Honourable Christian Porter MP
Attorney-General
Attorney-General’s Department
Australian Government
anticorruption@ag.gov.au

Dear Attorney-General Porter,

**Re: Comments on Commonwealth Integrity Commission – Proposed Reforms**

We welcome the opportunity to comment on the proposed Commonwealth Integrity Commission (CIC) and proposed reforms\(^1\).

Corruption impacts every country on earth and the only panacea to corruption is eternal vigilance. In this tone, the proposed CIC will be pivotal in ensuring that there is a watchman watching the watchmen –in the words of Juvenal, *quis custodiet ipsos custodes* – in Australia’s case the CIC will be the independent custodian on behalf of the integrity of our country’s laws and arbiter of anti-corruption practices in cooperation with other agencies.

Our submission is informed by our work on this topic, in particular, *The Changing Face of Corruption in the Asia-Pacific* (2017, Elsevier) and a working paper which compares and contrasts the experience of anti-corruption commissions in the region. We have attached this working paper as a PDF in the same email.

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The proposed CIC addresses the need for a key missing element in our institutional integrity infrastructure. With the establishment of the CIC, we will be joining other Asia-Pacific countries that have national anti-corruption commissions.

Our comments presented below is structured as follows:

1. The first section recognises elements of our support for or disagreement with the proposed CIC reforms
2. The second section makes nine (9) recommendations that build upon the positive elements of the proposed CIC by adding additional strengths gleaned from a range of informed research and advocacy;
3. The third section summarises our working paper which supports and informs our recommendations. More information on our research and literature review may be found in our working paper PDF.

We welcome any further dialogue that the Attorney-General’s office may wish to engage with us with respect to the ideas contained within.

Kind regards,

Dr. Marie dela Rama, Management Discipline Group, UTS Business School
Mr. Michael Lester, Consultant, Long View Partners

1.0 Proposed reforms of the CIC

We are supportive of the structure of the proposed CIC with the Commissioner and two Deputy Commissioners. However, the responsibility of the main Commissioner must be expanded.

We are principally in support of the proposed CIC with respect to the Law Enforcement Division.
We are not supportive of the proposed CIC with respect to the Public Sector Division as it has limited capacity.

2.0 Recommendations to amend CIC and integrate with McGowan NIC bill
We believe that the CIC’s proposed reforms has weaknesses that can only be addressed and further strengthened by elements from the McGowan bill which has the backing of Transparency International Australia. The following is the McGowan NIC framework taken from p.3 of her bill:

Graph 1: McGowan NIC Bill Framework (2018)
While there is unity between the CIC and McGowan Bill on the matter of the Law Enforcement Integrity Commissioner, the other elements of the Bill need to be transposed to the CIC for it to be legitimised and effective. The efficacy of the CIC depends on the support, knowledge and experience of people who have worked in this area before. Where there are glaring omissions within the CIC, it behoves that these omissions be addressed with reference to the McGowan Bill.

We make the following recommendations:

**Recommendation 1: The Commissioner must provide whistleblower protection and oversight**

The roles and responsibilities of the Deputy Commissioners outlined in the CIC are already extensive. They could consistently be extended to include It is a right the oversight over whistleblower protection. Whistleblowing has not been mentioned at all in the CIC proposed reforms. This is a major oversight that needs to be addressed and the Commissioner’s role is the natural avenue and authority for whistleblower protection.

**Recommendation 2: ‘Revolving door’ codes, rules, regulations must be strengthened and legally formalised in both law enforcement and public sector divisions**

The proposed reforms for the CIC obliquely refer to the ‘relying door’ phenomenon. The reference is insufficient. In section 3.7 of our commentary below, the ‘relying door’ is characterised as a potentially pervasive and corrosive for of ‘political corruption’. It can be regarded as a *prima facie* case of ‘conflict of interest’ that undermines public trust. While currently regarded ethically as a ‘grey area’ and lying outside the scope of anti-corruption laws it an important issue that must be addressed by the legal powers of CIC with associated enforced regulations and penalties. This oversight must be remedied for Australia to minimally meet international best practice in this area. See for example, Maskell, J. (2014) *Post-Employment, ‘Revolving Door’, Laws for Federal
Recommendation 3: Lobbying codes, and rules must be formalised by legislation and regulations in both law enforcement and public sector divisions

The proposed reforms for the CIC do not address lobbying. They must do so. Lobbying practices are minimally addressed in the Statement of Ministerial Standards and the proposed sanction of making formal recommendations to stand aside. This is insufficient. In section 3.8 of this commentary, lobbying is characterised as potentially a form of ‘political corruption’ issue that must be addressed by the CIC with penalties. The practices, the perception of privileged policy access, and their associated lack of transparency and accountability feed public distrust. This is an oversight that must be remedied for Australia to minimally meet international best practice in this area.

Recommendation 4: Changes in law to address ‘revolving door’ and ‘lobbying’ practices

We offer the following checklist for incorporation in the CIC legislation to address lobbying and revolving door employment:

1. The scope of ‘public offices’ to include ministers; parliamentary secretaries; ministerial office staff; ministerial consultants, ministerial electoral office staff; senior public servants; major consultants to policy;
2. The scope of ‘lobbying’ to include third party lobbying firms; consultants to corporations; senior executives within corporations; positions with industry advocacy and associations; positions with ‘vested interest’-funded ‘think tanks’;
3. Independent and appropriately resourced statutory agency and associated regulatory regime, with significant powers, sanctions, penalties, including criminal prosecution, and regular public reporting of breaches and regulatory responses;
4. Prohibition of a move by a public official to a lobbying position within 10 years of leaving a public office in which that official was responsible for a directly related area of public policy within the preceding 10 years;
5. Prohibition of lobbyist being appointed to or serving on government agency boards or committees of inquiry;
6. Real time on-line public disclosure of ministerial, senior public servants and lobbyists diaries of meetings between both sides including people present, topic discussed, interests represented, information disclosed and outcome of meetings;
7. Independent review of the regulatory regime functioning and effectiveness by, publicly available and regular annual reporting
8. Disclosure of fees paid by lobbyists clients to individual lobbyists, including issues to be represented, and banning of ‘success fee’ payments;
9. Prohibition on giving to or receipt of any gifts or other forms of benefit by lobbyists to public office holders;
10. Update the Code of Professional Lobbying Conduct, training and education for lobbyists and public office holders, and certification of training, with periodic update and compliance

Recommendation 5: Political donations to be published in annual reports by all companies registered with ASIC and not-for-profits registered with the ACNC

Political donations are a sensitive topic and are the most obvious expression and perception of possible corruption in the public-private sector interface. While various instruments exist that have published the demand-side of political donations (politicians), the supply-side of political donations (the donors) have not: the supply-side must also disclose. Corruption has two faces – the corruptor and the corruptee/corrupted. Private sector boards, and their not-for-profit counterparts, must recognise their social responsibility obligations with respect to the UN Global Compact 10th Principle on Corruption (see 3.5 in this commentary). Disclosing their donations to political parties is an important part of restoring public trust and confidence in our democratic system. It will be up to
the reader of any disclosure of political donations to assess whether any undue influence has occurred and referral to the appropriate CIC division to be made. We propose a new sub-section to section 300 of the Corporations Act 2001 with sub-section 16 to cover political donations as below:

s.300
(16) The report for a company must also include any political donations made to a political entity, political affiliated entity, or a politically-exposed person registered with the Australian Electoral Commission by the board, members of the board and senior managers of the company.

The above clause addresses matters related to, and especially section 10.19 of, the 2011 Report published by the Joint Standing Committee on Electoral Matters. Failure to disclose under the proposed s.300(ss16) should have a penalty registered equivalent to the donation made.

**Recommendation 6: Judicial integrity to be overseen by Public Service Integrity division**
The integrity of the judiciary, including the process of appointment, must be enshrined with oversight by the Public Service Integrity Commissioner.

**Recommendation 7: Mandate the CIC to hold public hearings, to investigate matters referred by whistleblowers and the public, and to publish its findings openly.**

‘Sunlight is the best disinfectant’ according to Justice Brandeis and this phrase has been used in anti-corruption literature. Transparency in the processes of institutions of government is the key to achieving accountability, integrity and public trust. In proposing the CIC, the argument against public hearings of the CIC would constitute to ‘kangaroo court’ proceedings. The government’s proposal is that it would sit in private and have no retrospective powers. It has been labelled a “Clayton's ICAC”: the ICAC you have when you do not have an

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The proposed CIC mandate is narrower than that of arguably the most successful anti-corruption body in the country, the NSW ICAC. It would need to establish ‘a reasonable suspicion of a criminal offence’ before investigating: a circular and self-defeating proposal. The previous head of ICAC has been quoted as saying that the CIC as proposed would not have resulted in the major convictions made by ICAC⁴ According to former NSW ICAC Commissioner Mr. Ipp, the proposed CIC falls far short of community expectations:

“This isn’t a trial. It’s an investigation” (by ICAC) It cannot succeed without broad powers that go beyond the strict rules of evidence in courts.”

In this instance, public hearings in both divisions must be made available similar to the intent and spirit proposed by the McGowan Bill.

**Recommendation 8: Address private-to-private sector corruption**

It is often overlooked that corruption occurs from private sector to private sector (Argandona 2003). However, remedies to address these are few. We suggest that a CIC look at Hong Kong ICAC’s experience in this regard, in particular the Prevention of Bribery Ordinance (POBO)⁵ which is explicit on principal-agent (Eisenhardt 1989) conflicts and issues:

- “No agent (usually an employee) shall solicit or accept any advantage without the permission of his principal when conducting his principal’s affairs or business; the offeror of the advantage is also guilty of an offence.
- "Advantage" includes money, gifts, loans, commissions, offices, contracts, services, favours and discharge of liability in whole or in part, but does not include entertainment.
- "Entertainment" means the provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment provided at the same time, for example singing and dancing.

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We recommend that the proposed CIC addresses that private-to-private corruption be addressed to create a fairer and even playing field for private sector participants that are often overlooked because they behave ethically, and do not wish to engage in political corruption.

**Recommendation 9: Create an anti-corruption mobile app to report on corrupt practices**

The CIC should consider looking at the Malaysian Anti-Corruption Commission’s experience and create a mobile phone application that can report anti-corrupt practices. See [https://itunes.apple.com/us/app/maccmobile/id1090338943#?platform=iphone](https://itunes.apple.com/us/app/maccmobile/id1090338943#?platform=iphone)

This app has proven to be effective in Malaysia in engaging civil society in reporting transgressions of public sector officials. Using crowd-sourcing technology will ensure we are using world’s best practice when it comes to detecting corrupt conduct.

**3.0 Literature review**

*Cui bono?* Or who benefits? Anti-corruption watchdogs around the Asia-Pacific have been established after long drawn-out fights to build public confidence in their country’s institutions, often against the vested interests of powerful elites with preferential access to policy makers. Corruption and integrity are conceived as the obverse and converse of a functional and dysfunctional system and their tendency to exist.

While Australia is an affluent representative democracy with state-based anti-corruption bodies and strong supportive public institutions, perception of corruption at the federal political level is contributing to falling levels of public trust in its politicians and political institutions. The state-based anti-corruption commissions, while generally successful, are limited in their oversight and remit and increasing perceptions of national corruption make a case for a federal body.
Worryingly however, Australia’s standing in global rankings of perceived corruption continues to deteriorate and as failing to improve. We stand as 13th cleanest country in the world in the latest Transparency International Index.

This commentary discusses the arguments for an anti-corruption watchdog in Australia’s federal system. Through surveys of the anti-corruption experience, this summarises the main issues and concerns in establishing the institution as an important component of a broader political integrity ecosystem.

Supplemented by Australian federal cases of political corruption and influence peddling; bureaucratic corruption in federal agencies; and private sector corruption including ‘corporate lobbying’ and ‘revolving door’ practices, this commentary argues that a federal anti-corruption watchdog such as the CIC, properly constituted, is one of the missing pieces in Australia’s institutional jigsaw in a national integrity ecosystem.

The protracted debate and associated struggle to establish a federal anti-corruption watchdog in Australia echoes the experience of its neighbours and Asia-Pacific counterparts. Those with economic and political power have always been reluctant to share I, thereby undermining the ‘political will’ for anti-corruption reform. But the history of economic growth and development attests to the value of open, inclusive institutions that provide equal access and opportunity for all, not just for existing vested, monied interests (Acemoglu & Robinson 2012).

3.1 Importance of Institutions
In its 2002 World Development Report, the World Bank Group emphasised that building institutions in government includes putting in place political institutions that deal with corruption and taxation, alongside building institutions in society including civil society organisations that advocate for freedom, transparency and anti-corruption (World Bank 2001).
Institution building is a good start, but they must also be robust, well-resourced and independent so that they can effectively address issues of corruption and governance (dela Rama 2017). The role of statutory and regulatory institutions is fundamental in order to prevent and address the opportunities for corruption. This will minimise the risks of politicisation exercised in favour of the pre-existing power structures and status quo, whilst giving heart to those, from civil society especially, who demand transparency, accountability and change to corrupt practices. In the case of the latter, the proliferation of social media has resulted in the wider dissemination of unsavoury practices (Widojoko 2017).

As dela Rama & Rowley pointed out:

"Institutional development to tackle corruption requires political will, a relatively depoliticised bureaucracy and a culture that is willing to be responsive and adapt to the changing needs of the country.” (2017: 373)

Failure to do so will result in the populace being affected by corruption – particular minor or petty forms – in daily life. Where government agencies and officials are perceived to be corrupt and inefficient, public trust is lost. Distrust in government also contributes to the black or shadow economy of a country (see Schneider 2011) and, in some cases, outward immigration (Chin 19996) and human trafficking (Guth 2010). Indeed, corruption in public institutions can also affect the health of a country’s citizens with the proliferation of infectious disease and antimicrobial resistance found to be related to the strength or weakness of a country’s public institutions (Collignon et al 2018). The cancer of corruption is not only metaphorical but also literal. This disease is seen as the biggest barrier in improving public health in developing countries (Mackey 2016 et al). Perhaps on a more philosophical bent, the proliferation of corruption may be symptomatic of a country’s political system in decline (Allan 2014).

6 “Some of my respondents were getihus (private entrepreneurs) in China said they immigrated because they were upset by official exploitation...Dissatisfaction with the Chinese government is largely a result of official corruption and a sense of powerlessness amongst ordinary Chinese who lack guanxi (connections)...Guanxi not only helps people get government jobs, it also enables them to get by with their everyday activities.” (Chin 1999: 23)
Systemic political corruption arises from an ethically degraded political culture; in the case of contemporary western democracies the now problematic values and beliefs underlying the neo-liberal market driven agenda of the 1980s have been exposed by untenable inequality and the collapse of political trust (Dine 2017; Allan 2014).

3.2 Political integrity and corruption

It is helpful to consider integrity and corruption as two sides of the same coin or as the reverse faces of Janus. This allows our driving concern about growing political corruption and its implications for declining trust in politics to be regarded as a deviation from a desired norm namely, political integrity. It provides a benchmark against which we can measure the extent of corruption by the gap between integrity and existing corruption.

In the first instance, integrity is thought of as politicians complying to obligations set down in official codes of conduct and ethics, and more generally, as their adhering to the public-service ethos underpinning these codes. But relying on politicians with personal and even collective integrity is not a complete answer. Important as these 'positional duties' certainly are, the concept of political integrity arguably invokes a broader 'commitment to principled causes' (Hall 2018). Integrity requires the furthering of these deeper political commitments while at the same time avoiding malfeasance or misconduct. Such assessments of political integrity typically require to be made over a long train or series of political actions over time rather than a focus on one off actions.

