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The case for a federal corruption watchdog

ICAC needed to fill the gaps in our
integrity system

*No federal agency has the investigative powers or
jurisdiction to expose corrupt conduct in the
federal government and public sector*

Discussion paper

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Summary

A federal anti-corruption commission would fill the gaps in our integrity system and increase public trust in government. No federal agency has the investigative powers or jurisdiction to expose corrupt conduct in the federal government and public sector.

Every state in Australia has an anti-corruption commission that operates alongside its other integrity agencies. These anti-corruption commissions have extensive powers and jurisdiction to investigate and expose corruption and misconduct in government and the public sector. They have uncovered systemic corruption and misconduct that was not found by existing agencies, including the corruption of local government elections in Queensland and mining lease distribution and political fundraising in NSW.

When compared to the integrity systems scrutinising the conduct of state governments, our federal system falls short.

There are significant gaps in the jurisdiction and investigative powers of the federal agencies responsible for scrutinising the public sector and government. No agency has the power to investigate corrupt conduct as defined by our state based commissions. No agency can investigate misconduct of MPs, ministers or the judiciary. The agencies that do have strong investigative powers, such as the federal police, can only use them when investigating criminal charges. No agency holds regular public hearings, meaning that corruption and misconduct is not properly exposed to the public.

A federal anti-corruption commission is needed to fill these gaps in our integrity system. To ensure any corruption and misconduct in our federal government and public sector is investigated and exposed, a federal anti-corruption commission will need strong investigative powers, broad jurisdiction similar to NSW ICAC and other successful state-based commissions, and the power to hold public hearings.

Recent polls, studies and surveys show that trust in government is at a record low in Australia and still falling.¹ A study conducted by the University of Canberra in 2016 found only 5% of Australians trust government.² A similar study by the Australian National University in 2016 found that 74% of Australians think politicians are ‘too

¹ See Andrew Leigh, *Explaining distrust: Popular attitudes towards politicians in Australia and the United States*, in *The Prince's New Clothes: Why do Australians Dislike their Politicians?* edited by David Burchell and Andrew Leigh, UNSW Press, UNSW, Sydney, 2002, Chapter 2; and <http://www.abc.net.au/news/2016-06-24/trust-in-australian-political-system-at-lowest-level/7539706>

² <https://theconversation.com/now-for-the-big-question-who-do-you-trust-to-run-the-country-58723>

often interested in themselves'.³ A recent poll commissioned by the Australia Institute revealed that 85.3% of respondents thought that there is corruption in federal politics.⁴

The establishment of a federal anti-corruption commission also has broad public support. A recent poll by the Australia Institute shows 80% of Australians support the establishment of a federal anti-corruption commission, and 78% support having one with public hearings. It also has broad support within the legal profession, with support from the Law Council of Australia and prominent barristers including Tony Fitzgerald AC QC, David Harper AM QC, Nicholas Cowdery AM QC and Paul Stein AM QC.

No federal agency has the investigative powers or jurisdiction to expose corrupt conduct in the federal government and public sector. The establishment of an anti-corruption commission would contribute to restoring people's confidence by sending an unambiguous signal that government takes corruption and accountability seriously.⁵ A federal anti-corruption commission would fill the gaps in our integrity system and increase public trust in government.

³ <http://www.abc.net.au/news/2016-12-20/2016-australian-election-disaffected-study/8134508>

⁴ <http://www.smh.com.au/federal-politics/political-news/federal-corruption-watchdog-needed-say-80-per-cent-of-australians-poll-20170113-gtqva3.html>

⁵ <http://www.themandarin.com.au/31553-anti-bribery-measures-beefed-up-but-the-case-for-a-federal-icac-remains/?pgnc=1>

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Introduction

WHAT IS AN ANTI-CORRUPTION COMMISSION?

