionnaires. This method would help to analyse the spread of misconduct across the public sector, how much knowledge the public has to deal with and prevent misconduct, and to examine its performance in helping the WA Police cope with organised crime. The Commission reported that because it was using this structure for the first time, ‘performance targets’ were included in its current annual report (CCC, 2006, p. 67).

The ‘Outcome-based Management’ scheme sets up goals for groups, such as local governments, people and communities. These goals are linked to strategic outcomes, such as ‘greater community confidence in the processes and actions of government agencies through effective independent oversight bodies’ and ‘reducing incidence of corruption in all its forms’. The agency will then be provided with the ‘Agency Level Government Desired Outcome’; the agency then draws on a number of services that would result in the desired outcome that the government is seeking. For example, the CCC overseeing and conducting misconduct investigations, and its corruption prevention and education projects could all be considered as services that contribute to accomplishing the intended government outcomes (CCC, 2006, p. 68).
9.3 Conclusion
This chapter has shown that the Corruption and Crime Commission still remains in its infancy compared with the NSW Independent Commission against Corruption (ICAC) and the Crime and Misconduct Commission (CMC) of Queensland. However, the CCC’s creation and establishment represents a significant learning experience since it draw on these two organisation’s experiences in terms of its organisational structure, which is close to that of the CMC, and its extensive powers.

A major example of this is that the CCC is the ICAC and CMC’s experiences in its Consultative Group, which is tasked with securing the smooth running and coordination between its various directorates, to ascertain the Commission’s overall effectiveness. The Commission’s participation in the Integrity Coordinating Group of Western Australia is another step to facilitate coordination and cooperation between the major anti-corruption agencies, and to avoid duplication and the waste of resources when combating public sector misconduct in the State.

During the few years of its operation, the CCC’s use of its functions through a holistic approach has, so far, yielded positive outcomes compared with the number of years the Commission has been functioning. However, the inherited culture in some public sector agencies of ignoring, either deliberately or accidentally, integrity issues has forced the Commission to apply more effort and resources into its preventative and educative functions. The Commission can accomplish this because it is armed with the necessary statutory powers to change the culture of its public sector.

The main area of concern seems to be conflicts of interest. In his speech to the IPAA, Commissioner Hammond pinpointed this issue:

On the evidence before us resulting from the Commission’s investigation and hearing over the last three years, it is clear there are
many quite influential public officers who wouldn’t recognise a conflict of interest if it walked up and kicked them in the backside. This is very concerning to me and should be to you (in O’Brien, 2007, p. 12).

Another major challenge to the CCC is the Western Australia Police Service reform program. Despite the intensive work carried out by the WAPOL so far, there remains work to do in areas such as individual performance, complaints investigation, developing misconduct prevention strategies and change management. The continual stringent reporting requirements imposed upon the WAPOL will help the Commission to keep a close eye on how the Service develops suitable procedures for better performance and for its integrity preservation.

Reaching out to local and regional areas is another important objective for the CCC. Its outreach program is one vital part of its education and prevention strategies. The positive reaction to this program should encourage the Commission to put extra efforts and resources into this initiative. Not only will this program inform local public officers about the CCC’s functions, it will also help the Commission through the information collected to tailor specific recommendations, training and solutions to each locality’s needs. The Commission should make use of its Parliamentary Committee’s positive attitude toward this program and capitalise on it. Examples include establishing regional offices and surveying local communities about their views on public sector integrity issues.

The *Corruption and Crime Commission Act 2003*, with its considerable powers, has helped the CCC to pursue demonstrable outcomes over a short period of time. Legislation usually has shortfalls that become evident in practice, and updates and amendments are necessary to keep up with new challenges. In 2007, the Commission completed its first three years of operation. The Act will be subject to a review of its operations and effectiveness. Although
it is probable, from past experience of Commission reviews, that changes will be made, the CCC appears to be in very good shape for continuing its work to maintain public sector integrity.
Chapter Ten
Discussion

10.0 Introduction
This chapter will summarise and discuss the main themes identified during this research into the strategies the three tested Commissions are using in their quest to preserve the integrity of their public sectors. After finishing this research, it is recognised that the three organisations share a number of common characteristics that have shaped the way they currently operate.

This chapter will follow the same format as the previous chapters of this thesis by relating the identified themes to three main sections. The first section will examine themes related to structures and functions. The second section will focus on themes related to the reactive approaches of the examined Commissions, and the third section will be devoted to themes associated with proactive aspects of these agencies’ work.

One theme identified is that these Commissions are all part of their State’s evolving public sector integrity system rather than completely stand-alone institutions. Australia, like most democratic nations, has been developing and strengthening its integrity systems for the last two decades. Its continual appearance within the top countries in Transparency International Corruption Perception Index (CPI) annual reports for the last several years is an indication of its dedication to preserve the integrity of its public sector (TI, 2005, 2006). Another major theme identified during this research is the holistic approach, not only for structurally setting up these Commissions, but also in the way that these agencies then tackle corruption comprehensively. The holistic approach tends to integrate all of the agency divisions and multi-functions to combat corruption.
Third, one of the most controversial issues faced by these Commissions has always been investigating the misconduct of its political masters. Although these commissions are created by politicians, supported by politicians and sponsored by their States’ political governments, when the time comes to scrutinise their wrongdoings, investigating political corruption places the Commissions in a difficult situation. This has been argued by many as being a structural fault, as outlined in Chapters 2 and 3 of this thesis.

The fourth theme is the undeveloped means of formal external coordination between these Commissions and other organisations involved in dealing with corruption in their States. In recent years, each State has witnessed an increasing number of government organisations becoming responsible for preserving the integrity of a particular area of a government function. The absence of clearly articulated coordination between all these agencies has tended to limit their effectiveness to work collectively in a whole-of-government approach.

The fifth theme is the emerging importance of research in the work of these Commissions after the adaptation of the holistic approach. After the introduction of this approach, research was given priority in the work of these Commissions. The realisation that prevention is better than cure has made research a key part of these agencies’ preventative efforts. It is also part of an appropriately ‘responsive’ approach to regulation that monitors changing needs and conditions. The research officers now take part in the investigative teams as well as play a critical role in guiding these Commissions’ prevention initiatives because of their research.

The sixth theme is related to the relatively low number of prosecutions in their investigated cases, which tends to rise from time to time, causing some disturbances in the working relationship with the Office of Public Prosecution. Not only has this matter manifested itself in the form of the
low rate of successful prosecutions but also through delays in deciding on criminal proceedings, as experienced by each of the three case studies.

The seventh theme deals with devolution and capacity-building initiatives. In recent years, there has been a tendency among these Commissions to delegate their investigative responsibilities to the public sector bodies, giving them a greater role in dealing with their own misconduct. However, the question remains whether the public sector is yet ready to take such responsibility honestly and effectively — or if it ever should.

The eighth identified theme examines the limited use of the integrity-testing strategy in areas other than police corruption. This mechanism has been exclusively used so far to deal with police corruption and, in most cases, in its targeted integrity-testing format. Its usefulness is still being debated; however, it is still not used for other types of public sector corruption.