Integrity is seen as an increasingly rare commodity, especially in politics, and in an environment of systemic non-integrity, politicians who aspire to live to high standards of accountability often do not last. In particular, where private and public sectors become closely intertwined, a political career is invariably an uncertain and less rewarding undertaking without the right links to the business world, providing fertile soil for bribery and corruption. In such environments,
with large public investments, corruption can also reduce economic growth (Tanzi 1998).

### 3.3 Political trust

Popular trust is the belief that the political system will deliver preferred outcomes even if left unattended (Shi 2001). Ma and Yang (2014) argue that political trust stems from social trust. It is independent in the short run of outputs and performance and is an important determinant of the stability of the system but is dependent “on the performance of government and institutional arrangements.” (2014: 339). That is, if trust is lost then the political system becomes less stable. Indicators of instability may include rampant corruption, scandals, role of independents in democracies, minority governments, shifting coalitions, changing leaderships, frequent elections, and other elements with a growing appeal to populism, authoritarianism and nationalism in an attempt to restore stability. These are features characteristic of the democratic malaise in countries of the Anglosphere, including in Australia. Political trust is important too in that it provides governments with room to move, to be flexible and adaptive to changing circumstances and needs.

Functional definitions of political corruption seek objective criteria for distinguishing between public and private interests by putting in place legal definitions that serve to avoid moral discussions about causes and consequences (Nye 1967; Rogow & Laswell 1970). For example, legal political donations are distinguished from those that are bribes blurring the public-private distinction morally and in the process not clearly identifying the nature of ‘political corruption’. There is similar ambiguity with ‘secrecy’ as a criterion for corruption; tolerated in some cases to guard public and private interests, furtive behaviour is generally associated with lack of transparency.

The difficulties inherent in distinguishing objectively and morally the shifting boundaries between public and private interests supports an argument that political corruption is a pattern of behaviour oriented to justifying the influence of some private interests in public ones leaving others aside as technically or
legally corrupt (Bratsis 2014). This has been the story of the neo-liberal shift towards markets and private interests over public ones with policies of privatisation, outsourcing, small government, managerialism, deregulation, public-private partnerships, amongst others.

The origins of political trust have been sought in theories of both cultures and institutions (Mishler & Rose 2001); the former emphasise the endogenous, or internalised set of determinants of trust while the latter emphasise the exogenous, or imposed set determinants.

3.4 Political culture

Political culture is the set of underlying collective assumptions, attitudes, sentiments, beliefs and values that give structure and order to a political system and its processes, and that determine political rhetoric and behaviour (Smith 2001). It is an accepted if disputed empirical concept that is transmitted and generally remains unchanged over the short term.

The term ‘political culture’ first appeared in modern political science in the late 1950s and early 1960s to denote the pattern and orientation of political actions within a political system (Almond 1956, 1963) and is associated with the modernization theory of democracy (Parsons 1971). The concept refers to the psycho-sociological limits or conditions within which political agents and their belief structure of a given polity, outside of which structure political action would be incoherent (Bove 2002).

In its contemporary revival it has been described as a political rubric in light of its continued weakness as a concept and theory namely, difficulty in disentangling sub-cultures such as political elites; and difficulty in its interactions with institutions and policy attributes to demonstrate a propensity for certain types of political outcomes (Reisinger et al. 1995).

Differing cultural values and beliefs held by politicians mean that their actions are determined by their mediating the different values or meanings that they
place on those actions rather than by a direct response to the issue in hand. Different politicians react to the same stimuli in different ways according to their values. Political culture has a significant impact on political trust and it cannot be reduced to the effects of institutions and structures. In other words, political culture runs deep and cannot be legislated or create structures to increase political trust. The underlying values and beliefs mediate and create a lag in the change of political culture.

On the theoretical side, values and beliefs are often treated differently (Alesina & Giuliano 2015). Beliefs about the consequences of actions can be manipulated by transmission or by experiment; values are seen as a more enduring primitive phenomenon. As in psychology, culture emphasises the role of emotions in motivating human behaviour. These two interpretations of culture are not mutually exclusive; they can interact systematically with each other as well as with institutions to change over time (Benabou 2008).

The concept of political culture is helpful in explaining political processes and behaviour. In the case of Australia, these influences include ideology, federalism, liberal democratic principles, Westminster tradition and party government (Singleton et al. 2014) and five dimensions of political culture have been identified: attitudes to reliance on government; responsiveness of government; citizen duty; authoritarianism; and, federalism (Bean 1993). Arguably, in Australia as in USA and UK the centre of gravity of the broad political culture has shifted to the right from the centre ground.

The ethical challenge for developing effective anti-corruption measures turns on identifying and establishing improper motives, intentions, interests and benefits between actors involved in corruption, as well as providing evidence of damage to public interest. This is compounded at times when the political culture has been shifting as it has. The process can become subjective and difficult to prove in court; when not proven objectively such actions can only be understood and treated as undermining trust, inefficient or even ineffective but not technically or legally as corrupt.
3.5 Anti-corruption frameworks in the Asia-Pacific region

The following multilateral agreements, principles and working groups are in place to address corruption and promote anti-corruption efforts in the region, with a specific focus on the private sector role.

The UN Convention Against Corruption (UNCAC) (2005) is the “only legally binding universal anti-corruption instrument” signed by 140 countries at the time of writing. It covers five areas: “preventive measures, criminalisation and law enforcement, international cooperation, asset recovery, technical assistance and information exchange.”

In particular, in addition to bribery and corruption, the Convention’s articles specifically also define:

- trading in influence (Article 18),
- abuse of functions (Article 19) and
- other acts of private sector corruption such as laundering the proceeds of crime (Article 23).

Money laundering is also covered by the UN Convention Against Transnational Organised Crime (UNTOC) (2000) in addition to human trafficking and smuggling, and arms trafficking.

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7 UN Office on Drugs and Crime, UNCAC Signature and Ratification Status
8 UN Office of Drugs and Crime, About UN Convention Against Corruption
https://www.unodc.org/unodc/en/corruption/uncach.html, 18th February 2018
9 UN Office of Drugs and Crime, UN Convention Against Corruption
https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, 18th February 2018
10 UN Office on Drugs and Crime, UN Convention Against Transnational Organised Crime And the Protocols Thereto
The UN Global Compact (UNGC) (2004) is a voluntary initiative undertaken by the private sector to support universal sustainability principles and sustainable development goals of the UN. In particular, the 10th Principle of the Compact directly addresses corrupt actions by private sector participants, so that:

"Businesses should work against corruption in all its forms, including extortion and bribery."

Private sector signatories to the Compact are expected to commit to this principle by:

“[avoiding] bribery, extortion and other forms of corruption [and] proactively develop policies and concrete programs to address corruption internally and within their supply chains. Companies are also challenged to work collectively and join civil society, the United Nations and governments to realise a more transparent global economy.”

A list of signatories to the Compact is available by country, size of business, sector and join date.

The OECD’s Anti-Bribery Convention on Combating Bribery of Public Foreign Officials in International Business Transactions (2009) legally binds OECD member-states in criminalising the “bribery of foreign officials [and is] an anti-corruption instrument focused on the supply side of the bribery transaction.”

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11 UN Global Compact, About US https://www.unglobalcompact.org/about accessed 18th February 2018
12 UN Global Compact 10th Principle https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-10 accessed 18th February 2018
13 op. cit.
14 UN Global Compact, Our Participants https://www.unglobalcompact.org/what-is-gc/participants accessed 18th February 2018
Article 10 of the Convention sets out the conditions for extradition for those to have bribed foreign officials.\textsuperscript{16}

The OECD is also a partner with the G20 Anti-Corruption Working Group (ACWG) (2010), which covers the 20 most economically advanced countries. The ACWG monitors the commitments made in the ratification of UNCAC as it recognises the “significant negative impact of corruption, economic growth, trade and development.”\textsuperscript{17} The G20 ACWG in 2015-16, looked at the problems of opacity in business ownership and has made “beneficial ownership transparency” as a priority.\textsuperscript{18}

Similarly, the APEC Anti-Corruption and Transparency Working Group (2011) was established to institutionalise member-countries’ work in order to address corruption’s “serious threat to sustainable economic growth, good governance, market integrity, and enhanced trade and investment.”\textsuperscript{19}

The frameworks mentioned above show the need for mutual cooperation and exchange of information when it comes to tackling and addressing corruption across countries and in the region. These frameworks do not sit in isolation with

\textsuperscript{16} OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions \url{http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf} accessed 18th February 2018


\textsuperscript{18} op. cit This addresses: “Preventing the abuse of legal persons and arrangements is a critical issue in the global fight against corruption. Despite significant international efforts and attention, legal persons and arrangements continue to be misused to hide or conceal criminal activity such as money laundering, tax evasion, and corruption. This abuse of legal persons and arrangements undermines the broader efforts of the G20 to achieve its mission of protecting the global financial system and promoting growth.”

\textsuperscript{19} APEC Anti-Corruption and Transparency Working Group \url{https://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Anti-Corruption-and-Transparency} accessed 18th February 2018
civil society participation, such as Transparency International’s work, in the region helping inform in the continued fight against corruption; while on the private sector side, the International Corporate Governance Network’s (ICGN) guidance on anti-corruption practices (2015) helps its investor members avoid such practices.

Countries in the Asia-Pacific region are nominally signatories to these agreements and some are members of the aforementioned working groups with the work undertaken in these forums influencing the policy resolutions of their respective anti-corruption commissions.

### 3.6 Anti-corruption commissions in the Asia-Pacific

The following table lists the name of the different anti-corruption commissions in the region, their remit and private sector oversight. With the proposed CIC, Australia will be joining the region in this regard.

**Table 1: List of Six Anti-Corruption Bodies in Five Asia-Pacific Countries**

<table>
<thead>
<tr>
<th>Country</th>
<th>Name</th>
<th>Year Established</th>
<th>Remit</th>
<th>Private Sector Oversight</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>Central Commission for Discipline Inspection (CCDI) 22</td>
<td>1978</td>
<td>Communist Party members</td>
<td>Business interests of Communist Party members and guanxi network; international reach for Party members with overseas business interests</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>Independent Commission</td>
<td>1974</td>
<td>Public officials including police, Operations department</td>
<td></td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Country</th>
<th>Body Name</th>
<th>Year</th>
<th>Roles</th>
<th>Focus</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>Against Corruption (ICAC)²³</td>
<td></td>
<td>and private sector</td>
<td>divided into two: public and private. Private sector has its own director of investigation and sub-branches including forensic accounting and confiscation of crime proceeds²⁴.</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Corruption Eradication Commission (KPK)²⁵</td>
<td>2002</td>
<td>Police, electoral officials, regulatory officials, politicians</td>
<td>Politicians who are also businessmen and using their positions for personal gain.</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Anti-Corruption Commission (MACC)</td>
<td>2009</td>
<td>Public sector officials and civil complaints. Motto is “For the people; against the corrupt.”</td>
<td>Corrupt transactions such as bribes between receivers (nominally public sector officials) and givers (nominally private sector participants).</td>
</tr>
<tr>
<td>South Korea</td>
<td>Anti-Corruption and Civil Rights Commission (ACRC)²⁶</td>
<td>2001</td>
<td>Public sector officials and civil complaints</td>
<td>Limited to “breaking the chain of corruption between the private and public sectors.”</td>
</tr>
<tr>
<td>Thailand</td>
<td>National Anti-Corruption</td>
<td>2008</td>
<td>Investigate public sector officials and</td>
<td>Business interests of public officials.</td>
</tr>
</tbody>
</table>

²⁵ Indonesia’s Komisi Pemberantas Korupsi (KPK) Home Page (in Bahasa Indonesia), [https://www.kpk.go.id/id](https://www.kpk.go.id/id) accessed 2nd February 2018
Of particular note is the experience of the HK ICAC, which was established in 1974, long before the former British colony's handover to China. Out of all the anti-corruption bodies above, the HK ICAC has the most formalised investigation unit to address private sector corruption, reflecting the status of the island as a global financial centre in the region.

It has also influenced the establishment of anti-corruption bodies in Australia. Below is an abridged version of its organisational chart showing how broad its Operations Department is and how it investigates corruption and the different divisions examining private sector malfeasance in its many forms, opportunities and motivations:

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HK ICAC also has a corruption prevention department with an advisory service assigned to the main industries present in Hong Kong: building management, financial industries, tourism and trading and logistics. It also addresses private-to-private sector corruption (Argandoña 2003) with a Prevention of Bribery Ordinance (POBO) which is explicit on principal-agent (Eisenhardt 1989) conflicts and issues:

- "No agent (usually an employee) shall solicit or accept any advantage without the permission of his principal when conducting his principal’s affairs or business; the offeror of the advantage is also guilty of an offence.
- "Advantage" includes money, gifts, loans, commissions, offices, contracts, services, favours and discharge of liability in whole or in part, but does not include entertainment.

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29 HK’s ICAC Organisational Structure

30 HK’s ICAC Corruption Prevention Department Organisational Structure
"Entertainment" means the provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment provided at the same time, for example singing and dancing.  

It continues to be in the best interest of the island that it operates a highly transparent system, quid pro quo, penalises the rotten few and supports a private sector so the latter has confidence in the functions of her public institutions - both sectors, in turn, securing the island’s future and financial sustainability.

The HK ICAC experience may prove to be useful in the proposed reforms for the Australian CIC especially for the Law Enforcement division.

3.7 Addressing revolving door politics in Australia

“Thieves of private property pass their lives in chains; thieves of public property in riches and luxury” – Cato the Elder

The ‘revolving door’ phenomenon in USA has become a scourge and such moves from public office to private interests have now been characterised as tracing the standard ‘career path’ for politicians. A recent report from the Roosevelt Institute, “Unstacking the deck: a new agenda to tame corruption in Washington” 2018 has analysed the issues ad makes recommendations on how they are to be addressed.

For CIC to be effective and legitimate, it must address the ‘revolving door’ politics of the country. Here in Australia, Cathy McGowan’s (IND) National Integrity Bill has proposed such provisions and unfortunately, that element is missing in the proposed CIC. This is an oversight that must be addressed.

According to the UNCAC (2005) Article 18, Trading in Influence is defined as follows:

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“Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.”

The term ‘revolving door’ when applied to politics denotes the transfer of senior people between the public and the private sector. There are legitimate reasons why such two way movement of senior personnel, in particular, by bringing real world, commercial experience, and specialised expertise and knowledge from the latter to bear on the processes of improved public policy and decision making in the public interest, and informing business about the workings of government. However, such movements can provide opportunities for vested private interests to advance their own agendas at the expense of the public good; at a minimum they can foster perceptions of close and cosy relationships between business and politics against the public interest.

‘Revolving door’ politics presents problems for modern democracies that go largely unrecognised, unaccounted for and un-policed, and as a result can profoundly undermine representative democracy and the base of trust upon which it is built (Rennie 2016).

Despite the existence of Australian anti-corruption laws, bodies, criminal codes, general codes and standards of conduct and with a few notable exceptions, the
law makes it almost impossible to prosecute such ‘grey area’ forms of corruption and the laws are rarely enforced. This is due to difficulties with investigation, evidentiary rules and burden of proof, all of which are compounded when applied to ‘revolving door’ politics (Mannix 2010).

The traditional legal and criminal conceptions of corruption are premised around the taking of personal benefits in the form of gifts, payments and bribes in return for exercising public duties in the interests of the private parties making the payments and that will gain commercially from the officer’s decision at the expense of the public good. Traditionally the exercise of these forms of influence is immediate and direct between the parties, the handing over of the ‘brown envelope’. They are also regarded as breaches of codes of conduct and standards, such as the Australian Government, Statement of Ministerial Standards promulgated by the Department of Prime Minister and Cabinet.32 If ex-ministers benefit immediately it breaches the code of conduct. The latter carry in themselves no legal or criminal sanctions and their administration and oversight are political and administrative rather than independent or judicial. Not surprisingly, their application is at best infrequent and patchy.