An anti-corruption commission is a commission set up with the sole purpose of investigating and exposing corruption and misconduct in government and the public sector. Currently no federal agency has the investigative powers or jurisdiction to expose corrupt conduct in the federal government and public sector.

Anti-corruption commissions already exist in every state in Australia, operating alongside the police, auditors, ombudsmen and other integrity commissions. They can investigate any behaviour that impacts the impartial or honest exercise of official functions by public officials. Importantly, the definition of corrupt conduct by Queensland and NSW state commissions does not limit it to specific behaviours but remains broad.⁶ These bodies have a wide jurisdiction and strong investigative powers, and have uncovered many cases of systemic corruption and misconduct at a state government level.

The most successful state based commissions are given the necessary powers to investigate the public sector, parliamentarians, ministers, the judiciary, and indeed any person that attempts to impact the honest and impartial conduct of any of the above. This has led to corruption being exposed Queensland and NSW in local government elections, state election fundraising, and in the distribution of mining licences. Investigative powers needed to do this work include the ability to hold public hearings, compel evidence and witnesses, begin investigations at their own discretion and use surveillance devices.⁷

A broad based anti-corruption commission currently does not exist to scrutinise federal government and the federal public sector in Australia. In its place are a number of other agencies that each have some part in combating corruption. This report looks at each key agency in turn, examining their role and exposing the gaps in our integrity system. It concludes that no federal agency has the investigative powers or jurisdiction to expose corrupt conduct in the federal government and public sector, and that a federal anti-corruption commission is needed to fill these gaps.

⁶ See NSW *Independent Commission Against Corruption Act 1988* and Queensland *Crime and Corruption Act 2001*

⁷ See NSW *Independent Commission Against Corruption Act 1988* and Queensland *Crime and Corruption Act 2001*

Australia's integrity system

CURRENT SYSTEM

Australia has a multitude of agencies that are involved in some way in auditing and scrutinising the federal public sector. However, no federal agency has the investigative powers or jurisdiction to expose corrupt conduct across federal government and the public sector.

The main bodies that are responsible for scrutinising the public sector and government in Australia under our current system are the Australian Commission for Law Enforcement Integrity (ACLEI), the Commonwealth Ombudsman, the Australian Federal Police (AFP), the Auditor General, the Australian Crime Commission (ACC), the Australian Public Service Commission (APSC), and the Independent Parliamentary Expenses Authority (IPEA). Other bodies including the Australian Securities and Investment Commission and the Australian Transaction Reports and Analysis Centre.

This arrangement is often described by the Australian Government as 'multi-agency', 'holistic', or 'multi-faceted and diverse'⁸. Transparency International disputes this assertion. It explains that:

"The recent adoption of the term 'model' suggests that current Commonwealth arrangements reflect a degree of pre-existing planning or coherence which, in TIA's assessment, is factually and historically inaccurate. The Commonwealth's present arrangements are the result of decades of largely uncoordinated developments in administrative law, criminal law and public sector management, together with political accident."⁹

Australian Commission for Law Enforcement Integrity

The Australian Commission for Law Enforcement Integrity (ACLEI) and the Integrity Commissioner were established in 2006 under the *Law Enforcement Integrity*

⁸ Attorney General's department (2014), *submission to the Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity*, Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity

⁹ Transparency International Australia, *Submission to the National anti-corruption plan discussion paper*, 2012

Commissioner Act 2006 (Cth). The object of ACLEI as defined by the Act is to detect, investigate and prevent corruption in law enforcement agencies.¹⁰

The agencies subject to the Integrity Commissioner's jurisdiction are¹¹:

- the Australian Criminal Intelligence Commission
- the Australian Federal Police (including ACT Policing)
- the Australian Transaction Reports and Analysis Centre (AUSTRAC)
- prescribed aspects of the Department of Agriculture and Water Resources
- the Department of Immigration and Border Protection (including the Australian Border Force)
- the former National Crime Authority, and
- any other Australian Government agency that is prescribed by regulation under the Law Enforcement Integrity Commissioner Act 2006.

