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Australasian Institute of Policing



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SPECIAL EDITION: NATIONAL INTEGRITY COMMISSION

Arguments for and against the Government's proposal

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Editorial

DR AMANDA DAVIES

Editor, Assistant Professor Policing and Security at the Rabdan Academy, Abu Dhabi



The impact of the COVID-19 pandemic has reverberated across the world and whilst many have tragically felt the consequences personally, many of the frontline professions: medical, emergency, policing, education have also been asked to perform at extraordinary levels demonstrate the true resilience of those who choose to serve the community and humanity.

Welcome to the final edition of *AiPol* for 2020. There would be little argument that it has been a somewhat tumultuous year on many levels. The impact of the COVID-19 pandemic has reverberated across the world and whilst many have tragically felt the consequences personally, many of the frontline professions: medical, emergency, policing, education have also been asked to perform at extraordinary levels demonstrate the true resilience of those who choose to serve the community and humanity.

A key point drawn from the COVID-19 pandemic and the environments it has created is the change in the landscape of crime. As evidenced across the world, lockdowns, forced the criminal fraternity to both increase their online activities and create new crimes and supply chains (*AiPol June 2020; September 2020*). In addition the reports emanating out of many countries identified the increase in both domestic violence and human trafficking. At the same time the police and security sectors domestically and

internationally have been redeployed to manage the community observance and compliance with COVID-19 mitigation measures – a challenging time for all involved. The question arises where to from here?

As the community and policing organisations look towards a post pandemic new state of normal, there will be an increase in reliance on the application of, for example, not limited to, evidenced based policing and the engagement of analysis of data through artificial intelligence. Facing forward to scope the future landscape of policing through application of future foresight modelling, PESTEL modelling and collaboration between research, strategic planning and operational policing offers the potential to support the design of future policing initiatives. The COVID-19 pandemic has brought many new lessons to be learnt in relation to the community/policing partnership which offer a contribution to future decision making for domestic and international police leadership.

In parallel, here in Australia we are witnessing the transition to a Commonwealth Integrity Commission. Appreciatively it is valuable to consider the various views on this initiative and to this end I commend the President Jon Hunt-Sharman's summary in this edition. The summary offers an historical perspective and identifies concerns, challenges and potential areas of success for the establishment of such a Commission. The edition includes a collection of informative papers on this exceptionally important matter with views expressed across the spectrum of support.

This year has offered a wealth of material for the journal and we have continued to capture the major areas of interest and activity from the policing environment to offer a cohesive and informed set of reading on the topics. We also welcome feedback and recommendations from our readers.

May I take the opportunity to wish our readers, members and those who police our community, family and friends a safe festive season.



SAFE CHRISTMAS

Happiness, Health and Best Wishes for the Coming Year

COMMITTEE OF MANAGEMENT

Australasian Institute of Policing

The COVID-19 pandemic has reshaped how we do a lot of things – but sending holiday greetings is not one of them. On behalf of the Australasian Institute of Policing, we wish our members, readers, supporters and contributors, happiness, health and a joyful holiday season.

As this year 2020 comes to a close, we must give tribute to the hard working front line emergency services and first responders, including, but not limited to, our police officers, ambulance officers, doctors, nurses, hospital and nursing home staff, and of course the ADF military personnel, who have all worked together in a collegial fight against the virus.

One cannot help but think that most people around the world are saying or thinking “*All I want for Christmas is a vaccine*”, and what an amazing present it will be. It truly will give us reason to celebrate a Happy New Year!

For all of us, 2020 looked a lot different to 2019 – and if you spent most of the year cooped up and sticking close to home, you’re not alone. We are truly in this together as we fight the impact of COVID-19 pandemic on the health of peoples and economies throughout the world.

It is time for us to reflect on the year gone past, our family, friends, colleagues

and loved ones both in Australia and overseas.

Sadly, for many people, there is a great deal to reflect upon and contemplate during these holidays. The pandemic has been very hard on many people and some have lost loved ones while being kept apart. Our sympathy and wishes are extended to all those effected by such tragedy. During this holiday season fewer people are going to be able to spend time with their loved ones, either due to international and state border restrictions or as a result of self discipline of restricting visitations to protect the elderly, others and themselves. However, these restrictions on movement, do not and can not, hinder our best wishes, our love, our thoughts and our prayers of happiness and health for others.

It is often said that “*Out of tragedy comes new strength and opportunity*”.

COVID-19 is no exception. As a result of COVID-19 there has been a re-focus on the value of family life and family time,

the discovery of benefits for both employers and employees from workforce participation from home. The ability to communicate via various platforms, the saving of time and money through changing work patterns and practices, the repopulation of country towns, have all contributed to a new way of life. We have all learnt from the challenges COVID-19 has placed on us, both individually and collectively. This gives us the foundations to make 2021 truly a Happy New Year!

The Australasian Institute of Policing, on behalf of the Australian community, would like to thank our Police Officers and all those frontline workers and others who have been willing to sacrifice their own safety and well-being in this crisis. Thank you for your commitment and dedication. Thank you for your compassion, collaboration and courage. Your selfless service to the greater community is helping all Australians get through these tough times.

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Philosophical differences hindering CIC legislation

JON HUNT-SHARMAN

President, Committee of Management, Australasian Institute of Policing

The Australasian Institute of Policing (Aipol) supports broadening the powers of the Australian Commission for Law Enforcement Integrity (ACLEI) to include all Commonwealth agencies and Commonwealth employees and appointees; including, but not limited to, the Australian Public Service; the Australian Defence Force; the federal judiciary staff; higher education & research bodies; Commonwealth service providers and any subcontractors they engage; and federal politicians and their staff.

There has been debate about the creation of a Commonwealth Integrity Commission for many years. As Integrity Commissions have been established across various States and Territories a philosophical differences has crept into each model moving the concept from *'Finding out the truth'* to *'Finding the evidence to assist criminal prosecution'*. I have previously had experience within this area of philosophical conflict, firstly being selected as a member of the inaugural investigation team of the NSW Independent Commission Against Corruption (ICAC) and working in the Commission for some 3.5 years and as an elected official of the Australian Federal Police Association (AFPA) during

the Wood Royal Commission into the NSW Police.

