



**CORRUPTION
AND CRIME
COMMISSION**

Your Ref: -
Our Ref: 01255/2016

1 August 2016

Hon. Nick Goiran, MLC
Chairman
Joint Standing Committee
on the Corruption and Crime Commission
Level 1, 11 Harvest Terrace
WEST PERTH WA 6005

Dear Mr Goiran

**INQUIRY INTO THE CURRENT APPOINTMENT PROCESS FOR
COMMISSIONERS AND PARLIAMENTARY INSPECTORS OF THE CCC**

Thank you for invitation to make submissions regarding the inquiry into the efficiency and timeliness of the current appointment process for the Commissioners and Parliamentary Inspectors of the CCC.

Please find enclosed my submission.

Yours sincerely

John McKechnie, QC
COMMISSIONER

Encl. Submissions in respect of the JSCCCC Inquiry into the Efficiency and Timeliness of the Current Appointment Process for Commissioners and Parliamentary Inspectors of the CCC.



CORRUPTION
AND CRIME
COMMISSION

CORRUPTION AND CRIME COMMISSION OF WESTERN AUSTRALIA

*Submission to the Joint Standing Committee on
the Corruption and Crime Commission on an
inquiry into the efficiency and timeliness of the
current appointment process for Commissioners
and Parliamentary Inspectors of the CCC*

1 August 2016

Background

- [1] On 23 May 2016 the Commission received a written invitation from the Joint Standing Committee ('JSCCCC') to make a submission in relation to an inquiry into the efficiency and timeliness of the current appointment process for Commissioners and Parliamentary Inspectors of the CCC.
- [2] The Inquiry's terms of reference include the following:
 - a) The current operation of sections 9, 14, 28 and 193 of the *Corruption, Crime and Misconduct Act 2003* ('CCM Act');
 - b) The role played by each of the agencies in discharging their responsibilities under sections 9, 14, 28 and 193 of the CCM Act; and
 - c) Any alternate models used for similar appointments in other jurisdictions.

WA model for Commissioner appointments under the CCM Act

- [3] The current WA model for appointment of the CCC Commissioner ('Commissioner') is set out in section 9 of the CCM Act.
- [4] In brief, the current appointment process for the Commissioner is as follows:
 - a) a nominating committee must be formed consisting of the Chief Justice, the Chief Judge of the District Court and a person appointed by the Governor to represent the interests of the community;¹
 - b) the nominating committee must advertise the role nationally and call for expressions of interest;²
 - c) the nominating committee must submit a list of three names of eligible persons to the Premier;³
 - d) the Premier must consult the JSCCCC to ensure that the appointee recommended also:⁴
 - i. has the support of a majority of the JSCCCC;⁵ and
 - ii. has 'bipartisan support';⁶

¹ Required by section 3 CCM Act definition of '*nominating committee*'.

² Section 9(3b) CCM Act.

³ Section 9(3a)(a) CCM Act.

⁴ Section 9(4)(a) CCM Act.

⁵ Section 9(3a)(b) CCM Act.

⁶ Section 9(3a)(b) CCM Act. '*Bi partisan support*' is defined in section 3 and means the support of members of the Standing Committee who are members of both of the parties represented by the Premier and the Leader of the Opposition.

- e) the Premier recommends an appointee with the support of the JSCCCC to the Governor;⁷ and
 - f) the Commissioner is appointed by the Governor on the recommendation of the Premier.⁸
- [5] The term of appointment for the Commissioner is an initial period of 5 years on a full time basis with eligibility to be reappointed once.⁹ The Commission supports the terms and conditions of service as currently provided for in Schedule 2 clause 1 and 2 of the CCM Act.
- [6] Recent amendments to the remuneration or salary and judicial pension schemes in 2014¹⁰ continue to be supported by the Commission as a means to ensure that it attracts the most qualified prospective appointees with experience in judicial office who may consider appointment as an attractive, beneficial and valuable opportunity.
- [7] The Governor may temporarily suspend the Commissioner from office at any time, if the grounds under section 12(2) CCM Act are satisfied. The statement of grounds for suspension must be laid before each House of Parliament within 7 days and within 30 days after that the Commissioner may only be removed from office on addresses from both Houses of Parliament.¹¹
- [8] The CCM Act does not currently prescribe any timelines at any stage of the appointment of the Commissioner.¹²

Role played by each agency at each stage of the process

- [9] The appointment of the Commissioner is intended to be a-political and for this reason the requirements under the CCM Act mandate the involvement of the following:
- a) the State's most senior judicial officer bearers (Chief Justice and Chief Judge of the District Court) as nominating committee members;

⁷ Section 9(3) CCM Act.

⁸ Section 9(3) CCM Act. Since the Australia Acts were passed in 1986 by the Commonwealth Parliament and the Parliament of the United Kingdom at the request of all State Parliaments, the Governor acts on the advice of the Premier, Ministers and Executive Council. The Governor's powers and functions are set out in the *Letters Patent*, under which the Governor is appointed, and the *Constitution Act 1889*: <http://www.govhouse.wa.gov.au/governors-role-link/the-governor.html>.

⁹ Section 11 and Schedule 2 CCM Act.

¹⁰ Section 32 of the *Corruption and Crime Commission Amendment (Misconduct) Act 2014* ensures that a Commissioner who is entitled to a judicial pension does not forfeit that entitlement on appointment to the office of Commissioner.

¹¹ Section 12(1)-(3) set out the procedures and criteria for suspension and removal from office.

¹² There is a provision regarding the expiry of resolutions concerning eligible Acting Commissioners after 12 months at section 14(2a)(c).

- b) an independent member of the public (recommended by the Governor) as a nominating committee member;
 - c) both JSCCCC support and bipartisan support; and
 - d) appointment by the Governor (on the recommendation of the Premier).
- [10] In practice, the CCM Act requirements for assembling a nominating committee and consultation with the JSCCCC and Premier have proven most recently to prolong the appointment of a Commissioner at each stage of the process.
- [11] The complexity of the WA Model espoused in the CCM Act is inefficient, cumbersome and may be costly in terms of public expenditure and public resources.
- [12] The current requirement to have a member of the public and judicial officers assist in the selection process is not replicated in any jurisdiction in Australia. The inclusion of persons not associated with any political party in the recruitment process may avoid perceptions of political bias in the appointment of the Commissioner although this particular process is not adopted by any other State.
- [13] In Victoria, it is the Attorney-General who submits a proposed appointment to the IBAC Committee.¹³ Similarly in Queensland,¹⁴ and in South Australia, it is the Attorney-General who makes a referral to a parliamentary committee.¹⁵ In New South Wales¹⁶ and in Tasmania,¹⁷ it is the relevant Minister who makes a recommendation in consultation with their respective bipartisan parliamentary committees.
- [14] In each of the above states, the Minister cannot make a recommendation for appointment by the Governor without the nominee being approved by a bipartisan parliamentary Committee.

¹³Section 21 *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('IBAC Act'). The relevant Minister is the Attorney-General, Hon. Martin Pakula MP. The IBAC Committee is established by the *Parliamentary Committees Act 2003* (Vic) and is comprised of 3 Australian Labor Party members, 2 Liberal Party members, 1 The Nationals party member and 1 Victorian Greens party member.

¹⁴Section 228(a)(i) *Crime and Corruption Act 2001* (Qld) ('CC Act'). The relevant Minister is the Attorney-General, Hon. Yvette D'Ath (Redcliffe). The Parliamentary Crime and Corruption Committee is comprised of 3 Liberal National Party and 4 Australian Labor Party members,

¹⁵Section 5 *Independent Commissioner Against Corruption Act 2012* (SA) ('ICAC Act (SA)'). The Parliamentary Crime and Public Integrity Policy Committee is a bipartisan standing committee comprised of 3 Australian Labor Party members, 1 Family First party member and 2 Liberal Party members.