A 2014 Joint Committee inquiry into the jurisdiction of ACLEI recommended expanding it to cover the Department of Agriculture, and investigating the feasibility of it also covering the Australian Taxation Office. The committee also noted that it was not opposed to further examining the need for a federal anti-corruption commission.¹² Committee recommendations were not implemented, leaving ACLEI's jurisdiction limited to police and law enforcement agencies. This means it cannot investigate corruption in other government departments or in parliament. The definition of corrupt conduct in the ACLEI Act is not as broad as that of state based anti-corruption commissions, and is limited to staff members or ACLEI or law enforcement agencies.¹³ ACLEI has the power to hold public hearings as part of its investigations, but it has never done so.¹⁴

Australian Criminal Intelligence Commission

The Australian Criminal Intelligence Commission (ACIC) was established under the Australian Crime Commission Act in 2002, replacing the former National Crime Authority which was originally established in 1982. The National Crime Authority had

¹⁰ *Law Enforcement Integrity Act 2006*

¹¹ <https://www.aclei.gov.au/acleis-role>

¹² Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (2014), *Committee Final report*, Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity

¹³ *Law Enforcement Integrity Act 2006*

¹⁴ McKenzie (2017), *Peter Dutton's home affairs ministry will investigate itself for corruption*, Sydney Morning Herald, 12th July 2017, <http://www.smh.com.au/federal-politics/political-news/peter-duttons-home-affairs-ministry-will-investigate-itself-for-corruption-20170721-gxfwov.html>

all the powers of a Royal Commission to investigate organised crime across state and federal borders. Its replacement by the ACIC limited its independence and public reporting. The *Crime Commission Act 2002* introduced a large ACIC Board made up of representatives from law enforcement agencies, which effectively put those the ACIC may be investigating in charge of the commission.¹⁵

The functions of the ACIC defined in the Act are to collect and disseminate criminal information, and at the direction of the Board undertake intelligence operations and investigate matters relating to federally relevant criminal activity.¹⁶ During federal criminal investigations, the ACIC is able to assist the Australian Federal Police, the Immigration and Border Protection Department or ACLEI in the conduct of integrity operations, but only in relation to matters referred by the Board that relate to federal crimes.¹⁷

The ACIC cannot investigate corruption or misconduct that is not a federal crime or has not been referred by the Board. This limits its independence, as the Board consists of the Commissioner of the AFP, the Secretary of the Justice Department, and the Tax Commissioner, among others.¹⁸ It also means it cannot investigate corrupt conduct that involves any behaviour adversely affecting the impartial exercise of public office.

Australian Public Service Commission

The Australian Public Service Commission was established under the *Public Sector Act 1999*. Its primary function is to strengthen the professionalism of the public service, uphold high standards of integrity and conduct, and to monitor, review and report on public service capabilities. In relation to corruption and misconduct, the APSC is tasked with inquiring into possible breaches of the Australian Public Service Code of Conduct by staff or agency heads. This Code of Conduct includes requiring staff and agency heads to behave with honesty, integrity, use Commonwealth resources properly, and avoid any conflict of interest. To inquire into whether the Code of Conduct has been breached the APSC can use the same limited powers as an agency head, which means it cannot require people to give evidence or produce documents, cannot enter or search premises and cannot hold hearings. The Code of Conduct only applies to staff of federal agencies, meaning that parliamentarians, Ministers, ministerial staff and the judiciary are not under the jurisdiction of the APSC.¹⁹

¹⁵ *Australian Crime Commission Act 2002*

¹⁶ *Australian Crime Commission Act 2002*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Public Sector Act 1999*

