

Submission Supporting the Establishment of a Commonwealth Integrity Commission

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Introduction

We thank you for the opportunity to make a submission to the Australian Government in relation to the proposal to establish a Commonwealth Integrity Commission. In our submission we make the following points, which are amplified in detail later in the paper.

- The remit of any Commonwealth Integrity Commission be drafted to consider international protocols such as those set out in the Paris Agreement and the Latimer House Principles;
- These protocols strongly recommend that such commissions are independent from government and private sector stakeholders, have the capacity to investigate complaints including those lodged by the public, clear guidelines for independent appointments and dismissals, and that their findings are publicly visible;
- To enhance independence, a Commonwealth Integrity Commission might be better placed in a fourth arm of government, being specifically accountable to the parliament rather than to the government of the day;
- The 'fourth arm' might also include other integrity *functions* such as ombudsman, auditor-general, freedom of information, human rights, elections, parliamentary entitlements and other matters where there is value from being placed at arm's length from the government of the day;
- Important matters for resolution through the parliamentary process would include funding and reporting (perhaps through a parliamentary accounts committee), appointments, establishing agency remits and, importantly, ways of developing and maintaining constructive relations with the government of the day;
- Of these matters, appointments and funding are probably the most controversial. In relation to appointments, there is clear evidence that diversity of appointments to agencies provides more effective performance, yet there are rarely mechanisms for community participation in nominations and even more rare the use of independent or politically non-partisan appointment committees to make final selections.

There is a history of political parties seeking such arrangements when in opposition only for support to lapse when in government especially when confronted by negative reports about their performance. Similarly, appointments to boards are frequently criticised by oppositions as partisan but they in turn make 'partisan appointments' when in government. There have been numerous examples of agreements or arrangements established by incoming governments but not further developed as the term of government proceeds (ACT Labor-Greens compact and the agreement between the Gillard government and independent members of the federal parliament are but two recent examples). In short, it takes resolute action by the major parties both to adopt such arrangements and then to

maintain them, especially when under pressure. Successfully negotiating this issue very much lies in the hands of parliamentarians who have the serious obligation of protecting accountability arrangements which are at the heart of such integrity agencies.

Many anti-corruption agencies are established in haste as a result of some scandal or report on corrupt behaviours that threaten the overall integrity of a particular jurisdiction. It is an advantage that this current Commonwealth proposal has not been prompted by events of the magnitude of, say, the Fitzgerald enquiry in Queensland and that it has some advantages in being able to undertake its deliberations relatively free of such major events. It also has the advantage of being a latecomer in the anti-corruption agency space to be able to learn from the experiences of other jurisdictions.

In this submission we focus on the concept of a Commonwealth Integrity Commission as an integrity agency and on some broad issues relating to the role of these kinds of agencies. We leave it to others to deal with particular operational issues such as reporting powers, public hearings and power to arrest.

In making this submission, we draw on our earlier work on non-departmental agencies generally (Aulich & Wettenhall 2012), and particularly on 'integrity agencies' as a special class of such agencies (Aulich, Wettenhall & Evans 2012; Aulich & Wettenhall 2017). In the reference list we annotate papers that we have published which deal with integrity and integrity agencies. We would be pleased to follow up any of the issues raised both in this submission and in our papers that we cite.

The Concept of 'Integrity Agency'

The work of many scholars and international bodies¹ draws on the concept of a National Integrity System comprising eleven pillars which, in working together in constructive fashion, would go far in establishing a society free of corruptive influences (Pope 2000; Heilbrunn 2006; Head et al 2008; Faulkner & Prenzler 2010).

We follow this work in referring to the term 'integrity' as a *system* of specific agencies, policies, practices, codes, laws and regulation that *collectively* build and maintain integrity, transparency and accountability in the public sector. We identify four types of agency that make their respective contributions to a system of integrity. First, those bodies which check and monitor other public sector bodies, such as auditor-general, ombudsman, privacy commission and human rights commission. These are typically referred to as 'watchdog' bodies because they are often required to check on government operations and therefore need to operate at arm's length from it. Second, are those agencies that *must* be at arm's length from the government to enable them to undertake their regular administrative responsibilities, such as an electoral commission. Third, are the anti-corruption bodies that are established specifically to investigate matters of corruption in the public sector and its stakeholder organisations. Often these bodies have an additional preventive role by providing advice and education in anti-corruption matters. Fourth, in some jurisdictions, a group of integrity agencies might be gathered directly under the auspices of the parliament,

¹ For example, The World bank, Transparency International, Commonwealth Heads of Government (Latimer House Principles), UN General Assembly (The Paris Principles).

as ‘officers of parliament’ to ensure that they are able to be accountable more directly to the parliament and its committees rather than to a minister or member of the executive branch.