¹⁶Section 64A *Independent Commission Against Corruption Act 1988* (NSW) ('ICAC Act (NSW)'). The relevant Minister is the Premier of New South Wales, Hon. Mike Baird MP. The Committee on the Independent Commission Against Corruption is currently comprised of 3 Liberal Party members, 3 National Party members, 1 Christian Democratic Party member and 4 Australian Labor Party member.

¹⁷Section 15(2)-(3) *Integrity Commission Act 2009* (Tas) ('IC Act').

[15] The Commission considers that the following measures are sufficient to alleviate perceptions of political bias:

- a) retention of the requirements for consultation *and* majority support of the prospective appointee by the JSCCCC; and
- b) retention of appointment by the Governor.

Key differences between WA and interstate appointment models

[16] There are a number of alternate models for the appointment of Commissioner and Assistant or Acting Commissioner in integrity agencies across Australia. A full comparative table is annexed at *Appendix 1*.

New South Wales

[17] In NSW, the relevant Minister (Premier) must refer a proposed nominee to the Committee on the Independent Commission Against Corruption for consideration. This Committee has 14 days (or up to a maximum of 44 days¹⁸) to consider whether to veto the proposal or not.¹⁹ The Governor appoints the Commissioner.

[18] In contrast to the appointment of a Commissioner, the Governor appoints one or more 'Assistant Commissioners' with the concurrence of the Commissioner.²⁰ The Assistant Commissioner has all the functions of the Commissioner and shall be taken to be the Commissioner.²¹

Victoria

[19] In Victoria, the relevant Minister (Attorney-General) must submit a proposed nominee to the IBAC Committee, who then have a 30 day statutory timeframe within which to veto the proposal or otherwise. Once this has been supported by the committee, the Minister must make a recommendation to the Governor²² and the Governor makes the appointment.

[20] Victoria has a model which allows for the appointment of an Acting Commissioner²³ as well as appointment of a Deputy Commissioner²⁴ with a tenure of 5 years with reappointment available.

¹⁸ Section 64A ICAC Act (NSW): The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.

¹⁹ Section 64A ICAC Act (NSW).

²⁰ Section 103 and Schedule 1, clause 2(1) ICAC Act (NSW).

²¹ Section 103 and Schedule 1, clause 2 ICAC Act (NSW).

²² Section 21 IBAC Act.

²³ Section 30 IBAC Act.

²⁴ Section 23 and 24 IBAC Act.

- [21] An Acting Commissioner appointment is limited to performing functions in the absence of the Commissioner or Deputy Commissioner and to a term of 6 months.²⁵ A person does not necessarily need to meet the eligibility requirements for Commissioner (under section 20 *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ('IBAC Act')) but who has experience in a similar role in a body with investigative functions may be appointed. The Governor in Council²⁶ appoints an Acting Commissioner on recommendation of the Minister, to act during any vacancy, absence or incapacity of the Commissioner.²⁷
- [22] A Deputy Commissioner is appointed by the Governor in Council on the nomination of the Minister and must have the concurrence of the Commissioner. More than one person may be appointed to the role and the person, if previously a judicial officer, is not required to retire but must 'cease' to hold the judicial office.²⁸

South Australia

- [23] In South Australia, the Attorney-General must ensure that the Commissioner position is advertised in each State and Territory. The Attorney-General refers the proposed appointee to the Statutory Officers Committee who will either approve the appointment within a 7 day period (or as extended by the Attorney-General) or provide written notice to the AG that it does not approve the appointment.²⁹ The Governor makes the appointment.
- [24] The South Australian model provides for the appointment of a Deputy Commissioner by the Governor. The person is responsible for assisting the Commissioner as directed by the Commissioner.³⁰ The Deputy Commissioner may act as the Commissioner during any period for which -
- a) no person is for the time being appointed as the Commissioner; or
 - b) the Commissioner is absent from, or unable to discharge, official duties.

²⁵ Section 30(2)-(4) IBAC Act or 12 months if they fit prescribed criteria in section 30(4)(c) IBAC Act.

²⁶ Governor in Council is a body that comprises the Governor as Chair and members of the Executive Council. Broadly, the latter comprises the Premier and his or her Ministers who have been sworn by the Governor as Executive councillors, usually at the same time as they are sworn as Ministers. In Victoria, this consists of the Premier and his or her Ministers. At meetings of the Governor in Council the Governor, on the recommendation of a Minister and with the advice of the Executive Council, deals with a wide range of matters that Parliament has specified be handled in that way rather than by a Minister acting alone, <http://governor.vic.gov.au/victorias-governor/government-in-australia>

²⁷ Section 30(1) IBAC Act.

²⁸ Section 23 IBAC Act.

²⁹ Section 5 ICAC Act (SA).

³⁰ Section 9(1) ICAC Act (SA).

- [25] In addition, when not in an 'acting' role, the Deputy Commissioner performs functions or exercises powers at the direction of the Commissioner.³¹

Queensland

- [26] In Queensland the relevant Minister (Attorney-General) must advertise nationally for applications from suitably qualified persons to be considered for selection as the Chairperson (Commissioner).³² Advertisement is not required for a reappointment.³³ The Minister must consult with the Parliamentary Crime and Corruption Committee as the Minister may only nominate an appointee to the Governor with bipartisan support of the parliamentary committee.³⁴ In practice, this means that the selection process for the appointment is undertaken by the parliamentary committee, who then proffer a recommendation of the preferred candidate to the Minister. The Governor makes the appointment.
- [27] For the appointment of the Deputy Chairperson and Chief Executive Officer, the process is similar³⁵ except that it is the Minister who undertakes the selection process and the nominee is interviewed by the parliamentary committee to obtain bipartisan support. The Chairperson is consulted in the appointment of his / her deputy pursuant to section 228(a)(ii) *Crime and Corruption Act 2001* (Qld) ('CC Act').
- [28] In addition to the appointment of a Deputy Chairperson, Queensland have introduced a model which allows for the transfer of functions and powers under the Act to Senior Executive Officers, who are appointed from within the Commission and not by the Governor. The Chairperson may delegate the chairperson's powers under the CC Act or another Act (other than under section 674 *Police Powers and Responsibilities Act 2000*) to an appropriately qualified commission officer.³⁶

Other jurisdictions in Australia

- [29] As yet, there is no integrity commission established in the Northern Territory although in 2015 the Legislative Assembly resolved to establish an Anti-Corruption Integrity and Misconduct Commission.³⁷

³¹ Section 9(6) ICAC Act (SA).

³² The Chairperson is defined as the Commissioner under the CC Act.

³³ Section 227(3) CC Act.

³⁴ Section 227-228 CC Act.

³⁵ The process is set out in sections 227 - 229 CC Act.

³⁶ Section 270 CCA (Qld).

³⁷ On 26 August 2015, the Legislative Assembly of the Northern Territory resolved to establish an Anti-Corruption Integrity and Misconduct Commission. The Commissioner Martin AO QC tabled a final report on 27 June 2016 which can be accessed via <https://acimcinquiry.nt.gov.au/?a=292252>.