The ninth and last theme is the absence of initiatives that work toward establishing an early warning system to proactively deal with suspected corrupt officials or misconduct. The development of such a system could use the organisation’s management database. Reviewing administrative records to identify public officers with problematic behaviour (such as repeated absences from work or an increasing number of public complaints) could be the starting point for developing and using this strategy.

Now that these three commissions have been studied and their strategies explored, the next goal of this chapter is to determine whether or not the proposed model for an anti-corruption agency needs modifying. The model discussed in Chapter Two included both reactive and proactive strategies that were mostly implemented by all three commissions that formed the case studies. However, there remain other proactive strategies that are still only partially used in all of the studied commissions. This chapter examines whether consideration ought to be given to the inclusion of these
undeveloped strategies within the most-used mechanisms of the tested anti-
corruption agencies — such as integrity testing, early warning systems and
enlarged performance indicators.

10.1 Structures and function themes

10.1.1 Being part of an overall wider public sector integrity
system

It has been shown that the three tested Commissions were not established
to function as stand-alone institutions. Queensland, NSW and WA have,
within their capacity, a number of other oversight bodies that deal with
public sector corruption within their jurisdictions as part of their greater
public sector integrity system. This is consistent with principles of ‘joined-
up’ or ‘whole of government’ approaches: in this case, that ethical standards
should be consistent across the public sector and that anti-corruption
mechanisms need to be multi-layered, comprehensive and coordinated.
However, it will be argued that while ‘coverage’ appears to be very good,
adequate coordination remains a challenge.

The CMC’s structures and functions, discussed in Section 4.1, the ICAC’s
structures and functions, discussed in Section 6.1, and the CCC’s structures
and functions discussed Section 8.1 of this thesis state that all three states do
not depend on a single institution to tackle public sector corruption. Instead,
they have been working to diversify the system by including more agencies
to deal with corruption in certain aspects of government work. For example,
the Queensland Public Sector integrity system involves more than 23 core
and line anti-corruption institutions in addition to the CMC, such as the
Office of the Queensland Integrity Commission and the Office of the
Public Service Merit and Equity.

The same situation has been identified in NSW, which also has more than
twenty core and line agencies dealing with different aspects of government
functions. WA is no different to the other two States, and has a number of institutions to combat public sector misconduct.

This diversity tends to be in line with the main objective of the National Integrity Systems (NIS) idea. The NIS, in its basic format, consists of a group of goals, assisted by major strategies and carried out or executed through ‘institutions, sectors or pillars’ including those of anti-corruption watchdog bodies or commissions.

10.1.2 Holistic approach anti-corruption agencies
The second theme related to the structures and functions of the three examined Commissions is that they are holistically designed to function comprehensively when dealing with corruption, through investigation, prevention and education. One of the earliest anti-corruption agencies is the Hong Kong Independent Commission Against Corruption (HKICAC), which has always been cited as a successful model of an anti-corruption agency. Besides its investigative role, it also has prevention, education, complaint and advice functions (UNDP, 2005, p. 45).

The Hong Kong Commission is independent of the government, well-resourced, with an established staff capacity of 1314 employees and its own newsletter and television channel (HKICAC web site, www.icac.org.hk, 10 May 2007). However, the transferability of this model to another jurisdiction might not be an easy task. It is an expensive model, with its own unique set of political, economic, and social environments. For countries such as those in the developing world, this model would be another financial burden without a firm assurance that its efforts in dealing with corruption would be positively accepted by the political elite in that country, unless it was given the needed political and judicial support (Doig, 1995, p. 159).

That is the case for countries in the developing world. In Australia, the case in many situations has never been financial; rather, it is a matter of the scope
of the responsibilities and functions. However, financial aspects have been used on some occasions to muzzle anti-corruption agencies, as was the case with the CJC in Queensland during the mid 1990s or the case of the previous ACC of Western Australia.

Though the financial resources for the three case studies used for this research vary between them, none seem to have been under-budgeted or seem to complain about a shortage of funds — at least, at the present time. For example, the ICAC reported a budget allocation of over $17 million for 2006 (ICAC 2006, p. 72). The CMC, on the other hand, was allocated about $35 million for its 2006 operations (CMC 2006, p. 105), while the newly established CCC in Western Australia operated on $25 million during 2006 (CCC 2006, p. 85). However, these resources tended to cover only their normal functions, but when it came to the extensive cost of major inquiries, these organisations reported over-spending on their annual budget because of the extra financial burdens these inquiries tended to inflict on their budgets. For example, the recent CCC inquiry into the lobbying activities of former Premier Brian Burke cost the Commission about $8 million out of its total $27 million for the financial year (AAP, 2007). This left the Commission with barely half of its budget for other functions and has cast some doubts on the suitability and the adequacy of their financial resources.

Structurally, the three Australian commissions are designed to carry out investigative, preventative and educative functions. In recent years, there has been a gradual movement within those Commissions, specifically the CMC and ICAC, to integrate their investigative work more with its prevention branch. An increasing number of investigations saw the participation of corruption prevention officers as part of investigative multidisciplinary teams, studying trends or drawing preventative measures based in the investigations’ outcomes.
From time to time, these Commissions conduct proactive investigations based on assessing data or reviewing systems through their corruption prevention and research units. For example, Project Shield, an investigation into police misconduct by the then-CJC conducted a number of proactive investigations based on an information and intelligence analysis, which resulted in a number of criminal charges and disciplinary actions against the corrupt police officers (CJC, 2000, p. 28–29).

This large emphasis on the preventative and educative aspect of its function resulted from the investigative approach limitations. The Commissions realised that investigations usually consume a lot of time, and drain much of their resources without providing sufficient solid evidence at the end, in most cases, to support the successful prosecution of the involved parties. In doing so, the Commissions tended to learn the lessons from their investigations, to analyse and recognise patterns and trends from the complaints and consider their research outcomes to better promote their preventative strategies.

This change in the institutional format is in line with the institutional options introduced in Chapter Three of the thesis: ‘Investigation versus Research and Policy’. Section 3.3 indicated that the integration of both investigation and prevention has another goal of preventing these organisations from becoming overwhelmed by the increasing flow of complaints.

10.1.3 Investigating politicians
The third theme associated with structures and function is investigating misconduct by politicians. A study by TI Australia of both the Queensland and NSW public sector integrity systems revealed that both States had in their capacity an appropriate foundation of institutions, laws, procedures and regulations for a sound public sector integrity system. There were still a
number of weak areas that needed examination, such as the lack of a strong ‘ethics regime’ to deal specifically with parliamentarians and ministers (TI Australia, 2005, pp. 22, 29).

These studies’ outcomes reflected that Australia still has some weaknesses and challenges in its public sector integrity systems when it comes to dealing with investigating politicians’ wrongdoings. This is despite being ranked within the top ten countries in recent years in the Transparency International Corruption Perception Index — 9th in the 2006 CPI — and the diversity of its integrity system (TI Australia, 2005, p. iii; TI CPI, 2006, p. 5).

