

18 January 2019

The Attorney-General's Department
Commonwealth Integrity Commission Consultation

To Whom It May Concern

Thank you for the opportunity to contribute to the proposed Commonwealth Integrity Commission (CIC) consultation process. I am a former public servant and write this submission as a member of the public in the hope for a healthier and stronger democracy. The growing corruption in Australia serves to increase inequity by skewing the sphere of influence towards those with money and power.

Please note my submission concerns itself with only the public sector function.

Submission – Commonwealth Integrity Commission

1. Jurisdiction (Public Sector)

As well as those groups listed in the proposal (Commonwealth departments, agencies, statutory agencies, parliamentarians and their staff, Commonwealth service providers and any subcontractors they engage) I would recommend including jurisdiction over:

- Lobbyists and lobbying organisations (in particular relating to failures to disclose lobbying activities, bribery and other potential corrupt practices). I don't think these groups are covered under Commonwealth suppliers or subcontractors.
- Corporations that act under foreign influence to bully and threaten governments, parliamentarians or their staff about policies and procedures
- Former parliamentarians and former parliamentary staff

I note in your lead page about the consultation the public sector jurisdiction also covers '*the staff of federal judicial officers, and in appropriate circumstances, recipients of Commonwealth funding.*' However, when reading the formal proposal these two groupings are not included under jurisdiction.

As such I would think it important to include this group as you have written on the AGD website.

- The staff of federal judicial officers, and
- Recipients of Commonwealth funding (in appropriate circumstances)

2. Functions - Investigations (Public Sector)

I note the proposal states investigations will be undertaken by the CIC after *‘receiving mandatory referrals of allegations of serious or systemic corrupt conduct from agency heads. It could also receive referrals of matters from the AFP where those matters were considered to constitute serious or systemic criminal offending that represents corrupt conduct in the public sector.’*

I think this is inadequate for a proper functioning anti-corruption body. Allegations from public service staff, parliamentary staff, parliamentarians and members of the public who may be in a position to bear witness to systemic corruption and individual corrupt behaviours and actions, will ensure unethical and corrupt behaviours don't slip through the cracks.

Historically, agency heads are hesitant to involve relevant external organisations for a number of reasons peculiar to public sector culture. There is an unwillingness to be viewed as incompetent, deficient or unaware of activities that may have happened under their watch and a preference for dealing with matters internally even where there has been criminal activity (which under any other circumstance, would be referred to law enforcement). For example, though it might be categorised as low-level fraud, this has been the case consistently with serial misuse of ministerial entitlements with rare referrals to the Australian Federal Police. Even a 'Failure to Report Corrupt Conduct' clause as outlined later in the proposal, may not have an effect if there is not a clear definition of corruption to differentiate minor offences that might be shelved under non-compliance or misconduct (where a serial offender could be considered for investigation by the CIC).

Mandatory reporting measures as outlined under Powers in the proposal are fine to a point and useful only if the senior agency head is aware of the corruption. Sometimes public service staff are too fearful of reporting corrupt activity up the chain of command for fear of the effect on their job security and future career opportunities (or potential backlash). Whistle-blowers have not always fared well in the public sector.

As such I recommend including:

- Public sector personnel
- Parliamentary personnel, and
- Members of the public

Referrals about parliamentarians and their staff are outlined later in the proposal under Referral Mechanisms as follows:

‘The public sector division could receive a referral regarding a parliamentarian or their staff that met the CIC’s threshold for investigation from the IPEA, the AEC, the AFP or other integrity agencies’.

This is wholly inadequate. Public service agencies are reluctant to refer cases to law enforcement under the current arrangements and there is no reason to believe this will change with the establishment of the CIC. In addition, parliamentary staff are in a unique position to witness corruption and under this system would remain powerless to act without having to place themselves at risk by reporting to party leadership. The Commonwealth Ombudsman's public interest disclosure scheme does not cover parliamentarians or their staff. How would such a referral be accommodated? Parliamentary staff who are very loyal to the interests of their party may feel they are being disloyal and need a confidential space to be able to report misconduct and corruption that meet the criminal standard.

