Summary of

Recommendations
[7] My Inquiry has led me to conclusions which are set out in this Report. Those conclusions necessarily reflect my personal views and they are conclusions about which informed persons might reasonably hold different views.

[8] In summary, and without endeavouring to list every individual item, I make the following recommendations:

1. The structure of the NT Anti-Corruption Commission follow the model established in South Australia in which:
   
   - The Commission is headed by the Commissioner.
   
   - An Office for Public Integrity, acting under the overall supervision and direction of the Commissioner, receives and assesses complaints and reports about corruption, misconduct and maladministration in public administration and makes recommendations to the Commissioner as to whether and by whom complaints and reports should be investigated. In substance the Office provides the administrative, operational and legal support for the Commissioner.

2. The *Public Interest Disclosure Act* (NT) be repealed and the Office of Public Interest Disclosures be absorbed into the NT Anti-Corruption Commission as the Office for Public Integrity with, broadly speaking, the same functions and objectives as the Office for Public Integrity in South Australia.

3. The Freedom of Information and Privacy functions of the Office of Public Interest Disclosures be transferred to the Ombudsman.

4. The Hon Bruce Lander QC, Independent Commissioner Against Corruption in South Australia, be employed as the first head of the Commission, with the title Commissioner.

5. Mr Lander be appointed on a part-time basis for two years with a view to reporting to the Assembly within two years outlining all operations in that
period and providing recommendations for the future operation of the NT Anti-Corruption Commission.

6. The NT Anti-Corruption Commission be an Agency with a Chief Executive Officer appointed at the ECOS5 level, replacing the ECO2 position currently occupied by the Commissioner for Public Interest Disclosures (CPID).

7. Provision be made for the appointment of a Deputy Commissioner to act as Commissioner during any period for which there is no person appointed as Commissioner or the Commissioner is absent from, or unable to discharge, official duties.

8. The Commissioner be an independent statutory officer appointed by the Administrator for a maximum term of five years and be eligible for re-appointment once only for an additional term for up to five years.

9. The appointment process include:

   - A panel such as the Judicial Appointments Panel making recommendations as to an appointment to a bipartisan Standing Committee of the Assembly.

   - The Standing Committee making recommendation to the Administrator.

   - The Standing Committee possessing the power of veto with provision for resolving any deadlock.

10. In order to be qualified for appointment as Commissioner the person must be a former Judge of a Supreme Court or the Federal or High Court, or be a legal practitioner of not less than ten years standing. No age restriction should apply.

11. The Commissioner should not hold a commission as a Judicial Officer or be a member of the Assembly.
12. The jurisdiction of the NT Anti-Corruption Commission be confined to investigating conduct in the administration of public affairs, but to include conduct that might amount to an offence against the *Electoral Act* (NT):

- Ordinarily the investigative role of the Commissioner be concentrated upon corrupt conduct.

- In the absence of good reason, conduct falling short of corrupt conduct and amounting to misconduct or maladministration be referred to the relevant agency for investigation and report to the Commissioner.

- Corrupt conduct, misconduct and maladministration be defined as set out in paras [149 and 159] of this report.

- The Commissioner be permitted to investigate an offence that is not corruption in public administration (an incidental offence) which is discovered in the course of investigation properly undertaken and may be connected with or part of a course of activity involving the commission of corruption in public administration.

13. The jurisdiction of the NT Anti-Corruption Commission extend to investigating any person for corruption, misconduct or maladministration in public administration or for offences under the *Electoral Act* (NT).

14. The NT Anti-Corruption Commission possess a broad educative function.

15. Specific provision be made in the NT Commission legislation recognising the importance of judicial independence and giving direction as to who may undertake an investigation relating to the conduct of a judicial officer.

16. Judicial independence and parliamentary privilege be maintained. In particular with respect to parliamentary privilege, the boundaries between the powers of the NT Anti-Corruption Commission and parliamentary privilege be clearly defined.
17. The privilege against self-incrimination be abrogated for Commission purposes but provisions be included concerning subsequent use of evidence obtained in the face of a claim of privilege.

18. Legal professional privilege and public interest immunity be maintained.

19. The NT Anti-Corruption Commission be empowered to institute investigations following complaint or report by any person or on its own motion.

20. Complaints and reports be made only to the Office for Public Integrity and not directly to the Commissioner.

21. The Office for Public Integrity not be a “one-stop shop” for complaints. For example, persons should remain free to make complaints to the Ombudsman, the Police or Heads of Public Sector Agencies.