The notion that some integrity bodies are ‘watchdogs’ and that they need protecting from the executive arm of governments gained clear expression in Australian discussions and particularly in more recent cases that have emerged in both Federal and State jurisdictions (see Evans 1990; Aulich 2012; Aulich 2016; Aulich & Wettenhall 2017). The independence of all integrity agencies from governments is supremely important: how that independence can be secured is a major issue in modern public administration. This is part of the accountability equation that applies to them. But there is another part: they are themselves part of the public domain, are funded from the public treasury, and have to be accountable themselves. How this equation is to be worked out is another major issue in public administration, and we have to recognise that parliament is the central institution involved.

The Commonwealth has a rich history of establishing agencies designed to enhance accountability, and several integrity agencies, notably Ombudsman, Office of the Privacy Commissioner, Auditor-General, Human Rights Commission and Electoral Commission, as well as agents such as the Parliamentary Commissioner for Standards, are well embedded in the Australian system of public administration and generally are well respected instruments of governance. It is therefore surprising to us that the draft proposal for a Commonwealth Integrity Commission did not make more effort to accommodate them. The explanation must surely be that the drafters of this set of terms of reference drew a clear distinction between corruption and the forms of maladministration that are the concern of the other integrity agencies, though the use of the word ‘integrity’ in the title of the current proposal seems to us to have a scrambling effect. If the Commonwealth is focusing primarily on the establishment of an anti-corruption body, then we suggest that it not be named as an ‘Integrity Commission’ to ensure that the nomenclature be more consistent with that increasingly being used elsewhere.

Officers of Parliament

We suggest that any anti-corruption body be incorporated into a broader set of Integrity agencies and would advocate a broad umbrella of Officers of Parliament that has been strong among parliamentary observers in New Zealand, Britain and Canada, and to some extent Australia, for a decade or more (see Gay & Winetrobe 2003; Beattie 2006; Vic Parliament PAEC 2006; Wettenhall 2011; ACT Legislative Assembly SCAP 2012; Dunne 2014).

If this notion of ‘officers of parliament’ is to be progressed in the Commonwealth, the range of such agencies needs to be strictly limited because the cause of good government would be hindered if the special accountability arrangements that need to apply to them were spread widely through the apparatus of public administration. As a former senior Commonwealth public servant has recently argued, coordination may well suffer because Australia has a considerable number of bodies across the several jurisdictions, with the anti-corruption bodies adding to the various audit, ombudsman, human relations and other such bodies involved in integrity protection and promotion, and we might well be better served if we concentrated the anti-maladministration function in a strong single body such as a

‘robust’ ombudsman (Wilkins 2014). Whether we already have too many such bodies is a matter which might be considered in relation to the current proposal.

For MPs: The Two Faces of Responsibility

Most members of parliament are members of governing parties or of opposition parties aspiring to be in government, and in much of their parliamentary work they will be led to hold the partisan values of executive government. But they are also part of a larger configuration of members of parliament-at-large, and ideally they will also hold broader and non-partisan values reflecting the totality of the parliamentary institution. Their responsibility is thus double-headed, but if the second of these accountability ‘faces’ often gets minimised or altogether forgotten, then the integrity agencies are unable to perform as they should be performing.

Recent history includes several cases in which Australian integrity bodies have felt the displeasure of the governments whose activities they have been reporting on – in the Commonwealth, the Ombudsman and the Australian Human Rights Commission particularly – leading to cutting of budgets and threats of non-reappointment (discussed in Aulich 2012 and 2016; Aulich & Wettenhall 2017). On occasions retiring integrity officers have voiced their own concerns publicly: they have indicated that their ability to perform the tasks parliament has set for them in the legislation establishing their bodies has been compromised by actions by executive government weakening them in various ways (Pearce 1992; Temby 1993; see also Wettenhall 2006).

We suggest that parliamentarians generally will need to understand that their role extends to being non-partisan parliamentarians as well as partisan members of a particular party or group; only when they accept that they have this dual role will the system of integrity agencies work.

Main Considerations

Digesting much such discussion in Australia and in international conferences³, we have constructed a set of propositions about the working environment of these integrity agencies, in the belief that these propositions will be helpful to members of parliament wanting to improve that environment. Some run to questions:

- Most integrity agencies are given statutory authority status because it is recognised that they need a measure of autonomy – but they will need more autonomy than possessed by the general run of statutory authorities.
- They depend on financial and other supports from the executive government, and since they are themselves inspectors, supervisors or regulators of departments and agencies of the same government and so are necessarily sometimes in conflict with it (or parts of it) if they are performing their allocated tasks satisfactorily, not surprisingly the executive government will sometimes seek to curtail their autonomy or otherwise restrict them.
- These restrictions cannot be allowed to interfere in the regular activities for which the agencies are entrusted, such as investigation.