In 2006 I provided input into the purpose, structure, processes and powers of ACLEI, based on my previous experiences with statutory bodies with Royal Commission powers.

What is evident in the current debate over the Federal Government's Commonwealth Integrity Commission (CIC) proposal, is that various stakeholders, experts, academics, laypersons and the media, have differing views on the purpose, structure, processes, powers and transparency that a new Integrity Commission should have. Everyone seeking that their views are included and indeed over-riding of others.

There is a significant challenge to overcome. The disputing parties, have a philosophical difference as to the 'purpose' of a standing Integrity Commission. It is the debate between whether an Integrity Commission is an investigative *'truth seeking and educational'* body or a *'criminal investigative'* body.

As Integrity Commissions have developed and evolved across Australia the pendulum has swung from investigative *'truth seeking and educational'* body towards a *'criminal investigative'* body.

Opponents to the proposed CIC model argue that Royal Commissions

continued on page 6

and anti-corruption bodies have a very particular primary role in our society, that is to expose the truth. Compelled evidence cannot be used in criminal prosecutions and in cases where there is no admissible evidence about a hidden crime the truth may be the only thing that can be brought to light. Its role is to expose corrupt conduct. The gathering and assembling of evidence able to be used in prosecution proceedings constitute an 'incidental benefit' of its main purpose and rationale to investigate corruption. The far more important outcomes from such investigations being appropriate disciplinary action against public sector employees and systemic reforms to decrease the scope for corruption.

For example the NSW ICAC has not been established by the ICAC Act as a statutory investigative body with the functions of a commission charged with criminal investigative functions. It is not authorised to include in a report a finding that a person has committed an offence; and nor is it authorised to make a recommendation that a person should be prosecuted for an offence: s 74B. In determining whether a person has engaged in corrupt conduct, ICAC makes findings of fact based on the civil standard of proof (on the balance of probabilities) rather than the criminal standard of proof (beyond reasonable doubt).

The proposed CIC model is consistent with other Integrity Commissions in Australia, whereby there is now greater emphasis on gathering and assembling evidence able to be used in criminal prosecutions.

It appears that the attempts to satisfy two unreconcilable philosophical positions is in fact working against the actual establishment of a CIC.

It is time for draft legislation to be tabled, debated in Parliament and passed to enable the establishment of the CIC. There is no advantage of delaying the Bill for further consultation as the philosophical differences are legitimate but unresolvable. It is important that there is a functioning Commonwealth anti-corruption body. It's 'purpose' can be altered later through legislative amendment, if it is found deficient.

It is time for draft legislation to be tabled, debated in Parliament and passed to enable the establishment of the CIC. There is no advantage of delaying the Bill for further consultation as the philosophical differences are legitimate but unresolvable.

The draft CIC Bill has a review process to enable amendment to purpose, structure, processes, powers and transparency, if changes are indeed required.

Government's Proposed CIC

It is intended that it will be an independent statutory agency led by a commissioner and two deputy commissioners, with public sector and law enforcement integrity divisions.

The Public Sector Integrity Division will cover departments, agencies and their staff, parliamentarians and their staff, staff of federal judicial officers and subject to consultation judicial officers themselves, as well as contractors.

The Australian Commission for Law Enforcement Integrity (ACLEI) will be reconstituted as the Law Enforcement Integrity Division, with a significantly expanded jurisdiction to also include the Australian Competition and Consumer Commission (ACCC), the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investment Commission (ASIC), the Australian Taxation Office (ATO), and the whole of the Department of Agriculture and Water Resources (DAWR).

Both divisions will investigate allegations of criminal corruption. The Government intends to amend the Criminal Code Act 1995 to add new corruption offences to ensure the most serious and systemic incidents of corruption are clearly understood and can be punished.

The Government believes that its proposed model will avoid the serious failings of state-based integrity bodies. The Attorney General has stated that on too many occasions these bodies have proved to be 'kangaroo courts' falling

victim to poor process and being little more than a forum for self-serving mud slinging and the pursuit of personal, corporate and political vendettas.

While the CIC will have the power to conduct public hearings through its Law Enforcement Integrity Division, the Public Sector Integrity Division will not have the power to make public hearings or to make findings of corruption. Instead, it will be tasked with investigating and referring potential criminal conduct to the Commonwealth Director of Public Prosecutions. The Government believes that this approach will ensure that it is the courts that make findings of criminally corrupt conduct.

Public Hearings V Private Hearings

Aipol acknowledges that there are benefits of public hearings but is also aware that the media will publicise allegations made against persons in a public hearing setting, whether or not the allegations are substantiated or indeed later to have been found to be vexatious. As was the case in the Wood Royal Commission into NSW Policing, the impact of televised public hearings and hounding media indeed led to a number of persons subject to the Commission hearings, sadly committing suicide.

Aipol believes that there must be a balance between having a powerful investigative body and fairness to individuals investigated or referenced by such a Commission.

Aipol understands and strongly supports private hearings, conducted in secret, as this often leads to successful criminal investigations where offenders are not alerted to police activity. They also do not necessarily damage the public reputation of those persons appearing before the Commission.

On the other hand public hearings ensure proceedings are not cloaked in secrecy and through transparency increases public trust and often leads to other complainants coming forward.

Aipol believes that the attorney-general has raised legitimate issues about damage to individual reputations where a person subject to a public hearing has their reputation tarnished in the media, but is ultimately found not to have acted corruptly by a Commission.

This issue could be ameliorated by having the default position being private hearings with public hearings only available when it is in the public interest and where certain criteria are met. The criteria could include balancing individual reputation considerations including not being unfairly prejudicial to the interests of an individual, against issues such as the seriousness of the allegations, traditional investigative techniques being exhausted, the need to encourage further potential unknown witnesses to come forward etc.

A further safeguard could be that the decision to conduct a public hearing require unanimous decision of the three Commissioners and that a judicial review process be available prior to commencement of a public hearing.

The ability to have both private and public hearings will enhance public trust whilst taking into account legitimate concerns about damage to an individual's reputation.