- [30] As the Tasmanian Integrity Commission performs a substantially different function, Tasmanian provisions are not analysed for the purpose of this submission.
- [31] Unique to the process of appointment of Commissioner in WA are the following characteristics embedded in the CCM Act:
- a) the assembling of a nominating committee comprised of current members of the judiciary to consider prospective appointees;
 - b) a Premier with a role in the process of appointment;³⁸ and
 - c) a requirement that there be a list of three prospective appointees.
- [32] Missing from the WA model of appointment are the following desirable characteristics for appointment of a Commissioner and Deputy Commissioner:
- a) Time limits for the nomination and recommendation stages;
 - b) Nomination of one person;
 - c) A person may be proposed for appointment on more than one occasion;³⁹ and
 - d) Appointment of a Deputy Commissioner, who may act both as Commissioner during any period of incapacity or vacancy and who may also perform functions under the CCM Act as directed by the Commissioner.⁴⁰

Efforts towards statutory reform

The Archer Review

- [33] The Archer Review of the *Corruption and Crime Commission Act 2003*⁴¹ made a number of relevant recommendations which are yet to be addressed by amendments to the Act.
- a) Recommendation 6 - Assistant Commissioners
- That the Act be amended to:*
- *allow for the appointment of deputy commissioners to whom specific functions may be delegated by the Commissioner, and*

³⁸ Although the Premier is the 'responsible Minister' or relevant Minister under the NSW ICAC Act, WA is the only State that nominates the Premier himself / herself in the CCM Act, rather than a reference to the relevant or responsible Minister.

³⁹ This replicates the position in section 5A(2) ICAC Act 1988 (NSW).

⁴⁰ This is the position in South Australia pursuant to section 9(1) Independent Commissioner Against Corruption Act 2012.

⁴¹ Note the Act has been retitled with effect from 1 July 2016 to *Corruption, Crime and Misconduct Act 2003*.

who are able to act as the Commissioner in the Commissioner's absence; and

- *allow for the appointment of assistant commissioners to whom specific functions may be delegated by the Commissioner as the need arises, and who may be appointed on a full-time or part-time basis.*⁴²

b) Recommendation 14 - *the definition of 'bipartisan support' be clarified.*⁴³

c) Recommendation 15 - Time limit for review by the JSCCCC

*That the Act be amended to require the JSCCCC to respond to a nomination for appointment within 14 days, or within a further 30 days if it notifies the Minister within the first 14 day period that it requires more time.*⁴⁴

d) Recommendation 16 - Discretion in number of candidates

*That section 9(3a) of the Act be amended to require the nominating committee to provide a list of up to three persons eligible for appointment.*⁴⁵

e) Recommendation 20 - Reappointment of acting and assistant commissioners

*That the Act be amended to permit the reappointment of acting commissioners and assistant commissioners without the need to advertise for expressions of interest.*⁴⁶

Parliamentary reports and support

[34] The introduction of a Deputy Commissioner and/or Assistant Commissioners (Recommendation 6 above) was supported at the time by the Commission, the Parliamentary Inspector and the JSCCCC, and restated in two subsequent parliamentary reports.⁴⁷

[35] Each of the other recommendations outlined above (Recommendations 14, 15, 16 and 20 above) were supported by the JSCCCC and by the CCC and subsequently included in the 2011 JSCCCC report 'Report 21

⁴² *Review of the Corruption and Crime Commission Act 2003*, Gail Archer SC (February 2008), page 57 ('Archer Review Report').

⁴³ Page 70, Archer Review Report.

⁴⁴ Page 70, Archer Review Report.

⁴⁵ Page 72, Archer Review Report.

⁴⁶ Page 79, Archer Review Report.

⁴⁷ *Report 13 Analysis of recommended reforms to the Corruption and Crime Commission Act 2003 (2011) and Report 21 Parliamentary Inspector's Report Concerning Telecommunication Interceptions and Legal Professional Privilege (2011).*

Parliamentary Inspector's Report Concerning Telecommunication Interceptions and Legal Professional Privilege'. The removal of the nominating committee was also supported by the Chief Justice.

- [36] Subsequent proposed legislative amendment by the *Corruption and Crime Commission Amendment Bill 2012* did include provision for an Assistant Commissioner and removal of the role of nominating committee but lapsed at prorogation of Parliament in 2013.
- [37] The most recent JSCCCC report *Ensuring the timely appointment of a new Corruption and Crime Commissioner (2014)* reignited the recommendations for appointment of a Deputy Commissioner and removal of the role of nominating committee with the result that the Attorney General's office agreed to give these consideration.⁴⁸

Recommendations

- [38] The Commission's recommendations for appointments to the office of the Commissioner and proposal for Deputy Commissioner follow.

Acting, Assistant or Deputy Commissioner?

- [39] The Commission recommends the introduction of the office of Deputy Commissioner in lieu of the office of Acting Commissioner to provide support and assistance to the Commissioner as required in the exercise of functions and powers under the CCM Act as well as to provide immediate assistance during any vacancy or incapacity.
- [40] A Deputy Commissioner will provide a mechanism for succession planning when the tenure of a Commissioner ceases as well as maintaining a dual role of acting as and when required.
- [41] The Commission recommends a provision be inserted in the CCM Act that, before making a recommendation of appointment of a Deputy Commissioner to the Governor, the Minister must obtain the concurrence of the Commissioner. This aligns with provisions in other States⁴⁹ and recognises the working relationship that will exist between the Deputy and the Commissioner in the performance of functions concurrently under the CCM Act.
- [42] The Commission also recommends amendment to provide for provisions similar to those at section 9(6) *Independent Commissioner Against Corruption Act 2012* (SA) ('ICAC Act (SA)'), which states that the Deputy Commissioner may -

(a) *act as the Commissioner during any period for which—*

⁴⁸Government response to JSCCCCCC report 15, dated 14 November 2014: [http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/CF778B277093246548257D33001C098B/\\$file/17722090.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/CF778B277093246548257D33001C098B/$file/17722090.pdf)

⁴⁹As provided for in section 23(3) IBAC Act and section 103 and Schedule 1, clause 2(1) ICAC Act (NSW).

- (i) no person is for the time being appointed as the Commissioner; or*
- (ii) the Commissioner is absent from, or unable to discharge, official duties; and*

(b) when not so acting, perform functions or exercise powers at the direction of the Commissioner.

- [43] Acting Commissioner arrangements at section 14 CCM Act are limited to appointment by the Governor when the Commissioner is unavailable.⁵⁰ The provisions relating to appointment of an Acting Commissioner do not extend to providing support or assistance to the Commissioner when operational needs may require it.
- [44] Further, an Acting Commissioner cannot act concurrently with the Commissioner unless they are appointed under terms in section 14(1)(c) CCM Act, that is, when the Commissioner has declared an inability to act pursuant to section 13.⁵¹
- [45] Two significant limitations are the requirement that, under section 14(2a), each prospective Acting Commissioner must undergo the same recruitment and selection process as the Commissioner, and any bipartisan support (from the JSCCCC) for a person lapses on the expiration of 12 months from the date of the resolution.⁵² Thus, if a person is not already appointed during the term of a Commissioner as an Acting Commissioner, or a 'Commissioner in waiting', there is a real prospect that if the Commissioner is unable to act for any reason the office will be vacant for a lengthy period whilst the onerous requirements for appointment under the CCM Act are met.
- [46] Section 14(2a) and (b) CCM Act make provision for the appointment of multiple Acting Commissioners on a prospective basis. In effect this creates a 'pool' of eligible Acting Commissioners, who may be appointed by the Governor as and when required to fill a vacancy or absence or during a period of illness or incapacity of the Commissioner.⁵³ Such a mechanism could also be used for Deputy Commissioners.
- [47] The term of appointment of an Acting Commissioner is currently at the discretion of the Governor.⁵⁴ The Commission recommends that the term of a Deputy Commissioner is equivalent to the Commissioner.

⁵⁰Section 14(1) provides for appointment only when there is a 'vacancy' (as defined in Schedule 2, clause 7) in the office, during a period of absence or when the Commissioner is unable to act. Further the Governor may limit the functions and powers of the Acting Commissioner under sections 14(2)(a) and (b) and sections 14(3) and (4) CCM Act.