- Restrictions can also include the appointment and removal from office of members of the agencies. Appointments by governments of partisan members of agency boards can only diminish public confidence in the agencies and the esteem and effectiveness in which their reports are received.
- It thus becomes a major issue of governance to ensure that they are not so weak that they cannot perform properly.
- The question arises: what defences do they have, how are they to be protected against actions by the executive government designed to reduce their effectiveness?
- Of course, they need to be accountable themselves, so it is important to establish arrangements for checking that they do perform their allocated tasks satisfactorily.
- This draws attention to the parliamentary role, for it is certain that the executive government cannot be trusted always to make these judgments dispassionately.
- Since parliament has usually created and empowered them through its legislation, the easy answer is that parliament should defend them.
- But parliament itself is often weakly placed in its relationships with the executive government.
- So, can parliament be strengthened to ensure that it can provide the needed protections?
- Or are other means available to strengthen and improve the work of these agencies?

Virtually without exception, the serious literature on these bodies proposes that there should be supervision by and accountability to a multi-party committee of the parliament capable of making, and therefore expected to make, judgments on a non-partisan basis, independently of particular parties and interests. In some cases, the literature has proposed separate such committees for each agency, e.g. with a public accounts committee being deemed appropriate for the auditor-general's office or an elections committee appropriate for the electoral office. But committees of this sort are likely to have a broader range of functions, and be unable to focus only on the integrity issues involved.

So the stronger arrangement comes with proposals for a single 'officers of parliament committee' as in the New Zealand model (Beattie 2006), a committee able without distractions to focus on matters such as working out appropriate budgets for all the agencies, recommending appointments to senior positions within the agency, and receiving and considering regular reports on agency affairs. Where necessary, this responsibility will also include undertaking relationships with the executive government, but it will be understood that the committee speaks for the legislature as a whole and not for a particular party. By definition it would not include ministers, and particularly it would not be chaired by a minister. The general assumption is that the Parliamentary Speaker is the appropriate chair, and that, where functions resembling those of ministers in other parts of the administrative system are involved, the speaker-chair will perform them as if a minister.

We observe also – also reinforcing a point made earlier in this submission – that this is a very special model of autonomy/accountability that could not be applied widely through the administrative service. This is why all discussants of officer-of-parliament-type arrangements insist that the number of such arrangements must be kept very small, not to include bodies performing executive-managerial functions that could otherwise be performed by government itself or its regular statutory bodies, and limited to agencies such

as those regulating the composition of the legislature (electoral commissions) or the ethical behavior of the general administration (audit, ombudsman).

Finally, we wish to underline the point that a Commonwealth Integrity Commission, by whatever name, demands that parliamentarians, especially those in government, have a clear duty to uphold its effectiveness and reputation and should not use and abuse these agencies for partisan political purposes. In an important audit of Australian democracy, the then authors warned that ‘democracy requires abstention from the kind of electoral popularity that can flow from a conjuring of threats to the majority, and then offering protection from those threats’ (Sawer et al 2009:3). We would add that this threat would include actions which undermine the work and reputation of integrity agencies.

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[This is a case study of three ACT integrity agencies and published as part of a special edition of the international journal *Policy Studies*. It followed a seminar of representatives of integrity agencies from various parts of Australia held at the University of Canberra]

Aulich, Chris 2016. Integrity and public sector governance: a democratic deficit? in Aulich, C. (ed.) *From Abbott to Turnbull: New Direction?* West Geelong: Echo Books, 119-141

[This chapter examined conflicts between the Abbott government and several of its integrity agencies, especially the Australian Human Rights Commission and the Office of the Information Commissioner. It highlighted relationships between government and its agencies with respect to funding, accountability of agencies to government, appointments and the lack of public support for agencies from government Ministers]

Aulich, Chris & Roger Wettenhall 2012. Australia, in Verhoest, Koen, Van Thiel, Sandra, Bouckaert, Geert & Laegreid, Per (eds.), *Government Agencies; Practices and Lessons from 30 Countries*, Basingstoke: Palgrave Macmillan, 29-39

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[The paper suggests a ‘systems’ approach to the question of integrity, and focuses on the particular role played in the integrity system by integrity agencies. It concludes with the suggestion that integrity agencies be considered a ‘fourth arm of government’ to stand at arms-length from the executive, in particular]

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