It should be noted that although ACLEI Commissioner has the ability to conduct public hearings, all hearings to date have been held in private. Although the hearings have been in secret, transparency is provided through the Commissioner publicly reporting on various investigations and findings.

The current cautious approach by the ACLEI Commissioner, in accordance with Part 4, Division 2, Subdivision A, Section 82 of the Act could be replicated for the proposed Public Sector Integrity Division.

CIC Complaint Process

Aipol does have some concern that the Public Sector Integrity Division appears to only take complaints and allegations referred by other bodies, such as public service agency heads etc. That is, it will not normally take allegations of corruption directly from public servants, whistleblowers, or members of the public, requiring them to go through the relevant

channels, such as the public service agency, ombudsman, AFP etc. This may hinder people coming forward due to perceived lack of independence.

Aipol is also concerned about the proposed CIC's inability to self initiate investigations. It is proposed that it can only investigate after a referral from the public sector, or if the CIC is conducting an investigation and discovers additional corrupt conduct. This is a significant limitation as it relies on an initial assessment being conducted by a person not skilled in identifying potential suspect criminal or corrupt behaviour, let alone them being required to make a subjective analysis of whether it is 'serious' corruption' versus lower level corruption, as required under the proposed model. What on the face of it might appear to an agency head to not be significant, may be the 'tip of the iceberg' of major unrelated serious corruption.

Other comparable investigative bodies have "own motion" powers to investigate issues. Notwithstanding that the agency head has recommended no further action be undertaken by the Integrity Commission due to say the minor nature of corruption identified, the Commission still has the ability to commence a preliminary investigation.

Again, this issue can be ameliorated if there is a requirement to report ALL suspect corrupt behaviour allowing the CIC to determine whether a matter should remain with the agency to deal with or be better handled by the CIC.

Corruption linked to Criminal Offence

Aipol notes that 'Corrupt Conduct' will include abuse of public office, misuse of official information and non-impartial exercise of official functions. The government intends to consolidate relevant offences and add new public sector corruption offences in the Criminal Code Act 1995 (the Criminal Code) under a new 'Public Sector Corruption Offences' Division. For investigation to commence in the Public Sector Integrity Division it will require a reasonable suspicion of corruption amounting to a criminal offence.

Aipol is concerned that the bar for investigation may be too high. Investigative experience shows that initial complaints about conduct of persons may not identify a suspect

criminal offence but show an unusual course of conduct. Further investigation demonstrates that the unusual conduct was for the purpose of concealing some corrupt or criminal conduct, not actually known to the complainant, when making their initial complaint.

For example, a complaint received that a person has not been reconciling expenditure in accordance with internal rules but there is no suspicion that funds have gone missing, would not be accepted because there is no suspect criminal activity. However preliminary enquiries by the CIC may identify that the person has authority over a number of other banking accounts. Investigation may then identify a significant fraud unknown to the original complainant.

This issue could be ameliorated by the Government including new broader corruption offences in the Criminal Code relating to conduct such as:

- 'Deliberately engaging in any conduct that adversely affects, or could adversely affect, either directly, or indirectly, the honest and impartial exercise of official function by any public official, or group or body of public officials';
- 'Dishonest or biased exercise of public official's functions or duties which involves conduct that would, if proven, be a criminal offence, or grounds for termination of employment or appointment';
- 'Knowingly acquire or hold, or control, directly or indirectly, a private interest in any contract or agreement with respect to the public authority by which they are employed or engaged';
- Codifying Article 20 of the United Nations Convention Against Corruption offence of 'Illicit enrichment'.

Moving Forward

It is important for the CIC to have access to a full range of powers, with the Commissioner utilising his/her discretion to ensure that the utilisation of such powers is proportionate to the corruption being investigated. It is also important that it is able to look for corruption rather than just rely on it being referred to it.

Aipol looks forward to the Federal Government's draft legislation being debated in parliament and hopefully enacted with bipartisan support, notwithstanding that philosophical differences will remain.