Auditor General

The office of the Auditor General was established in 1901 along with the Australian National Audit Office. It now operates under the *Auditor General Act 1997*. The main functions of the Auditor General are to provide annual financial statement audits, annual performance statement audits and general performance audits. Its jurisdiction is limited to Commonwealth entities that are established by an Act of Parliament, similar to the APSC, so it can effectively only audit departments and government corporations. Audits are limited to finance and performance, so any corruption or misconduct falling outside those areas would not be found by the Auditor General.²⁰

Commonwealth Ombudsman

The office of the Commonwealth Ombudsman was established under the *Ombudsman Act 1976*. The role of the Ombudsman as defined by the Act is to investigate complaints arising from the exercise of public office by federal agencies and officials. It can investigate Departments or prescribed authorities (including bodies or companies established by the Commonwealth or for public purpose) in matters arising from administration. This means that it cannot investigate corrupt conduct defined as any behaviour impacting the impartial function of public office. Among others, the Act specifies that it cannot investigate Ministers, the judiciary or anything protected by Parliamentary Privilege.²¹

Australian Federal Police

The Australian Federal Police (AFP) was established in 1979 under the *Australian Federal Police Act 1979*, replacing the *Commonwealth Police Act of 1957*. The AFP has broad jurisdiction including to police laws of the Commonwealth, the investigation of State offences that have a federal aspect, and providing police services to assist with operations of law enforcement and intelligence agencies.²² In relation to combating corruption, the AFP is responsible for investigating serious fraud and corruption against the Commonwealth and by Australian Government employees. For this purpose it established the Fraud and the Anti-corruption business area in 2013 which hosts the multi-agency Fraud and Anti-Corruption Centre.²³

²⁰ *Auditor General Act 1997*

²¹ *Ombudsman Act 1976*

²² *Australian Federal Police Act 1979*

²³ Australian Federal Police (2017), *Fraud and anti-corruption*, <https://www.afp.gov.au/what-we-do/crime-types/fraud/fraud-and-anti-corruption>

Although the AFP has strong investigative powers it can only use them to investigate corruption when it is a Commonwealth crime. This means that many forms of misconduct covered by state based anti-corruption commissions are not investigated by the AFP as they are not crimes. This means that it cannot investigate any behaviour that affects the impartial and honest conduct of public office, which the state anti-corruption commissions define as corrupt conduct (see Appendix 1). It also has to balance its resources and prioritise investigations across all federal crime areas, and is not solely focussed on investigating corruption.

Independent Parliamentary Expenses Authority

The Independent Parliamentary Expenses Authority (IPEA) was established in 2017 under the *Independent Parliamentary Expenses Authority Act 2017*. It has a limited purpose to advise, monitor, report and audit in matters relating to various expenses of parliamentarians. This means that it cannot investigate and expose corruption and misconduct.

Although the Act does not outline the specific investigative powers that the Authority has, it states that the Authority has ‘power to do all things necessary or convenient to be done for or in connection with the performance of its functions,’ including to require the production of information or documents.²⁴ These powers are limited by legal professional privilege and parliamentary privilege, however, which may lead to documents being hidden by parliamentarians or their lawyers.²⁵

IPEA cannot investigate corruption and misconduct beyond matters relating to parliamentary expenses. It also cannot investigate using the powers of a Royal Commission, cannot hold public hearings, and cannot expose inappropriate expenditure apart from listing a report on their website.²⁶

The enforcement of parliamentary expenses investigations is also difficult, as shown by former Speaker Bronwyn Bishop’s refusal to cooperate in a review of her expenditure and entitlements.²⁷

²⁴ Independent Parliamentary Expenses Authority Act 2017

²⁵ Ibid.

²⁶ Ibid.

