

Mr Chris Moraitis PSM  
Secretary  
Attorney-General's Department  
Canberra

[anticorruption@ag.gov.au](mailto:anticorruption@ag.gov.au)

Dear Mr Moraitis,

**Re: A Commonwealth Integrity Commission –  
proposed reforms**

I welcome the opportunity to make this submission and confirm that I give my consent for it to be posted on to the Attorney-General's Department's website and to have my name attributed to it.

I have been researching anti-corruption models/bodies for many years focusing particularly on the politics surrounding the creation of these independent, usually powerful institutions. My research often addresses their relationship with government and other members of parliament and some years ago I also examined the relationship between an independent, anti-corruption body and the parliamentary committees that monitored and reviewed its performance. My other area of research addresses causes underpinning the widening trust deficit between civil society and members of parliament and how they are impacting on the growing distrust civil society is feeling toward political institutions and political processes more broadly. These two areas of interest have coalesced

when analyzing the proposed model for a Commonwealth Integrity Commission (CIC).

There are some positive elements to the CIC, which I will address shortly, but regrettably, as currently proposed, the CIC is a flawed model that will not be able to deliver to the Australian people a Federal anti-corruption commission which ensures that the public interest takes precedence over personal, institutional and party interests.

The defective CIC model also represents a significant missed opportunity to address the growing hostility civil society is feeling toward its elected representatives and the political system more generally.

The proposed model should be delivering greatly improved transparency, accountability and openness across **the entire** public sector. Unfortunately, it does not. It is worth remembering that it is taxpayers who pay for the public sector to exist, and while they accept the need for a public sector and recognise the significant benefits derived from having one, they are entitled to have a public sector that always puts the public interest first. After all, that is at the heart of what they are paying for.

Through my research, I appreciate there is a sting attached to anti-corruption bodies. These independent institutions are established to address a set of problems relating to serious misconduct and corruption in the public sector, yet governments,

other members of parliament and public servants who advise governments on, among other things, anti-corruption policy, know that anti-corruption bodies often lead to another set of problems, in that they expose politically damaging findings in relation to the behaviour of public servants, elected and appointed. Of crucial importance to the ability of an anti-corruption body to be effective is the manner in which governments and other elements of the public sector respond to the sting.

The sting problem is sometimes addressed by deliberately creating an anti-corruption body that does not have the powers needed to be effective or the resources required to operationalise fully the powers they have been given. The proposed CIC model is defective in terms of the powers given to one of its two divisions: the Public Sector Division (the other is the Law Enforcement Division). Also, its suggested budget will prevent the CIC from delivering the level of public sector accountability the Australian community is entitled to receive.

This submission now address positive aspects of the model before going on to discuss the obvious flaws in the proposed model, which, in summary, lets the Australian people down.

## **Positive elements**

One of the most positive elements in the proposed model is its proactive-reactive approach to corruption-related matters. It is recognized by

experts in the anti-corruption field that an investigative, reactive only approach does not change behaviour. A reactive-proactive approach, however, allows staff of the anti-corruption body to undertake educative and liaison functions with all government departments and to conduct “quality assurance reviews” that focus on anti-corruption strategies and, where necessary, to deliver cultural change programs.

I suggest that the proactive role of the proposed CIC also needs to include a research element and that the reports and papers written by the research section be publicly available.

Clearly, the proactive section needs to be appropriately resourced. It also needs to have its budget quarantined. This prevents the investigative arm using the resources of the proactive section when their own budget is under pressure due to an unexpected escalation in investigations often the result of a serious scandal or series of scandals.

Another positive element of the CIC model relates to the Criminal Code being amended so that a “failure to report public sector corruption” is included as an offence. Royal commission, after royal commission and public hearing after public hearing have, over the years, revealed how colleagues have protected other colleagues, suspected of or known to be engaged in serious misconduct and corrupt activities. They have also revealed how institutions cover up scandals to protect the reputation of the institution. Amending

the Criminal Code to make the failure to report public sector corruption an offence will help considerably in changing conduct, as public servants are less likely to offer protection to other public servants or the institution for which they work if it is very likely to have a significant negative effect on their own careers and professional future.

Before moving on to discuss the most serious defects in the CIC model, this submission addresses the suggested budget for the CIC, which is a mere \$30 million per year.

### **Inadequate budget**

The CIC is to investigate and work with the entire Commonwealth public sector. This means it needs to cover personnel and institutions spread across the vast land of Australia. Yet the government is suggesting the CIC needs less funding than the Independent Broad-Based Anti Corruption Commission in Victoria. As referred to earlier, underfunding is one way governments try to protect themselves against the sting that attaches to anti-corruption bodies. Underfunding acts a form of repellent against those who deliver the sting.