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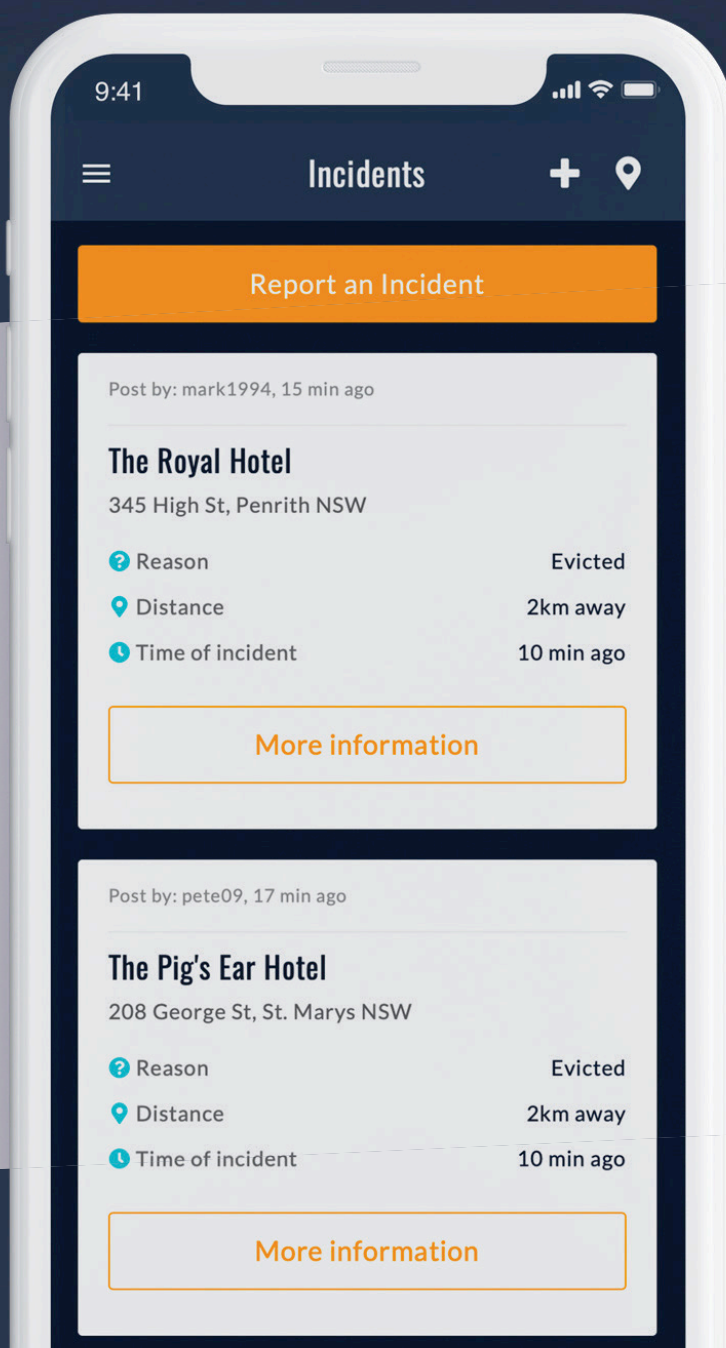
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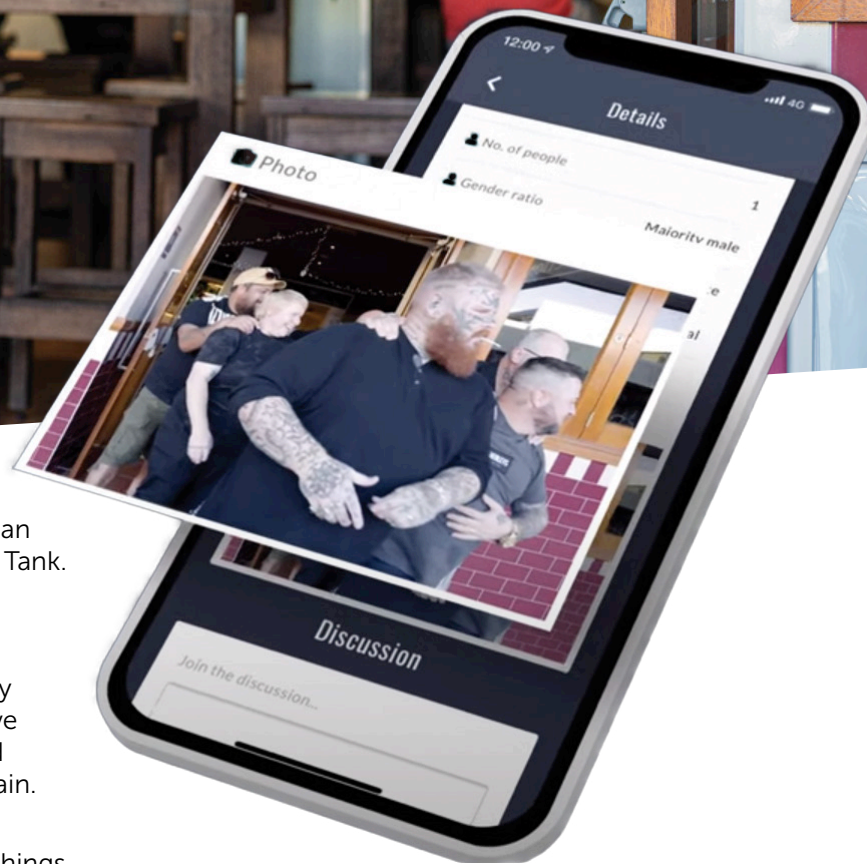
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Jason Muir is a 30-year security industry veteran, former Security Operations Manager for the Sydney 2000 Summer Olympics, Owner and Operator of Secureguard and the Founder of Preampt.

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Commonwealth Integrity Commission consultation draft

The Australian Government has committed to establishing a Commonwealth Integrity Commission (CIC) to strengthen integrity arrangements across the federal public sector.

The CIC will be a centralised, specialist centre investigating corruption in the public sector. It will be established as an independent statutory agency, led by the Integrity Commissioner and assisted by the Law Enforcement Integrity Commissioner and the Public Sector Integrity Commissioner.

The draft legislation is the result of detailed planning to ensure the new body has both the resources and powers that it needs to investigate allegations of criminal conduct that could occur across the public sector.

The CIC will have greater investigatory powers than a Royal Commission. These include the ability to:

- hold hearings and compel witnesses to testify
- enter and search premises
- require people to surrender documents and other evidence
- use telecommunication interceptions
- have individuals arrested and confiscate passports.

The Australian Government sought views on the proposed CIC model via a consultation paper, as well as advice from an expert panel that was engaged to advise the government on the reforms.

The Australian Government has considered feedback on the previous consultation paper and has developed draft legislation to establish the new agency. The draft legislation comprises two Bills:

- Commonwealth Integrity Commission Bill 2020 (the draft Bill) – which would establish the CIC.
- Integrity and Anti-Corruption Legislation Amendment (CIC Establishment and Other Measures) Bill 2020 – which would make necessary amendments to various Acts to give effect to the new CIC scheme.

A fact sheet about the key features of the CIC has also been released.

The first phase of the government's plan for a CIC is already underway. The Australian Commission for Law Enforcement Integrity's (ACLEI) jurisdiction will be expanded from

1 January 2021 to cover four new agencies, and additional funding and staff were allocated to ACLEI in the 2020-21 Budget to undertake those functions.

The second phase will be the full delivery of the CIC by legislation, which will subsume ACLEI and cover the remainder of the public sector.

The public sector integrity division will have jurisdiction over the rest of the public sector and other regulated entities. This division will investigate potential criminal corrupt conduct perpetrated by:

- public sector, intelligence agency and Australian Defence Force employees
- the staff of federal judicial officers
- parliamentarians and their staff
- higher education providers and research bodies (in some circumstances).

Other considerations

The government is considering whether the CIC should be given jurisdiction over federal judicial officers. Any model would need to be mindful of the separation of powers in Australia's system of government, and will need to respect and maintain the independence of the federal courts and judges enshrined in the Australian Constitution.

The government is also continuing to consider the interaction between the CIC and Public Interest Disclosure scheme. This will ensure that public officials who disclose corrupt conduct to the CIC are protected from reprisal action.

