



31 January 2019

Sarah Chidgey  
Deputy Secretary  
Integrity and International Group  
Attorney-General's Department  
3-5 National Circuit | Barton ACT 2600

**Public Submission – Civil Society Consultation**  
**Commonwealth Integrity Commission**

Dear Sarah,

Thank you for the opportunity to make a submission for consideration in the preparation of the bill for a new Commonwealth Integrity Commission. Following the discussions in Melbourne, it is clear a number of the other attendees will be making detailed submission on issues such as the lack of public hearings in the proposed Public Sector Division. With this in mind, I will limit my comments to some of the specific areas in which I had input on the day.

***Clarity of mission***

What was unclear during the Civil Society Consultation was the core mission of the proposed CIC. At times the discussion seemed bogged down in how matters would (or would not) proceed to prosecution, at other times it seemed the core function would be deterrence through exposing corruption. If prosecution is the core mission, the CIC will have a narrow focus and matters will be dragged through lengthy court processes<sup>1</sup> without the public airing necessary for accountability and celerity.

The organisation will need to understand its mission from the get-go, otherwise the organisational culture will become mired in one direction or another, and be far less responsive to the public will for a strong anti-corruption regime.

***Integrity testing***

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<sup>1</sup> Foreign bribery investigations are illustrative of this. According to the OECD, the average time between reporting and final action in such cases is more than seven years – see Organization for Economic Cooperation and Development, "Oecd Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials," (Paris: OECD Publishing, 2014).

The argument not to empower the Public Sector Division with the ability to use integrity testing requires reconsideration. While it is known that police and law enforcement agency personnel are far more aware of the nuances of investigative techniques than the average public servant, the generalities of investigations and many of the specifics of police and investigative methodology are regularly depicted in popular media. **Any** public servant choosing to educate themselves in counter-investigative techniques can do so readily in the information age. The Public Sector Division should therefore have the full range of investigative tools available.

International practice has seen integrity testing and sting operations successfully conducted against non-law-enforcement personnel. The Federal Bureau of Investigation in the United States specifically targets corrupt officials including positions as seemingly innocuous as postal workers<sup>2</sup>, and the US Postal Service office of Inspector General also uses integrity testing to investigate allegations of postal interference.<sup>3</sup>

At the other end of the scale, in the late 1970s, an FBI investigation using integrity testing techniques resulted in the conviction of a US Senator and six Members of the House of Representatives.<sup>4</sup> The use of such techniques where the executive tests members of the legislature are controversial – but proven.

### ***A direct avenue for public referrals***

Any limitation on the public ability to refer matters to the CIC will be interpreted by critics as a flaw. Getting the average person to report corruption is a difficult business. The 2012 ANUPoll<sup>5</sup> showed that many people did not sufficiently understand the machinery of government to know where to report corruption. The Table below from the Poll shows the responses to the question “If you suspected or observed corrupt activity, would you know where to report this corrupt activity?”

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<sup>2</sup> <https://www.justice.gov/usao-ndga/pr/sixteen-us-postal-service-workers-charged-accepting-bribes-deliver-cocaine>

<sup>3</sup> United States Postal Service Office of the Inspector General, "Semiannual Report to Congress October 1, 2015 - March 31, 2016," (Washington, DC: United States Postal Service Office of the Inspector General, 2016).

<sup>4</sup> Michael A. DeFeo, "Prevention and Repression of Corruption in Non-Law Enforcement Agencies," *Work Product of the 113th International Training Course* (Tokyo, Japan: United Nations and Asia Far East Institute for the Prevention of Crime and Treatment of Offenders, 2002), [https://www.unafei.or.jp/publications/pdf/RS\\_No56/No56\\_39VE\\_DeFeo2.pdf](https://www.unafei.or.jp/publications/pdf/RS_No56/No56_39VE_DeFeo2.pdf).

<sup>5</sup> Ian McAllister, Juliet Pietsch, and Adam Graycar, "Anupoll: Perceptions of Corruption and Ethical Conduct," (Canberra: The Australian National University, 2012).

	Number	Per cent
Australian Commission for Law Enforcement Integrity (ACLEI)	10	1.0
Consumer affairs/ fair trading	22	2.1
Corruption and Crime Commission (CCC)	49	4.8
Crime and Misconduct Commission (CMC)	20	1.9
Independent Commission Against Corruption (ICAC)	41	4.0
Local bank manager	1	0.1
Local councilor	9	0.9
Ombudsman	150	14.7
Parliament / member of parliament	15	1.5
Police	508	49.8
Public servant	3	0.3
School principal	1	0.1
Australian Competition And Consumer Commission (ACCC)	16	1.6
Australian Securities And Investments Commission (ASIC)	11	1.1
Depends on the type of corruption/ situation/ circumstances	37	3.6
Media (TV/ Newspapers/ etc)	16	1.6
Crime stoppers	14	1.4
Internet	6	0.6
Work superior/ boss/ senior management	11	1.1
Other	48	4.7
Don't know / can't say	30	2.9
Refused	2	0.2
<b>Total</b>	<b>1020</b>	<b>100.0</b>

The resolution lies in the processes and/or systems to be implemented in the new CIC, rather than the legislation. The NSW Independent Commission Against Corruption receives thousands of matters annually, which it refers to other agencies or closes without referral or investigation.<sup>6</sup> Technology can be used to streamline this process. An example is the complaints/allegations referral system introduced into the AFP in the mid-2000s. I used this system several times to input information from complainants, and to resolve minor matters speedily. Oversight included referral of all matters to the Commonwealth Ombudsman for auditing purposes. Similar processes or systems could be introduced to

<sup>6</sup> ICAC [Independent Commission Against Corruption], "Annual Report 2016-17," (Sydney, Australia: Independent Commission Against Corruption, 2017). – see pages 20-23 for the assessment processes.

the CIC as a cost effective means of ensuring the public are given every opportunity to report matters they believe to be corrupt.

While I accept many matters will be erroneously, vexatiously or maliciously referred to the CIC, this is the cost of doing business in the anti-corruption space. The alternative is for the CIC to go forward with a reputation of dodging its mission. The NSW ICAC, while imperfect, has garnered broad public support and respect over the years. It would do well for the Commonwealth to set its sights at the high end of the spectrum, rather than risk mediocrity in the public eye.

Sincerely

Adam Masters  
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## References

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