

Submission to Australian Government Attorney General's Department

Subject: A Commonwealth Integrity Commission – Proposed Reform

Introduction

The Australian population as evidenced by newspaper reports, community gatherings, online comments and informal gathering consistently articulate the lack of integrity within Federal Government activities.

Recent Royal Commissions have exposed the limited, inadequate and perhaps incompetent application of Government Regulation by regulators reinforcing the community view regarding integrity.

The behavior of members of the House of Representatives and the Senate at times also reinforces the view that standards of integrity held by the elected representatives differ markedly from those of the wider population. If the elected representatives display such attitudes to integrity the Government departments that they lead must also be so affected.

It is assumed that the current proposal is a response to the wide spread dismay within the general population regarding the low standards of integrity within our Federal Government.

The current proposal is very limited and displays an ineffective method. This submission seeks to identify the shortcomings of this proposal and offer suggestions.

Current Arrangements

The proposed Integrity Commission document states there is a “multi-agency approach” investigating, detecting and contributing to integrity approaches. Such an understanding demonstrates the problem the Australian Population faces.

This problem is there is no clear authority to investigate, detect or contribute to the development of integrity within Government activities. The multi-agency approach is piecemeal, it is ineffective, it is subject to financial constraints and political interference. Such interference is demonstrated almost daily in the national press.

The multi-agency approach is not accountable to the Australian People who are entitled to expect high standards of governance and application to law.

The multi-agency approach almost appears to address an agenda of who shouts the loudest or has the greatest power. Such an approach is not accountable to the wider population. There is an expectation that governance and law will apply for all and not be at the whim of the powerful.

The multi-agency approach also allows for significant issues to be hidden, derailed and sidelined so they are not addressed or addressed in such a way as to minimize their impact.

The proposed document proposes that the current arrangements have proven successful. The document quotes low corruption jurisdiction as its evidence. However, the Australian Population has not been informed of proceeding by the multi agencies and using the Royal Commission outcomes may have been deluded by many regulators who have adopted a no contest approach to regulation. In effect the regulators have failed to follow up the regulations and this feature may be significant in contributing to the low corruption finding.

The document identifies no single definition of corruption. This seems odd when considering there are acceptable definitions for corruption and integrity within the community. However, when considered in the context of the multi-agency approach it is true that these agencies differ so much and respond in some many different ways it is understandable that they have difficulty understanding or agreeing on very much. The lack of definition reflects the lack of clarity these multi agencies have. This is surely an indicator of the need for an effective Integrity Commission.

Recommendation –

The multi-agencies should remain however, there be established an independent, stand along Integrity Commission that has authority over the multi agencies to investigate their operations and those of the relevant Government representatives and departments.

The independent Integrity Commission has its own guaranteed funding, has its own employment authority and can co-opt appropriate staff as needed.

Proposed Commonwealth Integrity Commission

The proposed Commonwealth Integrity Commission as set out in the proposed reform document is more of the same.

The imposition of a Commonwealth Integrity Commissioner over a Deputy Commission Law Enforcement and a Deputy Commission Public Sector Integrity is simply adding another level of bureaucracy to the existing multi-agencies. This creates more levels which make further difficulties to have instances of corruption addressed.

The difficulty with this proposed model is that the agency that is tasked with investigating corruption and misconduct may be investigating itself. How can independence be achieved in this situation? How can accountability to the Australian people be achieved? How can the Government of the day not be tempted to interfere in this process when it can exert considerable influence across these multi-agencies?

The most striking flaw in the proposed model is the lack of independence and genuine accountability to the Australian people.

Recommendation

The proposed model be altered to allow for a standalone, independent Integrity Commission. This independent authority will be supported by its own guaranteed funding, it will have the ability to investigate, detect and refer for prosecution instances of corruption. It will have the ability to make its finding publicly available to the Australian Population.

Functions

The proposed function of the CIC seems admirable. The collection, analysis and training functions would seem appropriate to a consultative body. However, the CIC is a group to investigate, detect and deter corrupt behavior. This is not the function of a consultative group.

It may be that there is a consultative nature to the CIC. Such a consultative role could best be handled by other agencies. The major function of the CIC is to investigate, detect and deter. To promote other activities is to deflect the CIC from its prime function. This prime function involves transparency and reporting its findings to the Australian people.

To heap other functions onto the CIC such as training other departments and consulting on appropriate practice is to lessen its ability to investigate, detect and deter corrupt behavior.

Separating functions of the CIC into a Law enforcement division and the Public sector division is again adding an unnecessary layer to investigating, detecting and deterring corrupt behavior.

Recommendation

The current proposal for a CIC seems to overload the CIC with administrative functions and limit its prime role. The model should be altered to identify the prime function of the CIC is to investigate, detect and deter corrupt behavior within Federal Government activities.