Transitional arrangements for the effective operation of the CIC are also being settled. This includes, for example, mechanisms for the transfer of ongoing ACLEI investigations to the CIC, and establishing that the CIC may investigate conduct within jurisdiction that occurred before it commenced.

These will be particular areas for further consultation.

Consultation process

The government is committed to a national comprehensive consultation process on the draft legislation.

A series of consultation sessions will be arranged for the law enforcement and public sector groups that would be regulated under the legislation, as well as roundtable meetings with civil society, academia and other stakeholder representatives from all states and territories. These sessions will be held across the consultation period which will run from November 2020 to March 2021.

To ensure the consultation process is COVID-safe, registration will be required for face to face consultation sessions to be held in Canberra. Remote access will also be available by video conference.

Provide a submission

The Australian Government is inviting feedback on the draft legislation and other considerations via written submissions.

Please send submissions to cic.consultation@ag.gov.au using the submission template.

Submissions are due by 5pm AEDT on 12 February 2021. Submissions received after this date may not be considered.

Feedback received through the submission process will be used to inform further refinement of the Bills before they are introduced to Parliament.

Note: Allegations of corrupt conduct by Commonwealth officials or agencies should be referred to the relevant agency or the Australian Federal Police.

Downloads

- Commonwealth Integrity Commission Bill - Exposure Draft
- Integrity and Anti-Corruption Legislation Amendment (CIC Establishment and Other Measures) Bill - Exposure Draft
- CIC Consultation Submission Template
- Commonwealth Integrity Commission Fact Sheet

Commonwealth Integrity Commission Fact Sheet

The CIC would be a centralised, specialist centre for the prevention and investigation of corruption in the Commonwealth public sector and higher education and research sectors.

The CIC would be established as a new independent statutory agency, subsuming and replacing the existing Australian Commission for Law Enforcement Integrity (ACLEI). ACLEI is currently responsible for providing independent assurance to Government about the integrity of prescribed law enforcement agencies and their staff members.

A total of \$106.7 million in new funding was allocated to establish the CIC in the 2019-20 Budget over the forward estimates, including \$2.2m allocated to ACLEI for CIC implementation activities. This is in addition to the \$40.7 million in existing ACLEI funding for that period that will be absorbed by the CIC upon its commencement. At full capacity, the CIC would have a total staff of 172.

Jurisdiction

The CIC would have a broad jurisdiction to ensure that it can properly investigate corruption within the Commonwealth public sector and in the higher education and research sectors. The CIC would be divided into two divisions, as follows:

Law enforcement integrity division

The law enforcement integrity division would have jurisdiction over the following law enforcement agencies and public sector agencies with investigative functions:

- the Australian Criminal Intelligence Commission
- the Australian Federal Police
- the Australian Transaction Reports and Analysis Centre
- the Department of Home Affairs
- the Department of Agriculture, Water and the Environment
- the Australian Competition and Consumer Commission
- the Australian Prudential Regulation Authority
- the Australian Securities and Investments Commission, and
- the Australian Taxation Office.

Public Sector Integrity Division

The public sector integrity division of the CIC would have jurisdiction over:

- public service departments and agencies, parliamentary departments, statutory agencies, Commonwealth companies and Commonwealth corporations
- higher education providers and research bodies that receive Commonwealth funding
- Commonwealth service providers and any subcontractors they engage, and
- parliamentarians and their staff.

The government is giving consideration to a model which would allow for the CIC to have jurisdiction to investigate allegations relating to members of the federal judiciary.

Investigations

The CIC's primary function would be the investigation of serious criminal conduct that represents corruption in the public sector.

Law enforcement integrity division

The law enforcement integrity division would investigate corrupt conduct – that is, conduct that involves an abuse of office, perversion of the course of justice or corruption of any other kind – by staff within its jurisdiction, giving priority to serious and systemic corruption.

Public sector integrity division

The public sector integrity division would investigate corrupt conduct—that is, conduct that involves an abuse of office or perversion of the course of justice—by staff within its jurisdiction where this conduct would also constitute one of a list of corruption-related offences against a law of the Commonwealth. It would only investigate criminal offences and would not make findings of corruption at large. This approach would ensure that it is the courts making findings of criminally corrupt conduct.

Outcomes of investigations

Where the CIC uncovers evidence that an individual engaged in corrupt conduct, the CIC would be required to send evidence of criminal activities to the Commonwealth Director of Public Prosecutions (CDPP) or other relevant prosecuting agency for consideration.

Where the CIC uncovers more minor disciplinary issues by a staff member of an entity, they would refer that material back to the relevant entity for action.

In relation to investigations into parliamentarians, there are two outcomes:

- if evidence of corrupt conduct is found – material would be referred to the CDPP for consideration, or
- if no evidence of corrupt conduct is found – the matter is finalised; Integrity Commissioner must advise parliamentarian of the outcome and may advise a referring integrity agency, such as the Ombudsman.

Referral mechanisms

Law enforcement integrity division

Heads of law enforcement agencies would have a mandatory obligation to refer corruption issues relating to their agency to the CIC. Referrals could also be made by the Attorney-General, the Minister responsible for the agency, an integrity agency (such as the Commonwealth Ombudsman) or anyone else (including a staff member or a member of the public).

Public sector integrity division

The heads of entities (other than a parliamentarian's office) covered by the public sector integrity division would have a mandatory obligation to report suspected corruption issues relating to their staff members if they hold a 'reasonable suspicion' that a listed offence has been committed. Heads of intelligence agencies would notify corruption issues to the Inspector-

General of Intelligence and Security (IGIS), who would determine whether the matter should be referred to the CIC.

The public sector integrity division could receive a referral from another integrity agency – like the Ombudsman or the AFP – where that agency discovers activity that suggests corrupt conduct and has a reasonable suspicion that the conduct constitutes one of a list of criminal offences. This applies to corruption issues involving parliamentarians and their staff. For example, if the Independent Parliamentary Expenses Authority observed potentially corrupt conduct that it reasonably suspected was capable of constituting a listed criminal offence, it could refer that activity to the CIC for investigation.

Parliamentarians will also be able to refer their staff (where the reasonable suspicion threshold is met) and to make a self-referral to the public sector integrity division. There is no requirement of reasonable suspicion for a parliamentarian self-referring to the CIC.