If the CIC is to be effective, the government should be proposing a figure of around \$100 million per year. In terms of the taxpayer funded Australian budget, this is not a vast sum of money, especially when you consider the billions spent on defence-related contracts each year.

## **A divided, lopsided model**

The most egregious element of the CIC proposal, however, is not the budget but the divided nature of the model into two divisions: the Law Enforcement Division and the Public Sector Division.

Each Division is to have different powers and different forms of accountability and levels of transparency.

The Law Enforcement Division will cover: the Australian Criminal Intelligence Commission; the Australian Federal Police; The Australian Transaction Reports and Analysis Centre; the Department of Home Affairs; the Department of Agriculture and Water Resources; the Australian Competition and Consumer Commission; Australian Prudential Regulation Authority; the Australian Securities and Investment Commission; and the Australian Taxation Office. In other words, staff and institutions with law enforcement powers.

This Division is to have the power to: compel the production of documents; question people; hold public and private hearings; arrest; enter/search premises; seize evidence; undertake controlled operations and assumed identities; and undertake integrity testing.

The Public Sector Division will have jurisdiction over: non-law enforcement public service departments and agencies; parliamentary departments; statutory

agencies; Commonwealth companies and Commonwealth corporations; Commonwealth service providers and any subcontractors they engage; and parliamentarians and their staff.

The Public Sector Division will not have the same suite of powers as the Law Enforcement Division. It will only have the power to: compel the production of documents; question people; hold private hears; and enter/search premises. It will **NOT** be able to: exercise arrest warrants; hold public hearings or make findings of corruption, criminal conduct or misconduct at large.

At a recent meeting with staff of the Attorney-General's Department (24 January 2019), which I attended, we were informed that one of the reasons for the different powers for the Law Enforcement Division and Public Sector Division relates, in large part, to the sensitive information to which members of the law enforcement community have and can access. This, it was suggested, can make them a vulnerable target for the corrupt.

I would have thought that the most sensitive information in Australia in terms of many law enforcement and security matters and the letting of government contracts worth billions and billions of dollars took place around the Cabinet Table.

It was also explained that while the Public Sector Division is prohibited from holding public hearings,

corruption matters would eventually become public if a person was charged and brought before the courts.

As an eminent former Victorian Court of Appeal Judge pointed out at the meeting, many court cases do not attract the same level of interest that public hearings conducted by anti-corruption bodies do, and that the level of public interest can have several positive outcomes.

The benefits that arise from the ability to hold public hearings was made clear by the Commissioner of the Independent Broad-Based Anti Corruption Commission, The Honourable Robert Redlich QC, in the 2017/2018 Annual Report. As he explained:

*Public examinations are a critical investigative tool in exposing and preventing corruption public sector corruption and police misconduct. They help educate the public sector and community about the impact of corruption and police misconduct and how it can be prevented. They have prompted the public sector to examine and improve its systems and practices. And they have encouraged further credible complaints about corruption.*

Mr Redlich goes on to point out that from 69 investigations, which included preliminary inquiries, IBAC has, to date, only conducted five public hearings.

I am not in any way suggesting that public hearings should be the norm for most investigations, but used

wisely, they are a vital tool for any effective anti-corruption body.

## **Conclusion**

There is no justifiable reason to quarantine the Public Sector Division from public hearings or to deny it the powers granted to the Law Enforcement Division. The only plausible reason that comes to mind relates to the previously referred to sting effective anti-corruption bodies can deliver.

The public will see the diminished powers of the Public Sector Division as a blatant attempt by particular members of parliament, in this instance those on the government benches who are proposing the divided model, to protect themselves, their political staff, many in the public sector and big businesses that provide services to government (some of whom may be political donors) from transparency and effective accountability.

One outcome from this divided, flawed model is assured. If implemented, the trust deficit between civil society and its elected representatives will plummet to new lows.

The public will see this as an attempt by the government to shield itself, many elements of its administrative arm and big business from the same level of accountability and transparency it is championing for those public servants who perform a law enforcement role. It is creating a “them” and “us”,

divided public sector. How could this be seen as well-considered, informed, “best practice” public policy?

The proposed anti corruption reforms, which include the creation of the divided and lopsided CIC should be abandoned by the government forthwith. The public interest demands it, as does the public office-public trust principle, which all elected representatives are, for ethical reasons alone, obliged to uphold.

Sincerely

Dr Colleen Lewis, Adjunct Professor, Monash University.