The relationship between independent anti-corruption agencies and governments is a potentially difficult situation for a number of reasons. First, politicians created most of these agencies for their own varied reasons. For example, as with all three Commissions examined for this research, the NSW ICAC was created to fulfil an election promise made by the then-Greiner Government while in Opposition. The Fitzgerald Inquiry brought the CJC, which later changed to the CMC, into being after the famous ‘lock, stock and barrel’ declaration made by Mike Ahern, the leader of the State National Party, to implement the Inquiry’s recommendations to soften public outrage. Though the Nationals did not regain the government, such a promise came at a time when even the other State political parties had no alternative but to adopt it to establish their credibility with the voters. Lewis described the Queenslanders’ mood and reaction to the Fitzgerald Report as that of great respect to the extent that it was ‘seen as the bible for a new era of police, public sector and political accountability’ (Lewis, 1997, p. 154).

The CCC was the outcome of the Kennedy Inquiry into WA police corruption and came into existence in 2004 as a replacement for the unpopular Western Australia Anti-Corruption Commission. The ACC,
created in 1996, was not well appreciated because of its secrecy and confidentiality provisions, and its controversial Police Service oversight function that made it a contentious issue with the public, the police and the media.

Despite being independent of the government of the day, these types of organisations tend to depend on those politicians to advance their recommendations for legislative improvements and law reforms. In addition, the organisations are dependent on political approval and support for their finance and the appointment of their senior staff. Consequently there is the fear that the work of these agencies could be compromised and that these watch-dogs elect to develop a ‘peaceful co-existence’ with their political masters. This could lead to a situation where these bodies have to avoid clashing with their political masters and to continue gaining their support, as well as being seen by the public to still tackle corruption whilst at the same time being careful not to cross the line that might bring them at odds with their superiors (Hindess, 2004, p. 17). This notion is very much a reflection of the ‘vertical jurisdiction’ referred to in Section 3.7.5 that limits who they can investigate as one of the institutional factors that might affect the function of these bodies.

In the long term, this situation might promote the opportunity for these agencies to be ‘captured’ or subject to undue influence or else being targeted by politicians, particularly those under its investigations to ‘delegitimise’ or derail such investigations in other situations. One of the major long term effects of this political attack on those bodies is undermining and damaging its investigative powers to the point where the anti-corruption agencies elect to remove their focus from political executives to look into connections between those ‘middle-rank’ employees and criminal groups such as the Mafia. Another long-term consequence of political executives’ challenges to weaken the integrity of these anti-corruption bodies is that those
organisations may become more selective in their investigations and gradually shift and focus towards prevention and community education (Maor, 2004, pp. 21–22).

The point here is that although politicians do invest in establishing anti-corruption mechanisms, when those politicians fear losing control over these bodies’ inquiries of high-ranking public officeholders, they tend to take an aggressive stance against the mechanisms, on the ground that such investigations not only draw public attention, but might also effect their political parties’ trustworthiness and could lead to damaging outcomes with their constituents and legislatures (Maor, 2004, p. 2).

For example, the Australian Electoral Commission (AEC) was suspected in 2003 as having a co-existing relationship with its masters. The AEC was formed as an independent statutory authority mainly to conduct federal elections and by-elections, maintain the Commonwealth electoral roll, and among other things administer election funding and financial disclosure (http://www.aec.gov.au/index.htm, retrieved 25 January 2008).

In carrying out its financial duties, the AEC is responsible for monitoring the disclosure of donations to political parties and to care for a more public-based funding system that would limit the dependency on private funds. Australia is not like many democracies that limit the private corporate level of donation to political parties. Here there are no such restrictions to how much private corporations can donate to Australian political parties. However, and despite the fact that the AEC can conduct an independent audit of political parties’ files and records, the Commission was never suitably resourced to take on such a task with efficiency, and the Commission seldom brought any prosecutions for breaches against its disclosure regulations in recent years. Also, its recommendations to the Standing Joint Committee on Electoral Matters to close gaps in laws
organising electoral disclosure were neglected by politicians fearing that acting upon those proposals might restrict political funding (Hindess, 2004, pp.18–19).

Secondly, despite being independent of the government of the day, these types of organisations tend to depend on these politicians to advance their recommendations for legislative improvements and law reforms. In addition, the organisations are dependent on political approval and support for their finance and the appointment of its senior staff. Consequently, some politicians tend to hold the idea that because of this dependency on their support, these agencies should not — when it comes to politicians — be allowed to search in-depth during investigations of politically delicate matters. This notion is very much a reflection of the ‘vertical jurisdiction’ referred to in Section 3.7.5 that limits who they can investigate as one of the institutional factors that might affect the function of these bodies.

In the long run, this situation might promote the opportunity for these agencies to be ‘captured’ or subject to undue influence. An agency might have to live with the notion that to avoid clashing with its political masters and to continue gaining their support, it should be seen by the public as still tackling corruption while at the same time being careful not to cross the line that might bring it at odds with its superiors (Hindess, 2004, p. 17).

Thirdly, another point related to the anti-corruption agencies’ relationships with politicians is the contradictory requirement by their statutory Acts to investigate politicians’ illegalities, at the same time as their functions in this area are limited by legislations. For example, both the CMC and the ICAC legislations restrict the Commission’s ability to conduct investigations. The CMC can investigate elected officials only if the politician’s conduct constitutes a criminal offence. The ICAC has similar provisions with the added condition that the action of ministers and elected officials should
amount to a significant violation of a ‘code of conduct’ (CICAC, 2006, pp. 117–118; CMC, 2006, p. 3). The CCC Act 2003 Section 27(A & B) on the other hand, requires the Commission to refer any allegation of non-serious misconduct against a member of the Legislative Council or the Legislative Assembly to their presiding officers. The Act also advises how to decide if such a matter should be investigated by the ‘Privilege Committee’ or be examined by the CCC.

Fourth, another picture of the anti-corruption agencies’ relationships with politicians was the accusations that these agencies were used and manipulated in some cases by the politicians to further their own political interests. Claims and counter-claims between politicians of corruption or misconduct by their counterparts can bring anti-corruption agencies into the centre of political rivalries (Grabosky & Larmour, 2000, p. 6). For example, in the early 1990s, the ICAC (as outlined in Section 6.1.3 of this thesis) investigated claims that the then-Premier Greiner, the Minister of Environment, Mr Moore, and Dr Terry Metherell, a member of the NSW Parliament, had acted corruptly by orchestrating the resignation of Dr Metherell from the Parliament by offering him a high-level public service post. When the Commission investigation established the truth of such claims, it was legally challenged in the NSW Court of Appeal that decided that the Commission’s findings were outside its jurisdiction (ICAC, 1992, p. 5; 1993, p. vi).

This latter incident put the ICAC in a ‘no win’ situation, where lack of action would have been seen as favouring politicians, but independent action resulted in a highly unsatisfactory outcome. The CJC, now the CMC, was caught out in its early years in a similar situation, over its investigation into the possible misuse of parliamentary travel entitlements by members of the 1986–1989 Queensland Legislative Assembly in 1991 (Lewis, 1997, p. 252). Section 4.4 on politicisation and institutional tensions provides more details.
on how the CJC, now the CMC, went through this difficult period in dealing with politicians’ wrong doings.