The public sector integrity division of the CIC would also be able to investigate

parliamentarians or their staff where an existing CIC investigation into suspected corruption within a different part of the public sector revealed evidence that will meet the investigation threshold.

The CIC would not receive referrals about those within the public sector integrity division's jurisdiction from the public at large.

Powers

The law enforcement integrity division would have all the powers ACLEI has – including the ability to execute search warrants, make arrests and use telecommunications interception and surveillance devices, subject to appropriate thresholds being met.

The public sector division would have all the same powers as the law enforcement integrity division with the exception of the ability to hold public hearings or conduct integrity testing.

Oversight arrangements

The CIC would be accountable to the Attorney-General and subject to oversight by an independent Inspector-General

and a Parliamentary Joint Committee on the CIC. The Commonwealth Ombudsman would also oversee and audit the CIC's use of coercive powers such as telecommunications interception, surveillance devices, assumed identities and integrity testing.

Commencement

The commencement timeframe for the CIC will depend on the passage of legislation; the government will introduce the legislation to the Parliament once it has considered feedback received during the consultation period.



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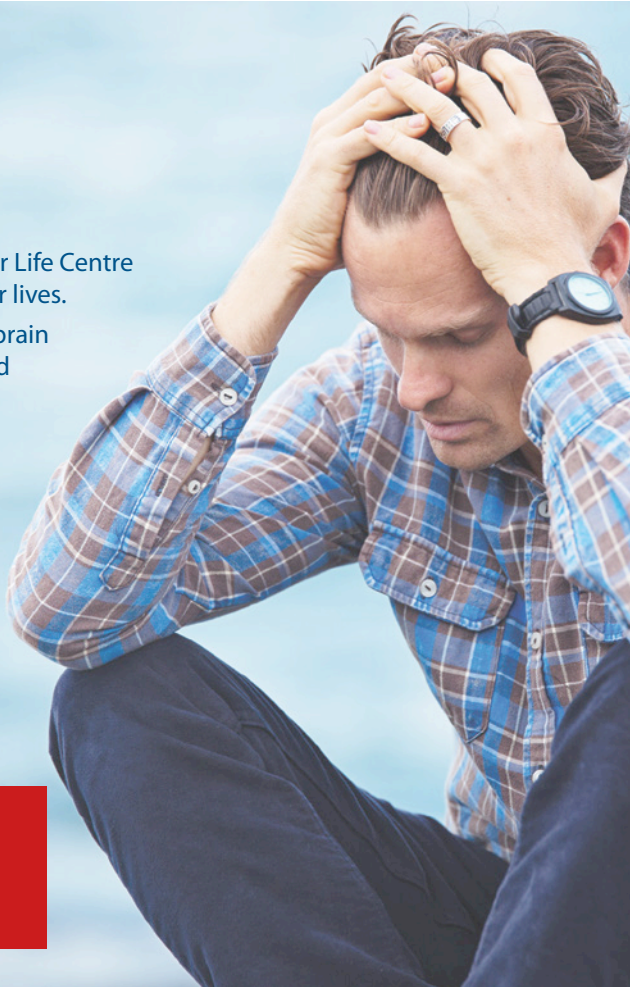
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Reasons for delaying an integrity commission are blatant nonsense

DR COLLEEN LEWIS

Honorary Professor at the Australian Studies Institute, ANU

It is nonsense to keep on delaying the introduction of a well-resourced Commonwealth Integrity Commission with the appropriate structure and processes required to be a truly effective accountability institution.

It is also nonsense to suggest that the reason why the government has delayed introducing legislation to establish one is because the Attorney-General's Department has been preoccupied with COVID-19 and industrial relations matters, and therefore could not devote resources to a CIC.

This excuse is not credible — it is asking the Australian people to accept that a department as large as the Attorney-General's is unable to deal with more than a couple of policy issues at any one time.

It is also a questionable excuse, because a draft model was released in December 2018 and several accountability experts attended a meeting, hosted by senior members of the Attorney-General's Department toward the end of January 2019, to provide informed feedback on the proposed model. The invitation was in the guise of a consultation process but during that meeting, attendees were told that the model's structure was "firm" and that legislation to establish a CIC would be introduced into Parliament in February 2019.

February 2019 came and went, as has February 2020. At this rate, so too might February 2021.

The promise made by the government in the lead-up to the 2019 election to establish a CIC has been lingering in the "fringe issue" ether for far too long. One cannot help but wonder if it will still be dwelling there after the next election.

Despite public feedback on a CIC by learned experts in the anti-corruption



Attorney-General and Minister for Industrial Relations Christian Porter during Question Time at Parliament House. Credit: Alex Ellinghausen



Properties near site of Sydney's new airport at Badgerys Creek. Credit: Wolter Peeters

field, the saga, which began in 2018, drags on. Not one independent person with expertise in anti-corruption models supports the CIC's proposed structure.

In all good conscience, it is impossible to do so because it is blatantly designed to shield the conduct

of politicians and many public servants from public hearings. The shield is impregnable — the CIC explicitly excludes them from such a process.

Despite experts' repeated condemnation of the model, it appears that the Attorney-General is determined

to proceed with the defective “dual structure”: defective at least to those dedicated to ensuring that democratically elected governments deliver openness, transparency and accountability to the people who grant them the privilege of representing them.

In return for this privilege, the electorate expects that the public interest will always be placed before personal and party interests. The National Integrity Commission structure and other aspects of the model cannot deliver such an outcome.

In addition to its fundamental structural flaw, the CIC fails, among other things, to facilitate courageous whistleblowing; deliberately defines corruption so narrowly as to prevent investigations into malfeasance, which history shows is often the pathway to serious corruption; and bizarrely prevents the public from complaining directly to the CIC.

The government’s proposal to incorporate an expanded Australian Commission for Law Enforcement Integrity into the CIC model must be

scrapped; since its inception in 2006, ACLEI has not delivered effective accountability.

The suggested budget for the CIC is yet another serious barrier to effectiveness.