It has been argued that politics in Australia, as in countries where neo-liberalism has become embedded policy especially through privatisation in light of Reaganite and Thatcherite reforms (Dine 2017) has become ‘corporatised’ by the movement of politicians to business particularly in sectors such as construction, mining and finance (Quiggin 2017).

In Australia, many senior politicians and bureaucrats have moved on to the private sector becoming board members, senior executives or consultants for corporations, joining or even establishing lobbying firms, and being appointed to industry associations or think tanks, or joining large consulting firms that shape

32 Department of Prime Minister and Cabinet, Statement of Ministerial Standards https://www.pmc.gov.au/resource-centre/government/statement-ministerial-standards This was amended on the 15th of February 2018 to include a ban on sexual relations between Ministers and their staff in light of the Barnaby Joyce affair.
public policy. (Swan 2012). This is potentially problematic when politicians and bureaucrats move into areas of commercial interest that relate directly to their responsibilities while in office. It can be perceived as either a ‘payoff’ for past favours done while in office or as providing preferential access and undue ‘insider’ advantage and personal contacts with those in government charged with dealing with the relevant businesses through legislation, regulation, financing or contracting. The ‘revolving door’ operates in Australia, to a lesser extent in the opposite direction too with movement of business people into government, partly because pay is much lower in the public sector. Other countries have sought to close this door.

In America the ‘revolving’ door, including into the ‘lobbying’ industry has become entrenched as a new career path for politicians following their term in public office (Maskell 2014). It has been described as emerging revolution in the political culture of Washington without attracting much public notice. The laws to date have not made much of an impression on this movement developing into a tide flowing from Congress to K Street and the major corporations (Lipton & Protess 2013).

In Japan, there has been a long history of debate and actions on ‘revolving door’ politics. Such moves by bureaucrats to the private sector are institutionalized and traditionally known as ‘descent from heaven’, or by its Shinto name ‘amakudori’. Government and industry are closely intertwined and a high percentage of ex public servants sit on private boards. Officials must not join the private sector for two years after they leave their office and cannot join in area of their prior responsibility for previous 5 years while in office. Retired public servants can take up well-paid positions with specialist government organisations. New tougher laws were introduced in 2007 but do not appear to have been effective (Japan Times 2017)

In the EU, Transparency International Europe published a 2017 report that found more than 50% of ex-Commissioners and 30% of ex-Members of the European Parliament (MEP) were working for organisations on the lobby
One of the concerns raised included regulatory capture. The EU only has an 18-month cooling off period for former Commissioners and none for former MEPs.

France sought to close this door for civil servants for three years while Germany has a three to five year waiting period (UNODC 2012).

The CIC must address this to join, if not exceed, international best practice. The particular complication and difficulty arising with ‘revolving door’ behaviour is that the conflict of interest that arises is typically displaced in time between the exercise of the influence and the payment of the benefit. The ‘decision’ or ‘favour’ done in public office is likely to be rewarded once the office holder leaves their position in the public sector and takes up lucrative employment in the private sector, typically with an organisation with whom the office holder was dealing in their public office.

These ‘inter temporal conflicts of interest’ with their associated delayed benefit are more likely to escape legal restrictions and scrutiny. The perpetrator is no longer bound by codes of conduct and it is too hard to prove a criminal act. Receiving direct ‘quid pro quo’ payment upfront while in office and then conferring political favour can be more readily associated for purposes of prosecution, than an ‘ex post’ benefit, particularly if it is conferred some years later following retirement from public office in the form of a lucrative appointment in the private sector. The apparent conflict of interest only becomes apparent after they leave office. For example, as widely documented in the media, former Health Minister Nicola Roxon, former Trade Minister Mark Vaile, former Trade Minister Simon Crean amongst many others, have all taken up senior private sector roles in areas related to their ministerial portfolios in their post-political careers.

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Nevertheless, the examples mentioned in this section show that revolving door politics is a common problem in many countries, as well as in Australia, and that there are available remedies to discontinue this movement.

3.8 Lobbying

Lobbying involves the perceptions and risks of corruption and misconduct, particularly through conflicts of interest on the part of public officials due to their receipt of payments, including, political donations, secondary employment, and the ‘revolving door’ by public officials and lobbyists (Tham & Ng 2014). Unfair access to and influence on ‘insiders’ in public policy is often obscured by secrecy, abetting the exercise of political connections and the power of lobbyists with their advantages of wealth.

Igan and Mishra (2014) found that lobbying paid off for those in the American financial industry with the legislators lobbied changing their positions in favour of deregulation from 1999-2006. The long-term consequences of this can be seen in the immediate effects of the global financial crisis as the captured regulators failed to regulate. It is estimated that in America, there are around 5 lobbyists for every lawmaker. (Transparency International 2009: xxvii)

These practices undermine key democratic principles: the protection of the integrity of representative government through transparency in decision-making; prevention of corruption and misconduct; promoting fairness in decision-making; and respect for the political freedom for all to directly lobby.

In Australia, there is neither any systematic action nor any professional body dedicated to lobbyists to issue and enforce standards of conduct in the lobbying industry. The UK Association of Professional Political Consultants (APPC) and other professional groups were scrutinised by a House of Commons (2009) report and while no monetary amount can be placed on the breadth of this industry in that country the industry’s political influence is assessed as “disproportionate” (Beetham 2013). In America, the lobbying industry is sophisticated, systemic and a $3B industry (Centre for Responsive Politics 2017)
with conglomerates such as General Electric paying $20M in 2007 (Drutman 2015). The Sunlight Foundation estimated a Washington lobbyist with some form of government experience generated $300,000 in median revenue in 2012 (Drutman & Furnas 2014).

Lobbying remains a closed world prone to various risks for the private sector that wish to engage the industry as clients. How likely is that lobbyists will voluntarily disclose details of their activities? The very structure of the industry is aimed at preferential, unfair access and influence. Direct lobbying by ‘repeat players’ is invariably a paid activity; those who can pay more get more lobbying services. This is not a principle of political equality but the logic and power of the market. Also, key parts of the lobbying industry trade in political connections in selling their services. Indeed, many of their commercial websites boast of such connections within government reinforcing the notion that “business interests dominate bureaucratic policy making at the expense of the broader public.” (Dur et al 2015: 975)

Lobbyists provide increasingly unprecedented access to political decision makers. In Europe, there are an estimated 2,500 lobbying organisation employing 15,000 lobbyists in Brussels – all of whom vie for influence on EU policy making (Transparency International 2009: xxvii)

In Australia, one third (191/538) of lobbyists registered with the Department of Prime Minister & Cabinet (PM&C) are former government representatives (Rennie 2016). The best of them lobby a friend not just a government contact, immediately creating a perceived conflict of interest.

An estimated 5000 lobbyists across Australia, including former government ministers, officials and junior staffers to ministers earn lucrative contracts, monetising their government experience by influencing policy (Christodoulou & Begley 2017). Or as Dahan et al pointed out more crudely, lobbying:
“maximises their human capital...[whereas] a golden executive position in the past would have been second only to outright bribery as egregious behaviours sapping a democratic regime.” (2013: 377)

Lobbying maybe unethical, but it is not illegal – and as in most cases where activities fall in the ‘grey ares’ of the latter, corporate boards may have given tacit, if not explicit approval for such participation, paying out large fees and commission payments on ‘success’.

In Australia, lobbyists – both registered and unregistered - own parking spaces and special access passes to Parliament House, and their meetings are not recorded publicly. They are unregistered primarily because they do not need to be; corporate in-house lobbyists and those working for industry associations or think tanks are not counted as ‘lobbyists’ under the regulations. They constitute a largely unregulated industry, overseen by a government department (PM&C) with no legislative power or penalties, and which does not reveal how many times the code of conduct has been breached, by those who are required to be registered, let alone the implications or sanctions arising (Easton 2018).

Similar to the clustering effect of technology enterprises in Silicon Valley or “K Street” in Washington D.C., in the case of lobbyists, the lobbying industry in Australia has grown around the Canberra suburb of Barton. Lobbying companies, for example, such as GRA Cosway have 58 corporate clients (including Aldi and Optus) and 18 lobbyists (8 of whom were advisers to former Liberal Prime Ministers Tony Abbott and John Howard). Barton Deakin are closely linked to the Liberal-National Party while Hawker Britton are aligned with the Labor Party. The latter have 36 corporate clients (including Macquarie Bank, Commonwealth Bank, Macquarie Bank and Sportsbet) and 6 lobbyists (4 of whom were chiefs of staff to former ALP Prime Minister Kevin Rudd and South Australia Premier Mike Rann).

One lobbyist had no illusions about the nature of his influence-peddling activity: “I’m a mercenary, in effect being paid by a company to do their bidding.”
(Christodoulou & Begley (2017). As a legitimate practice, a former senior public
servant has noted that lobbying is endemic to politics and “the problem of
influence peddling will not go away. The best way to deal with it is to have clear
and transparent rules, and independent oversight” (Bartos 2014).

The very nature of the problems posed by lobbying argue strongly in themselves,
that legal regulation of direct lobbying is necessary. Self-regulation by lobbyists,
even when it exists, is demonstrably inadequate. Furthermore, those elected or
appointed officials being lobbied are in the process undermining their capacity
to serve and to be seen to serve in the ‘public interest’. Instruments to create a
regulatory regime aimed at ensuring the integrity of government, such as laws
providing for public participation and consultation in policy making, freedom of
information laws; administrative laws and laws directed specifically at
corruption, that together would form part of a nation’s ethics regime or more
broadly, a national integrity system (Pope 2000) also require a complementary
system or regime governing behaviour in the private sector.

The following state-based and Commonwealth legislation seeks to limit
Australian lobbying:

The NSW ‘Lobbying of Government Officials Act’ (2011) is under the
oversight of a statutory body, the NSW Electoral Commission, with investigatory
powers and sanctions (deregistration from Lobbyist Register or placing on a
‘Watch List’) and banning lobbying ‘success fee’ payments. Its scope covers ex-
ministers and public servants.

The NSW Code of Conduct Regulations (2014) under the 2011Act applies only
to moves to third-party lobbying firms.

The Commonwealth ‘Standards of Ministerial Ethics’ (2007) stipulates an 18-
month ban in respect of any relevant ministerial office in the preceding 18
months. Ministerial office staffers, consultants and electoral office staff are also
banned for 18 months. The scope of the Standards relate only to moves to third-party consulting firm.

The following are two overseas-based legislation that seeks to limit lobbying:

**United States**

**Lobbying Disclosure Act (1995)** establishes a Register of Lobbyists but its scope only covers lobbying firms (acting as third parties). Public officials cannot join a lobby firm within 5 years of leaving a related area of public office. Offences under the Act are specified. **Executive Orders made** by President Trump to give effect to his commitments to “Drain the Swamp” by limiting the ‘revolving door’ is legally enforceable and punishable by fines or jail.

**Canada**

**Conflict of Interest Act (2006)** places a 5-year ban on designated public office holders or ministers moving into lobbying. Includes ministerial staffers and senior public servants who are subject to a 1-year prohibition. Imposes significant monetary penalties up to $25,000.

For corporate boards, their explicit approval in hiring lobbyists or participating in lobbying – similar to bribery – shows the short-term advantages of petty corruption. The long-term economic harm to their companies can be seen with the reputational fallout as a country’s laws are changed to suit their business operations at the expense of the societies they operate in. They also become a cost of doing business with uncertain outcomes on their effectiveness. This is the uncertainty of lobbying and it become a corrupting influence on our democracy.

**3.9 Why Australia needs the CIC**

The problem of corruption is based in the norm of integrity (Sampford 2016). Corruption is the misuse of public position for private gain. Integrity is the appropriate use of public power for public ends. The latter sets the standard and associated process while the former is a deviation from that standard and practice. In a democracy it is for the community to set the expected standards of
integrity against which corruption can be determined. In a representative
democracy, the community devolves its standard setting to its parliamentary
representatives on the assumption that they will act in the public interest. The
exercise of democratic politics is a contest over ‘who gets what and when’. The
moral and ethical problem of corruption arises when the political process among
politicians and governments expressed in legislation becomes perverted by
undue private influence of vested interests over public policy-making and
decision-making in the public interest for the public good. 

_Homo economicus_, and its dominant self-interest, is at odds with the _homo
reciprocans_ of public institutions. Increasing private sector power, for example,
through legitimate ‘tax avoidance’ schemes have resulted in community concerns
that – at least in that sector – they are not paying their ‘fair share’ of social
expenses in operating in a democratically stable country (Clark 2017). While
Australia provides a secure legal environment for property rights; the
institutional costs in supporting such an environment is increasingly being
ignored by that sector. As Chang pointed out, recognition and enforcement of
private property rights provide a secure investment environment but is "not
something good in itself...[and countries should not expect] to protect all existing
property rights at all costs" (2005: 11) at the expense of community.

Good governance puts in place structures and processes to ensure legitimate use
of public power for politically justified and authorised purposes to further the
public good (Sampford 2016). Accountability is the demonstration of good
governance in practice. Both concepts are concerned with the uses and abuses of
power. Lord Acton’s dictum holds that ‘all power corrupts and absolute power
corrupts absolutely’. The democratic challenge is to manage the inevitable risks
of the abuse of power from the necessary to the contingent. The power held by
the corruptor is as relevant as that held by those corrupted; management needs
to be applied to both.

The history of institutional innovation is also the history of corruption and the
responses to it, balancing the concentration of power against the public benefit
for the community as a whole (Sampford 2016). It is institutions and their associated ‘cultures’ that generate temptations and opportunities for corruption, and these opportunities have undeniably been expanded enormously under the general drift in the ‘political culture’ away from the middle ground. Problems of corruption are essentially institutional rather than individual; not primarily a matter of rooting out the ‘few rotten apples in the barrel’ so much as ‘emptying the barrel itself’.

Criminal reform is necessary but not sufficient and must be complemented by broad institutional reform of institutions and their associated culture. Wholesale law reforms are never easy to put in place and often fall short of their ambition. They must be premised on and support community values and trust of institutions. Alternative responses to governance and corruption problems include ethics, economic and institutional reforms. Each has its advocates but each also has its own limitations. Ethics argue that laws and behaviour need to be backed by the values they reflect. This leads to ‘codes of conduct’ to persuade compliance or ‘bare ethics’ in the form of voluntary codes, and all ‘regulations’ short of law. But ethics without the backing of sanctions under laws are a ‘knaves charter’; a guide for the good, dead letter for the bad.

Economic solutions advocate positive and negative ‘incentives’. Their challenge is to decide what constitutes expected norms and values. Institutional and organizational reforms take many forms and create new agencies or reform and change existing ones in pursuit of removing temptations (from separation of powers, through centralisation/decentralisation, to administrative law), reducing risks and facilitating detection (from regular audits and asset checks to financial tracking). Unfortunately, and all too often such endeavours suffer the fate of the famous epithet from Charles Ogburn, nominally attributed to Petronius34:

“...in life we tend to meet any new situation by reorganising: and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency and demoralisation”.

In Australia, political corruption is generally not perceived as a major problem in that it disrupts the entire government polity as it does in other countries in the Asia-Pacific region. However, there is on the other hand, a good deal of concern about how fairly people are treated by public officials and about the lack of government responsiveness and sense of inability to have access and influence in the political process (Bean 2012).