⁵¹Section 13 defines the circumstances where the Commissioner is unable to act, and includes a conflict of interest or where the Commissioner is having to perform other functions under the CCM Act.

⁵²Section 14(2a)(c) CCM Act.

⁵³Sections 14(1)(a) - (c) and Section 13 CCM Act - declaration of inability to act.

⁵⁴Section 14(3) CCM Act.

Eligibility

- [48] The Commission supports the existing requirements for legal qualifications and eligibility of prospective appointees and considers the same be applied to both Commissioner and Deputy Commissioner roles.
- [49] As currently provided for in sections 10(1) and (2) CCM Act persons who qualify for appointment as a judge of the Supreme Court of Western Australia, or another State or Territory, the High Court of Australia or the Federal Court of Australia should be eligible for appointment.
- [50] Section 8 *Supreme Court Act 1935* states that 'a person is eligible for appointment (to a Judge of the Supreme Court) if that person is a (Australian) lawyer and has had not less than 8 years' legal experience'. Section 10(2) *District Court of Western Australia Act 1969* provides that the person must be an 'Australian lawyer' with not less than 8 years' legal experience.

Reduction of list of three to one nominee

- [51] The Commission recommends that the CCM Act be amended to remove the requirement for a list of three eligible persons to be considered by the JSCCCC and recommends that the Premier undertake the process of vetting and shortlisting prospective applicants to ascertain the name of one suitable nominee.

Shortlisting process and removal of nominating committee

- [52] The Commission recommends that the Premier hold primary responsibility for the shortlisting of prospective appointees. If the requirement to assemble a nominating committee is removed this would create a significantly more streamlined and efficient process to ensure a timely appointment.
- [53] The Premier already holds the statutory responsibility for coordinating the process of nomination and recommendation for appointment under the current provisions.

JSCCCC power of veto over proposed nominee

- [54] The Commission recommends that the JSCCCC be given the power of veto regarding the appointment of a Commissioner, and that the passing of a resolution of appointment require a majority support of the JSCCCC.
- [55] The Commission recommends consideration of provisions similar to those set out in subsections 21(1) - (3) IBAC Act.
- [56] As a joint standing committee of Parliament, the JSCCCC is representative of both houses of Parliament and must be comprised of two members of the Legislative Assembly and two members of the Legislative Council. At present, the JSCCCC is comprised of four members with each major political party (Liberal and Australian Labor Party) represented in equal numbers. The current Legislative Assembly Standing Orders and

membership of the JSCCCC already ensure that no one political party may dominate consideration of a resolution to support an appointment of a Commissioner under the CCM Act.⁵⁵

- [57] A requirement that the JSCCCC hold the power of veto by majority resolution in relation to a recommended nominee will ensure that the requirement for bipartisan support is maintained.

Statutory time limits for appointment procedures

- [58] The Commission recommends the introduction of statutory time limits to expedite the process of appointment to the office of Commissioner and Deputy Commissioner.
- [59] The Commission does not support a position, such as that in Victoria, where it is prescribed that there cannot be a vacancy in the role of Commissioner for more than 12 months.⁵⁶ Instead, the Commission considers that any vacancy in the role of Commissioner may be immediately filled by a Deputy Commissioner.
- [60] The Commission recommends the following -
- a) A statutory time limit within which the Premier is required to consider prospective appointments which begins from the date expressions of interest (or applications) close to the date the Premier makes a recommendation to the JSCCCC; and
 - b) A statutory timeframe within which the JSCCCC is to deliberate and pass a resolution on a recommendation from the Premier which is to commence at the date the JSCCCC receives the recommendation.
- [61] Any recommendation to, and appointment by, the Governor should not be time limited.
- [62] The recommendations of the Archer report continue to be supported by the Commission and compare favourably with interstate agencies -
- a) the Queensland CCC and Tasmanian Integrity Commission do not have any prescribed time limits;
 - b) in New South Wales the Parliamentary Joint Committee are given a period of 14 days (up to a maximum of 44 days if extended by the Minister) to consider an appointee after it is referred to them by the Minister;
 - c) in Victoria, after the Minister submits details of the proposed recommendation to the IBAC Committee, that Committee has 30 days to decide whether to veto the recommendation; and

⁵⁵ Legislative Assembly Standing Order 259(1) states that a quorum of three is sufficient to deliberate and pass resolutions.

⁵⁶ Section 30(5) IBAC Act.

- d) in South Australia, the Statutory Officers Committee considering appointment of a Commissioner has only 7 days to decide after the referral is made by the Attorney-General (although this can be extended with Attorney-General approval).

Judicial officer resignation requirement

- [63] The Commission recommends that the current requirement for a Commissioner to resign under section 10(4) CCM Act be amended to enable a former judge, who takes office as the Commissioner, to be able to return to the judiciary upon conclusion of their service as Commissioner.
- [64] A provision similar to the IBAC Act section 23, which requires only that the judicial officer 'cease' to act in a judicial role during the term of appointment as Commissioner.
- [65] The requirement to resign from judicial office may have the effect of limiting the potential pool of eligible but currently serving judicial officers, who may have sufficient experience to be appointed but may wait to apply until they are nearing retirement.

Parliamentary Inspector appointments under the CCM Act

- [66] The Commission does not comment on the appointment of the Parliamentary Inspector or Acting Parliamentary Inspector.
- [67] The functions of their office are accountable to the Parliament, which places the JSCCCC in the best position to determine the suitability of the appointment requirements under the CCM Act.



John McKechnie, QC
COMMISSIONER

Submission to Joint Standing Committee on the CCC - Alternate models used for appointments of Commissioner, Acting Commissioner, Parliamentary Inspector in other relevant jurisdictions
Comparator table of appointment models as at July 2016

Commissioner (not first appointment)

WA: Corruption Crime and Misconduct Act 2003

Role: There is to be a Commissioner, who in the name of the Commission, is to perform the functions of the Commission under the Act (s 9), holding office in accordance with the Act: s 9(5)

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> • Candidate must have served as, or qualifies for appointment as a judge of a Supreme Court, High Court or Federal Court • No current or previous police officers • Current judicial officer holders to retire upon appointment <p>s 10(1),(3)-(4)</p>	<ul style="list-style-type: none"> • Premier must consult with: <ul style="list-style-type: none"> (a) the Standing Committee; or (b) if no SC, the Leader of the Opposition, and the leader of any other political party with at least 5 members in either House <p>s 9(4)</p>	<ul style="list-style-type: none"> • Before making any nominations, the Nominating Committee must advertise nationally for expressions of interest <p>s 9(3b)</p> <ul style="list-style-type: none"> • The Premier is to recommend (to the Governor) the appointment of a person: <ul style="list-style-type: none"> (a) whose name is on a list of 3 persons eligible for appointment that is submitted to the Premier by the nominating committee; AND (b) who, if there is a Standing Committee, has the support of the majority of the Standing Committee and bipartisan support <p>s 9(3a)</p>	<p>By the Governor (on the recommendation of the Premier)</p> <p>s 9(3)</p>	<ul style="list-style-type: none"> • The Commissioner holds office for a period of 5 years and is eligible for reappointment once: Sch 2, cl 1 • The Commissioner is to hold office in accordance with the Act: s 9(5) • The Commissioner is to be appointed on a full-time basis: Sch 2, cl 2

NSW: Independent Commission Against Corruption Act 1988

Role: The Commissioner has and may exercise the functions conferred or imposed on the Commissioner by or under the ICAC or any other Act: s 5(2)