²⁷ Bourke (2017), *Bronwyn Bishop cut short participation in expenses review after repaying more than \$6700, report finds*, Sydney Morning Herald, 30th March 2017, <http://www.smh.com.au/federal-politics/political-news/bronwyn-bishop-cut-short-cooperation-with-expenses-review-after-repaying-more-than-6700-report-reveals-20170329-gv9g8r.html>

GAPS IN OUR INTEGRITY SYSTEM

The existing agencies in our integrity system have significant gaps in their jurisdiction (see table 1). No agency has the specific purpose or core function of investigating and exposing corruption and misconduct. No agency investigates corrupt conduct as defined by anti-corruption commissions, which includes any behaviour that affects the honest and impartial exercise of public office (see Appendix 1). The majority cannot investigate MPs, ministers, ministerial staff or the judiciary. The AFP and the ACIC can only do so in criminal investigations.

There are also significant gaps in our integrity system in its investigative powers (see table 2). The agencies with the strongest investigative powers, the AFP and the ACIC, can only use them in criminal investigations. ACLEI can only use its powers when investigating law enforcement agencies. The other agencies do not have sufficient investigative powers to uncover corruption and misconduct. State based anti-corruption commissions have extensive powers to compel witnesses and evidence, hold public and private hearings, enter and search premises, and use surveillance devices and phone intercepts.

Table 1: Comparison of jurisdiction of integrity bodies

Body	Core Function	Criminal corruption	Corrupt conduct*	Govt Depts	Govt contractors	MPs	Ministers	Ministerial staff	Judiciary
Auditor General	Audit financial statements	No	No	Yes	Yes	No	No	No	No
ACIC	Federal crime	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
ACLEI	Integrity of law enforcement agencies	Yes	No	Only law enforcement agencies	No	No	No	No	No
AFP	Federal crime	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
APSC	APS standards	No	No	Yes	Yes	No	No	No	No
Comm Omb	Audit administrative processes	Yes	No	Yes	Yes	No – Parli privilege	No	No	No
IPEA	Audit MP expenses	No	No	No	No	Yes	Yes	No	No

Sources: Law Enforcement Integrity Act 2006, Auditor General Act 1997, ACC Act 2002, AFP Act 1979, Public Service Act 1999, Auditor General Act 1997, Ombudsman Act 1976

* This refers to corrupt conduct as defined by state based anti-corruption commissions. For full definition see Appendix 1.

Table 2: Comparison of powers of integrity bodies

Body	Coercive powers	Enter premises	Search warrants	Surveillance and phone intercept	Hearings – public/private	Own motion function	Referral to DPP	Corrupt conduct findings
Auditor General	Yes	Can enter on Commonwealth premises when undertaking audits	No	No	No	Yes	No – tables reports in Parliament and gives to Ministers	No
ACIC	Yes	Yes - in criminal matters	Yes	Yes	Private	No – ACC Board refers	No – refers to AFP	No – must refer for prosecution
ACLEI	Yes	Law enforcement agencies only	Yes	No	Can hold public hearings but never has	Yes	No – refers to AFP Commissioner	No – refers misconduct to agency manager
AFP	No	Yes - in criminal matters	Yes	Yes	No	No – requires reporting	Yes	No
APSC	No	No – can only make inquiries similar to an agency head	No	No	No	Yes	No – reports to agency head	No
Comm Omb	Can obtain information	Can enter Commonwealth premises	No	No	No, and limited public reporting	Yes	No – refers misconduct to agency manager	No
IPEA	Can obtain information	No	No	No	No	Yes	No – reports on website	No

Sources: Law Enforcement Integrity Act 2006, Auditor General Act, Australian Crime Commission Act 2002, Australian Federal Police Act 1979, Public Service Act 1999, Auditor General Act 1997, Ombudsman Act 1976, Independent Parliamentary Expenses Authority Act 2017

A federal anti-corruption commission

A federal anti-corruption commission is needed to fill the gaps in our current system. Each state has an anti-corruption commission that works alongside the existing bodies to combat corruption. Their explicit core function is to investigate and expose corruption and misconduct, and they are given the broad jurisdiction, independence, resourcing and investigative powers of a Royal Commission to be able to fulfil that function.