In reviewing what had been accomplished over the 20 years following the Fitzgerald Inquiry, Phil Dickie, whose investigative reports in the Courier-Mail in 1986 together with the television programme ‘Four Corners’ sparked such an investigation, described how governments of the time tried to defend their record of preserving the public sector integrity. They listed the various numbers of watchdogs that had been created in those years, such as the CMC, the Parliamentary Committees, the Information Commissioner, the Integrity Commissioner or the number of legislations being passed for the same objective, such as the Whistleblowers Act (The Courier-Mail, 17 May 2007, p. 12).

According to Dickie’s assessment, ‘all these bodies and legislations have been abused or ignored’. For example, one of the Fitzgerald recommendations was the need for extensive consultation prior to introducing any law or legislation to the parliament. However, the experiences in the last ten years have shown that this practice is hardly ever applied. According to Terry O’Gorman, the President of the Australian Civil Liberties Union, when it comes to police legislations, there are currently no such consultations outside of the Queensland Police Service (Dickie, the Courier-Mail, 17 May 2007, p. 12; O’Gorman, The Courier-Mail, 22 May 2007, p. 20).

Similarly, O’Gorman shares the same view when it comes to the application of the Freedom of Information Legislation (FOI), stating that this ‘legislation is now a pale shadow’ of a new open system of government compared to what Fitzgerald had originally envisioned. There are mounting reports that an increasing number of government documents are made secret under the government-introduced exemptions when the document
has been due to be considered by the cabinet. This has resulted in massive amounts of information and papers being kept secretly in the cabinet room (Johnstone, in The Courier-Mail, 18 May 2007, p. 21).

Dickie cited that this legislation was repeatedly neutralised by State Governments as early as 1992 in concealing ‘embarrassing information’ from the public, as was revealed in the Bundaberg Hospital Commission Inquiry. Another example is the recent CMC examination of the Gold Coast Council elections. Despite findings of misconduct, the Commission’s recommendations for reform were not supported and were ignored by the State Government. In particular, recommendations were ignored that dealt with reforming the ‘corrupt’ local government electoral process. The recommendations included amending the Local Government Act to include items such as, better disclosure provisions, the need for local government to document and minute declarations made by councillor on conflicts of interest, and lastly for local government to explain their reasons for not complying or implementing the recommendations provided to them by the Commission’s officers (CMC, 2006, p. 4; the Courier-Mail, 17 May 2007, p. 12; 22 May 2007, p. 20).

10.1.4 Coordination

One of the main challenges recognised during these studies and relating directly to this research was the issue of coordination between the various parts of this system (TI Australia, 2005, pp. 86–87). The proposed model in Chapter Three acknowledged the importance of coordination either internally between the different departments or divisions of the anti-corruption agency or externally between the various ‘nodal points’ that make up the whole public sector integrity system in any one jurisdiction.

It is true that this thesis examines single agencies, but it is also true that those agencies are part of a wider integrity system. It has been stated earlier
that there is considerable diversity in the Australian States’ and Territories’ integrity systems whereby many organisations — core or line agencies — are performing or in charge of preserving the integrity of the different parts of their public sector. The question is: how, in such a multiple-integrity system, can we guard against chaos, ‘unhealthy competition’ or confusion among the public concerning who is responsible for what or even to which agency should they report when faced with a corruption matter? Coordination might be the answer to all these points.

There has been a favourable perception that the diversity of the integrity systems is an asset in the fight against corruption and enhancing good governance, but there still remains the need to have all parts of such systems functioning together smoothly and simultaneously by means of coordination. In Queensland for example, there is no formal external method of coordination between the State integrity regime in relation to police reforms and joint operations except for the CMC and QPS. However, to meet such a deficiency, an informal ‘Integrity Committee’ has been formed to include the Parliamentary Integrity Commissioner, the Public Service Commissioner, the Chair of the Crime and Misconduct Commission, the Auditor-General and the Ombudsman. One of its initiatives was the creation of the Queensland internet-based corruption prevention net, as a type of cyber forum for those interested in issues relating to the fight against misconduct. However, this Committee seems to be fading away. Recently, there has been no mention of its existence or its accomplishments (Demack, 2003, p. 6; Parnell, 19 June 2004 in The Courier-Mail, p. 37).

A similar situation exists in NSW. With no formal external coordinating measure there tends to be a growing ‘informal’ way of policy and operational coordination emerging between the different parts of its public sector integrity system. WA is the only exception amongst the three case
studies. In 2005, the major Western Australia Government organisations responsible for public sector integrity formed what has become known as the ‘Integrity Coordinating Group’ represented by the CCC, the Ombudsman, Auditor-General and the Public Sector Standards Commissioner. Though it is not a formal group, it has made itself public to the public sector and advocated the importance of operational cooperation (TI Australia, 2005, p. 87).

Section 9.2.6 of the thesis, which discusses coordination, provides detailed information about what this group is doing. The main goal behind establishing this group is to enhance policy consistency and strengthen operational cooperation and coordination between the State’s core integrity agencies, with the major objective of reinforcing integrity across the WA public sector. One of its early initiatives was to conduct a seminar on ‘conflict of interest’ during November 2005 in cooperation with the Institute for Public Administration Australia (IPAA). Internally, all three Commissions seem to have, in their capacity, the internal mechanisms to coordinate the work of their different functions. Table 10.1 summarises the main internal coordinating measures in the case studies.

Coordination between the institutions involved in dealing with corruption is not only confined to Australia. Globally, the United Nation Development Programme (UNDP) has identified this issue to be widespread in countries both with specialised anti-corruption agencies and those without one but who have other arrangements and structures to combat corruption. The study on institutional arrangements to combat corruption by the UNDP recognised the importance of having a sound coordination regime to facilitate smooth cooperation and a workable relationship between the different agencies combating corruption regardless of the institutional format adopted by the country (UNDP, 2005, p. 19).
Table 10.1: Internal coordination mechanisms for the CMC, ICAC & CCC

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<th>Commission</th>
<th>Coordination Mechanism</th>
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| CMC, Qld   | • Strategic Management Group (SMG) sets, implements and coordinates overall CMC policies & strategies.  
            | • Crime Reference Committee facilitates coordination between the CMC and other law enforcement agencies for investigating major crimes. |
| ICAC, NSW  | • Investigations Management Group coordinates & supervises the investigative work of the ICAC.  
            | • Prevention Management Group oversees and coordinates the preventative, educative and research work of the ICAC.  
            | • Executive Management Group reviews and facilitates the overall strategic policies of the Commission. |
| CCC, WA    | • Directors Management Committee ascertains that all CCC functions are coordinated in a manner that leads to achieving its strategic goals. |

(Source: CMC, ICAC and CCC annual reports)

The same study presented examples of how countries around the world tended to overcome the problem of coordination. Countries without specialised anti-corruption agencies such as Bulgaria established a specialised ‘inter-ministerial’ commission tasked with coordinating and controlling the application of the country’s national anti-corruption strategy and assessing the efficiency of the different measures being taken to combat corruption. South Africa also created the ‘Anti-Corruption Coordination Committee’ comprising both national and local agencies in the country (UNDP, 2005, p. 19).