Public perceptions of the probity with which politicians act are useful indicators of political integrity and thereby sustaining the trust of citizens in their politicians. These public perceptions of probity are ‘coherent, substantively meaningful, responsive and most importantly, they do matter’ (Rose 2014). Probity is seen to be about 'playing by the rules' or in the 'spirit of the public service'. It is less about formal, prescriptive rules, and more by way of an appropriate exercise of public office. The process of governing is emphasised over the outcomes produced by government.

Machiavelli posed a rift between a morally admirable and a virtuous political life. An ethical challenge lies in the art of compromise without losing integrity but this poses a basic political dilemma: democratic politics is accepted as the art of political compromise, 'the art of the possible', yet as a society we appear to be allergic to it when it happens. Can such moralistic assumptions legitimately justify the contemporary vilification and loss of trust in politicians? 'A compromising disposition' is an ambiguous virtue, politically expedient but not necessarily morally admirable; and while uncongenial to moral integrity it is an essential aspect of political integrity (Tillyris 2017).

To argue that political integrity should be akin to moral integrity idealises the notion of political integrity and the day-to-day, practical and messy context within which democratic politicians operate. This real world context is characterised by a plurality of incompatible traditions, each with its own values
and principles. In such a domain the commitment to political principles of tradition or even of pre-election promises often requires their abandonment, but can nevertheless lead, it is argued, to a political life of integrity and virtue: “an innocent, all or nothing pursuit of one’s principles in politics might prompt political disaster or defeat; an uncompromising disposition entails the entire abandonment of any hope of realizing all those principles” (Tillyris 2017).

In this view, what matters for integrity is how decisions are made and how policies are implemented (Rothstein 2011). Integrity is closely connected to trust, a quality in short supply when voters think of politics and politicians in contemporary Australia (Grattan 2014). Contributing to this cynicism have been the professionalization and polarization of politics as well as perceptions of ‘broken promises’, and the ‘rorting of taxpayer funded entitlements’. Issues of money, political access and influence also loom large in regard to political donations, fundraising, campaign spending and the role of vested interests and lobbyists. While arguably legitimate in themselves they may in certain circumstances corrupt the integrity of the political system. This means that they pose much more complicated issues of integrity and challenges of transparency and accountability than the black and white issues of straight quid pro quo, ‘brown paper envelope’ practices of traditional political corruption. In the process they degrade trust and reduce meaningful debate of public policy to a sham.

There is a growing perception that politics and its culture has become a values-free competition for office and the spoils that it can deliver. Politicians re widely seen as acting in their own interests rather than in those of the community they represent and serve. Issues of policy access and influence in return for political donations and post-public office employment as lobbyists or consultants, as well as the influence of privately funded policy think tanks and corporate lobbyists, are growing in importance and particularly hard to grapple with for transparency, accountability and integrity. As former Senator Faulkner (2012) pointed out: “The perception of undue influence can be as damaging to democracy as undue influence itself. It undermines confidence in our processes
of government, making it difficult to untangle the motivation behind policy decisions.”

The ‘fluid dynamics’ of political culture means that it can paradoxically both inhibit political change and be a source of it (Welch 2013). Paradoxically too, it can serve policy-makers well despite its poor scientific standing. It may not explain social conduct, but it can be used to devise intelligent questions about the likely consequences of political actions. The notion of political culture poses an apparent contradiction in both the fluidity and the inertia of political life: between the unacceptable extremes of complete environmental or complete cultural determinism. The central liberal truth is that politics can change culture and save it from itself’. The problem is one of explanatory circularity: to effect cultural change it needs already to have happened. Culture enters as an explanation for both the success and the failure of programs of cultural change.

In establishing the CIC, a wider anti-corruption institutional ecosystem needs to be recognised and the requisite broadly spread infrastructure further changed and developed. According to Pope (2000), a ‘national integrity ecosystem’ (NIE) involves a number of ‘pillars’ The ‘pillars’ (Greek temples) include the legislature, executive, judiciary, auditor general, ombudsman, watchdog agencies, public service, media, civil society, private sector and international actors. These players are underpinned by cross cutting public awareness and society’s values. To mix metaphors, NIE can be likened to a ‘bird’s nest’, built up over time from material to hand, with components individually weak but in combination effective.

More broadly, as argued in this letter we need to conceive of an ‘integrity ecosystem’ with the individual elements dynamically and constantly interacting with each other, pulling first one way then the other, constantly re-configuring the balance of interests, private and public, often in unpredictable ways. It requires constant vigilance, monitoring, review and adaptation to maintain integrity. This is the challenge of designing and establishing the CIC to ensure continuing political legitimacy and integrity in Australia. Anti-corrupt practices
must adapt and address the local culture, issues and concerns efficiently and effectively in order to prevent political behaviour that will be further corrosive of public trust.

In our liberal democracy, the proposed CIC is critical to rebuilding trust in our political institutions and why in form and substance, it must meet and respond to the prevailing standards of community values and expectations.
Anti-corruption institutions around the Asia-Pacific and a national integrity ecosystem: lessons for a proposed Australian federal anti-corruption watchdog

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Abstract
This article proposes a National Integrity Ecosystem (NIE), premised on values and trust. It elaborates upon and places a national integrity system in an existing political culture and wider institutional framework. Corruption and integrity are conceived as the obverse and converse of a functional and dysfunctional system and their tendency to co-exist. This article also summarises global anti-corruption frameworks, policies and principles applicable in the Asia-Pacific region and compares existing anti-corruption bodies in the Asia-Pacific region. While Australia is an affluent representative democracy with state-based anti-corruption bodies and strong supportive public institutions, perception of corruption at the federal political level is contributing to falling levels of public trust in its politicians and political institutions. The state-based anti-corruption commissions, while generally successful, are limited in their oversight and remit and increasing perceptions of national corruption make a case for a federal body. This article discusses the arguments for an anti-corruption watchdog in Australia’s federal system. Through surveys of the anti-corruption experience, this article summarises the main issues and concerns in establishing the institution as an important component of a broader political integrity ecosystem.

Supplemented by Australian federal cases of political corruption and influence peddling; bureaucratic corruption in federal agencies; and private sector corruption including ‘corporate lobbying’ and ‘revolving door’ practices, this article argues that a federal anti-corruption watchdog remains one of the missing pieces in Australia’s institutional jigsaw in a national integrity ecosystem.

Keywords: Asia-Pacific, Australia, China, Indonesia, Thailand, South Korea, Hong Kong, corruption, anti-corruption, corruption commission, national integrity commission, national integrity system, national integrity ecosystem, institutions, institutional theory, cases, elite networks, class
1.0 Introduction

*Cui bono?* Or who benefits? Anti-corruption watchdogs around the Asia-Pacific have been established after long drawn-out fights to establish public confidence in their country’s institutions, often against the vested interests of powerful elites.

The protracted debate and associated struggle to establish a federal anti-corruption watchdog in Australia echoes the experience of its neighbours and Asia-Pacific counterparts. Those with economic and political power have always been reluctant to share it. But the history of economic growth and development attests to the value of open institutions that provide equal opportunity for all, not just for existing vested interests (Acemoglu and Robinson 2013).

Firstly, institutional theory is used to develop the argument that it is important to build strong institutions with political and legal systems in place to ensure anti-corruption watchdogs have legitimacy in the community. Secondly, a framework is proposed to define the context and boundaries of a national integrity ecosystem (NIE). Surveys of anti-corruption commissions around the region and Australia are then presented to summarise the state of play and experience of anti-corruption watchdogs in the Asia-Pacific region.

Afterwards, cases and perceptions of corruption and influence peddling in Australian are covered and a summary of the stakeholder groups that submitted to the 2016-17 Senate Inquiry towards establishing a Federal anticorruption body is provided. Lessons for a proposed watchdog and the thorny problem of ‘revolving door’ and closely associated ‘corporate lobbying’ politics are examined. The role of institutions and corruption are discussed within the proposed framework of the NIE framework in Australia.

2.0 Institutional theory and anti-corruption institutions

As a form of human organising, institutions are the outcome of social and economic actions (Smelser and Swedberg 2005). Adam Smith, in his 1776 treatise, the *Wealth of Nations*, pointed out the importance of confidence in a state whereby there is a “regular administration of justice,” security in property, law and the enforcement of contracts.

Institutions are the result of socio-economical, historical, judicial, political and religious relationships. Indeed, institutions reflect society’s concerns and in some cases, its need to
adapt as they “provide the incentive structure of an economy; as the structure evolves, it shapes the directions of economic change towards growth, stagnation or decline.” (North 1991: 1)

Institutional theory looks at their continued existence and their reason for being as they are social constructs and they shape “the means by which interests are determined and pursued.” (Scott 1987: 508). Once established, institutions are “products of interaction and adaptation; they become receptacles of group idealism; they are less readily expendable.” (Selznick 1957: 22)

There are three forces underlying an institution’s establishment and continued existence: functional, political and social (Dacin et al 2002). Functional pressures seek to improve organisational performance; political pressures seek to redistribute power through institutions normally present when there is a change in political leadership; and finally, social pressures come from the public’s needs for change reflecting the community’s underlying values. In this paper, both political and social pressures are present in the establishment of, and calls for, independent anti-corruption commissions.

In its 2002 World Development Report, the World Bank Group emphasised that building institutions in government includes putting in place political institutions that deal with corruption and taxation, alongside building institutions in society including civil society organisations that advocate for freedom, transparency and anti-corruption (World Bank 2001).

Institution-building is a good start, but they must also be robust, well-resourced and independent so that they can effectively address issues of corruption and governance (dela Rama 2017). The role of statutory and regulatory institutions is fundamental in order to prevent and address the opportunities for corruption. This will minimise the risks of politicisation exercised in favour of the pre-existing power structures and status quo, whilst giving heart to those, from civil society especially, who demand transparency, accountability and change to corrupt practices. In the case of the latter, the proliferation of social media has resulted in the wider dissemination of unsavoury practices (Widojoko 2017).

As dela Rama & Rowley pointed out:
“Institutional development to tackle corruption requires political will, a relatively depoliticised bureaucracy and a culture that is willing to be responsive and adapt to the changing needs of the country.” (2017: 373)

In practice, the importance of good institutions and institutional strength is highlighted by the example of the Hong Kong Independent Commission Against Corruption (discussed later in this paper); its mandate empowers it to:

“impartially and rigorously enforce the law at all times making corruption a high risk crime in Hong Kong. The corrupt will be pursued relentlessly irrespective of their background, status and position.”

Strong anti-corruption institutions enhance the effectiveness of the NIE, the triumvirate ‘pillars’ of government, economy and society, and contribute to the further strengthening of the integrity of the ecosystem as a whole. The next section proposes a framework outlining a political integrity ecosystem that places institutions, culture, value and trust in the context of corruption.

3.0 A National Integrity Ecosystem (NIE) Framework

This paper argues that understanding political corruption and redressing it effectively- to ensure political integrity - must be done within the broad framework of a complex socio-economic system. As such, in this conceptual paper, we propose the following research question:

_What should a national integrity framework consider?_

Systemic political corruption arises from an ethically degraded political culture; in the case of contemporary western democracies the now problematic values and beliefs underlying the neo-liberal market driven agenda of the 1980s have been exposed by untenable inequality and the collapse of political trust (Dine 2017; Allan 2014).

Culture is given expression through and interacts with political institutions; changes in both variables are required to secure political integrity and a sustainable democracy. National culture reflects the intangible constituents that manifest themselves in the country’s institutions. Hofstede’s (1984) four dimensions of national culture— power distance,

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collectivism/individualism, masculinity-femininity and uncertainty avoidance – find expression to varying degrees at an institutional level and within organisations. For example, countries in Asia that have a high power distance culture are characterised by organisations with greater centralisation and enforced hierarchy: the superior-subordinate (such as a manager-employee or owner-manager) relationship is marked by strong dependency needs, autocracy or paternalism and acknowledgement of authority (1984: 107, 259) as opposed to undermining or even subjugation of authority in low power distance cultures.

The collectivism/individualism dimension is also important in understanding the culture within the NIE. Strong individualistic countries such as Australia emphasise the responsibility of the individual in their performance of duties as opposed to collectivist cultured countries such as South Korea whereby organisations emphasise the responsibility of group membership and group decision-making (1984: 171). In addition, even countries that value conflict avoidance and social harmony (dela Rama 2011) can manifest a destructive culture if its senior leaders engage or are perceived to engage in corrupt behaviour, leading to dysfunction. Conversely, if senior leaders emphasise transparent, accountable and trustworthy actions – “walking the talk” – so to speak, then the acceptable scope for bribery and other malfeasance is narrowed (Lee 2000: 647-648).

As presented in the following chart, this ecosystem has four principal and interacting components: national integrity; national corruption; political culture, and, institutions. They interact within a broad sphere of values and beliefs, domestic and international. Together they constitute a complex and adaptive ecosystem that bears on the level of political trust essential to the functioning of a democratic society. The chart below sets the broad conceptual framework for our paper.
The main stakeholders in a NIE are the politicians and the community. In representative democracies, the politicians are elected by the community and thereby represent the power vested in the people and delegated to the politicians. These stakeholders interface and interact through the political system of a country where national culture, trust and values are reflected or become embedded in the country’s institutions.

Domestic and international events are part of, and have an influence on, the integrity ecosystem whether through formal or informal channels. Formal channels may include institutions, international forums and agreements; while informal channels may be through elite/oligarchical networks in business and politics or civil society activism and social media, for example as represented by broad developments such as globalisation, neo-liberalism and more recently, populism.

This framework suggests that any individual initiative on integrity and corruption, unless it is understood and developed as a component of a much larger ecosystem is likely to be ineffective; each component interacts with the others, often in unforeseen and unpredictable ways. At the heart of the integrity ecosystem is the process of 'politics'. Its role is to mediate democratically (in the public good) between political institutions/community (right circle)
and political culture/politicians (left circle) so as to maintain a sustainable balance between community values and trust (small eggs) in politicians. This broad setting that includes (in the big, enclosing egg shape) a wide range of international and domestic drivers and trends shaping national systems (the inset labels in Chart 4 later in this article reflect this broader ecosystem setting as viewed from an Australian perspective.)

The next sections critically reflect on these underlying concepts drawing on the relevant literature.

3.1 Political integrity and corruption

It is helpful to consider integrity and corruption as ‘two sides of the same coin’ or as the ‘reverse faces of Janus’, interacting and in tension with each other along a continuous spectrum. This allows our driving concern about growing ‘political corruption’ and its implications for declining trust in politics to be regarded as a deviation from a desired norm namely, political integrity. It provides a conceptual benchmark against which we can measure the extent of corruption at any given time or place by the gap between the values and practices of integrity and corruption.

In the first instance, integrity may be thought of as politicians complying to obligations set down in official codes of conduct and ethics, and more generally, as their adhering to the public-service ethos underpinning these usually non-statutory codes. But relying on the personal and even collective integrity of public officers is not a complete answer. Important as these ‘positional duties’ certainly are, the concept of political integrity arguably invokes a broader ‘commitment to principled causes’ (Hall 2018). Integrity requires the furthering of these deeper political commitments while at the same time avoiding malfeasance or misconduct. Such assessments of political integrity typically require to be made over a long train or series of political actions over time rather than a focus on one off actions.

It is a common complaint that professional politicians lack integrity. Integrity is seen as an increasingly rare commodity, especially in politics, and in an environment of systemic non-integrity, politicians who aspire to live to high standards of accountability often do not last. In particular, where private and public sectors become closely intertwined, a political career is invariably an uncertain and less rewarding undertaking without the right links to the business world, providing fertile soil for privileged access to government decision-makers, for career development on leaving public office, and even for ‘black letter’ for bribery and corruption,
In such environments, with outsourcing and privatization of large public investments and often discretionary regulatory powers, corruption can also reduce economic growth (Tanzi 1998).