The establishment of a federal anti-corruption commission also has broad public support. A recent poll by the Australia Institute shows 80% of Australians support the establishment of a federal anti-corruption commission, and 78% support having one with public hearings. It also has broad support within the legal profession, with support from the Law Council of Australia and prominent barristers including Tony Fitzgerald AM QC, David Harper AM QC, Nicholas Cowdery AM QC and Paul Stein AM QC.

JURISDICTION

State based anti-corruption commissions in established in NSW and Queensland have wide jurisdiction to investigate conduct of any person that impacts the impartial conduct of public officials.²⁸

A federal anti-corruption commission, if designed in a similar way to these state based commissions, would have jurisdiction over the public sector, members of parliament, Ministers, ministerial staff, the judiciary, and any person who adversely affects the impartial exercise of public office. This is important in filling the gaps in our current system, where most outside the public sector operate without proper scrutiny.

As well as having a broad jurisdiction in terms of the people the commission can investigate, a federal anti-corruption commission would also need a broad jurisdiction in terms of the conduct it can investigate. If the definition of corrupt conduct is too limited, as it is in many of our existing integrity agencies, the commission will be limited in the investigations it can undertake. No agency in our current system

A full definition of corrupt conduct as used by the NSW ICAC is attached as an appendix.

²⁸ See NSW *Independent Commission Against Corruption Act 1988* and Queensland *Crime and Corruption Act 2001*

INVESTIGATIVE POWERS

Corruption and misconduct are complex forms of wrongdoing. Corruption and misconduct are often committed by highly skilled professionals in positions of power within a system that is both well-known to them and difficult for others to penetrate. Corruption often occurs in networks of mutually beneficial relationships of powerful and influential people.²⁹ The corrupt often know how to hide their trail and stay in front. As outlined by former Premier Nick Greiner in his second reading of the NSW *Independent Commission Against Corruption Bill* in 1988:

“... corruption is by its nature secretive and difficult to elicit. It is a crime of the powerful. It is consensual crime, with no obvious victim willing to complain. If the commission is to be effective, it obviously needs to be able to use the coercive powers of a Royal commission.”³⁰

Eddie Obeid was recently sentenced to prison for misconduct in public office in NSW.³¹ It is now known that he had been engaging in misconduct for decades, though it took all the powers of NSW ICAC, including public hearings, to untangle the complex web of relationships and favours to find him guilty.³²

For this reason, a federal anti-corruption commission must be given the investigative powers necessary to expose corruption and misconduct. State based anti-corruption commissions, including NSW ICAC and Queensland CCC, have strong investigate powers including the ability to hold public hearings, compel evidence and witnesses, and use surveillance devices. To ensure these powers are not used irresponsibly, oversight of the commission can be implemented through a parliamentary committee and an inspector as used in state based commissions around Australia.³³

The necessary investigative powers include³⁴:

- Coercive powers to compel documents or things
- Coercive powers to compel a public authority or official to provide information
- Ability to enter and search premises and inspect and copy documents

²⁹ Murray (2017), *Game of Mates: how favours bleed the nation*, self-published

³⁰ Griener (1988), NSW Parliamentary Hansard, 26th May 1988

³¹ Whitbourn (2016), *Eddie Obeid sentenced for Circular Quay corruption*, Sydney Morning Herald, accessed 28th July 2017, <http://www.smh.com.au/nsw/eddie-obeid-sentenced-for-circular-quay-corruption-20161214-gtbb50.html>

³² Leslie (2014), *Untangling the web: how the ICAC scandal unfolded*, ABC News, accessed 28th July 2017, <http://www.abc.net.au/news/2014-08-21/untangling-the-web-how-the-icac-scandal-unfolded/5686346>

³³ See NSW *Independent Commission Against Corruption Act 1988* and Queensland *Crime and Corruption Act 2001*

³⁴ Prenzler (2010), *Towards a model public sector integrity agency*, The Australian Journal of Public Administration, vol. 69, no. 3, pp. 251–262