3. Threshold for Investigations (Public Sector)

The proposal states *'The public sector division of the CIC will be responsible for investigating 'corrupt conduct' where the commissioner has a reasonable suspicion that the conduct in question constitutes a criminal offence.'*

And;

'It is intended that the public sector division will focus on the investigation of serious or systemic corrupt conduct, rather than looking into issues of misconduct or non-compliance under various codes of conduct. Misconduct that is not defined as a criminal offence at Commonwealth law is considered more appropriately dealt with by the entities where the misconduct occurs...'

It will be important to define clearly that misconduct for which ordinary citizens would be charged (under a criminal code), such as fraud and theft, equally applies to the public service sector and to parliamentarians and their staff. It has been culturally accepted that, for example abuse of ministerial entitlements be handled by the Special Minister of State and/or the Department of Finance (including the newly formed IPEA). Acknowledging an honest mistake especially for newly elected parliamentarians is quite different from systemic and serial abuses from individual parliamentarians without recourse (occasionally having to repay monies used fraudulently). This is simply theft disguised as misconduct or non-compliance.

In addition, aggressive and bullying behaviours by lobbyists (domestic and foreign), bribery and blackmail should also be treated as a criminal offence not just reported in the media with no action taken (some of these practices may already be covered under the Espionage and Foreign Interference Bill 2018).

It is inappropriate to consider serious conflicts of interest as low importance. Something to be handled by an internal parliamentary oversight committee, and where historically, guilty parliamentarians are simply demoted and in rare cases urged to resign. Public and parliamentary personnel should be held to the same standard as ordinary citizens in regard to what constitutes criminal behaviour. Criminal activities such as parliamentarians abusing their position to lobby for corporations in which they hold shares, either openly or hidden in family trusts and investments provides a fitting example.

Probably the most potential for corruption and abuse of parliamentary position involves the corporate sector and any legislation adapted for the CIC should include not only conflict of interest in relation to shares or board positions held, but to appointments to corporations (as an employee or consultant), company boards and directorships after a political career. Also known colloquially as the revolving door syndrome.

There should be room for criminal referrals for previous ministers who are later employed by multinational companies or lobbyists/associations who by the nature of their previous portfolio responsibilities, are in a position to be influenced by future career opportunities. These include lucrative pay deals, sometimes for attending a board meeting once a year. There is no easy solution to this but I see the CIC could play a role in 'concreting' in legislation a more formal legislative approach rather than the public relying on an un-enforced ministerial code of conduct.

I recommend any important changes in legislation regarding the CIC include these important features. It is useless in terms of discouraging corruption to ignore actions that ordinarily meet the standards of a crime in law, but then act as if the conduct is minor (non-criminal) and only requiring of a slap on the wrist.

4. Powers (Public Sector)

The proposal put forward by the government states:

'The public sector division of the CIC will have the power to

- *compel the production of documents*
- *question people*
- *hold private hearings, and*
- *enter/search premises.*

It will not be able to:

- *exercise arrest warrants*
- *hold public hearings, or*
- *make findings of corruption, criminal conduct or misconduct at large.'*

If the government is serious about reducing corruption and fostering a system where corruption is reduced, it is essential the CIC be able to exercise arrest warrants, hold public hearings and make findings of corruption, criminal conduct or misconduct at large.

The NSW Independent Commission Against Corruption (ICAC) has been successful in investigating and bringing to court a number of high-profile corruption cases. It has received criticism purely on the basis that it has been successful in fulfilling its mission of which the consequence is sometimes embarrassing politicians and/or their cronies.

A Federal CIC should have wide powers to be able to ensure that its goals can be achieved. A corruption body without wider legislative powers will become part of the problem and absorb itself into the status quo.

An important component of a federal CIC is to be able to investigate **retrospectively** to include current and former parliamentarians and public sector personnel, particularly where there are links and ties with current serving personnel, lobbying groups and business.

Past acts of criminal activity should not be ignored in any society and perpetrators should be brought to justice as with any other criminal activity. There is an odd perception that white collar crime, even those with far reaching effects like those related to the global GFC, are not as bad as other forms of criminal activity. This is despite the huge effect on many families who fall victim to criminal and unethical business practices. A thug dressed in a suit wearing a Rolex is as much a thug as one dressed in a balaclava and a hoodie.