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> • A person is not eligible to be appointed as Commissioner or to act in the office unless the person is: <ul style="list-style-type: none"> (a) qualified to be appointed as a Judge of a Supreme Court, the Federal or High Court, or (b) a former Judge or Justice of any court referred to above • A person is not eligible to be appointed as Commissioner if the person is: <ul style="list-style-type: none"> (a) the holder of any judicial office, or (b) a member of the Legislative Council or the Legislative Assembly or is a member of a House of Parliament of another State or of the Commonwealth. 	<p>See Nomination - Minister refers to Committee</p>	<ul style="list-style-type: none"> • A person is not to be appointed as Commissioner until a s 64A proposal is referred to the Joint Committee and either the Committee do not veto or the Committee notifies the Minister that it has decided not to veto the proposed appointment: <ul style="list-style-type: none"> s 5A(1) • A person may be proposed for appointment on more than one occasion: s 5A(2) • In this section and s 64A, appointment includes re-appointment: s 5A(3) <p>Section 64A Power to veto proposed appointment of Commissioner</p> <ul style="list-style-type: none"> • The Minister is to refer a proposal to appoint a person as Commissioner or Inspector to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time. • The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter. • The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it. • A referral or notification under s 64A is to be in writing. 	<ul style="list-style-type: none"> • The Governor may appoint a Commissioner for the ICAC: s 5(1) • If the office of Commissioner becomes vacant, a person shall, subject to the Act, be appointed to fill the vacancy: Sch 1, cl 7 	<ul style="list-style-type: none"> • Subject to Schedule 1, the Commissioner shall hold office for a term not exceeding 5 years, but is eligible (if otherwise qualified) for re-appointment. • A person may not hold the office of Commissioner for terms totalling more than 5 years. <p>Sch1, cl 4</p>

VIC: Independent Broad-based Anti-corruption Commission Act 2011

Role: The Commissioner

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> • Must be or have been, or is qualified for appointment as, a judge of the High Court, Federal Court or a Supreme Court • Must not be a member of the Parliament of Victoria or of the Commonwealth or of another State or a Territory. • Must resign judicial office upon being appointed to be the Commissioner. <p>s 20(2)-(3)</p>	<p>The Minister must submit details of the proposed recommendation to the IBAC Committee who have 30 days to either veto or not veto the recommendation</p> <p>s 21</p>	<p>The Minister submits a recommendation to the IBAC Committee and then to the Governor</p> <p>s 20; 21</p>	<p>By the Governor in Council on the recommendation of the Minister</p> <p>s 20(1)</p>	<ul style="list-style-type: none"> • For the period not exceeding 5 years as is specified in the instrument of appointment. • Not eligible for re-appointment <p>s 24</p> <p>A vacancy in the office of the Commissioner must be filled by a person appointed in accordance with s 20 within the period of 12 months after the vacancy occurred.</p> <p>s 30(5)</p>

APPENDIX 1 - COMPARISON OF INTERSTATE APPOINTMENT PROCESSES

SA: Independent Commissioner Against Corruption Act 2012

Role: The person holding or acting in the office of the Independent Commissioner Against Corruption.

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> Must be a legal practitioner of at least 7 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State) or a former judge of the High Court, Federal Court or a Supreme Court <p>§ 8(3)(a)</p> <ul style="list-style-type: none"> Must not be a judicial officer or member of an Australian Parliament <p>§ 8(3)(b)</p>	<ul style="list-style-type: none"> A person may only be appointed to be the Commissioner if, following referral by the Attorney-General of the proposed appointment to the Statutory Officers Committee: <ul style="list-style-type: none"> the appointment has been approved by the Committee; or the Committee has not, within 7 days of the referral, or such longer period as is allowed by the Attorney-General, notified the Attorney-General in writing that it does not approve the appointment. <p>§ 8(5)</p>	<ul style="list-style-type: none"> Before a person is appointed, the Attorney-General must ensure that the position is advertised in a newspaper or newspapers circulating in each State and Territory <p>§ 8(4)</p>	<ul style="list-style-type: none"> The Commissioner is to be appointed by the Governor <p>§ 8(1)</p>	<ul style="list-style-type: none"> The Commissioner is appointed for an initial term not exceeding 7 years The Commissioner can be reappointed but cannot hold office (including any term as Deputy Commissioner or Acting Commissioner) for a term exceeding 10 years in total <p>§ 8(1)-(2)</p>

QLD: Crime and Corruption Act 2001

Role: Full time Commissioner (Chairperson) is responsible for the proper performance of the Crime and Corruption Commission's functions delegated to the chairperson under s 269

Eligibility	Consultation	Nomination	Appointment	Term
<p>A person is qualified for appointment as the chairperson if the person has served as, or is qualified for appointment as, a judge of—</p> <ul style="list-style-type: none"> the Supreme Court of Queensland; or the Supreme Court of another State; or the High Court of Australia; or the Federal Court of Australia. <p>§ 224</p>	<p>The Minister must consult with the parliamentary crime and corruption committee</p> <p>§ 228(a)(i)</p> <p>Consultation and bipartisan support per s 228 also required for re-appointments</p> <p>§ 231(4)</p>	<p>The Minister must advertise nationally for applications from suitably qualified persons to be considered for selection as the chairperson.</p> <p>§ 227(1)</p> <p>Advertising not required for re-appointments s 227(3)</p> <p>The Minister may nominate a person for appointment to the office of chairperson only if the nomination is made with the bipartisan support of the parliamentary committee.</p> <p>§ 228(b)</p>	<p>Appointed by the Governor in Council</p> <p>§ 229(1)</p>	<ul style="list-style-type: none"> The chairperson holds office for a term not longer than 5 years May be re-appointed to the office for a further term or terms as long as— <ul style="list-style-type: none"> no term of appointment is longer than 5 years; and the person does not hold that office for more than 10 years in total. <p>§ 231</p>

Acting Commissioner

WA: Corruption Crime and Misconduct Act 2003

Role: Acting Commissioner

To act in the office of Commissioner:

a) during a vacancy in that office; or

b) during any period or during all periods when the Commissioner or an Acting Commissioner is unable to perform the functions of office of Commissioner or is absent from WA

c) in relation to any matter in respect of which the Commissioner or an Acting Commissioner has declared themselves unable to act per s13

§ 14(1)

Eligibility	Consultation	Nomination	Appointment	Term
<p>A person who is eligible for appointment as a Commissioner (per s10)</p> <p>§ 14(1)</p>	<p>As for Commissioner per s 9(4), except that:</p> <ul style="list-style-type: none"> process may be carried out prospectively even though necessity for an appointment has not arisen process may be carried out wrt a number of eligible candidates any bipartisan support for a person lapses after 12 months from the date of the resolution <p>§ 14(2a)</p>	<p>As for Commissioner per s 9(3a), except that:</p> <ul style="list-style-type: none"> process may be carried out prospectively even though necessity for an appointment has not arisen process may be carried out wrt a number of eligible candidates any bipartisan support for a person lapses after 12 months from the date of the resolution <p>§ 14(2a)</p>	<ul style="list-style-type: none"> The Governor may appoint a person to act in the office of Commissioner for the purposes in s 14(1)(a)-(c). An appointment may be made at any time: s 14(2)(a) An appointment may be expressed to have effect only in the circumstances in the instrument of appointment: s 14(2)(b) 	<ul style="list-style-type: none"> The T&Cs of appointment of a person acting under s 14 are determined by the Governor, subject to the Act. <p>§ 14(3)</p>

NSW: Independent Commission Against Corruption Act 1988

Role: An Acting Commissioner, while so acting, has all the functions of the Commissioner and shall be taken to be the Commissioner: Sch1(2)