The concept of ‘political corruption’, broadly defined as satisfying private interests at the expense of the public interest, raises fundamental questions about underlying value judgments of the distinction between private and public arenas and their objectivity. There is a tendency to adopt a ‘Western perspective’ or conceptual relativism in judging political corruption that maintains an illusion of the purity between public and private domains (Bratsis 2014). This norm has evidently varied over history, societies and geography, and in particular, has seen a significant shift since the 1980s. From Margaret Thatcher’s ‘there is no such thing as society’, and Ronald Reagan’s ‘government is the problem not the solution’, the heralding of the neoliberal age (Dine 2017) has seen a general shift in politics away from the ‘middle ground’ towards the ‘right’. Wide political acceptance of the market-based, profit-driven deregulated, small-government ethos has marked a shift in ‘political corruption’. In particular, this has been reflected in a public perception that politicians have become self-interested and captive of vested-interests thereby opening up a wide gap in institutional and political trust. In particular, anti-corruption institutions are now perceived as lagging behind this citizen perspective.

3.2 Political trust

Popular trust is the belief that the political system will deliver preferred outcomes even if left unattended (Shi 2001). Ma and Yang (2014) argue that political trust stems from social trust. It is independent in the short run of outputs and performance and is an important determinant of the stability of the system but is dependent “on the performance of government and institutional arrangements.” (2014: 339). For authoritarian regimes in East Asia, it is important for them “to reform the political institutions, promote the quality of governance, and seek to control rampant corruption.” (ibid)

That is, if trust is lost then the political system becomes less stable. Indicators of instability may include rampant corruption, scandals, growing role of independents in democracies, minority governments, shifting coalitions, changing leaderships, frequent elections, and other elements with a growing appeal to populism, authoritarianism and nationalism in an attempt to restore stability. Political trust is important too in that it provides governments with room to move, to be flexible and adaptive to changing circumstances and needs.
Functional definitions of political corruption seek objective criteria for distinguishing between public and private interests by putting in place legal definitions that serve to avoid moral discussions about causes and consequences (Nye 1967; Rogow & Laswell 1970). For example, legal political donations are distinguished from those that are bribes blurring the public-private distinction morally and in the process not clearly identifying the nature of ‘political corruption’. There is similar ambiguity with ‘secrecy’ as a criterion for corruption; tolerated in some cases to guard national security, cabinet deliberations, commercial in confidence, public and private interests, perceptions of furtive behaviour are generally associated with a lack of transparency and fuel distrust.

The difficulties inherent in distinguishing objectively and morally the shifting boundaries between public and private interests supports an argument that political corruption is a pattern of behaviour oriented to justifying the influence of some private interests in public ones leaving others aside as technically or legally corrupt (Bratsis 2014). This has been the story of the neo-liberal shift in government towards markets and private interests over public ones with policies of privatization, outsourcing, small government, managerialism, deregulation, public-private partnerships, amongst others.

The origins of political trust have been sought in theories of both cultures and institutions (Mishler & Rose 2001); the former emphasise the endogenous, or internalised set of determinants of trust while the latter emphasise the exogenous, or imposed set of determinants.

3.3 Rational choice, political branding and investor theory of politics

Under rational choice theories (Green & Shapiro 1994) political trust is determined by political actors’ calculation of direct material interests. It is dependent upon the government’s ability to deliver outcomes seen to be in the ‘public good or interest’, providing good policy process and access, and the perception of officials as ‘people of good will’.

In democracies, many commentators and analysts invoke the closely related ‘median voter theory’ of politics (McKelvey 1976, Romer & Rosenthal 1979, Holcombe 1989, Green & Shapiro 1994). This is based on an assumption that voters’ interests are spread over a normal distribution and that accordingly, commanding a government majority requires appealing to the middle ground where the bulk of votes lie rather than to the extremes at either or both ends. However, in a society characterised by growing inequality and the hollowing out of the
‘middle class’ this theory encounters serious problems that undermine political trust (Temin 2018) with the fracturing of traditional party lines and the growing appeal of ‘independents’ in traditionally two-party systems.

Furthermore, the problems are exacerbated to the extent that voter participation and access to information for informed decisions on voting are also constrained. In a modern society access to information and its processing has costs and this has in part been reflected in the ‘branding strategies’ increasingly pursued by political parties in their campaigns. As in consumer retailing and advertising, branding has the effect of lowering the cost of information search to consumers and is premised on ‘trust’ in the political brands (Smith & French 2009). Increasingly, social media political campaigns can also be manipulated as exemplified in the US (Persily 2017) and Indonesian (Lim 2017) elections.

Furthermore, political ‘brand’ strategies are expensive as reflected in the absurdly high and escalating costs of electoral campaigns to ‘buy votes’. This has driven politics into the arms of those interests rich enough to make the required large political donations, such as corporations and industry bodies or rich individuals who can fund their own campaigns for high office. This ‘investment theory of politics’ (Ferguson 1995) holds that the effects of voting are determined by these rich, funding entities rather than by the voters themselves. The voters have relatively less access and influence on political outcomes and this leads to an erosion of political trust: more money yields more votes (Temin 2018). Thus, the purchase of the election process then becomes a cause of grand political corruption (Rose-Ackerman 2013) leading to national instability.

3.4 Political culture and values

Political culture is the set of underlying collective assumptions, attitudes, sentiments, beliefs and values that give structure and order to a political system and its processes, and that determine political rhetoric and behaviour (Smith 2001). It is an accepted if disputed empirical concept that is transmitted and generally remains unchanged over the short term.

The term ‘political culture’ first appeared in modern political science in the late 1950s and early 1960s to denote the pattern and orientation of political actions within a political system (Almond 1956, 1963) and is associated with the modernization theory of democracy (Parsons 1971). The concept refers to the psycho-sociological limits or conditions within which
political agents and their belief structure of a given polity, outside of which structure political action would be incoherent (Bove 2002).

In its contemporary revival it has been described as a ‘political rubric’ in light of its continued weakness as a concept and theory namely, difficulty in disentangling sub-cultures such as political elites; and difficulty in its interactions with institutions and policy attributes to demonstrate a propensity for certain types of political outcomes (Reisinger et al. 1995). Differing cultural values and beliefs held by politicians mean that their actions are determined by their mediating the different values or meanings that they place on those actions rather than by a direct response to the issue in hand. Different politicians react to the same stimuli in different ways according to their values. Political culture has a significant impact on political trust and it cannot be reduced to the effects of institutions and structures. In other words, political culture runs deep and you cannot in the first instance just legislate or create structures to increase political trust. The underlying values and beliefs mediate and create a lag in the change of political culture.

On the theoretical side, values and beliefs are often treated differently (Alesina & Giuliano 2015). Beliefs about the consequences of actions can be manipulated by transmission or by experiment; values are seen as a more enduring primitive phenomenon. As in psychology, culture emphasises the role of emotions in motivating human behaviour. The rise of political ‘culture wars’ in Australia illustrates the nature and often divisive impact of such values-driven politics. These two interpretations of culture, as values or beliefs, are not mutually exclusive; they can interact systematically with each other as well as with institutions to change over time (Benabou 2008).

Despite its contested status in academia the concept of political culture is helpful in explaining political processes and behaviour. In the case of Australia, these influences include ideology, federalism, liberal democratic principles, Westminster tradition and party government (Singleton et al. 2014) and five dimensions of political culture have been identified: attitudes to reliance on government; responsiveness of government; citizen duty; authoritarianism; and, federalism (Bean 1993).

The ethical challenge for developing effective anti-corruption measures turns on identifying and establishing improper motives, intentions, interests and benefits between actors involved in corruption, as well as providing evidence of damage to public interest. This is compounded at times when the political culture has been shifting as it has in recent decades. The process
of corrupt behaviour can become subjective and difficult to prove in court; when not proven objectively such actions can only be understood and treated as undermining trust, inefficient or even ineffective but not technically or legally as corrupt.

### 3.5 Politics and institutions

Strong support has also been found for institutional explanations of political trust particularly at the micro, individual level, rather than at the macro, societal level (Mishler & Rose 2001). Under this view there is grounds for cautious optimism about the potential for nurturing popular trust by the establishment of new institutions that further democratic principles and political culture.

The formal, institutionalised approach to tackling corruption avoids subjective approaches that require motives and intentions to be identified. They focus on the criterion of ‘legitimate’ actions that comply with due democratic legislative process that includes generality, autonomy and publicity (Thompson 1993). Corruption or inappropriate actions are defined as detrimental to the democratic process as a result of specific relations between the actors involved. Accordingly, political or private gains are not corrupt in themselves; they are only deemed corrupt if obtained by avoiding democratic process controls.

The idea that the ethics of a situation are based on the specifics of an actual case is known as ‘casuistry’ and is often dismissed on the grounds that culture, stories and ethics cannot be reduced to generalising equations (Lanchester 2018). It is a method of applied ethics and jurisprudence originally applied to quibbling or evasive ways of dealing with difficult cases of duty. It is often characterised as a critique of principle – or rule-based reasoning.2

Nevertheless, there is increasing pressure for political transparency and accountability to be institutionalized, with rules on full disclosure, freedom of information, public declaration of assets, and an open invitation to public scrutiny, with rules and regulations governing conflicts of interest and requiring full disclosures of personal assets and liabilities by holders of public office (World Bank 2001, 2017). Anti-corruption laws must be enforced through an independent judicial system based on rule of law, but proper implementation and enforcement face challenges due to lack of politicians with integrity and strong political will. Even rigorous laws can become ineffective. Equally important is a democratic culture based

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2 From Viscount Bolingbroke (1740): “Casuistry...destroys distinctions and exceptions, all morality, and effaces the essential differences between right and wrong” (from Oxford English Dictionary online).
on rule of law that permits open public scrutiny and effective political opposition. A higher level of social capital also means that citizens are more likely to hold politicians accountable (Nannicini 2013 et al). They are more likely to punish politicians that pursue vested interests and appropriate economic rents for specific groups.

3.6 Culture and institutions

Culture and institutions interact and evolve in complex, non-linear, complementary ways, with mutual feedback effects and often unstable and unpredictable outcomes. As Hofstede’s 1984 study indicated, they are endogenous variables largely determined by longer term shifts in underlying drivers such as geography, technology, wars and other historical shocks. Both can determine economic choices and outcomes and it would be wrong to claim the causal superiority of either (Alesina & Giuliano 2015). Thus, the same institutions (political and legal; regulatory; welfare state) may function differently in different cultures (trust; families; individualism; generalized morality; work-luck), but culture may evolve in differing ways depending upon types of institutions.

It is helpful in considering cultural and institutional change to distinguish between economic and political institutions (Acemoglu et al 2005). While political institutions distribute power across socio economic groups this in turn determines the structure of economic institutions. Institutions denote which political pressure or interest group on a given issue has the power to control social choice. Thus, institutional change is the outcome of voluntary concessions by the controlling group under threat of fracturing the ‘social contract’. An example of a controlling group is explored further in the section on elites.

3.7 Elite networks

Elite networks exist in every country (see Moore 1979; Moore et al 1980). They may be overt or covert in their exercise of power. In countries where there is high power distance, their presence is more noticeable. To understand corruption in the region, addressing the underlying political culture requires understanding the elites of the region. Indeed, the economic forces in the region are driven by elites shaping the political culture and nominally hampered by limits of civil society when they are allowed to exist.

In the Asia-Pacific, elite networks are nominally found in politics, the private sector, the bureaucracy and in some cases, more overtly in the military sphere (dela Rama and Rowley 2017). There can be cross-overs such as when the military elites participate in the private
sector. The prime example of this is China where its unitary political system has allowed the ease of transfer of princelings from military to politics and to business (Bickford 1994). Other countries where similar examples exist or have existed include East Timor, Myanmar, South Korea, Thailand and Vietnam (Andrews & Htun 2017, McCargo 1998, Phuong 2017, Scambary 2017, Yoo & Lee 2009). The power and privilege of access has allowed the politically-connected elites to reify their dominance and indeed is reflected in the primacy of business groups in the region (Claessens et al 2000).

With all of the above issues in mind, in order to answer our research question we conducted two desk surveys. Firstly, a desk survey to find the relevant multilateral agreements, principles and working groups in place to address corruption and promote anti-corruption efforts in the region. The second desk survey sought to compare and contrast the experiences of anti-corruption commissions around the region. The next section looks at the underlying principles and frameworks in place that underpin the institutional capacity of countries in dealing with corruption.

4.0 Anti-corruption frameworks applicable in the region

The following multilateral agreements, principles and working groups are in place to address corruption and promote anti-corruption efforts in the region, with a specific focus on the private sector role.

The UN Convention Against Corruption (UNCAC) (2005) is the “only legally binding universal anti-corruption instrument” signed by 140 countries at the time of writing. It covers five areas: “preventive measures, criminalisation and law enforcement, international cooperation, asset recovery, technical assistance and information exchange.” In particular, in addition to bribery and corruption, the Convention’s articles specifically also define trading in influence (Article 18), abuse of functions (Article 19) and other acts of private sector corruption such as laundering the proceeds of crime (Article 23). Money laundering is also

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3 UN Office on Drugs and Crime, UN Convention Against Corruption Signature and Ratification Status [https://www.unodc.org/unodc/en/corruption/ratification-status.html](https://www.unodc.org/unodc/en/corruption/ratification-status.html) accessed 18th February 2018
covered by the UN Convention Against Transnational Organised Crime (UNTOC) (2000) in addition to human trafficking and smuggling, and arms trafficking.\(^6\)

The UN Global Compact (UNGC) (2004) is a voluntary initiative undertaken by the private sector to support universal sustainability principles and sustainable development goals of the UN.\(^7\) In particular, the 10\(^{th}\) Principle of the Compact directly addresses corrupt actions by private sector participants, so that:

> “Businesses should work against corruption in all its forms, including extortion and bribery.”\(^8\)

Private sector signatories to the Compact are expected to commit to this principle by:

> “[avoiding] bribery, extortion and other forms of corruption [and] proactively develop policies and concrete programs to address corruption internally and within their supply chains. Companies are also challenged to work collectively and join civil society, the United Nations and governments to realise a more transparent global economy.”\(^9\)

A list of signatories to the Compact is available by country, size of business, sector and join date.\(^10\)

The OECD’s Anti-Bribery Convention on Combating Bribery of Public Foreign Officials in International Business Transactions (2009) legally binds OECD member-states in criminalising the “bribery of foreign officials [and is] an anti-corruption instrument focused


\(^7\) UN Global Compact, About US [https://www.unglobalcompact.org/about](https://www.unglobalcompact.org/about) accessed 18th February 2018

\(^8\) UN Global Compact 10\(^{th}\) Principle [https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-10](https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-10) accessed 18th February 2018

\(^9\) op. cit.

\(^10\) UN Global Compact, Our Participants [https://www.unglobalcompact.org/what-is-gc/participants](https://www.unglobalcompact.org/what-is-gc/participants) accessed 18th February 2018
on the supply side of the bribery transaction. Article 10 of the Convention sets out the conditions for extradition for those to have bribed foreign officials.

The OECD is also a partner with the G20 Anti-Corruption Working Group (ACWG) (2010), which covers the 20 most economically advanced countries. The ACWG monitors the commitments made in the ratification of UNCAC as it recognises the “significant negative impact of corruption, economic growth, trade and development.” The G20 ACWG in 2015-16, looked at the problems of opacity in business ownership and has made “beneficial ownership transparency” as a priority. This addresses:

“Preventing the abuse of legal persons and arrangements is a critical issue in the global fight against corruption. Despite significant international efforts and attention, legal persons and arrangements continue to be misused to hide or conceal criminal activity such as money laundering, tax evasion, and corruption. This abuse of legal persons and arrangements undermines the broader efforts of the G20 to achieve its mission of protecting the global financial system and promoting growth.”