One of the oldest tricks by governments in the anti-corruption space is to establish an anti-corruption body, boast to the people about how good the government is to have created one, but then underfund it. They do so because the budget is a way for governments to exercise indirect control over such independent bodies.

This is not an unfounded statement. There have been several examples of this happening in Australia and beyond by governments who understand, only too well, that powers without the necessary budget to exercise them translates into no powers.

While the Attorney-General’s Department may be incapable of dealing with several matters at the one time, the Australian people are not. They have been calling for an effective national anti-

corruption body for years. Why has the government assumed it is not a priority for them today, especially given the revelations surrounding matters such as the sports rorts affair and the Badgerys Creek land deal?

The government claims that the delay in establishing a National Integrity Commission relates, in part, to retrospectivity issues. An easy way to solve this supposed problem is to look at how other effective anti-corruption bodies have addressed the matter.

One can only hope that a revised model adopts many of the positive aspects of anti-corruption legislation already put forward by independent parliamentarians.

To stubbornly ignore the views of experts and enlightened parliamentarians is to place personal and party interests before the public interest. The electorate will remember such an approach — there is only so much nonsense it is prepared to tolerate in relation to the establishment of an anti-corruption commission.

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Explainer: what is the proposed Commonwealth Integrity Commission and how would it work?

A J BROWN

Professor of Public Policy & Law, Centre for Governance & Public Policy, Griffith University

Australia has come a significant step closer to forming a federal anti-corruption agency, when federal Attorney-General Christian Porter released draft legislation designed to set up a Commonwealth Integrity Commission (CIC).

It is promising, but has big problems. Fortunately, the attorney-general has signalled key elements of the proposal are still up for negotiation in parliament. A consultation period will run from November 2020 to March 2021 to allow time for feedback on the draft legislation.

The bill puts detail on an anti-corruption model for which the federal government has already been heavily criticised since it was first released in December 2018.

But with the political consensus behind a federal agency now spread across all parties, and into a government bill, it's a historic step towards a genuine strengthening of Australia's integrity system in 2021 — if or when the Morrison government amends its bill to overcome the problems.

Three issues — resources, scope and powers — will determine if the new Commonwealth Integrity Commission can help restore flagging trust in Australia's ability to deal with corruption.

Resources: where the CIC proposal is on its strongest ground

In the 15 years since Transparency International Australia first recommended a national anti-corruption agency, funding has been central to the discussion. A poorly-resourced Commonwealth Integrity Commission cannot be effective.

This is where the proposal is on its strongest ground. Porter's announcement



Attorney-General Christian Porter.

confirmed A\$106.7 million in new funding over four years. That's on top of the \$40.7 million already spent on the ACLEI (Australian Commission for Law Enforcement Integrity), to be absorbed by the CIC.

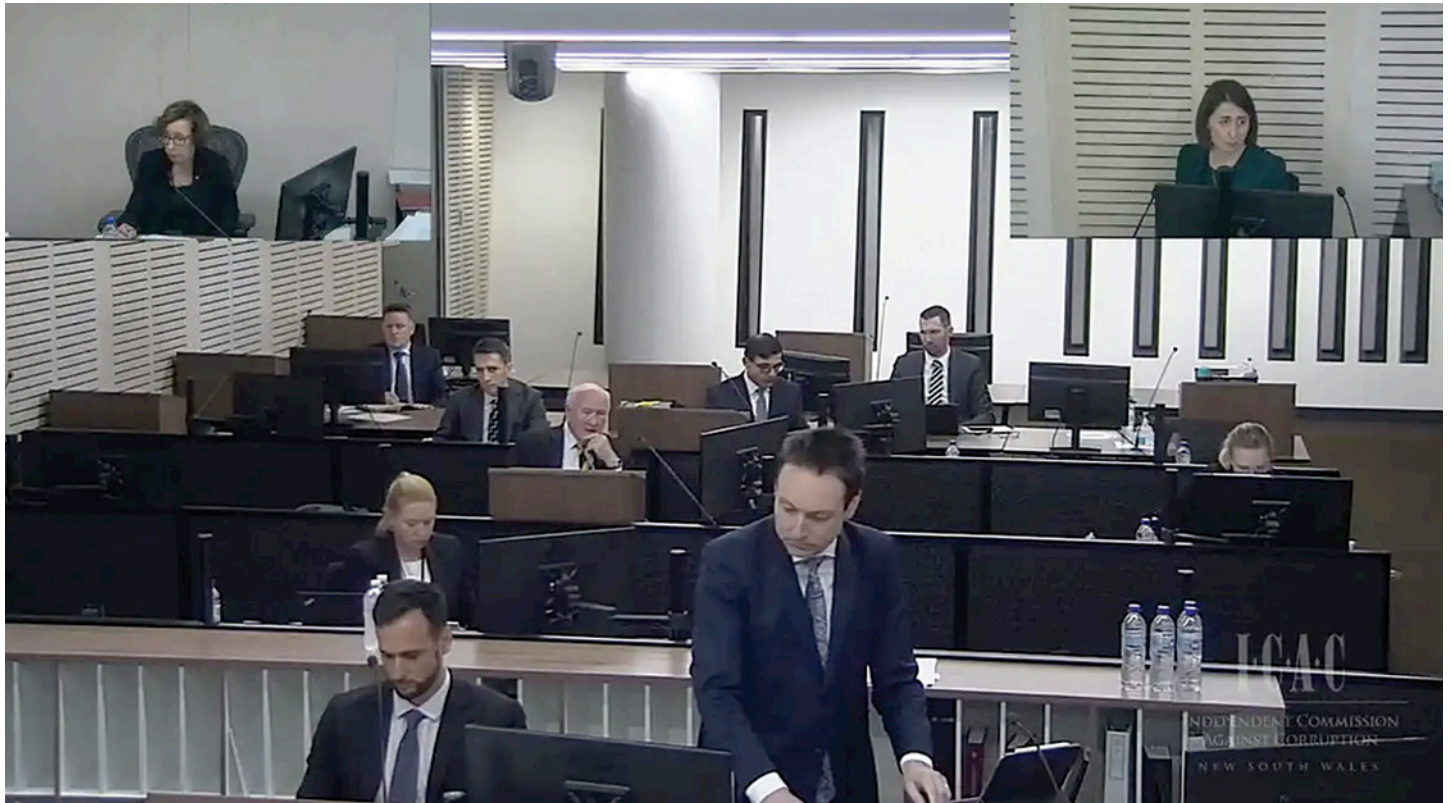
This means an agency with an annual budget of \$42 million when fully operational.