In countries that have an anti-corruption agency, similar efforts have also been made. Countries like Indonesia, Latvia and Lithuania all have a clear mandate on which organisation or unit is in charge of coordinating anti-corruption activities among the various institutions. In Indonesia, the KPK is the supreme unit for coordinating and supervising the work of all of the organisations involved (Komisi Pemberantasan Korupsi or Corruption Eradication Commission). In Latvia, despite the fact that the Corruption
Prevention and Combating Bureau (CPCB) was tasked with the overall coordination in relation to combating corruption activities, the government established an extra parliamentary council chaired by the Prime Minister to be in charge of the coordination and the supervision of the entire national units’ efforts in preventing crime and corruption in the country (UNDP, 2005, pp. 19–20).

The Australian anti-corruption counterparts need to follow suit in formulating a suitable and practical institutional structure to deal with deficiencies relating to the lack of coordination between the increasing numbers of governments units involved in combating misconduct within each jurisdiction.

10.2 Reactive approach themes

10.2.1 Prosecuting investigated cases and relationships with the DPP

Most of the anti-corruption agencies are organised to act as fact-finding bodies. The three study cases in this research are no exception. After investigating corrupt conduct, and in accordance with their constitutional and legal requirements, they need to make recommendations based on their findings to the Director of Public Prosecutions (DPP) to consider criminal prosecution or to the concerned public sector agency to take disciplinary action against the corrupt officials.

Because of this requirement, both the Queensland CMC and the NSW ICAC (because of their relatively longer experience than that of the WA CCC) came to witness some uneasy situations with the DPP on some occasions. These difficulties revolved around the two main issues with the DPP: the delays in acting on their cases and the lack of admissible evidence for successful prosecutions.
The Parliamentary Committees of both the CMC and ICAC have expressed their concerns over the delays in initiating criminal proceedings. For example, the Committee of the ICAC, after examining the Commission 2002–2003 annual report, recommended that the ICAC discuss and explore with the DPP more practical measures to deal with this matter (CICAC, 2004, pp. vii, xi).

The CMC Committee also dealt with the same issue after noticing delays with the CMC cases in the DPP. Part of the problem was that the Commission sends all its cases to the DPP to seek advice as to whether or not these need to be considered for prosecution. After examining the issue, the Committee acknowledged the ‘administrative arrangements’ discussed and approved by the CMC and the DPP to overcome this problem by calling upon the next Parliamentary Committee to keep supervising the effectiveness of these arrangements (PCMC, 2006, pp. 54–56).

Another side of the relationship between the anti-corruption commissions and the DPP is the reluctance of the DPP to initiate criminal prosecutions on the Commission’s cases because of the lack of admissible evidence that would yield a successful prosecution. In some cases, it is difficult to satisfy the high level of the criminal court requirements for evidence, partly because of the secretive nature of corruption dealings, which makes it very hard to obtain the solid evidence admissible in criminal courts.

Going through such difficulties, the question remains why there is such a large focus on criminal proceedings, and why there is not much use made of other alternatives, specifically misconduct tribunals, to deal with official misconduct as an efficient measure for deterrence. Disciplinary actions, such as dismissals and fines or other formats of administrative sanctions, still constitute a punishment. For years, these Commissions have been reporting the number of prosecuted cases as a result of their investigations as proof of
their effectiveness and, despite the low percentage of successful prosecutions, they continue to send their cases to trial as the preferred final treatment of their investigations. However, in recent years, reporting these low rates of prosecutions has been turned against those organisations when questions of their efficiency arose, when their allocated financial resources and powers have been taken into account.

The CJC, now the CMC, reported only 35% of its cases brought to trial were successfully prosecuted. Prenzler recognised that the more serious the allegations of misconduct were, the lower the possibility that they would be successfully prosecuted because of the higher standard of proof required. Cases of minor misconduct, on the other hand, tended to result in a higher rate of success, simply because of the lesser requirements for proof. According to his argument, there has been a very modest use of misconduct tribunals despite their effectiveness when compared to criminal prosecutions (Prenzler, 2000, p. 666). Greater use of tribunals and disciplinary hearings would also be consistent with Braithwaite’s theory of a regulatory pyramid. Greater use of interventions and sanctions at the lower level of the pyramid can be more effective in controlling misconduct than a ‘big gun’ approach that relies on criminal prosecutions and criminal sanctions.

The key point here is that since misconduct is brought to light and revealed through the investigative work of these Commissions and agencies, conviction could be achieved by these agencies through using misconduct tribunals and other managerial sanctions that would probably not be dealt with under the prosecution systems.
10.3 Proactive approach themes

10.3.1 Research

The adoption of the holistic approach in recent years gave rise to the importance of research in the work of responsive anti-corruption agencies. As detailed earlier, the three study cases have come to recognise the need to incorporate research with their other functions, such as investigations, intelligence and complaints assessment. They recognise that the more knowledge, information and understanding of this phenomena they have, the better prepared they will be to combat it and prevent it from happening again.

Another important reason for research is to foster the educational aspect of these Commissions towards the public and the public sector population and to raise their awareness to create an ethical culture resistant to corruption. All three cases use different types of empirical research methodologies to better inform corruption resistance strategies. These techniques include complaints analysis, examining the literature, studying public officials’ perspectives, exploring community attitudes, examining, acknowledging and spreading successful strategies implemented by some of the public sector organisations across the public sector, and evaluating programs and using manuals for anticorruption strategies.

Notwithstanding the increased consideration for research in these agencies’ work, the fact remains that more resources — financial and human — are devoted to its reactive strategies, especially towards its investigative work. All three studied Commissions report that their investigative branch consumes the majority of their financial and human resources. Table 5.1 in Section 5.1.1.1 on the CMC’s strategies gives a clear indication of how investigating misconduct takes the majority of its staff. Table 7.3 about ICAC staff profiling is similar, as is the CCC, as identified in Section 8.4.1,
Table 8.3. Though it might be understandable that reactive work such as investigation, surveillance and intelligence might need the allocation of greater financial and human resources, there must still be a push to enhance the capacity of research and preventative resources as well, if this aspect of its function is to bring a fruitful outcome in combating public sector corruption.

For example, the CMC suggested an increase in the resource allocation to research and prevention which was still incompatible with that allocated to its reactive approach. Table 10.2 illustrates the published CMC financial and human resources assigned to its different divisions.

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* The information for this table was extracted from the Three Year Review of the Crime and Misconduct Commission Reports. After the 2004 three year review of the CMC such financial information was not reported anymore either in this kind of report nor in the CMC annual reports. The reporting of this information is done through the Annual Ministerial Portfolio Statement (MPS) to the Minister and Queensland Treasury.

**Full time equivalent

***As a result of an organisational restructure review that removed the surveillance activities from misconduct Division to Operation & Witness Protection Division.

(Source: PCJC, 2001, p. 12; PCMC, 2004, pp. 7, 8)

Neither the ICAC nor the CCC reveal detailed financial allocation figures of their various functions, but they do report on their staffing levels across their different Divisions as indicated above. For example, the ICAC annual reports have consistently shown its investigative ‘Strategic Operation
Division’ (SOD) as being allocated double the staffing numbers to those assigned to its research and prevention function. In its last annual report, the SOD staffing was 40 compared to 21 for its prevention division (ICAC, 2005/2006, p. 62). The CCC does not differ greatly. Its reports show similar patterns of staffing to those of the CMC and ICAC (see above, section 10.1.2, paragraph 5).