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> As per Commissioner <p>§ 103, Sch 1, c 11</p>	<ul style="list-style-type: none"> Governor appointed <p>Sch 1</p>	<ul style="list-style-type: none"> Governor appointed <p>Sch 1</p>	<ul style="list-style-type: none"> The Governor may from time to time, appoint a person to act in the office of Commissioner during the illness or absence of the Commissioner <p>Sch 1, cl 2(1)</p> <ul style="list-style-type: none"> A vacancy in the office of Commissioner shall be regarded as an absence from office of Commissioner <p>Sch 1, cl 2(4)(a)</p>	<ul style="list-style-type: none"> during the illness or absence of the Commissioner: Sch 1, cl 2 an Assistant Commissioner shall be regarded as absent from office as an Assistant Commissioner during any period when the Assistant Commissioner acts in the office of the Commissioner pursuant to an appointment under this clause: Sch 1, cl 2(4)(b)

APPENDIX 1 - COMPARISON OF INTERSTATE APPOINTMENT PROCESSES

VIC: Independent Broad-based Anti-corruption Commission Act 2011

Role: Acting Commissioner

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> No conditions if appointed for 6 months or less. <p>• If appointed for 12 months, the person must be:</p> <ul style="list-style-type: none"> o eligible for appointment as the Commissioner under s 20; or o a person who, in the opinion of the Minister— <p>(i) has the experience and qualifications necessary to enable the IBAC to achieve the objects of this Act and perform its duties and functions; and</p> <p>(ii) has prior experience in a senior role in a body with investigative functions, intelligence gathering functions or substantially similar functions.</p> <p>s 30(2); (4)</p>	N/A	<ul style="list-style-type: none"> Recommendation of the Minister to the Governor <p>s 30(1)</p>	<ul style="list-style-type: none"> The Governor in Council may on the recommendation of the Minister appoint a person to act in the office of Commissioner or a Deputy Commissioner during— o any vacancy (including an initial vacancy) in the office of the Commissioner or Deputy Commissioner; or o any period when the person holding the office— (i) is absent from duty; or (ii) is for any other reason unable to perform the duties of the office. <p>s 30(1)</p>	<ul style="list-style-type: none"> A person appointed under subsection (1) can be appointed for a period not exceeding 6 months. • However, they may be appointed for 12 months if certain conditions met <p>s 30(2); (4)</p>

SA: Independent Commissioner Against Corruption Act 2012

Role: a person to act as the Commissioner during any period for which no person is for the time being appointed as the Commissioner or the Commissioner is absent from, or unable to discharge, official duties s 11(1)(a)

Eligibility	Consultation	Nomination	Appointment	Term
A person, who may be a public service employee	N/A	N/A	<ul style="list-style-type: none"> The Governor may appoint an Acting Commissioner <p>s 11(1)</p>	<ul style="list-style-type: none"> The terms and conditions of appointment are to be determined by the Governor, except that the person may not act as the Commissioner for more than 6 months in aggregate in any period of 12 months <p>s 11(2)</p>

QLD: Crime and Corruption Act 2001

Role: Acting Chairperson (Commissioner) to act in the office of chairperson: s 237

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> The person must be a qualified person (which means qualified to be appointed to that office, being Chairperson) <p>s 237(1), (6).</p> <p>• Refer to Chairperson's qualifications in s 224 (or see above)</p>	<ul style="list-style-type: none"> The Minister must consult with the Chairperson before recommending the person for the appointment. <p>s 237(4)</p> <ul style="list-style-type: none"> There is no requirement to consult with the parliamentary committee, but if does so, can appoint for term longer than 3 months <p>s 237(3)</p>	<ul style="list-style-type: none"> There is no requirement for advertising <p>s 237(5)</p> <ul style="list-style-type: none"> The nomination does not need to be made with the bipartisan support of the parliamentary committee (but it is contemplated in s 238(3)) <p>s 237(5)</p>	<ul style="list-style-type: none"> The Governor in Council may appoint a qualified person for all or part of a period in which— (a) the office is vacant; or (b) the person holding the office is absent from duty or from the State or, for another reason, can not perform the duties of the office. <p>s 237(1)</p>	<ul style="list-style-type: none"> A person may not be appointed to act in the role for: (a) a continuous period of more than 3 months; or (b) a period that, with the periods of other appointments of the person to act in the office, form a continuous period of more than 3 months. <p>• However, this time limit does not apply if the Minister recommends the person for the appointment with the bipartisan support of the parliamentary committee.</p> <p>s 237(2)-(3)</p>

Assistant Commissioner

NSW: Independent Commission Against Corruption Act 1988

Role: An Assistant Commissioner has and may exercise the functions conferred or imposed on an Assistant Commissioner by or under the ICAC Act or any other Act. An Assistant Commissioner shall assist the Commissioner, as the Commissioner requires: s 6

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> A person is not eligible to be appointed as Assistant Commissioner or to act in the office unless the person is: (a) qualified to be appointed as a Judge of a Supreme Court, the Federal or High Court, or (b) a former Judge or Justice of any court referred to above • A person is not eligible to be appointed as Assistant Commissioner if the person is: (a) the holder of any judicial office, or (b) a member of the Legislative Council or the Legislative Assembly or is a member of a House of Parliament of another State or of the Commonwealth. <p>Sch 1, cl 1</p>	<ul style="list-style-type: none"> Current Commissioner to concur with Governor's proposed appointment <p>s 6(1)</p>	<p>See appointment</p>	<ul style="list-style-type: none"> The Governor may, with the concurrence of the Commissioner, appoint one or more Assistant Commissioners <p>s 6(1)</p>	<p>Sch 1, cl 4:</p> <ul style="list-style-type: none"> •(1A) Subject to Schedule 1, an Assistant Commissioner is to hold office for such term not exceeding 9 years, but is eligible (if otherwise qualified) for re-appointment. •(3) A person may not hold the office of Assistant Commissioner for terms totalling more than 9 years.

Deputy Commissioner

SA: Independent Commissioner Against Corruption Act 2012

Role: There is to be a Deputy Commissioner responsible for assisting the Commissioner as directed by the Commissioner: s 9(1)

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> a legal practitioner of at least 7 years standing (taking into account, for that purpose, periods of legal practice and judicial service within and outside the State) or a former judge of the High Court, Federal Court or a Supreme Court; and is not a judicial officer or member of an Australian Parliament. 	N/A	N/A	<ul style="list-style-type: none"> Appointed by the Governor 	<ul style="list-style-type: none"> Appointed for a term not exceeding 7 years and is eligible for reappointment but cannot hold office for terms (including any term as Commissioner or Acting Commissioner) that exceed 10 years in total
s 9(4)			s 9(2)	s 9(2)-(3) <ul style="list-style-type: none"> The Deputy Commissioner may— (a) act as the Commissioner during any period for which— (i) no person is for the time being appointed as the Commissioner; or (ii) the Commissioner is absent from, or unable to discharge, official duties; and (b) when not so acting, perform functions or exercise powers at the direction of the Commissioner.
				s 9(6)

QLD: Crime and Corruption Act 2001

Role: The commission is to include a deputy chairperson (part-time Commissioner) as a member: s 223