The identification of a Law Enforcement Division and a Public Sector division creates further confusion and obfuscation. To overcome such confusion and provide transparency and clarity an independent CIC is needed. Such a CIC will not have separate divisions but be dedicated to investigating, detecting and deterring corrupt behavior and reporting its efforts to the Australian people.

Powers

This section of the proposed reform shows that there exists little change to the functions of the multi agencies identified earlier in the document. There seems little change to the status of the power of these agencies. It does seem that the proposed CIC will limit the power of some of the agencies to provide transparency and accountability to the Australia People.

The identification that the Public Sector division will not hold public hearings or “make finding of corruption, criminal conduct or misconduct at large” seems at odds with what an corruption commission should do. It would seem most appropriate that the CIC should be seen to operate within the public view, hence the need for public hearings. There is also the great need for the reporting of the outcomes of the Commission investigation to be made available to the public. Clearly to not make findings of corruption, criminal conduct or misconduct could lead to questioning what actually the CIC would do!

Earlier in the document there is reference to the low level of corruption in Australia. However, the public perception is that there exist low levels of integrity with Federal Government representatives. To clarify the dissonance between such positions there is a significant need for independent public observation and reporting.

Recommendation

A CIC should be an independent body, with guaranteed funding that provides public transparency of its operations and widely reports the outcomes of its investigative efforts. Only with such independence can the skepticism that the Australian population holds towards elected officials be dispelled.

Referral Mechanism

The proposed document sets out a referral process that is assumed to already exist regarding the multi agencies. The identification of criminal behavior is still the responsibility of the Australia Federal Police, the Ombudsman also has powers to investigate individual and group complaints in relation to Federal Government activities. The referral process indicates that the AFP and other Government agencies when detecting criminal or corrupt behaviour can refer to the CIC. The identified agencies when detecting criminal and corrupt behaviour should be acting upon such detection. Referring onto the CIC is passing the problem to another level, obscuring and making difficult a resolution of the problem identified.

If the multi agencies identified in the proposed document are not acting on criminal and corrupt behaviour but referring to the CIC, why do such agencies exist. Clearly they are superfluous and unnecessary. Clearly this is not so, but the proposed document again clouds the issues of what the CIC will actually do. It creates another level of authority that hampers the effort to eliminate criminal and corrupt behaviour.

Recommendation

That an independent CIC be formed, that has its own powers to investigate, detect and deter criminal and corrupt behaviour that has been undetected and/or ignored or disregarded by other Federal Agencies.

The CIC should be able to accept referrals from the Australian People. The CIC should have its own capacity to determine the appropriateness of the referrals it seeks to investigate.

Size and Funding

The size and funding of the proposed CIC will be influenced by the role it plays. The current model places the CIC as an additional layer over the existing multi agencies. Such a position would seem that it would require less resourcing because it will be acting within the realm of the multi agencies. It will be duplicating what is already in existence and should not require strong resourcing.

An independent CIC however, would require significant resources that the Australia public could reasonably expect to be applied to the transparency and accountability required for an organization that is genuinely committed to addressing criminal and corrupt behaviour within the Federal Government operations.

Recommendation

That further investigation be undertaken to determine the cost of an independent CIC that operates under its own authority to investigate, detect and deter criminal and corrupt behavior within the Federal Government operations.

Comparison to State Models

The proposed model points to deficiencies with the state based anti-corruption commissions. It is worth noting that the NSW anti-corruption commission has been successful in dealing with long term corrupt behavior that has resisted the intervention of other agencies. The findings of the NSW anti-corruption commission have led to long term benefits to the citizens of NSW. It is worth noting that these benefits would not have occurred without the presence of the NSW Anti-corruption commission.

The use of a split jurisdiction ignores the benefits the State Anti-corruption commission have obtained.

Recommendation

The proposed model for a CIC does not appear to have taken any insight into the successes of the State based Anti-corruption commissions. The proposed CIC could

benefit from examining the successful activities that the States have used and incorporate such activities into the proposed model.

Conclusion

The community at large remains skeptical about the levels of integrity within the Federal Government operations. A CIC is a significant way to address such skepticism.

The proposed model for a CIC has some issues that I consider limit its usefulness and its application to addressing the level of skepticism.

The major concern I wish to articulate is the lack of independence of the proposed model. The imposition of a CIC over the multi agencies already in existence only adds to the level of bureaucracy. There is a clear need for an independent agency that does not investigate itself or is reliant on other agencies for support.

There is confusion about what this CIC will actually do. Will it take over some of the functions of the existing multi agencies or will it develop its own insights. The proposed model implies that it will take up existing functions. There is a clear need for new thinking and a new approach to dealing with criminal and corrupt behavior within the Federal Government. This new approach must be free from interference from outside agencies and the Government of the day.

Perhaps the most disturbing feature of this proposed document is its avoidance of providing transparency and accountability to the Australia public. There should be clear instances of how and when the public can view the activities of the CIC. These instances should be public hearings and the published findings of the investigation and detection of criminal and corrupt behavior.

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