As the experiences of these Commissions advance, the way they conduct their anti-corruption research advances also. Corruption, as a very wide phenomenon comprising a number of diverse pictures and forms of abusing power and public office, has led those organisations to combat it holistically in terms of using both reactive and proactive strategies allocated to them. However, there seems to be an understanding that when corruption is researched, for the aim of prevention, it should be examined and targeted by specifically studying a single form of corruption, such as stealing office resources for personal use. The reason given for this single approach to research is to best prescribe prevention strategies for each separate form of corruption (Gorta, 2001, p. 14)

In 1998, a study by the ICAC in New South Wales reviewed the available literature for ‘how to best minimise work place corruption’ as a tool kit to help those concerned to combat this problem. One of the approaches suggested by the study in understanding and dealing with corruption was to benefit from the crime prevention literature and to apply it to this problem. The idea was that criminologists, in their efforts to deal with crimes, tend to lean on applying a ‘crime-specific approach’, meaning they look at an individual crime to suggest how to specifically prevent and combat it (ICAC, 1998, p. 23; Gorta, 1998, p. 84).

In mentioning this, the three cases’ the research takes into account this approach. Most of their research and preventative work has dealt with
specific forms of corruption; their systems review capacity has tended to be
directed toward specific aspects of the public sector work. Previous chapters
have contained samples of each of these Commissions’ research and
preventative efforts over the last few years. For example, section 7.4.1
demonstrated how the ICAC investigated corruption risks relating to the
private sector doing business with the NSW public sector. For the CMC,
Table 5.7 in section 5.1.10 on research provides a summary of prevention-
oriented researched corruption matters and forms of misconduct.

10.3.2 Devolution and capacity building
Part of the recent development in the work of the three Commissions was
the increased attention given to the idea of giving public sector organisations
greater responsibility for investigating misconduct within their jurisdiction
and in preserving their own integrity. For example, the CMA 2001 Section
34(b, c) explicitly stated that capacity building and devolution should be the
CMC’s main objective in performing its misconduct function. The ICAC
and the CCC have similar statutory obligations to strengthen the public
sector agencies’ capacities for handling more of their own integrity matters.

This approach, as explained earlier, was meant to enhance the confidence of
public organisations to maturely deal with their own misconduct. The
Commission retains the overall supervision into how well these
organisations executed such investigations and how adequate their
procedures were in handling such processes, together with a leading role in
developing their capacity to accomplish such tasks efficiently and
satisfactorily.

Project Resolve with the Queensland Police Service was cited earlier as an
example of a devolution and capacity-building initiative by both the CMC
and the QPS in recent years. It gave the police service more responsibility in
a supervisory role for handling complaints against its members, with
monitoring by the Commission. However, the Parliamentary Committee for Crime and Misconduct, despite its support for such an approach, warned against the possibility of the Commission’s oversight role being diluted or vanishing during this process. The Parliamentary Committee emphasised that this approach would only be effective with agencies that have the appropriate and efficient resources to administer to their own misconduct, while the CMC needs to take the lead role in handling complaints against other smaller non-equipped agencies (PCMC, 2004, pp. 25, 26).

These concerns are legitimate not only with the CMC but also with the other two Commissions; specifically when considering that their workload is always increasing across all aspects of their functions and responsibilities. To cater for this, the CMC, in 2005-2006, referred about 73.5% of its total received complaints back to be handled by the agency concerned. During 2005–2006, the CCC also referred about 63.7% of received allegations back to the home agency for investigation, in comparison with only 1.9% of those complaints being handled by its investigative units (CCC, 2006, p. 27; CMC, 2006, p. 49).

Though it might still be early to assess the successes or the failures of this approach, opposition is mounting against the idea of handing back the investigation of public sector misconduct to the relevant public organisations. In Queensland, during the 20 year anniversary of the Fitzgerald Inquiry, the CMC Chairperson told The Courier Mail newspaper that police standards were dropping and an increasing number of police officers were ‘cutting corners to secure convictions’. For example, there are increasing allegations that the police tend to threaten suspects prior to turning on police station recorded interviews. Recently, allegations have been made that a number of Criminal Investigation Bureaus (CIB) in the city and suburbs are in the practice of cooperating with certain criminal defence lawyers by purposely referring suspects to them in return for
personal gain, including ‘frequent open-tab boozy lunches’ (The Courier-Mail, 12 May 2007, p. 3; 22 May 2007, p. 20).

Another similar concern that has been expressed relates to the CMC allowing the police to handle police complaints, when it seems the police cannot be trusted to do so. According to O’Gorman, President of the Australian Civil Liberties Union, the Commission is not as effective as it should be when it comes to monitoring how the Police Service investigates complaints against its own members. He argued that the CMC’s role as an external oversight body to the police is declining as a consequence of its policy of handing back complaints against the Service to be investigated by the Service (The Courier-Mail, 22 May 2007, p. 20).

In light of such uncertainty about the ability of these public sector organisations to deal honestly and adequately with their own misconduct, there is a requirement for those external oversight agencies to conduct more independent investigations or to reinforce their monitoring capacity of these organisations’ procedures and the way they conduct such investigations.

### 10.3.3 Performance indicators

Over the years, the three study cases have used a number of performance indicators for assessing their functionality. In line with the general trend, the Commissions mainly used the various aspects of their work to present a quantitative picture of their accomplishments. The most common annually-used indicators are:

- the number of cases reported
- the number of conducted investigations
- the number of finalised matters within a certain time-frame
- the number of public or private hearings conducted
- the number of produced reports (investigative or research)
- the number of implemented recommendations arising from their investigations
- the number of prosecutions and disciplinary action in response to their investigations
- public surveys
- complainant surveys.

These quantitative figures tend to provide the justification that these bodies are functioning effectively and producing noticeable results compatible with the financial recourse allocated to them.

It seems that in recent years, not only have these Commissions moved forward by adopting a holistic approach as their means of combating public sector misconduct, but they have also realised the need for a more comprehensive framework to report on the efficiency of their performance.

The acknowledgment that the currently-used performance indicators do not reliably represent the actual effectiveness of their work resulted in a search for more indicators. For example, the ICAC, in its 2003–2004 annual report, admitted that it needed to refine its performance indicators to provide a more informative picture of its performance and overall effectiveness (ICAC, 2004, p. 55).

Consequently, the last few years have witnessed steps to develop more comprehensive and refined indicators that would incorporate the outcomes of different functions, including the investigation, prevention, research and education activities, and serve as accountability measures as well. However, the attempts to widen performance indicators have not been an easy task and have sometimes been met with scepticism (Prenzler & Lewis, 2005, p.82).
In their review of performance indicators for police oversight agencies, both Prenzler and Lewis identified that most agencies tend to rely on statistical information on complaints handling and dispositions or on the number of implemented recommendations as their main indicators. According to their review, there is a need to use more ‘sophisticated measures’ such as ‘stakeholders surveys’ that would lead to setting up standards for measuring performance, indicators for ‘deterrence, impact fairness, timelines and outcomes’. This is in addition to measuring public satisfaction with the reforms recommended by its work and applied to public sector organisations, such as that of police reform or other public sector agencies (Prenzler & Lewis, 2005, p. 82).