22. Legislation not require that a complaint or report be verified on oath or be made in writing. These matters be left to administrative decisions by the Commissioner.

23. Appropriate provisions be put in place to ensure protection of complainants or persons making reports, for example, protection from reprisals and victimisation.

24. Significant penalties be prescribed for false or misleading complaints and for contempt of or obstructing and failing to comply with directions given by the NT Anti-Corruption Commission.

25. Appropriate provisions be put in place with respect to confidentiality of complaints and reports, including the identity of complainants or persons making reports, subsequent investigations and information gathered in the course of investigations. To the extent necessary and appropriate these provisions should specifically exclude the operation of the rules of natural justice.
26. Senior public officers, Police Officers, Members of the Legislative Assembly, Local Government Councillors and Local Government Chief Executive Officers be required to report to the NT Anti-Corruption Commission any matter reasonably suspected of involving corruption in public administration or serious or systemic misconduct or maladministration in public administration.

27. The Commissioner develop guidelines for the assistance of those to whom the mandatory reporting provisions apply.

28. No time limit be imposed with respect to receiving complaints about corruption, but consideration be given to imposing a limitation in respect of less-serious matters which are properly classified as maladministration.

29. If a time limit is imposed, notwithstanding that a matter is outside the time limit, the Commissioner possess a wide discretion to accept the complaint or report and to investigate if the Commissioner is of the view that it is in the public interest to do so.

30. The Commissioner possess a wide and unfettered discretion to:

- Accept or reject a complaint or report.
- Undertake an investigation or refer a matter to an agency for that purpose.
- Give directions to an agency as to the conduct of an investigation.
- Take back an investigation from an agency.
- Cease an investigation and either dismiss the complaint or report or refer it to an agency.
- Direct an agency to undertake further investigation and give directions in that regard.
• Generally alter a course of action according to information received in order to meet changing circumstances.

31. The Commissioner and other members of the NT Anti-Corruption Commission not be under obligation to complete a register of pecuniary interests and personal or political associations, but be under a legislative duty to avoid actual or perceived conflicts of interest. Legislative direction may be appropriate for consequences to follow if the existence of a conflict of interest is established.

32. The Commissioner not be bound by the rules of evidence.

33. The NT Commission legislation not include a general provision requiring the Commissioner to observe the rules of natural justice or procedural fairness (leaving the common law to operate in conjunction with the provisions recommended in the next paragraph).

34. The following provisions be enacted in order to ensure fairness to persons publicly affected by investigations:

• In a public inquiry in which allegations adverse to a person or body are aired, that person or body be provided with a reasonable opportunity to respond to the allegations both in public submissions and the presentation of evidence.

• If the NT Anti-Corruption Commission proposes to include in a report to a Standing Committee, the Assembly or a Public Sector Agency any comment adverse to any person or body, the Commission give the person or body a reasonable opportunity to respond to the substance of the matter adverse to the person or body and include in the report the principal features of the response of the person or body to the adverse matter.
35. Inquiries be conducted in private unless the Commissioner is satisfied it is in the public interest to conduct a public inquiry:

- The legislation state that possible prejudice to a future prosecution is a factor tending against holding a public inquiry.

- Legislative guidance be provided in terms of those found in s31(2) of the *Independent Commission Against Corruption Act 1988* (NSW).

- The factors to be considered include undue hardship likely to be caused to any person if a public inquiry is conducted.

36. In conducting a public inquiry the Commissioner be able to suppress information and documents and the identity of witnesses and persons publicly identified if it is in the public interest to do so or if publicity would cause undue hardship to any person.

37. Broadly speaking, the Commissioner be given the following powers:

- Entry, search and seizure powers without warrant with respect to public premises or premises used by public persons or entities other than residential premises.

- To require productions of statements, documents or other things.

- To obtain search warrants in respect of private or residential premises or motor vehicles or ships or other forms of conveyance.

- To seek warrants under surveillance and telecommunications legislation.

- To seek authorisation to conduct unlawful activities and assume false identities.
• To require attendance at a hearing and the giving of evidence under oath or affirmation (coupled with appropriate sanctions for non-compliance and contempt).

• To second staff from other agencies or to employ investigators or to delegate powers.

• To require a public sector agency to refrain from taking action relating to a particular matter under investigation or to conduct a joint investigation with the Commissioner (SA s34\(^1\) and WA s42\(^2\)).

• To exercise the powers of a public sector agency (SA s36A\(^3\)).

• Provided certain safeguards are implemented, to commence or continue an investigation notwithstanding the existence of other investigations or proceedings (NSW s18, \(^4\) QLD s331\(^5\) and VIC s70\(^6\)).