- Surveillance devices and phone intercepts
- Own motion powers to begin investigations at the discretion of the commissioner
- Public and private hearings

INDEPENDENCE

In order to provide proper scrutiny of the public sector and government, anti-corruption commissions in NSW and Queensland legislate the independence of the Commission as a statutory body with a Commissioner with a fixed term.³⁵

The NSW Government severely threatened the independence of its NSW ICAC Commissioner by prematurely ending her term in 2016. This occurred shortly after the report of Operation Spicer that found 10 members of the Liberal Party were involved in illegal party fundraising by soliciting and then hiding political donations from banned donors.³⁶

In a recent report titled 'Lessons from NSW ICAC', former NSW Director of Public Prosecutions Nicholas Cowdery AM QC has said:

Commissioner Latham's statutory independence and tenure were ignored in the legislative aftermath of the Cunneen case. Part way through her term she was invited to apply for her own position (in effect) in a newly constituted ICAC. The presumed independence of the position, thought to have been akin to that of a judge, was cast aside. In order to attract and hold the best applicants for such positions, that level of independence is required for the work of the Commission to be done effectively, frankly and fearlessly. Government should not be able to intervene in the way it did and dismissal from office should be available only on grounds similar to those applying to the bench. That is another lesson for a federal proposal.³⁷

³⁵ See NSW *Independent Commission Against Corruption Act 1988* and Queensland *Crime and Corruption Act 2001*

³⁶ Gerathy (2016), *ICAC: sweeping changes of ICAC may see Megan Latham lose job*, ABC News, accessed 28th July 2017, <http://www.abc.net.au/news/2016-11-15/sweeping-changes-to-icac-might-see-megan-latham-lose-job/8027442>

³⁷ Cowdery (2017), *Lessons from NSW ICAC*, Conference Paper: Accountability and the Law 2017 Conference, <http://tai.org.au/content/lessons-nsw-icac-watchdog-has-teeth>

RESOURCING

A federal anti-corruption commission must be given sufficient resources to fulfil its purpose. The annual budget of an anti-corruption commission must be assured and protected from political interference.

NSW ICAC has faced funding cuts over consecutive years, resulting in the loss of 17 staff including an entire investigative team. This occurred after ICAC exposed corruption in political donations involving ten members of the Liberal Party. The NSW Public Service Association has said that the funding cuts are an attempt by the government to diminish scrutiny.³⁸

Nicholas Cowdery AM QC has raised concerns about the resources made available to NSW ICAC and a future federal anti-corruption commission:

NSW ICAC has been faced this year with a funding cut. It is an easy way for government to impair the effectiveness of such a body and steps would need to be taken to ensure that adequate resources continued to be allocated to a national integrity commissions.³⁹

³⁸ Knaus (2017), *Icac weakening due to budget cuts and job losses, union and NSW Labor warn*, The Guardian, 17th July 2017, <https://www.theguardian.com/australia-news/2017/jul/17/icac-weakening-due-to-budget-cuts-and-job-losses-union-and-nsw-labor-warn>

³⁹ Cowdery (2017), *Lessons from NSW ICAC*, Conference Paper: Accountability and the Law 2017 Conference, <http://tai.org.au/content/lessons-nsw-icac-watchdog-has-teeth>

Conclusion

A federal anti-corruption commission is needed to fill the gaps in our integrity system. Currently no agency can investigate corrupt conduct as defined by our state based anti-corruption commissions. No agency can investigate misconduct of members of Parliament, ministers or the judiciary. The only organisations that have strong investigative powers can only use them when investigating serious crime. No agency holds regular public hearings, leaving corruption and misconduct hidden from public view.

With a broad jurisdiction and sufficient investigative powers, a federal anti-corruption commission can fill these gaps. Anti-corruption commissions operate in every state in Australia and uncover corruption and misconduct that has fallen through the gaps of their other integrity agencies. Corruption does not stop at state borders, and a federal anti-corruption commission would ensure that any corrupt conduct or misconduct happening a federal level is found and exposed.