For example, both the Queensland Crime and Misconduct Commission and its counterpart in New South Wales, the Independent Commission Against Corruption, have been conducting surveys for years profiling their public sector, examining public perceptions, the attitudes of their public sectors and of the police service in their States. Recently, the Corruption and Crime Commission of Western Australia initiated its first public sector profiling survey with the aim of examining its results and comparing them with those reported by the CMC and the ICAC. Though the findings from Queensland and NSW reflected a healthy and positive overall perception on how the public sectors in these two States identified and managed corruption risks, there remained shortfalls such as reinforcing corruption resistance strategies and building public sector capacity to deal with allegations of corruption (CMC 2004, p. xv; ICAC, 2003, p. ix). On the other hand, the CCC in WA is still conducting its survey.

It is now believed that a more comprehensive performance measurement scheme would produce a better picture of how well the integrity systems are performing. Using multiple ‘indicators’ can highlight the various angles in the operation of such systems, despite the fact that neither a single nor a
group of measures might describe the actual effect of these agencies in preventing corruption or how efficient they are in arbitrating or judging any sort of illegalities or accusations.

The point is, that because ‘indicators’ represent the operating characteristics of an agency, they need to be a genuine measure to reveal the accomplishments rather than the functions (Prenzler & Lewis, 2005, p.78).

Uhr, in his article ‘How do we know if it’s working?’ supported the earlier notion. He argued that because Australia already has ‘evidence-based approaches’ to evaluate the end results of the current integrity systems, the efforts should be focused on extending the method to include a wider examination framework that would produce ‘a holistic picture of whether integrity goals are being achieved’ (Uhr, 2005, p.74).

The Commissions’ recent developments and the widening of their performance indicators tend to represent a step toward comprehensively-measuring not only their achievements but also their effectiveness. The next step in this regard might be to examine how these developments measure up to those currently in use globally. This task is beyond the scope of this current research.

10.4 Improving the model or modifying the current practice

Chapter Three in this thesis presented a model for a framework for setting up an anti-corruption agency. However, before going further, it is necessary to state that it is not a new invention, rather, it is a reflection of what has already been used generally around the globe and particularly in Australia. The addition being made here is the important inclusion of a formal type of ‘external’ coordinating mechanism to facilitate the cooperation and coordination between the different organisations involved in dealing with public sector corruption.
After studying these three cases, it was noted that there was an absence of any formal external coordination to guard against the duplication of efforts, confusion or chaos within these States’ integrity systems. Coordination has been identified globally as being ‘one’ of the vital elements in the success of any anti-corruption strategy. However, from the Australian perspective, such a mechanism is still lacking.

The CCC had the initiative to establish collaborations with the other main State agencies responsible for preserving the integrity of the Western Australia public sector. The Integrity Coordinating Group (ICG) in 2004 was an appropriate experience that needed to be formalised and widened to include other public sector agencies that needed to improve their abilities and capabilities to deal with misconduct. Both Queensland and New South Wales need to follow suit.

Another major observation was that both investigation and intelligence were used in many situations reactively and proactively, as in the case in the then-CJC during ‘Project Shield’ in the late 1980s. In the proposed model for an anti-corruption agency, both of these strategies form part of the reactive approach to misconduct. However, in light of this research, both investigation and intelligence need to be centrally positioned in that model. The model now consists of central strategies – intelligence, coordination and investigations – that can operate across both its reactive and proactive approaches. Table 10.3 presents the modified model. In particular, it enlarges on the proactive side. The rationales for the different elements and strategies have been developed in sections 10.3.1 to 10.3.3 above. Some further aspects are developed below.

One undeveloped or underused method is integrity testing. This has been acknowledged to be a promising proactive strategy for combating corruption. However, the benefit of this mechanism has been limited so far
and its usage has been confined to police corruption. The reluctance to apply this strategy is understandably based around its legality, appropriateness and cost effectiveness. However, the successful legal application of integrity testing against police suggests it should be trialled in cases where there are strong suspicions, but inadequate proof, against other public officials.

**Table 10.3: The modified proposed model for an oversight agency**

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<th>Reactive</th>
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<td>• Integrity Capacity Building</td>
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Neither the CMC nor the ICAC, like most of the other Australian States and Territories, have such a strategy within their capacity when dealing with public sector corruption. The exception is the CCC. I believe that, with careful consideration, clear arrangements and legal safeguards against any misuse, targeted integrity testing could be an effective proactive measure for tackling public sector corruption.

One of the developing strategies that is not used by the three tested Commissions in the fight against public sector misconduct is that of Early Warning Systems (EWS). During this research, no evidence was found that the three Commissions were using this strategy. As explained in previous chapters, this mechanism is a ‘data-based management tool’ to identify suspected misconduct, and proactively intervenes through administrative means and measures to assist the officials in modifying behaviours that lead to disproportionate numbers of adverse indicators, such as complaints or poor supervisor reports.

After examining what these three Commissions have been accomplishing with their public sector organisations, it seems that all of them have the necessary infrastructures to establish or create this system to preserve the integrity of the public sector in their States. These include the development of codes of conduct, profiling complaints, performance indicators, the increasing adaptation of devolution and giving the public sector agencies greater responsibility for investigating their own misconduct. At the same time, there appears to be a need to apply a more rigorous overall monitoring on how well they carry out their investigations. This includes the use of more comprehensive performance indicators, as outlined above.

There is also a strong case for the application of a more effective and wider mix of regulatory strategies, including those at the middle and lower ends of the enforcement pyramid, such as misconduct tribunals and disciplinary
hearings, integrity testing, complaints profiling and early intervention systems. These should be buttressed by more far reaching research into the causes of misconduct and into effective evidence-based strategies for reducing misconduct. If anti-corruption agencies improve their research and monitoring capacities, and engage in more proactive anti-corruption measures where necessary, then there may be more scope for greater devolution of complaints investigation and resolution to the agencies themselves. Devolution, however, requires ‘capacity building’, including adequate training in in-house anti-corruption techniques. It also requires close monitoring to ensure there are no cover ups or favouritism towards colleagues.

10.5 Conclusion
This chapter provided an overview of the main themes observed during this study. These themes are limited to this study; another research paper on the same Commissions might find more or different themes. Each of the nine identified themes could itself be the focus of academic research. However, because the case studies identified in the previous chapters of this thesis use, with variations, most of the reactive and proactive strategies included in the proposed model, the next wave of research might need to focus on exploring the full use of integrity testing, complaints profiling and the development of early warning systems for public sector corruption other than police misconduct. Nonetheless, it appears that these are strategies that should be incorporated into a more advanced model of public sector corruption prevention, along with the greater use of research, more use of misconduct tribunals and ‘administrative’ adjudications of complaints, enhanced capacity building for devolution, and greater use of different performance indicators to improve the accountability of commissions.
Chapter Eleven

Conclusion

When I started my PhD research a few years ago, my main objective was to explore the Australian experience in combating public sector corruption. Australia, for years falling within the top globally highly-ranked countries with a robust public sector integrity system, attracted me to come and examine this phenomenon. I came to learn that such accomplishment was no easy task.