• In referring a matter to a public sector agency, power to give directions and guidance with respect to the conduct of the matter (SA ss37 and 38\(^7\) and WA s41\(^8\)) and to require the agency to provide a report as to the investigations undertaken and results.

• To refer a complaint or report concerning a Member of the Legislative Assembly (MLA) to the Speaker (the legislation requiring the Speaker to provide a report to the Commissioner as to the investigations undertaken and results).

\(^1\) Independent Commissioner Against Corruption Act 2012 (SA).
\(^2\) Corruption, Crime and Misconduct Act 2003 (WA).
\(^3\) Independent Commissioner Against Corruption Act 2012 (SA).
\(^4\) Independent Commission Against Corruption Act 1988 (NSW).
\(^6\) Independent Broad-Based Anti-Corruption Commission Act 2011 (Vic).
\(^7\) Independent Commissioner Against Corruption Act 2012 (SA).
\(^8\) Corruption, Crime and Misconduct Act 2003 (WA).
• To evaluate the practices, policies and procedures of a public sector agency and to report to the Assembly with recommendations (SA ss40-429).

• To request or recommend that a person be granted indemnity from prosecution (NSW s4910).

• To issue seizure and retention orders (SA ss31 and 3211).

• To apply to the Supreme Court for injunctions to restrain certain conduct (NSW s27,12 QLD s344,13 SA s3514 and TAS s9915).

• To apply to the Supreme Court for an order that a person’s passport be delivered to the Commissioner (SA Schedule 2, s1816).

• To request the Auditor-General to conduct an examination of accounts (SA s3917).

• To apply to dispose of seized property (NSW s48B18).

• To enlist the services of Police personnel to assist in the conduct of investigations and the provision of security for the Commissioner, Commission investigators and staff and witnesses in circumstances where the Commissioner believes on reasonable grounds that such assistance and protection is necessary.

• To convey information to the Director of Public Prosecutions (DPP), Police or other relevant law enforcement agencies concerning proceeds of crime discovered in the course of an investigation, regardless of

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9 Independent Commissioner Against Corruption Act 2012 (SA).
10 Independent Commission Against Corruption Act 1988 (NSW).
11 Independent Commissioner Against Corruption Act 2012 (SA).
14 Independent Commissioner Against Corruption Act 2012 (SA).
15 Integrity Commission Act 2009 (Tas).
16 Independent Commissioner Against Corruption Act 2012 (SA).
17 Ibid.
18 Independent Commission Against Corruption Act 1988 (NSW).
whether the information concerning the proceeds of crime was directly or indirectly relevant to the investigation.

38. The Commissioner be able to report at any time to the Assembly and the Standing Committee concerning investigations and opinions.

39. The Commissioner possess a discretion to report confidentially or to decline to report a matter which, in the opinion of the Commissioner, should remain confidential.

40. The NT Anti-Corruption Commission not be given power to institute any prosecutions.

41. Other than in respect of decisions to maintain confidentiality of material (see para [388]) and in respect of claims of privilege (see para [436]), no specific provision be made with respect to appeals or judicial review (leaving the current law with respect to judicial review of administrative bodies to apply).

42. The NT Anti-Corruption Commission be given budgetary flexibility.

43. The NT Anti-Corruption Commission be empowered to undertake or seek security checks with respect to all staff and others retained to provide services.

44. With the agreement of the Commissioner of Police and the DPP and, if necessary, the Heads of Public Sector Agencies, the NT Anti-Corruption Commission be able to retain the services of persons such as IT experts, Police Officers and DPP Prosecutors.

45. Provision be made for appropriate protections and immunities for the Commissioner, staff and persons retained to provide services for the NT Anti-Corruption Commission; and for witnesses.

46. The Commissioner be empowered to arrange physical and other protections for witnesses and staff.
47. As in South Australia, a person be appointed on an annual basis to conduct a review of the operations of the NT Anti-Corruption Commission.

48. A bipartisan Standing Committee of the Assembly be established with appropriate oversight of the NT Anti-Corruption Commission.

49. Complaints against the Commissioner be dealt with by the person appointed to conduct the annual review.

50. Provision be made for suspension and removal of the Commissioner.

51. The Commissioner possess appropriate powers with respect to investigating complaints against staff of the NT Anti-Corruption Commission and others retained to provide services to the Commission and in relation to disciplinary and other matters concerning staff.

52. Consideration be given to establishing a Commissioner for Standards to deal with less serious matters relating to Members of the Legislative Assembly.