Similarly, the APEC Anti-Corruption and Transparency Working Group (2011) was established to institutionalise member-countries’ work in order to address corruption’s “serious threat to sustainable economic growth, good governance, market integrity, and enhanced trade and investment.”

The frameworks mentioned above show the need for mutual cooperation and exchange of information when it comes to tackling and addressing corruption across countries and in the region. These frameworks do not sit in isolation with civil society participation, such as

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14 op. cit
Transparency International’s work,\textsuperscript{16} in the region helping inform in the continued fight against corruption; while on the private sector side, the International Corporate Governance Network’s (ICGN) guidance on anti-corruption practices (2015)\textsuperscript{17} helps its investor members avoid such practices.

Countries in the Asia-Pacific region are nominally signatories to these agreements and some are members of the aforementioned working groups with the work undertaken in these forums influencing the policy resolutions of their respective anti-corruption commissions.

The next section looks at a select group of anti-corruption commissions around the region and that the individual experiences in each country are shaped by the specific demands and issues of their national culture and values.

\textbf{5.0 Anti Corruption Commissions around the Asia-Pacific region}

This section surveys five anti-corruption bodies in four Asia-Pacific countries. These bodies are a product of their local conditions and they continue to be shaped by their experiences of corruption and dishonourable conduct. The following table lists the name of the different bodies, their remit and private sector oversight.

\begin{table}[h]
\centering
\begin{tabular}{|l|l|l|l|l|}
\hline
\textbf{Country} & \textbf{Name} & \textbf{Year Established} & \textbf{Remit} & \textbf{Private Sector Oversight} \\
\hline
China (mainland) & Central Commission for Discipline Inspection (CCDI) \textsuperscript{18} & 1978 & Communist Party members & Business interests of Communist Party members and guanxi network; international reach for Party members with overseas business interests \\
Indonesia & Corruption Eradication & 2002 & Police, electoral officials, regulatory & Politicians who are also businessmen and using \hline
\end{tabular}
\end{table}

\textsuperscript{16} Transparency International, Asia-Pacific Corruption, Global Barometer \url{https://www.transparency.org/whatwedo/publication/people_and_corruption_asia_pacific_global_corruption_barometer} accessed 18th February 2018
\textsuperscript{17} ICGN (2015) Guidance on Anti-Corruption Practices \url{https://www.icgn.org/sites/default/files/ICGN_Anti-Corruption_2015_0.pdf} accessed 18th February 2018
\textsuperscript{18} China’s Central Commission for Discipline Inspection (CCDI) Home Page (in Mandarin), \url{http://www.ccdi.gov.cn} accessed 2\textsuperscript{nd} February 2018
5.1 China’s Central Commission for Discipline Inspection

In a one-party state, China, the CCDI, is the sole organ to investigation malfeasance of Communist Party members and corruption in general. After high profile cases of corruption of party members, who have fallen out of favour such as Bo Xilai, a Minister of Commerce and the former party chief in Chongqing (Anderlini 2012, Guo 2014), President Xi Jinping led a high profile anti-corruption campaign with international reach, including princelings residing in Australia (Garnaut 2012), but as pointed out by Guo, these efforts by the CCDI can be “highly politicised owing to concerns about upsetting the existing balance of the

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19 Indonesia’s Komisi Pemberantas Korupsi (KPK) Home Page (in Bahasa Indonesia), https://www.kpk.go.id/id accessed 2nd February 2018
power structure [and the Party] is reluctant to move towards a depoliticised legal system for its high-ranking leaders “(2014: 621) which means the lack of an independent legal system (Winckler and Doyon 2017) will continue to be the Achilles heel in the institutional development of the country and its fight against corruption.

Furthermore, the remit of this body to investigate Communist party members internationally has been somewhat hampered with the lack of extradition treaties in several countries. There are also suspicions of politicised motives (Garnaut 2012) when these Communist party members have commercial and residential interests and are seen to exercise undue political influence in their host countries.

5.2 Indonesia’s Corruption Eradication Commission

In the wake of its long Suharto dictatorship, Indonesia’s civil society embraced the freedom and promise of democracy – warts and all:

“Eradicating corruption, collusion and nepotism was a demand the student protestors made in the uprising against President Suharto in 1998, in the midst of the Asian financial crisis.” (Widojoko 2017: 254)

Established in 2002, the country’s Corruption Eradication Commission (KPK) pursued corrupt targets in the police, judiciary and government and has been “remarkably effective in identifying corrupt patterns in Indonesia’s political officials and bringing even high-ranking officials to justice.” (Mietzner and Misol 2012: 118)

However, this success ensured that in the process, the KPK also acquired very powerful enemies. Indeed, at one point the KPK faced dissolution and its future became uncertain until Indonesia’s civil society, through the use of social media, publicly gathered to show its overwhelming support for the KPK (Widojoko 2017). While its future is secure at the time of writing, there is the possibility that Indonesia’s oligarchical elite will turn on the very body that seeks to reduce its power.

5.3 Hong Kong’s Independent Commission Against Corruption

The widely influential Hong Kong Independent Commission Against Corruption (ICAC) was established in 1974, long before the former British colony’s handover to China. Out of all the anti-corruption bodies in this section, the HK ICAC has the most formalised investigation unit to address private sector corruption, reflecting the status of the island as a global
financial centre in the region. It has also influenced the establishment of anti-corruption bodies in Australia. Below is an abridged version of its organisational chart showing how broad its Operations Department is and how it investigates corruption and the different divisions examining private sector malfeasance in its many forms, opportunities and motivations:

![Organisational Chart](http://www.icac.org.hk/en/ops/struct/index.html)  

**Figure 1: Private Sector Investigation Unit of HK's ICAC**

ICAC also has a corruption prevention department with an advisory service assigned to the main industries present in Hong Kong: building management, financial industries, tourism and trading and logistics. It also addresses private-to-private sector corruption (Argandoña 2003) with a Prevention of Bribery Ordinance (POBO) which is explicit on principal-agent (Eisenhardt 1989) conflicts and issues:

- “No agent (usually an employee) shall solicit or accept any advantage without the permission of his principal when conducting his principal's affairs or business; the offeror of the advantage is also guilty of an offence.

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• "Advantage" includes money, gifts, loans, commissions, offices, contracts, services, favours and discharge of liability in whole or in part, but does not include entertainment.

• "Entertainment" means the provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment provided at the same time, for example singing and dancing.²⁷

It continues to be in the best interest of the island that it operates a highly transparent system, quid pro quo, penalises the rotten few and supports a private sector so the latter has confidence in the functions of her public institutions - both sectors, in turn, securing the island’s future and financial sustainability.

5.4 South Korea’s Anti-Corruption and Civil Rights Commission

South Korea’s economic development from the miracle decades of the 1960s to 1980s saw a political-business nexus of crony capitalism that allowed the collusion of an “uninterrupted inflow of extorted subordinates of the government from chaebol owners.” (Oh 2017: 243). As argued by Oh (2017), South Korean corruption has changed from state-led to chaebol-led. Chaebols, the business group conglomerates that rule the Korean private sector, are increasingly seen as a liability to further political democratization in the country preventing the transformation of the country from a chaebol republic to a market democracy (Kalinowski 2016). Incidents of the abuse of power by chaebols and their family representatives have undermined the trust of wider Korean society from the pettiness of ‘air rage’ by the daughter of the Korean Air owner to turn back a plane over macadamia nuts to the grand corruption of systemic slush funds established by owners of Hyundai and Samsung to pay off government officials (Oh 2017: 245).

Attempts to enforce existing laws against corruptors are beset by the deferential culture shown to chaebol largesse as can be seen with the early release from jail over corruption of the Samsung Group heir, Lee Jae-yong, prior to the commencement of the PyeongChang 2018 Winter Olympic Games (Choe & Zhong 2018). Samsung is a Worldwide Olympic Partner, Official Partner and Official Sponsor of the Games.²⁸

South Korea’s Anti-Corruption and Civil Rights Commission (ACRC) was established in 2008 as a result of the amalgamation of three existing public bodies: the Ombudsman of Korea, the Korean Independent Commission Against Corruption and the Administrative Appeals Commission.\textsuperscript{29} It has been noted that the merger has resulted in a weaker institutional body (Lee and Jung 2010). The ACRC’s role and functions are heavily organised around public sector and civil complaints against different government bodies. They also include whistleblower protection and reporting of public subsidy fraud.\textsuperscript{30} The supervision it has over private sector corruption is limited by how public officials interact with their private sector counterparts\textsuperscript{31} such as the enforcement of the Improper Solicitation and Graft Act. In 2012, an ACRC survey reported at least 1\% of citizens had paid bribes to public officials or entertained them in bars or other activities as a matter of respect or courtesy and to prompt business transactions (Kalinowski 2016).

It is beyond the oversight of the ACRC to investigate wider, grander corruption by \textit{chaebols} as it does not have responsibility to cover elections where instances of political corruption through private sector donations occur.

\textbf{5.5 Thailand’s National Anti-Corruption Commission}

Similar to South Korea, Thailand’s National Anti-Corruption Commission (NACC) was formally established in 2008 from previous iterations\textsuperscript{32}. Its main mandate is to investigate public officials through asset tests especially if they have:

\begin{quote}
“…become \textit{unusually wealthy} [emphasis added] or has committed an offence of corruption, malfeasance in office or malfeasance in judicial office.”\textsuperscript{33}
\end{quote}

The NACC has investigated the country’s former Prime Minister Yingluck Shinawatra over her family’s business interests and a rice subsidy government program (McKirdy et al 2017)

\begin{footnotesize}
\begin{itemize}
\item South Korea’s ACRC, Background, \url{http://www.acrc.go.kr/en/board.do?command=searchDetail&method=searchList&menuId=020110} accessed 2\textsuperscript{nd} February 2018
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\item Thailand’s NACC, Historical Perspective \url{https://www.nacc.go.th/ewt_news.php?nid=938} accessed 2\textsuperscript{nd} February 2018
\item Thailand’s NACC, Duties of Responsibilities \url{https://www.nacc.go.th/ewt_news.php?nid=937} accessed 2\textsuperscript{nd} February 2018
\end{itemize}
\end{footnotesize}
and she was subsequently sentenced to jail *in absentia* (Cochrane 2017). She follows in the footsteps of her brother, another former PM, Thaksin Shinawatra, who was the subject of a previous NACC investigation a decade earlier and was also jailed *in absentia* (Biswas et al 2015). At the time of writing, both Shinawatra family members are still in exile and there is criticism of other Thai “elite groups [using] the mantra of ‘corruption’” (Dyussenov 2017: 337) as a vendetta against the Shinawatras, politicising the NACC in the process.

These five case studies show the spectrum of successful and not-so-successful pursuit of corrupt actors. Nevertheless, these anti-corruption bodies provide an avenue for public assurance in their institutions – despite their imperfections – and the next sections show Australia’s journey as it looks at establishing its own federal anti-corruption watchdog.

**6.0 Australian political culture and Australian political institutions**

It is important to provide a context of Australian political culture and their institutions in order to understand the current state of the country’s NIE. A closer scrutiny and breakdown of Chart 1 shows the crucial role of culture and institutions in how the country deals with integrity and corruption issues.

The following chart looks at Australian political culture and the tensions embedded within it, in particular the concept of ‘mateship’ where - in its most dysfunctional form - borders on crony culture (Cave & Kwai 2018):
This also shows the detailed elements of political culture, which, while country specific to Australia, may also be applicable in other countries. Issues of privatisation, competition, markets, regulatory capture, lobbying, think tanks, industry bodies and other elements are nominally present in other OECD countries. A strong patriarchal element alongside a tradition of ‘mateship’ (Page 2002) in the country also influences the tenor of its political parties. This chart describes and foreshadows the range of specific political culture issues addressed within this paper and what a federal anti-corruption watchdog would need to consider, operate and interact with.

The next chart looks at the representative voice of the community as expressed through Australian public and political institutions bearing on integrity:
Similar to Chart 2, this shows the key components of Community-driven institutions from Chart 1 that bear on integrity and corruption. As can be seen, the community’s values and concerns are given voice through public institutions such as the Auditor-General, Electoral Commission, Ombudsman, Royal Commissions, Regulators, Judiciary, the Police, and the Legislature. Concerns may also be raised through the Media, NGOs and Whistleblower associations. Underpinning this is the ‘rule of law’ through a strong presence and inheritance of English Common Law. Politicians and Public Servants are governed generally through voluntary ‘codes of conduct’.

A proposed federal watchdog will operate within these varied institutional elements and the community values by which they are underpinned.. This chart also foreshadows the discussion of these institutions in our paper. The design of a federal ICAC in respect to powers and scope will need to reflect the existing institutions' mandates, experiences and strengths and weaknesses.

The next section looks at existing anti-corruption bodies in Australia at the state level within the national federation.
7.0 Anti-corruption bodies in Australia

This section looks at the historical establishment of anti-corruption bodies in Australia by state and territory and at their experience. Some of them show the push (such as cases of corruption reported in the media and ensuing widespread public opprobrium) and pull (such as powerful elite networks) factors that underpin their continued existence. There is a dedicated anti-corruption body in each of the six Australian states while its two territories are in the process of setting them up at the time of writing. The following table summarises the name of each anti-corruption commission in Australia and the year of their establishment:

Table 2: List of State anti-corruption bodies in Australia

<table>
<thead>
<tr>
<th>State or Territory</th>
<th>Name</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>Independent Commission Against Corruption</td>
<td>1989</td>
</tr>
<tr>
<td>Victoria</td>
<td>Independent Broad-based Anti-Corruption Commission</td>
<td>2012</td>
</tr>
<tr>
<td>South Australia</td>
<td>Independent Commission Against Corruption</td>
<td>2013</td>
</tr>
<tr>
<td>Queensland</td>
<td>Crime and Corruption Commission</td>
<td>2001</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Crime and Corruption Commission</td>
<td>2004</td>
</tr>
<tr>
<td>Tasmania</td>
<td>Integrity Commission</td>
<td>2010</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>To be established – Anti-Corruption and Integrity Commission</td>
<td>&gt;2018</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>To be established – Anti-Corruption Commission</td>
<td>&gt;2018</td>
</tr>
</tbody>
</table>

7.1 New South Wales (NSW)

In Australia’s largest state, New South Wales (NSW) the origins of its own Independent Commission Against Corruption (ICAC) was in the lead up to the 1988 election and modelled after the Hong Kong ICAC. The former State Labor Minister for Corrective Services faced court for taking bribes to release prisoners early. The then opposition leader, Nick Greiner, promised to establish an ICAC on election. On winning the election and becoming Premier, he did so but ironically was then investigated by it himself and though winning on appeal, he resigned over his use of an unadvertised public sector job to persuade a parliamentarian to resign his seat (Spicer 2016).

Although NSW ICAC\textsuperscript{34} is generally regarded as the successful state –based prototype anti-corruption body and despite a compelling set of successful investigations over the years, it has also experienced attacks on its legitimacy and powers. In 2015, as a result of its aborted investigation into the Crown Prosecutor, Margaret Cunneen, then Premier Mike Baird

\textsuperscript{34} NSW ICAC [https://www.icac.nsw.gov.au](https://www.icac.nsw.gov.au)
commissioned an expert panel to review its powers (Nicholls 2015). Despite commissioning the expert panel, that included the Chief Justice of Australia, the Premier also commissioned a previous ICAC inspector, David Levine to review ICAC. Levine delivered a scathing assessment of ICAC’s aborted investigation of Cunneen and characterised it as a ‘low point’ for the Commission as it engaged in “unreasonable, unjust and oppressive maladministration.” (Nicholls 2016).