Years of scandals, corruption, public outrage and investigations all resulted in a strong responsive commitment toward improving and preserving the integrity of the public office. The drive to secure such a noble goal was itself a hard road with obstacles ranging from deciding the appropriate structure and legislative framework of an anti-corruption agency, to providing it with the required sufficient resources, providing independence from its political masters, and its use on some occasions as what was described by Lewis (1997, p. 1) as a ‘political football’ for settling some political rivalries among its masters.

The current anti-corruption systems in the three tested States are the outcome of the widening of approaches to include both reactive and proactive mechanisms and by starting to deal with corruption holistically. One of most noticeable positive features in these systems is their comprehensive coverage of the whole of government — or the whole public sector, including all key nodal points of governance and ‘joined up’ elements. In addition, the three Commissions under scrutiny appear to be engaged in a continual search for the right ‘regulatory mix’ of tools and strategies to make them function more effectively. This dynamic approach is essential to keep up with the complex challenges of crime and corruption. Updating their legislation to overcome the practical problems, amending
other legislation to accommodate the requirements of these Commissions’ work and strengthening their powers are all part of this dynamic method of coping with corruption.

Corruption has long been known as a reoccurring phenomenon that starts quietly and that in some cases grows to be endemic. It is usually exposed as the result of an outcry or a scandal to be dealt with through an investigation. However, the issue to be kept in mind is how to keep the momentum rolling after the Commission or the Inquiry investigations have finished. In many cases the first few years after such an examination witness an increasing attention to reforms, but as the time passes, such enthusiasm fades away, giving rebirth to corruption. The three-year parliamentary reviews on the functions of the anti-corruption commission, as with the case of the CMC and this year the CCC Act 2003 review, are one way of guarding against this loss of enthusiasm.

The identified themes in the previous chapter highlighted not only the commonalities among the three tested Commissions, but also discussed their joint future roadmaps and the efforts to deal with some of these issues. However, the fact remains that the drive to integrate both the reactive and proactive approaches must never be relaxed but rather reinforced to better tackle corruption.

One of the major issues these Commissions need to examine is how to make better use of misconduct tribunals and disciplinary hearings, specifically in light of the low rate of successful criminal prosecutions. The high standards for criminal proof have become an obstacle in many cases; it is not fully clear why these alternatives have not been used to determine such cases. Punishment for corrupt actions should not be confined to sentencing the corrupt to jail; it could be widened to include other formats
of administrative and financial penalties, especially when the legal requirements are hard to satisfy.

One might relate the reason why misconduct tribunals are ignored as a tool to deal with public official misconduct to the previous experience of misusing tribunals in some jurisdictions. For example, in Queensland, Fitzgerald recognised the failure of the Police Complaints Tribunal in combating police misconduct in that State. The suspicion that these types of tribunals might be damaged by favouritism and the police looking after themselves and their colleagues cast doubts on the further use of tribunals to fight misconduct (Prenzler, 2000, p. 666).

The proposed model for an anti-corruption agency was set up in accordance with most commonly used structures of both reactive and proactive strategies, across a hierarchy or pyramid of enforcement strategies, with coordination playing an important central role between these various strategies as a method of linking these activities together to ensure that they function coherently. However, after completing this research, I came to realise that there is a further strategy that also needs to be recognised as a central element for the function of both reactive and proactive approaches in combating corruption — intelligence. Therefore, it should be placed centrally in the model.

Intelligence, as the three tested Commissions’ experiences have demonstrated, has been used on many occasions both reactively and proactively. This type of dual usage will continue in the years to come, as long as there is a firm commitment to the holistic approach to dealing with corruption. Therefore, the intelligence unit ought to be located, neither entirely in association with reactive strategies nor completely with the proactive mechanisms, but as a central element of any effective design for an anti-corruption agency.
The model also included a number of other proactive strategies that should be developed in the commissions, namely integrity testing, complaints profiling and early warning systems. These mechanisms have been increasingly used to dealing with police misconduct but not for other forms of public sector corruption. Questions and debates about the usefulness of integrity testing still remain the main obstacle in fully using this strategy. Even in jurisdictions where it had been implemented, it is used only partially in targeted testing but not at all in the random version (as discussed previously – see pp.73-76). Some scholars argue that, in Australia, the near future will witness an increasing use of targeted integrity testing, which will eventually lead to the full usage of this strategy and will include random testing (see Homel, 2002). I tend to agree with this prediction in light of the growing sophistication of misconduct transactions, specifically if legislative guards and controls are put in place to ensure against any misuse.

Another undeveloped technique at the lower end of the enforcement pyramid is early warning systems. The development of this strategy for public sector corruption other than in the police might need to be concurrent with the current drive of devolution and giving public sector organisations a greater responsibility for dealing with their own misconduct. The idea is that because the commissions are being given a greater role in combating corruption, one of the requirements should be for those bodies to develop procedures whereby they would be able to identify problematic behaviours and react to such deficiencies proactively before more corrupt conduct develops. With the rapid growth of information technology, developing such a system should not be difficult, especially if it were to be developed with input from both the anti-corruption commissions and those sections involved in dealing with misconduct across the public sector.

The dynamic approaches being developed require these Commissions to upgrade their resources and functionality to include developing their
performance indicators. The old quantitative-based performance indicators are not providing a complete picture of their effectiveness in combating corruption; they are merely a means of demonstrating their activities. The recent pursuit of bringing in more indicators, such as surveys of stakeholders and the complainants feedback on how well their complaints were handled by those agencies, tends to provide a closer view of their efficiency. However, developing this aspect for their functions will not only enhance their credibility but might also be used to justify the high financial cost of combating corruption, including the increase in funds being allocated to them.

Another factor that would help to strengthen the credibility of these commissions is that all are designed to be accountable to the public through their parliamentary committees and their parliamentary inspectors. The recent experience of the three examined commissions revealed that they understood the importance of maintaining good working relationships with their parliamentary oversight committees and inspectors. On the one hand, this is for the purpose of accountability and, on other hand, for gaining parliamentary support for their Commissions’ functions, suggestions for improvement and recommendations.

One of the major tasks ahead for these commissions is building the capacity in the public sector to enable it to detect corruption and deal with it effectively. Without progressing in this aspect of its function — in all commissions — it will be hard for them to cope with matters related to misconduct in the growing public sectors. Initiatives such as systems reviews, tool-books for handling misconduct allegations, meetings of liaison officers and regional visits, will all assist in accomplishing this goal. However, the point remains that these agencies must improve public confidence in public sector integrity, and improve the quality of their investigations by carrying out more investigation themselves rather than
referring matters to public sector departments and agencies for investigation.

It has been argued during this research that, through the introduction of a responsive holistic approach to corruption, there has been a gradual increase in the attention being given to research. In recent years, these Commissions have worked to enhance their research capabilities by employing more researchers, integrating the research more thoroughly with their investigative work and increasing their financial allocation and resources toward research. However, there remains a noticeable variation in the distribution of their resources between investigation and research. Investigation has been and still is the more dominant of these functions. The challenge would be for those commissions to strike the right balance in the future between investigation and research if a comprehensive approach to effectively tackle corruption were to succeed.
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