

March 2019

Submission – Commonwealth Integrity Commission consultation

Mr Ken Phillips

This submission has been redacted, in accordance with the approach outlined on the Attorney-General's Department's website here: <https://www.ag.gov.au/Consultations/Pages/commonwealth-integrity-commission.aspx>.



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**Submission in response to the Discussion Paper
A Commonwealth Integrity Commission—proposed reforms**

<https://www.ag.gov.au/Consultations/Documents/commonwealth-integrity-commission/cic-consultation-paper.pdf>

31 January 2019

We write to support the proposal to reform the Commonwealth Integrity Commission. In particular, we strongly support the inclusion of the Australian Taxation Office (ATO) within the jurisdictional reach of the Integrity Commission.

This submission

- explains our reasons for our interest in the inclusion of the ATO and
- highlights some of the issues that we believe need to be included within the powers and reach of the Commission.

1. The ATO and the investigation of corruption

In our experience the Australian Taxation Office cannot be trusted to properly investigate (or even investigate at all) potential corruption within its own ranks.

2. Issues of importance

We seek to ensure that

- Members of the public can directly lodge requests for investigation to the Integrity Commission.
- The legislative definition of ‘corruption’ or other appropriate terminology covers the possibility that persons working within the Commonwealth can be guilty if they have undertaken corrupt activity that benefits the Commonwealth, as opposed to benefitting themselves.

2a. *Members of the public*

We note the discussion paper states

The referral mechanisms for the law enforcement division will replicate the existing arrangements under the LEIC Act. That is, ***a referral of an allegation of corruption could come from*** an agency head within jurisdiction (agency heads being obliged under the LEIC Act to report suspected corruption issues), the Attorney-General or anyone else, including a staff member or ***a member of the public***. [Emphasis added.] A referral could also come from another integrity agency, such as the Commonwealth Ombudsman (who is required to refer *significant* corruption issues under the LEIC Act) or the IGIS.

This statement seems to allow for members of the public to lodge complaints. We seek clarity and confirmation of this. Further, we seek to be assured that the process for the lodging of complaints by members of the public can be done within the bounds of common-sense practicality.

Corruption to benefit the Commonwealth

We seek assurances that corrupt behaviour of a Commonwealth officer that benefits the Commonwealth and not necessarily the officer personally will be captured within the definition of an offence for the purposes of the Integrity Commission.

We note the following extract from the Commonwealth *Criminal Code Act 1995*

(SCHEDULE The Criminal Code) http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/cca1995115/sch1.html

142.2 Abuse of public office

- (1) A Commonwealth public official commits an offence if:
 - (a) the official:
 - (i) exercises any influence that the official has in the official's capacity as a Commonwealth public official; or
 - (ii) engages in any conduct in the exercise of the official's duties as a Commonwealth public official; or
 - (iii) uses any information that the official has obtained in the official's capacity as a Commonwealth public official; and
 - (b) the official does so with the intention of:
 - (i) dishonestly obtaining a benefit for himself or herself or for another person; or
 - (ii) ***dishonestly causing a detriment to another person***. [Emphasis added.]

Penalty: Imprisonment for 5 years.

- (2) A person commits an offence if:
 - (a) the person has ceased to be a Commonwealth public official in a particular capacity; and
 - (b) the person uses any information that the person obtained in that capacity as a Commonwealth public official; and
 - (c) the person does so with the intention of:
 - (i) dishonestly obtaining a benefit for himself or herself or for another person; or
 - (ii) ***dishonestly causing a detriment to another person.*** [Emphasis added.]

The two items highlighted [142.2 (1)(b)(ii) and (2)(c)(ii)] would seem to indicate that the legal idea of 'corruption' includes behaviour that 'dishonestly causes a detriment to another person'. This would seem to cover our concerns as expressed above. We seek clarity on whether similar provisions as those in the Commonwealth's Criminal Code will be included in the legislation covering the Integrity Commission.