

Fundamental Principles of Australian Anti-Corruption Commissions

These twelve principles enable Anti-Corruption and Integrity Commissions (Anti-Corruption Commissions) to independently and effectively undertake their functions. They provide a legislative and policy framework within which Australian Anti-Corruption Commissions may achieve national consistency and readily collaborate.

The principles express a shared approach to engaging with Australia's obligations under the United Nations Convention against Corruption.

1. The ability to consider referrals from any third party

Anti-Corruption Commissions should be empowered to consider an allegation of corruption referred to it by any third party. Third parties, in this context, include public sector employees, heads of government agencies or departments, holders of public office and members of the public.

Empowering Anti-Corruption Commissions to receive allegations of corruption from any third party will ensure that the Commission can consider allegations detected by a government agency as well of allegations that are reported by whistle-blowers.

2. The ability to commence an investigation on own volition (own motion powers)

Anti-Corruption Commissions should be empowered to commence investigations into corruption or maladministration on its own motion, so long as the investigation falls within the jurisdiction of the Commission. This "own motion power" enables a Commission to initiate investigations into allegations that have been detected by the Commission, rather than limiting its investigation powers to allegations that have been referred to it.

3. A requirement for the heads of public sector agencies to report allegations of corruption to the Anti-Corruption Commission

In keeping with the responsibility of public sector agency heads for the integrity of their agency, public sector agency heads should be subject to a mandatory duty to report allegations of corruption relating to their agency to the Anti-Corruption Commission.

This duty to report may also be expanded, as appropriate, to other public officials whose functions might identify allegations of corruption within the Anti-Corruption Commission's jurisdiction.

4. Protections for whistleblowers and witnesses

A person who refers information or gives evidence to a Commission should be immune from any criminal, civil, administrative or disciplinary liability, and from the enforcement against them of contractual rights or remedies, for doing so. The taking of any reprisal against a person for giving information or evidence to a Commission should be an offence. However, these protections should not exempt such a person from liability for providing intentionally false or misleading information or evidence, nor from liability for past conduct of the person that is disclosed by the person.

5. Coercive powers to obtain information and evidence

In addition to traditional law enforcement investigative tools to obtain information and evidence, Anti-Corruption Commissions should be able to compel the production of information or documents, and conduct hearings, as a coercive tool to obtain evidence. Anti-Corruption Commissions should be able to compel and use records that would usually attract an immunity from production where it can be demonstrated that it is necessary and proportionate to advance an investigation. This includes the express abrogation of the privilege against self-incrimination in respect of evidence given or documents or information produced, but with corresponding use immunity provisions, so that evidence obtained under compulsion cannot be used against the witness from whom it is obtained (though it can be used against others) in a criminal prosecution (except a prosecution for an offence against the relevant integrity legislation).

The features of hearings in this context include:

- The power to summons witnesses
- The power to require production of information and documents
- The power to take evidence subject to penalty for perjury (on oath or affirmation)

Anti-Corruption Commissions should be able to conduct hearings either in public or private. The types of considerations in deciding whether to conduct a hearing in public or in private include reputation, witness welfare, privacy, confidentiality, any risk of compromising a fair trial in potential criminal proceedings, and the public interest.

6. The ability to refer matters to a prosecuting authority

Anti-Corruption Commissions are, by their very nature, investigation agencies. They should be empowered (or not restricted in their ability) to refer briefs of evidence assembled as a result of their investigations directly to a prosecuting authority, such as the Director of Public Prosecutions, for assessment for prosecution action.

7. The ability to make recommendations

As with other integrity agencies, such as the auditor-general and ombudsman, it is an important aspect of the work of an Anti-Corruption Commission to be able to make recommendations to heads of public sector agencies that arise from the Commission's work. These recommendations may relate to individuals or systemic issues identified through the Commission's work and have the aim of strengthening the integrity framework and anti-corruption controls and preventing the corrupt conduct from recurring.

As a matter of best practice, an Anti-Corruption Commission should also be able to make recommendations to the public sector as a whole, either through a recommendation tabled in Parliament or provided to an appropriate Minister that relate to addressing corruption vulnerabilities or risks generally within the public sector.

8. The ability to report on investigations and make public statements

One of the key ways that an Anti-Corruption Commission can give insight into their operations is through the ability to report on investigations and make public statements. This should include the ability to oversee and report on the implementation of any recommendations. This is important to provide transparency in relation to the way that an Anti-Corruption Commission undertakes their work, to provide assurance to the public and public sector that corruption allegations are appropriately dealt with and as a mechanism of general deterrence.

In preparing a report on an investigation, Anti-Corruption Commissions should provide procedural fairness to persons to whom a finding is proposed to be made. In deciding whether to publish a report or make a public statement, Anti-Corruption Commissions should balance the public interest in disclosing the information with any unreasonable prejudicial consequences that might result.

9. A corruption prevention function

As well as having an investigation function, it is best practice for an Anti-Corruption Commission to also have a corruption prevention function. Investigations, by their very nature, focus on events that have already occurred. In contrast, a corruption prevention function focuses on identifying vulnerabilities and potential mitigations to prevent the event from occurring in the first place or avoid similar events occurring in the same or separate entities. This is a crucial element in a robust anti-corruption framework.

The corruption prevention function requires adequate resourcing to be able to support public sector agencies and public officials to mitigate the corruption risks that they face and put in place strong corruption prevention controls. The function may include multiple elements such as education, engagement, research, advice, support and specific projects.

10. A sufficient and predictable budget

An Anti-Corruption Commission's capacity to fulfil its statutory functions will be limited by its budget. The Commission's efficacy can therefore be undermined by budgetary restrictions. The threat of a potential reduction in budget also threatens an Anti-Corruption Commission's perceived, or actual, independence.

It is acknowledged that all government agencies will have some budgetary limitations. However, an Anti-Corruption Commission's budget should be largely quarantined from the political process. The way in which this is achieved will depend on the jurisdiction, but could involve a budget being set by Treasury, with oversight from a Parliamentary Committee. Any funding model should be transparent, certain and flexible, promoting accountability by both the funding body and the anti-corruption agency.

11. Transparency of appointments

The process for appointment of integrity commissioners impacts on the community's perceptions of an Anti-Corruption Commission's independence. Commissioner appointments should be made on the basis of merit following an open and transparent appointment process. Selection should be measured against publicly available criteria, with an independent panel putting forward a shortlist of suitable applicants to the relevant Minister for appointment. Merit should be the dominant consideration in selection.

The Council of Australasian Tribunals *Tribunal Independence in Appointments - Best Practice Guide* offers a useful template for this process.

12. Effective and proportionate oversight

Given the powers available to Anti-Corruption Commissions, effective and proportionate oversight of Commissions should be established, to ensure transparency and accountability. Appropriate oversight mechanisms include an independent inspectorate and parliamentary oversight through a dedicated parliamentary committee.