5. Amendments to the Criminal Code (Public Sector)

I am not trained in the law and feel unqualified to make an informed analysis, however would like to add some general comments. The section of the proposal dealing with amendments to the Criminal Code and transfer of existing legislation for the public sector function appears to focus on the APS and judiciary i.e. Reference to senior public service officer without including parliamentarians and their staff. It may be that the parliamentary grouping should have specific legislation even if it essentially copies that for criminal acts under APS legislation.

6. Prevention, Analysis, Outreach (Anti-Corruption Measures)

The proposal for the CIC to be involved in playing a key role in corruption prevention and integrity strengthening is important.

‘...strengthening efforts across government, as well as supporting agencies to build capability to identify and manage corruption risks...’

The CIC has an important role in strengthening anti-corruption protocols within the Australian public service (APS) particularly in relation to outsourcing, grants and procurement. In addition to the strengthening the APS the Commission might be a good advocate for other reforms which may help to strengthen resilience within the Parliament.

For example, there have been many proposals put forward as part of the **Open Government Partnership** (OGP) consultation, of which the CIC could be an advocate. This includes supporting the establishment of an open-to-the-public **Beneficiaries Register** and free access to the **ASIC Register**. Interference by business in the public sector and in policy making is one of the greater threats to democracy. Knowing who actually benefits from business arrangements via holding companies, trusts and investment funds is a vital tool against corruption in the political arena (in the same way as matters relating to counter-terrorism and money laundering. Another OGP proposal centres around real time disclosures for **political donations** and is another example of where the CIC might play a role.

The PM&C Register of Lobbyists allows amorphous corporate entities, family trusts and investment funds (without a list of actual beneficiaries) to be listed as owners of lobbying organisations. The purpose of the Register was to bring transparency to the lobbying industry and another reason for the need for a Beneficiaries Register.

The CIC should not focus its emphasis only on making the APS more resilient but should be just as hard wired to the political culture within the Australian Parliament. It would be a mistake if the public sector function becomes limited to the APS while downplaying CIC's function in regard to parliamentarians and their staff.

7. Summary

At the end of the document there is a paragraph ***'It also enables the careful design of a threshold for corrupt conduct that avoids a broad and confusing swathe of potentially minor irregularities or misconduct. Similarly, restricted powers ensure that coercive powers are applied to the most serious cases while extra-judicial 'findings of corruption are avoided'.***

Defining corruption - care is need on defining too narrowly what constitutes serious cases of corruption including serial offenders of so-categorised simple misconduct or non-compliance cases. Minor irregularities and misconduct should be defined specifically. Too often, particularly using historical notions like the Minchin Protocol, what would be considered a criminal act if committed by the wider public should equally be considered a criminal act when committed by a parliamentarian or their staff. (For example, regular misuse of parliamentary entitlements is fraud).

Secrecy and Referrals - it is wrong to keep hearings secret and to limit referrals to a narrow grouping i.e. agency heads and some oversight agencies (already reluctant to report criminal offences and tend to adopt a less-is-best approach to misconduct). Members of the public and all public sector personnel should be able to make referrals to the CIC so there can be a preliminary examination and assessment. For example, members of the media who in their investigations may feel a referral to the CIC is necessary based on evidence gathered for a story.

Retrospective - the proposal that investigations not be retrospective is counter-intuitive to the fight against corruption. In the strongest possible terms, this is not an appropriate position for an anti-corruption organisation. The establishment of a CIC may provide an avenue for people to come forward over historical matters which have eluded law enforcement so far. The idea that the CIC will simply serve as a 'we will all be good from now on' stick for wrong-doers is not a way the CIC can realise its full potential. And worse such a proposal essentially gives a free pass to criminals.

Title - I would like to suggest the name of this anti-corruption body include the words 'corruption' and 'independent' as this is the intention of such a body. 'Commonwealth Integrity Commission' seems weak compared to Independent Commonwealth Anti-Corruption Commission'.

The decision by the government to establish a CIC is an important one and many of the proposals will serve to increase awareness of and reporting of corruption. I hope my submission outlines some of the concerns about limiting CIC powers especially when thinking about the big picture in the battle against corruption.

Thank you for the opportunity to contribute to this important consultation.

Evelyn Doyle