Eligibility	Consultation	Nomination	Appointment	Term
A person is qualified for appointment as the deputy chairperson if the person has served as, or is qualified for appointment as, a judge of— (a) the Supreme Court of Queensland; or (b) the Supreme Court of another State; or (c) the High Court of Australia; or (d) the Federal Court of Australia.	Minister must consult with— <ul style="list-style-type: none"> the parliamentary crime and corruption committee; and the chairperson 	<ul style="list-style-type: none"> The Minister must advertise throughout the State for applications from suitably qualified persons to be considered for selection as the deputy chairperson. 	<ul style="list-style-type: none"> Appointed by the Governor in Council 	<ul style="list-style-type: none"> An officer holds office for a term not longer than 5 years
s 224	s 228(a)	s 227(2) <ul style="list-style-type: none"> The Minister may nominate a person for appointment to deputy chairperson, only if they have consulted with the parliamentary committee and the chairperson 	s 229	<ul style="list-style-type: none"> A person holding office as a commissioner or the chief executive officer may be re-appointed to the office for a further term or terms as long as— (a) no term of appointment is longer than 5 years; and (b) the person does not hold that office for more than 10 years in total.
		s 228(a)		s 231
		<ul style="list-style-type: none"> The Minister may nominate a person for appointment to deputy chairperson, only if the nomination is made with the bipartisan support of the parliamentary committee 		
		s 228(b)		

VIC: Independent Broad-based Anti-corruption Commission Act 2011

Role: Deputy Commissioner

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> Persons whom the Minister considers have the experience and qualifications necessary to enable the IBAC to achieve the objects of this Act and perform its duties and functions. 	<ul style="list-style-type: none"> Before making a recommendation, the Minister must obtain the concurrence of the Commissioner. 	<ul style="list-style-type: none"> On recommendation of the Minister 	<ul style="list-style-type: none"> The Governor in Council on the recommendation of the Minister may appoint one or more persons as Deputy Commissioners 	<ul style="list-style-type: none"> A Deputy Commissioner holds office for the period not exceeding 5 years eligible for reappointment
<ul style="list-style-type: none"> The Minister must ensure that at least one Deputy Commissioner is an Australian lawyer within the meaning of the <i>Legal Profession Act 2004</i>. 	s 23(3)	s 23(1)	s 23(1)	s 24(1); (3)
<ul style="list-style-type: none"> A person holding a judicial office immediately before being appointed to be a Deputy Commissioner must cease to hold that judicial office upon being appointed to be a Deputy Commissioner. 				

Parliamentary Inspector (not first appointment)

WA: Corruption Crime and Misconduct Act 2003

Role: Office of the Parliamentary Inspector of the CCC, officer of Parliament responsible for assisting the Standing Committee (s 188), holding office in accordance with the Act (s 190(3))

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> A person is eligible for appointment as the PI if the person is a lawyer with no less than 8 years' legal experience (as defined) 	<ul style="list-style-type: none"> The Premier is to consult to gain majority and bipartisan support of the Standing Committee for the proposed appointee (from the list of 3 persons eligible for appointment from the Nominating Committee (in s 189(2)(a)) 	<ul style="list-style-type: none"> The Nominating Committee is to submit to the Premier a list of 3 persons eligible for appointment 	<ul style="list-style-type: none"> By the Governor, on the recommendation of the Premier 	<ul style="list-style-type: none"> The PI holds office for a period of 5 years and is eligible for reappointment once
s 190(2)	s 189(2)(b)	s 189(2)(a)	s 189(1)	Sch 3, cl1

APPENDIX 1 - COMPARISON OF INTERSTATE APPOINTMENT PROCESSES

NSW: Independent Commission Against Corruption Act 1988

Role: The Governor may appoint an Inspector of the Independent Commission Against Corruption (s 57A) with the principal functions in s 57B

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> A person is not eligible to be appointed as Inspector or to act in that office if the person is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth <p>Sch 1A, cl 1</p> <ul style="list-style-type: none"> Inspector can be holder of judicial office as a Judge of a court of NSW <p>Sch 1A, cl 6</p>	<p>See nomination</p> <p>Sch 1A, cl 10(1)</p>	<ul style="list-style-type: none"> A person is not to be appointed as Inspector until: <ul style="list-style-type: none"> (a) a proposal has been referred to the Joint Committee under s 64A, and (b) the Committee does not veto the proposal (within prescribed time period) or the Committee notifies the Minister that it has decided not to veto the proposed appointment <p>Sch 1A, cl 10(1)</p> <ul style="list-style-type: none"> A person may be proposed for appointment on more than one occasion <p>Sch 1A, cl 10(2)</p> <ul style="list-style-type: none"> See above under ICAC Commissioner re required s 64A proposal which applies to Inspector appointments. 	<ul style="list-style-type: none"> The Governor may appoint an Inspector of the ICAC <p>s 57A</p> <ul style="list-style-type: none"> If the office of Inspector becomes vacant, a person is to be appointed to fill the vacancy (subject to ICAC Act) <p>Sch 1A, cl 8</p>	<ul style="list-style-type: none"> Subject to this Schedule 1A, the Inspector holds office for such term not exceeding 5 years, but is eligible (if otherwise qualified) for re-appointment. A person may not hold the office of Inspector for terms totalling more than 5 years. <p>Sch 1A, cl 4</p>

QLD: Crime and Corruption Act 2001

Role: There must be appointed a commissioner to be known as the parliamentary crime and corruption commissioner: s 303

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> A person is qualified for appointment as the parliamentary commissioner if the person has served as, or is qualified for appointment as, a judge of— <ul style="list-style-type: none"> (a) the Supreme Court of Queensland; or (b) the Supreme Court of another State; or (c) the High Court of Australia; or (d) the Federal Court of Australia. <p>s 304</p>	<ul style="list-style-type: none"> The parliamentary committee must be consulted by the Speaker in order to obtain bipartisan support of the committee <p>s 306(3)</p>	<ul style="list-style-type: none"> The Speaker must advertise nationally for applications from suitably qualified persons to be considered for selection as the parliamentary commissioner. <p>s 306(1)</p> <ul style="list-style-type: none"> No requirement to advertise for reappointments <p>s 306(2)</p>	<ul style="list-style-type: none"> The parliamentary commissioner must be appointed by the Speaker as an officer of the parliamentary service under the <i>Parliamentary Service Act 1988</i>. <p>s 307</p>	<ul style="list-style-type: none"> The parliamentary commissioner holds office for the term, not less than 2 years and no longer than 5 years The parliamentary commissioner must not hold office for more than 5 years in total <p>s 309</p>

VIC: Victorian Inspectorate Act 2011

Role: The Inspector constitutes the Victorian Inspectorate under s 8, and is an independent officer of the Parliament s 13

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> Must be or has been, or is qualified for appointment as, a judge of— <ul style="list-style-type: none"> (i) the High Court; or (ii) the Federal Court; or (iii) the Supreme Court of Victoria or another State or a Territory; Must not be a member of the Parliament of Victoria or of the Commonwealth or of another State or a Territory; Must not, and has not been, a Commissioner, Acting Commissioner, Deputy Commissioner, or Acting Deputy Commissioner, of the IBAC. A person holding a judicial office immediately before being appointed to be the Inspector must cease to hold that judicial office upon being appointed to be the Inspector. <p>s 14</p>	<ul style="list-style-type: none"> The Minister must not make a recommendation to the Governor without submitting details to the IBAC Committee which may veto an appointment within the prescribed statutory period <p>s 15</p>	<ul style="list-style-type: none"> The Minister recommends an appointment to the Governor <p>s 14</p>	<ul style="list-style-type: none"> The Governor in Council on the recommendation of the Minister <p>s 14(1)</p>	<ul style="list-style-type: none"> The Inspector holds office for the period not exceeding 5 years The Inspector is eligible to be re-appointed <p>s 17(1)-(2)</p>