ICAC hit back claiming his report contained legal and factual errors. The panel did not recommend changes to ICAC powers to hold public inquiries. It advised against any formal oversight or internal review of decisions to hold public inquiries or decisions as to what witnesses to call in public. It recommended that ICAC only investigate serious corruption and only make corruption findings in such cases. These recommendations were implemented. Meanwhile the Premier resigned from office and Parliament, on family grounds, and promptly took up a highly paid executive role with the National Australia Bank (Sprague 2017).

ICAC has reported on the corruption risks in NSW public sector procurement (AUD$30 billion a year) (NSW ICAC 2010). Based on nearly thirty investigations involving public enquiries they have highlighted examples in a diverse range of agencies, including, fire brigade, housing, roads and transport, rail, and electricity transmission. A range of problem areas was identified, including in respect of outsourcing and contracting of services. Compliance with policy, codes and guidelines is patchy and problematic. The opportunities for corruption are compounded by the contracting-out of public services to private providers in the absence of fully functioning markets. Well over a third of NSW agencies outsourced core functions while a further third out sourced non-primary functions.

In 2017, in an example of ‘regulatory capture’ of regulators by commercial interests that they regulate, the ABC Four Corners program exposed large scale theft of billions of litres of water from Australia’s largest river, the River Murray, by large scale irrigators in Northern NSW. This appeared to be aided and abetted by the senior Water Authority public servant responsible for regulating water use (Besser et al 2017). He stood down and then subsequently resigned. The matter was referred to ICAC and an independent enquiry was also commissioned (Begley 2017). In early 2019, the South Australian Government’s Royal Commission into the Murray-Darling Basin published its 2019 report35 finding

35 Murray Darling Basin Royal Commission https://www.mdbrc.sa.gov.au
“Commonwealth officials committed gross maladministration, negligence and unlawful actions36” and that “The governance structure is flawed as it has permitted...a small group of MDBA Board members, staff and others, to engage in a secretive exercise in respect of scientifically-based decisions.” (2019: 692)

Indeed, Juvenal’s oft-quoted question applies here again: *Quis custodiet ipsos custodies?*

### 7.2 Victoria

In Victoria, the Independent Broad-based Anti-corruption Commission (IBAC)37 was established in 2012. It succeeded the Office of Police Integrity and its powers were broadened. Before conducting public examinations it must satisfy tests including ‘exceptional circumstances’ and ‘no risk of unreasonable damage to a person’s reputation, safety or well-being (O’Bryan 2018). These tests are relatively demanding and restrictive in comparison with other ICACs. However, in reflecting on its history, it has proven it is no ‘toothless tiger’ and that it does have an important role to play (O’Bryan 2018).

The state’s faith in its clean-self image has been tested with several recent high-profile cases of corruption, such as the so-called ‘banker schools’ involving education department senior executives and the director siphoning off millions of dollars of public funds for their personal benefit (Savage 2015). IBAC has also drawn attention the state’s vulnerability to corruption in the public health sector (IBAC 2017a). It warns that the health sector corruption risks and vulnerabilities are common to the rest of the public sector, especially those risks associated with procurement and employment practices.

Despite government agency heads vowing to clean up their organisations, and despite the robust integrity system under IBAC many public servants are afraid to report corruption. According to IBAC research, almost half of Victoria Police employees worry that they would suffer personal repercussions for reporting internal corruption (IBAC 2017b). This suggests whistleblowing protections are inadequate.

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7.3 South Australia

The ICAC of South Australia was established in 2013. In 2017, it commenced investigating elder abuse, neglect and maladministration over a period of 10 years at the government-run Oakden Nursing Home. The Oakden inquiry resulted in the resignation of a former mental health minister before the state’s elections (Harmsen 2018).

7.4 Queensland

Queensland has a Crime and Corruption Commission (CCC) that was established in 2001. It seeks to reduce major crime and public sector corruption. In 2016, it investigated a host of local councils, their elections and ties to property developers. Queensland, in the 1980s, had suffered systemic police and political corruption, which resulted in the Fitzgerald Royal Commission of Inquiry (Queensland CCC 2014). Four ministers and the police commissioner were jailed. The inquiry highlighted that it was not only individuals who were corrupt but the state itself. It shattered the complacency of the political class. The premier, Bjelke Petersen, was thrown out of office thereby ending his party’s 32-year reign of the state.

7.5 Western Australia

Similar to Queensland, WA has a CCC that was established in 2004. It investigates serious misconduct and reduces the incidence of organised crime. In 2015, it was the subject of a government inquiry over internal misconduct in its covert operations unit (O’Connor 2015).

7.6 Tasmania

In Tasmania, the state has an Integrity Commission that was established in 2010. However, it has been called “toothless, under-resourced and unable to use the full extent of its powers” (Whitson 2018) as the Commission has never held a public hearing or inquiry since its inception.

However, one of its reports on misconduct accountability (Tasmanian Integrity Commission 2017) saw the state’s Premier, Will Hodgman, criticised over the ‘nepotism’ culture that has

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38 SA ICAC https://icac.sa.gov.au/content/about-us-o
39 SA ICAC, Oakden https://icac.sa.gov.au/content/oakden
42 WA CCC, About the CCC Fact Sheet No.1 https://www.ccc.wa.gov.au/sites/default/files/Fact%20Sheet%20No.%201%20About%20the%20CCC.pdf
43 Tasmania, Integrity Commission http://www.integrity.tas.gov.au/about_the_commission
proliferated in its senior public service ranks (Whitson 2017) and conflicts of interest in appointments that had neither been reported nor managed.

### 7.7 Australian Capital Territory (ACT)

In the ACT, a bipartisan Legislative assembly Committee has agreed a detailed plan to put in place an Anti-Corruption and Integrity Commission (ACIC), a comprehensive anti-corruption body with strong powers by the end of 2018 (Easton 2017). This responds to the community’s expectation as taxpayers that the social contract between government and the people is working in its interests and acknowledges the correlation between the establishment of such a body and improved accountability and trust in government.

Its range of functions include prevention, risk reduction and public education; being a ‘visible, accessible’ point of contact for citizens and public servants, as well as taking official referrals. Public examinations will be subject to a ‘public interest test’, rather than the more limiting tests in the Victorian state domain. It would deliver ‘findings of fact’ but report suspicions of criminal behaviour to authorities and leave it to courts to decide guilt. Its jurisdiction would be wide covering all politicians and staff members, judicial officers and anyone doing work of delivering services on behalf of the government.

### 7.8 The Northern Territory

The Northern Territory (NT) government has drafted legislation for an Anti-Corruption Commission (ACC).

### 8.0 The proposed Federal/National/Commonwealth Integrity/Anti-Corruption Commission

In Australia’s federal system, moves towards a National Integrity Commission were informed by an inquiry held in 2016-17. While the relevance of state anti-corruption bodies, once established, has not been questioned - their powers are under scrutiny: too powerful in the case of NSW, not powerful enough in Tasmania. There is no doubting their importance and critical role in ensuring accountability in the function and the transparent discharge of the duties of state governments, state bodies and public servants. However, the extent of their power remains an issue in the moves towards a federal anti-corruption commission – too much power from the point of view of those being scrutinised, too little from those who wish to hold power to account.
Federal parliamentarians, and indeed sections of Australian business, have long resisted and indeed denied the need for such a body at the national level (Oquist 2018). This has been despite long-standing public support for its establishment and continuing decline in public trust of politicians (Denniss 2017). Federal politicians are clearly unenthusiastic about taking the risk of scrutinising their own actions. For example, in February 2018, the personal and political life of Australia’s deputy prime minister Barnaby Joyce, spectacularly unravelled when his personal interests interfered with his public duties and exposing his business ‘mates’, and that of his close associates or “cronies” (Cave and Kwai 2018). The Joyce Affair showed the unfortunate underbelly of Australia’s federal political class – the intertwining of personal affairs, lobbying, ministerial discretion and, not least of all, Joyce’s personal connections to Australia’s richest woman, Gina Rinehart (McIlroy 2018).

Some have commented a National Integrity Commission would have prevented his persistent abuse of power and the mismanagement of the public purse, given Joyce was not keen on its establishment (Easton 2018).

While cases such as Joyce tend to gain the public’s attention and opprobrium over misbehaving taxpayer-funded public figures, it is in the less sensational, bread-and-butter personalities in power in charge of Australia’s federal agencies that shows why the National Integrity Commission (NIC) is a missing, crucial piece in Australia’s institutional jigsaw. Political culture does impact the bureaucratic culture in the Westminster system of governing.

In 2017, the main revenue generating arms of the federal government, the Australian Tax Office (ATO) and Australian Customs, had incidences of corruption by senior public servants that underlined the ineffectiveness of existing bodies to tackle malfeasance. In May 2017, the ATO’s Deputy Commissioner, Michael Cranston, was forced to resign after it was uncovered he was connected, through a relative, to a syndicate that perpetrated a AUS$165 million tax fraud (Olding & Levy 2017). In August 2017, an Australian Border Force officer and former customs officer were arrested over importation of illegal drugs (Hall 2017). In the case of the latter, the integrity system in the Customs agency was seen to have been compromised as the incident showed links to criminal families and transnational crime, and with it the systemic failure of an internal anti-corruption watchdog to gain hold within the agency (McKenzie & Baker 2017).
It was in this climate of growing public mistrust that the inquiry into establishing a federal anti-corruption watchdog was set in motion. As a former Victorian Supreme Court judge Stephen Charles said:

“IT is already well known that there is abundant corruption in the other capital cities around Australia, why on earth does the air suddenly clear around Queanbeyan [near the capital Canberra]?”

The first body to investigate was a Senate committee in 2016 that looked at establishing the National Integrity Commission. It received 30 submissions from broadly three stakeholder groups – government agencies, non-government agencies including lobby groups, and private individuals. Private individuals comprised of former public servants, whistleblowers, politicians (current and former) and academics. The table below shows these stakeholder groups:

Table 3: Stakeholder Groups of Senate Committee Inquiry Submission

<table>
<thead>
<tr>
<th>Government Agencies</th>
<th>Private Individuals</th>
<th>Non-Government Agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Public Service Commission</td>
<td>Public servants</td>
<td>Rule of Law Institute of Australia</td>
</tr>
<tr>
<td>Commonwealth Ombudsman</td>
<td>Whistleblower</td>
<td>Transparency International</td>
</tr>
<tr>
<td>Federal Attorney-General’s Department</td>
<td>Academics</td>
<td>Science Party of Australia</td>
</tr>
<tr>
<td>NSW ICAC</td>
<td></td>
<td>Australian Chamber of Commerce and Industry</td>
</tr>
<tr>
<td>Queensland Integrity Commissioner</td>
<td></td>
<td>Law Council</td>
</tr>
<tr>
<td>Victorian IBAC</td>
<td></td>
<td>Institute of Public Affairs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Community and Public Service Union</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Australian Council of Trade Unions</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Accountability Roundtable</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Gilbert + Tobin Lawyers – UNSW</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6</th>
<th>14</th>
<th>10</th>
</tr>
</thead>
</table>

Total = 30


The second body was a Select Committee, which succeeded in continuing the same inquiry in February 2017. The elapsed time between the two committees was due to a federal election held in July 2016 and where the Greens Party campaigned heavily for a national anti-corruption watchdog.\textsuperscript{46}

45 stakeholder submissions were received this time including one from the authors’. Below is the table showing these stakeholder groups, with some making addenda submissions to the 2016 committee.\textsuperscript{47}

Table 4: Stakeholder Groups of Senate Committee Inquiry Submission

<table>
<thead>
<tr>
<th>Government Agencies</th>
<th>Private Individuals</th>
<th>Non-Government Agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Public Service Commission</td>
<td>Politicians</td>
<td>Law Council of Australia</td>
</tr>
<tr>
<td>Victorian IBAC</td>
<td>Academics</td>
<td>Australia Institute</td>
</tr>
<tr>
<td>Inspector General of Intelligence and Security</td>
<td>Journalists</td>
<td>Get Up!</td>
</tr>
<tr>
<td>Attorney General’s Department</td>
<td>Whistleblowers</td>
<td>Civil Liberties Australia</td>
</tr>
<tr>
<td>Australian Commission for Law Enforcement Integrity</td>
<td></td>
<td>Gilbert Tobin Lawyers – UNSW</td>
</tr>
<tr>
<td>Victorian Inspector</td>
<td></td>
<td>Accountability Roundtable</td>
</tr>
<tr>
<td>Australian National Audit Office</td>
<td></td>
<td>Transparency International Australia</td>
</tr>
<tr>
<td>NSW Ombudsman</td>
<td></td>
<td>NSW Council of Civil Liberties</td>
</tr>
<tr>
<td>Queensland CCC</td>
<td></td>
<td>Maths Party of Australia</td>
</tr>
</tbody>
</table>

| 9 | 27 | 10 | Total = 46 |

Overall, 76 submissions were received over these two committees. The main difference between the first and the second was greater interest and detail in the second committee. More individuals submitted and the government agencies provided a more thorough submission in the proposed operationalisation of a proposed body. In the case of the latter, government agencies have some powers to deal with corruption, fraud and anti-criminal activities, however the lack of a unifying federal agency makes it somewhat difficult to bring a heterogeneous group together and how to bring these powers – competing and


\textsuperscript{47} https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/National_Integrity_Commission/IntegrityCommissionSen accessed 2nd February 2018
complementing - together. It is in the quandary of coordination that highlighted the defects and deficiencies of Australia’s institutional regime in the absence of a national anti-corruption body.

For individual submissions to the inquiry, there is disquiet about the lack of accountability or secrecy that has transpired with unaccountable government-related decisions. Some witnessed such decisions, while others were the recipients of them.

In January 2018, the Federal opposition leader Bill Shorten announced that his Labor Party was in support of establishing a Federal anti-corruption body if he were to win the next election. This came a month after the resignation of a Labor senator found to be unduly influenced by Chinese donors (Walker 2017). Chinese interference in Australian politics is largely based through political donations of significant sums to both sides of politics (Murphy 2017). The community interest lies in whether such donations interferes with differing foreign policies over the South China Sea (see Lester & dela Rama 2018) and adversely influences domestic policies covering the treatment of pro-democracy activists in Australia.

In support of this proposed body, Shorten stated it will be “modelled on the lessons of the state anti-corruption bodies.” (Shorten 2018) The powers of this proposed federal body is wide-ranging and well-resourced analogous to a “standing Royal Commission.” The proposed body will have one Commissioner and two deputy Commissioners on fixed 5-year terms. Their investigative powers reaches the highest public office of the land - that of the Governor-General, and downwards. Any adverse findings will be referred to the Commonwealth Director of Public Prosecutions (Shorten 2018). The success of the Banking Royal Commission (2018), which shone light on malfeasance in the financial services sector, also reinforced this need.

Amidst political instability afflicting the sitting government, in November 2018, the Australian independent politician, Cathy McGowan, introduced a national integrity commission bill (McGowan 2018) based on consultation with a wide variety of anti-corruption stakeholders including Transparency International Australia. Her bill proposed three integrity commissioners covering national integrity enforcement, law enforcement and whistleblower protection.

In December 2018 the minority Morrison Government announced a Commonwealth Integrity Commission, which proposed two integrity divisions: law enforcement and public sector
integrity (AG 2018). However, it has been roundly criticised as a ‘very weak’ model with no public hearings, no public findings and direct referral to the prosecutor for decision whether to act or not in the public sector integrity division which could leave politicians and their associates unaccountable publicly.