Recent polls, studies and surveys show that public trust in government is at a record low in Australia and still falling.⁴⁰ A study conducted by the University of Canberra in 2016 found only 5% of Australians trust government.⁴¹ A similar study by the Australian National University in 2016 found that 74% of Australians think politicians are 'too often interested in themselves'.⁴² Polling commissioned by the Australia Institute revealed that 85.3% of respondents thought that there is corruption in federal politics.⁴³

The establishment of a federal anti-corruption commission has broad public support and would go some way to increasing public trust in government. A recent poll by the Australia Institute shows 80% of Australians support the establishment of a federal anti-corruption commission, and 78% support having one with public hearings. It also has broad support within the legal profession, with support from the Law Council of Australia and prominent barristers including Tony Fitzgerald AM QC, David Harper AM QC, Nicholas Cowdery AM QC and Paul Stein AM QC.

⁴⁰ See Andrew Leigh, *Explaining distrust: Popular attitudes towards politicians in Australia and the United States*, in *The Prince's New Clothes: Why do Australians Dislike their Politicians?* edited by David Burchell and Andrew Leigh, UNSW Press, UNSW, Sydney, 2002, Chapter 2; and <http://www.abc.net.au/news/2016-06-24/trust-in-australian-political-system-at-lowest-level/7539706>

⁴¹ <https://theconversation.com/now-for-the-big-question-who-do-you-trust-to-run-the-country-58723>

⁴² <http://www.abc.net.au/news/2016-12-20/2016-australian-election-disaffected-study/8134508>

⁴³ <http://www.smh.com.au/federal-politics/political-news/federal-corruption-watchdog-needed-say-80-per-cent-of-australians-poll-20170113-gtqva3.html>

Appendix 1 - Corrupt conduct

The definition of corrupt conduct below is from the NSW *Independent Commission Against Corruption Act 1988*. The Queensland *Crime and Corruption Act 2001* has a similar definition, as does the Victorian *Independent Broad-based Anti-corruption Commission Act 2011*, although the IBAC Act differs in that it requires the conduct to, if proven, be a criminal offence.⁴⁴ NSW ICAC and Queensland CCC allow for corrupt conduct that would, if proven, be a criminal offence, a disciplinary offence, or reasonable grounds for dismissal.⁴⁵

(1) Corrupt conduct is:

(a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or

(b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or

(c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or

(d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

(2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:

(a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),

(b) bribery,

(c) blackmail,

(d) obtaining or offering secret commissions,

(e) fraud,

(f) theft,

(g) perverting the course of justice,

(h) embezzlement,

(i) election bribery,

(j) election funding offences,

(k) election fraud,

(l) treating,

⁴⁴ See Queensland *Crime and Corruption Commission Act 2011* and Victoria *Independent Broad-based Commission Against Corruption Act 2011*

⁴⁵ See NSW *Independent Commission Against Corruption Act 1988* and Queensland *Crime and Corruption Commission Act 2011*

- (m) tax evasion,*
- (n) revenue evasion,*
- (o) currency violations,*
- (p) illegal drug dealings,*
- (q) illegal gambling,*
- (r) obtaining financial benefit by vice engaged in by others,*
- (s) bankruptcy and company violations,*
- (t) harbouring criminals,*
- (u) forgery,*
- (v) treason or other offences against the Sovereign,*
- (w) homicide or violence,*
- (x) matters of the same or a similar nature to any listed above,*
- (y) any conspiracy or attempt in relation to any of the above.*

(2A) Corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:

- a) collusive tendering,*
- b) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,*
- c) dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,*
- d) defrauding the public revenue,*
- e) fraudulently obtaining or retaining employment or appointment as a public official.⁴⁶*

⁴⁶ NSW Independent Commission Against Corruption Act 1988