Acting Parliamentary Inspector

WA: Corruption Crime and Misconduct Act 2003

Role: To act in the office of Parliamentary Inspector (an officer of Parliament responsible for assisting the Standing Committee):

a) during a vacancy in that office; or

b) during any period or during all periods when the PI or an Acting PI is unable to perform the functions of office or is absent from WA;

c) in relation to any matter in respect of which the PI or an Acting PI has declared themselves unable to act

s 193

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> A person who is eligible for appointment as the PI <p>s 193(1)</p>	<p>Same as for PI per s 189, except that:</p> <ul style="list-style-type: none"> process may be carried out prospectively even though necessity for an appointment has not arisen process may be carried out wrt a number of eligible candidates any bipartisan support for a person lapses after 12 months from the date of the resolution <p>s 193(2a)</p>	<p>Same as for PI per s 189, except that:</p> <ul style="list-style-type: none"> process may be carried out prospectively even though necessity for an appointment has not arisen process may be carried out wrt a number of eligible candidates any bipartisan support for a person lapses after 12 months from the date of the resolution <p>s 193(2a)</p>	<ul style="list-style-type: none"> An appointment may be made at any time by the Governor <p>s 193(2)(a)</p>	<ul style="list-style-type: none"> The Governor may appoint a person to act in the office of PI for the purposes in s 193(1): <ul style="list-style-type: none"> a) during a vacancy in the office; or b) during any period or during all periods when the PI or an Acting PI is unable to perform the functions of office or is absent from WA; c) in relation to any matter in respect of which the PI or an Acting PI has declared themselves unable to act An appointment may be expressed to have effect only in the circumstances in the instrument of appointment <p>s 193(2)(a)</p>

APPENDIX 1 - COMPARISON OF INTERSTATE APPOINTMENT PROCESSES

NSW: Independent Commission Against Corruption Act 1988

Role: Acting Inspector - The person, while so acting, has all the functions of the Inspector and is taken to be the Inspector: Sch 1A, cl 2(1)

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> A person is not eligible to act in that office if the person is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth. 	See appointment	See appointment	<ul style="list-style-type: none"> The Governor may, from time to time, appoint a person to act in the office of Inspector during the illness or absence of the Inspector 	<ul style="list-style-type: none"> Appointments can be made for the duration of an illness or absence of the Inspector
Sch 1A, cl 1			Sch 1A, cl 2(1)	Sch 1A, cl 2
<ul style="list-style-type: none"> Inspector can be holder of judicial office as a Judge of a court of NSW 				
Sch 1A, cl 6				

QLD: Crime and Corruption Act 2001

Role: Acting Parliamentary Commissioner

The Speaker may appoint a person to act as the parliamentary commissioner—

(a) during a vacancy in the office; or

(b) during any period, or all periods, when the parliamentary commissioner is absent from duty or from the State or, for another reason, can not perform the duties of the office: s 308

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> The person must be qualified to be appointed parliamentary commissioner s 308(1) 	<ul style="list-style-type: none"> A person may be appointed to act as the parliamentary commissioner only if the appointment is made with the bipartisan support of the parliamentary committee 	NA	<ul style="list-style-type: none"> By the Speaker 	<ul style="list-style-type: none"> The Speaker may appoint a person qualified to be appointed as the parliamentary commissioner to act as the parliamentary commissioner—
<ul style="list-style-type: none"> A person is qualified for appointment as the parliamentary commissioner if the person has served as, or is qualified for appointment as, a judge of— 	s 308(2)		s 308	<ul style="list-style-type: none"> (a) during a vacancy in the office; or
<ul style="list-style-type: none"> (a) the Supreme Court of Queensland; or 				<ul style="list-style-type: none"> (b) during any period, or all periods, when the parliamentary commissioner is absent from duty or from the State or, for another reason, can not perform the duties of the office.
<ul style="list-style-type: none"> (b) the Supreme Court of another State; or 				s 308(1)
<ul style="list-style-type: none"> (c) the High Court of Australia; or 				
<ul style="list-style-type: none"> (d) the Federal Court of Australia. 				
s 304				

VIC: Victorian Inspectorate Act 2011

Role: Acting Inspector: s 21

Eligibility	Consultation	Nomination	Appointment	Term
NA	NA	A person may be recommended by the Minister to act in the office of Inspector	<ul style="list-style-type: none"> The Governor in Council may on the recommendation of the Minister appoint a person to act in the office of Inspector during— 	A person can be appointed for a period not exceeding 6 months.
		s 21	<ul style="list-style-type: none"> o any vacancy in the office of the Inspector; or 	s 21(2)
			<ul style="list-style-type: none"> o any period when the person holding the office— 	A vacancy in the office of the Inspector must be filled by a person appointed in accordance with s 18 within the period of 6 months after the vacancy occurred
			<ul style="list-style-type: none"> (i) is absent from duty; or 	s 21(4)
			<ul style="list-style-type: none"> (ii) is for any other reason unable to perform the duties of the office. 	
			s 21(1)	

Other: Ordinary Commissioner (QLD)

QLD: Crime and Corruption Act 2001

Role: Ordinary Commissioners

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> A person is qualified for appointment as an ordinary commissioner if the person has qualifications, experience or standing appropriate to assist the commission to perform its functions. 	Minister must consult with—	<ul style="list-style-type: none"> The Minister must advertise throughout the State for applications from suitably qualified persons to be considered for selection as an ordinary commissioner. 	<ul style="list-style-type: none"> Appointed by the Governor in Council 	<ul style="list-style-type: none"> An officer holds office for a term not longer than 5 years
s 225(2)	<ul style="list-style-type: none"> the parliamentary committee; and 	s 227(2)	s 229	<ul style="list-style-type: none"> A person holding office as a commissioner may be re-appointed to the office for a further term or terms as long as—
	s 228(a)	<ul style="list-style-type: none"> The Minister may nominate a person for appointment to deputy chairperson, only if— 		<ul style="list-style-type: none"> (a) no term of appointment is longer than 5 years; and
		<ul style="list-style-type: none"> (a) the Minister has consulted with— 		<ul style="list-style-type: none"> (b) the person does not hold that office for more than 10 years in total.
		<ul style="list-style-type: none"> (i) the parliamentary committee; and 		s 231
		<ul style="list-style-type: none"> (ii) except for an appointment as ordinary chairperson; and 		
		<ul style="list-style-type: none"> (b) the nomination is made with the bipartisan support of the parliamentary committee. 		
		s 228		

Other: Reviewer (SA)

SA: Independent Commissioner Against Corruption Act 2012

Role: A person to conduct an annual review of the operations of the Commissioner and the Office during the financial year: s 46

Eligibility	Consultation	Nomination	Appointment	Term
The person must be eligible for appointment as Commissioner	NA	NA	The Attorney-General must appoint the person before the end of each financial year	N/A
s 46(1)			s 46	

Assistant Inspector : Independent Commissioner Against Corruption Act 2012

NSW: Independent Commission Against Corruption Act 1988

Role: Assistant Inspector of the Independent Commission Against Corruption

An Assistant Inspector may, to the extent to which he or she is directed by the Inspector to do so, exercise any function of the Inspector and for that purpose is taken to be the Inspector: s 57AA

Eligibility	Consultation	Nomination	Appointment	Term
<ul style="list-style-type: none"> A person is not eligible to be appointed if the person is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth 	<ul style="list-style-type: none"> Governor to obtain concurrence of Inspector 	<ul style="list-style-type: none"> See s 57AA per Governor to appoint 	<ul style="list-style-type: none"> The Governor may, with the concurrence of the Inspector, appoint an Assistant Inspector 	<ul style="list-style-type: none"> Refer to Sch 1 A
Sch 1A, cl 1A; cl 1	s 57AA(1)/ Sch 1 A		s 57AA/ Sch 1 A	Note cl 8 of Sch 1A does not apply, such that if the office becomes vacant a person is not necessarily appointed
<ul style="list-style-type: none"> Inspector can be holder of judicial office as a Judge of a court of NSW 	Note cl 10 of Sch 1A does not apply such that referral to the Joint Committee under s 64A is not required.			
Sch 1A, cl 6				