It is expected that Australia will have some form of national integrity commission after the next federal election in 2019, with the likely structure a negotiated outcome from the above three proposals. Central to its potential effectiveness in the ‘public interest’ will be its independence and transparency in conducting public hearings with public findings.

The next two sections look at what lessons a proposed federal body can learn from a state anti-corruption body and, in particular, why it should tackle the growing practice of ‘revolving door’ politics in Australia.

9.0 Lessons from the NSW ICAC experience

The NSW ICAC was established in part because of the difficulties of obtaining criminal law prosecutions for corrupt offences and partly to establish a ‘holistic’ approach to corruption that focuses on determining what happened in specific cases and then identifying and addressing ‘systemic’ institutional weaknesses (NSW ICAC 2016). This approach can have a more lasting, effective impact on reducing corrupt behaviour, focusing on prospective rather than past behaviour. It grew out of the experience from Hong Kong and has become encapsulated in what is known as the concept of “National Integrity Systems” or NIS (Pope 2000).

Importantly, in addition to ‘factual findings’ ICAC may find that a person has engaged in corrupt conduct, as defined in its legislation, if it is satisfied the conduct is ‘serious’ corrupt conduct (occurred, occurring, or about to occur). This finding can be made and detailed, even if the evidence is insufficient to warrant criminal prosecution or other action. If a person is charged as a result of such a finding with a criminal offence but is then acquitted, the ICAC finding of ‘corrupt conduct’ stands. It may well be the only adverse consequence that person incurs. Standards of evidence and proof used by ICAC are civil, on the ‘balance of probabilities’; they require only ‘reasonable satisfaction’ compared with the criminal standard of ‘beyond reasonable doubt’.

Preoccupation with the number of prosecutions and convictions is an imperfect indicator premised on the erroneous assumption that corrupt conduct is commensurate with criminal
conduct. ICAC provisions make it clear that its findings of corrupt conduct may occur in the absence of criminal offence, and could involve a disciplinary offence, grounds for dismissal, or in the case of ministers or parliamentarians a substantial breach of an applicable code of conduct.

A strength of the ICAC model lies in its unique holistic approach among anti-corruption agencies, in that its roles in investigating, exposing and preventing corruption are largely complementary (NSW ICAC 2016). Up to 2016, it has made 1,200 corrupt conduct findings, against over 800 individuals, and hundreds of corruption prevention recommendations addressing identified corruption risks.

In establishing ICAC, then Premier Greiner, acknowledged that there was a general perception that those in high public office in his state were susceptible to impropriety and corruption, and that in some cases that had been shown to be true (ICAC 2016). The state has seen a Minister gaol for bribery: an enquiry into a second, and indeed a third: a former Minister for alleged corruption; the former Chief Stipendiary Magistrate gaol for perverting the course of justice; a former Police Commissioner in the courts on a criminal charge; the former Deputy Commissioner of Police charged with bribery; a series of investigations and court cases involving judicial figures, including a High Court judge; and, a disturbing number of dismissals, retirements and convictions of senior police officers for offences involving corrupt conduct.

ICAC’s extensive statutory legislated powers are akin to those of a Royal Commission, extending well beyond those of traditional law enforcement agencies. These importantly include compulsory examinations and open public inquiries. Experience demonstrates these powers are essential for its effectiveness and a federal anti-corruption watchdog ought to note these lessons well.

10.0 Addressing ‘revolving door’ politics in Australia

“Thieves of private property pass their lives in chains; thieves of public property in riches and luxury” – Cato the Elder

48 ICAC Act, section 8, defines ‘corrupt conduct’
If an anti-corruption federal body is set up in Australia, at the core and legitimacy of its establishment must be to address the ‘revolving door’ politics of the country. According to the UNCAC (2005) Article 18, Trading in Influence is defined as:

“Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.”

The term ‘revolving door’ when applied to politics denotes the transfer of senior people between the public and the private sector. There are legitimate reasons why such two way movement of senior personnel, in particular, by bringing real world, commercial experience, and specialised expertise and knowledge from the latter to bear on the processes of improved public policy and decision making in the public interest, and informing business about the workings of government. However, such movements can provide opportunities for vested private interests to advance their own agendas at the expense of the public good; at a minimum they can foster perceptions of close and cosy relationships between business and politics against the public interest.

‘Revolving door’ politics presents problems for modern democracies that go largely unrecognised, unaccounted for and un-policed, and as a result can profoundly undermine representative democracy and the base of trust upon which it is built (Rennie 2016).

Despite the existence of Australian anti-corruption laws, bodies, criminal codes, general codes and standards of conduct and with a few notable exceptions, the law makes it almost impossible to prosecute corruption and the laws are rarely enforced. This is due to difficulties
with investigation, evidentiary rules and burden of proof, all of which are compounded when applied to ‘revolving door’ politics (Mannix 2010).

The traditional legal and criminal conceptions of corruption are premised around the taking of personal benefits in the form of gifts, payments and bribes in return for exercising public duties in the interests of the private parties making the payments and that will gain commercially from the officer’s decision at the expense of the public good. Traditionally the exercise of these forms of influence is immediate and direct between the parties, the handing over of the ‘brown envelope’. They are also regarded as breaches of codes of conduct and standards, such as the Australian Government, Statement of Ministerial Standards promulgated by the Department of Prime Minister and Cabinet. If ex-ministers benefit immediately it breaches the code of conduct. The latter carry in themselves no legal or criminal sanctions and their administration and oversight are political and administrative rather than independent or judicial. Not surprisingly, their application is at best infrequent and patchy.

It has been argued that politics in Australia, as in countries where neo-liberalism has become embedded policy especially through privatisation in light of Reaganite and Thatcherite reforms (Dine 2017) has become ‘corporatised’ by the movement of politicians to business particularly in sectors such as construction, mining and finance (Quiggin 2017). In Australia, many senior politicians and bureaucrats have moved on the private sector becoming board members, senior executives or consultants for corporations, joining or even establishing lobbying firms, and being appointed to industry associations or think tanks (Swan 2012). This is potentially problematic when politicians and bureaucrats move into areas of commercial interest that relate directly to their responsibilities while in office. It can be perceived as either a ‘payoff’ for past favours done while in office or as providing preferential access and undue ‘insider’ advantage and personal contacts with those in government charged with dealing with the relevant businesses through legislation, regulation, financing or contracting. The ‘revolving door’ operates to a lesser extent in the opposite direction too with movement of business people into government, partly because pay is much higher in the private sector.

49 Department of Prime Minister and Cabinet, Statement of Ministerial Standards
https://www.pmc.gov.au/resource-centre/government/statement-ministerial-standards This was amended on the 15th of February 2018 to include a ban on sexual relations between Ministers and their staff in light of the Barnaby Joyce affair.
Other countries have sought to stop this door.

In America the ‘revolving’ door, including into the ‘lobbying’ industry has become entrenched as a new career path for politicians following their term in public office (Maskell 2014). It has been described as emerging revolution in the political culture of Washington without attracting much public notice. The laws to date have not made much of an impression on this movement developing into a tide flowing from Congress to K Street and the major corporations (Lipton & Protess 2013).

In Japan, there has been a long history of debate and actions on ‘revolving door’ politics. Such moves by bureaucrats to the private sector are institutionalized and traditionally known as ‘descent from heaven’, or by its Shinto name ‘amakudori’. Government and industry are closely intertwined and a high percentage of ex public servants sit on private boards. Officials must not join the private sector for two years after they leave their office and cannot join in area of their prior responsibility for previous 5 years while in office. Retired public servants can take up well-paid positions with specialist government organisations. New tougher laws were introduced in 2007 but do not appear to have been effective (Japan Times 2017)

In the EU, Transparency International Europe published a 2017 report that found more than 50% of ex-Commissioners and 30% of ex-Members of the European Parliament (MEP) were working for organisations on the lobby register. One of the concerns raised included regulatory capture. The EU only has an 18-month cooling off period for former Commissioners and none for former MEPs.

In France, sought to stop this door for civil servants for three years while Germany has a three to five year waiting period (UNODC 2012).

For a potential anticorruption federal watchdog, the particular complication and difficulty arising with ‘revolving door’ behaviour is that the conflict of interest that arises is typically displaced in time between the exercise of the influence and the payment of the benefit. The ‘decision’ or ‘favour’ done in public office is likely to be rewarded once the office holder leaves their position in the public sector and takes up lucrative employment in the private sector, typically with an organisation with whom the office holder was dealing in their public office. These ‘inter temporal conflicts of interest’ with their associated delayed benefit are

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more likely to escape legal restrictions and scrutiny. The perpetrator is no longer bound by codes of conduct and it is too hard to prove a criminal act. Receiving direct ‘quid pro quo’ payment upfront while in office and then conferring political favour can be more readily associated for purposes of prosecution, than an ‘ex post’ benefit, particularly if it is conferred some years later following retirement from public office in the form of a lucrative appointment in the private sector. The conflict of interest only becomes apparent after they leave office.

Nevertheless, the examples mentioned in this section show that revolving door politics is a common problem in many countries, as well as in Australia, and that there are available remedies to discontinue this movement.

11.0 Discussion: Institutions and corruption

“...[I]t is not by the consolidation, or concentration of powers, but by their distribution, that good government is effected.” – Thomas Jefferson (1821 in Ford 1904-05)

“...[N]o one ever seizes power with the intention of relinquishing it.” – 1984 (George Orwell)

The problem of corruption is linked to the notion of integrity (Sampford 2016). Corruption is the misuse of public position for private gain. Integrity is the appropriate use of public power for public ends. The latter sets the standard and associated process while the former is a deviation from that standard and practice. In a democracy it is for the community to set the expected standards of integrity against which corruption can be determined. In a representative democracy, the community devolves its standard setting to its parliamentary representatives on the assumption that they will act in the public interest. The exercise of democratic politics is a contest over ‘who gets what and when’. The moral and ethical problem of corruption arises when the political process among politicians and governments expressed in legislation becomes perverted by undue private influence of vested interests over public policy-making and decision-making.

The chart below places all of these issues in an Australian NIE:
While the detail in this chart is elaborated, the ecosystem – by its nature – is complex, dynamic, malleable and changeable. The notion of the ‘public good’ is the ideal outcome, balanced but shaped by the forces of institutions, culture, trust and values. Broader, often internationally originating drivers such as globalisation, privatisation, neo-liberalism and increasing corporatisation have been perceived as resulting greater inequality in the country. *Homo economicus*, and its dominant self-interest, is at odds with the *homo reciprocans* of public institutions. Increasing private sector power, for example, through legitimate ‘tax avoidance’ schemes have resulted in community concerns that – at least in that sector – they are not paying their ‘fair share’ of social expenses in operating in a democratically stable country (Clark 2017). While Australia provides a secure legal environment for property rights; the institutional costs in supporting such an environment is increasingly being ignored by that sector. As Chang pointed out, recognition and enforcement of private property rights provide a secure investment environment but is “not something good in itself...[and countries should not expect] to protect all existing property rights at all costs” (2005: 11) at the expense of community.
Good governance puts in place structures and processes to ensure legitimate use of public power for politically justified and authorised purposes to further the public good (Sampford 2016). Accountability is the demonstration of good governance in practice. Both concepts are concerned with the uses and abuses of power. Lord Acton’s dictum holds that ‘all power corrupts and absolute power corrupts absolutely’. The democratic challenge is to manage the inevitable risks of the abuse of power from the necessary to the contingent. The power held by the corruptor is as relevant as that held by those corrupted; management needs to be applied to both.

The history of institutional innovation is also the history of corruption and the responses to it, balancing the concentration of power against the public benefit for the community as a whole (Sampford 2016). It is institutions and their associated ‘cultures’ that generate temptations and opportunities for corruption. Problems of corruption are essentially institutional rather than individual; not primarily a matter of rooting out the ‘few rotten apples in the barrel’ so much as ‘emptying the barrel itself’ (or as American President Trump put it ‘draining the swamp”).

Criminal reform is necessary but not sufficient and must be complemented by broad institutional reform of institutions and their associated culture. Wholesale law reforms are never easy to put in place and often fall short of their ambition. They must be premised on and support community values and trust of institutions. Alternative responses to governance and corruption problems include ethics, economic and institutional reforms. Each has its advocates but each also has its own limitations. Ethics argue that laws and behaviour need to be backed by the values they reflect. This leads to ‘codes of conduct’ to persuade compliance or ‘bare ethics’ in the form of voluntary codes, and all ‘regulations’ short of law. But ethics without the backing of sanctions under laws are a ‘knaves charter’; a guide for the good, dead letter for the bad. Economic solutions advocate positive and negative ‘incentives’. Their challenge is to decide what constitutes expected norms and values. Institutional and organizational reforms take many forms and create new agencies or reform and change existing ones in pursuit of removing temptations (from separation of powers, through centralisation/decentralisation, to administrative law), reducing risks and facilitating detection (from regular audits and asset checks to financial tracking). Unfortunately, and all too often
such endeavours suffer the fate of the famous epithet from Charles Ogburn, nominally attributed to Petronius⁵¹:

“…in life we tend to meet any new situation by reorganising: and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency and demoralisation”.

In establishing a NIS, a wider anti-corruption institutional infrastructure needs to be recognised and further developed. According to Pope (2000), an NIS involves a number of ‘pillars’ The ‘pillars’ (Greek temples) include the legislature, executive, judiciary, auditor general, ombudsman, watchdog agencies, public service, media, civil society, private sector and international actors. These players are underpinned by cross cutting public awareness and society’s values. To mix metaphors, NIS can be likened to a ‘bird’s nest’, built up over time from material to hand, with components individually weak but in combination effective. More broadly, as argued in this paper we need to conceive of an ‘integrity ecosystem’ with the individual elements dynamically and constantly interacting with each other, pulling first one way then the other, constantly re-configuring the balance of interests, private and public. This is the test that, at the time of writing, confronts the institutional quandary of establishing a federal ICAC in Australia.

Therefore, the NIE framework (see Charts 1 and 4) we have proposed adds to our understanding of the system in the following six ways:

1. It sets alongside political institutions the important dimension of political culture;
2. It emphasises the role of politics in mediating the between the two in the public good;
3. It recognises the dynamic and complex interplay between these groups of factors;
4. It grounds the integrity corruption continuum in the underlying community values and societal trust;
5. It acknowledges the role of politics in balancing values against trust; and
6. It notes the influence of broader international developments on the national system.

Political institutions are deeply embedded in political culture and it is hard to conceive and understand the former, without taking into account the latter. Political culture cannot be ignored in the design of workable and effective integrity institutions. The culture can both thwart the establishment and effective operation of an anti-corruption commission, which

seeks to limit the power of the latter, or indeed seek a political compromise that will satisfy no one.

Further research may also show how adaptable this framework could be in other countries of the region and whether their experience reflects the Australian case.

12.0 Conclusion

This paper advocates a national integrity ecosystem framework to provide a greater understanding of where and how a national integrity system can be placed in its attempt to address corruption and promote anti-corrupt practices. It also sought to compare the experience of corruption and its effects through the anti-corruption commissions of the region. It uses these cases to discuss how Australia’s anti-corruption institutional infrastructure has progressed and attempts so far to create a national body to deal with federal corruption issues. This paper shows that while there are international frameworks, agreements and principles in place in the region to deal with corrupt behaviour and promote anti-corrupt practices, the local cultural and institutional context of a country is paramount. Anti-corrupt practices must adapt and address the local issues efficiently and effectively in order to prevent further corrosive behaviour. This is critical to rebuilding trust in our political institutions as reflecting community values.
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