That's not enough to fix all the gaps in our creaking accountability framework, as shown in my research team's soon-to-be-finalised national integrity system

assessment of Australia. But it's over double what the Australian Labor Party originally estimated.

It finally moves ACLEI well beyond the minuscule budget and narrow remit it had when it was founded in 2006, after the Howard government first promised to create what many hoped would be an independent national anti-corruption body.

With corruption risks rising in the post-COVID world, we are at least slowly going in the right direction — and that's important.



NSW Premier Gladys Berejiklian recently gave evidence during the NSW Independent Commission Against Corruption hearings for inquiry into allegations surrounding former Wagga MP Daryl Maguire. Many have long called for a federal version of ICAC. AAP/ICAC

Scope: the first big shortcoming

As it is proposed, the CIC's full Royal Commission powers would only extend to about 20% of the federal public sector.

More agencies will be covered by ACLEI's powers from January 1 2021, as its jurisdiction expands to cover four new law enforcement and regulatory bodies, including ASIC and the ATO. But for 80% of the federal government, including politicians, the CIC's strong powers can only be exercised in private, and only where there is a reasonable suspicion of a criminal offence.

So the powers may be strong — including compelling people to give sworn evidence at private hearings, search and seizure of property (under warrant), and tapping phones. But there will be little or no jurisdiction to get to the bottom of "grey area" corruption like undisclosed conflicts of interest, unless a criminal offence like fraud, theft or bribery is already obvious.

The scope is also narrow because, while federal agency heads must report suspected corruption offences, this is only if they meet the same threshold.

If a public service whistleblower approaches the new commission directly, with reasonable suspicions of corruption breaches but no actual evidence of an offence, they would have to be turned away.

Indeed, under clause 70 of the bill, they could risk prosecution for making an unwarranted allegation. This is a draconian idea that defies the purpose of federal whistleblowing legislation.

Public hearing powers: a worry

The inability of the CIC to use public hearings for 80% of the federal government is the feature that would likely make many Australians most worried.

How this problem is fixed in the final bill will be the key to securing a strong agency with a wider, pro-integrity remit.

It's a worry for the government because in Australia, and overseas, the problem of strong anti-corruption powers being used as a weapon against political opponents is real. There is little value in integrity bodies that become costly political weapons, damaging more than restoring public trust.

Coalition MPs are especially fearful of the way the NSW Independent Commission Against Corruption (ICAC) has used public hearings in the past - such as its ambush of NSW Premier Barry O'Farrell in 2015, prompting his resignation despite the commission's conclusion he had "no intention [...] to mislead".

The next steps will need to include other solutions to this problem, ensuring

public hearing powers can be used when needed, and not when it's unnecessary.

If this can be achieved, along with other improvements based on public feedback, there is a real chance of the Commonwealth Integrity Commission standing the test of time.

And that would mean, after 15 long years, an enduring, independent agency supported by all sides of politics – not one undermined by partisan criticism or allegations of ineffectiveness.

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THE CONVERSATION

Disclosure statement

A J Brown is Professor of Public Policy and Law at Griffith University, and receives funding from the Australian Research Council, Queensland Crime & Corruption Commission, NSW Ombudsman and other agencies as project leader of Australia's National Integrity System Assessment. He is a board member of Transparency International Australia, and Transparency International globally.



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Attorney-General Christian Porter and Prime Minister Scott Morrison. Picture: Sean Davey

Rule of law means no room for show trials

CHRIS MERRITT

Vice-President of the Rule of Law Institute of Australia

The great strength of Christian Porter's anti-corruption agency is its commitment to the rule of law. By rejecting the titillation of show trials and NSW-style rough justice, the Attorney-General has shown a commitment to fundamental rights that others should emulate.

Federal Labor and the Greens have carved out a different position. By yearning for a NSW-style anti-corruption agency they have shown themselves to have as much commitment to justice and human rights as Madame Defarge, waiting impatiently for heads to roll, regardless of guilt or innocence.

The hallmark of the Attorney-General's plan for a commonwealth integrity commission is respect for the presumption of innocence, which is apparent in the decision to conduct most investigations in private. This will ensure the judiciary, and not the CIC, will tell Australia who is guilty of corruption. And that will only happen in a court governed by the rules of evidence, the presumption of innocence and the safeguard of appeals.

Porter has created a high-powered investigator whose coercive powers

will be subject to oversight by an independent inspector-general, the Ombudsman, the Attorney-General and a joint parliamentary committee. But the NSW experience shows even that might not be enough.

The jurisdiction of the CIC has been designed to prevent it wasting resources on trivia. Both divisions of the new body will instead pursue breaches of 143 laws directed at specific wrongs.

This is another safeguard against abuse of power.

Those who expect this work to take place in public reveal how little they understand about the criminal justice system. The CIC, just like the police, will investigate wrongdoing and prepare briefs of evidence for independent prosecutors. Prosecutors will make their own assessments before allowing a case to proceed.

Under the system we share with comparable countries, independent judges have the exclusive right to decide guilt or innocence — not prosecutors and definitely not police or other investigators.

Public hearings are legitimate and necessary but only when a matter reaches court. That is where justice is done, not in a police interview room.

By rejecting public hearings in most circumstances, Porter's CIC should avoid the main problem that bedevils NSW: what happens when ICAC makes a mistake?

Shortcomings in the CIC's work will be sorted out by the prosecutors. But with ICAC, which makes its own public findings, there is no appeal on the merits, even when courts reach the opposite conclusion. This means ICAC, alone among the works of man, is presumed by the law of NSW to be infallible.



Poor Sleep: The Biggest Robber of All

DR ANNE-MAREE COLE

BDS, MScMed (Sleep Medicine)

Is snoring disrupting more than your partner's peace and quiet?

Do you wake feeling refreshed every morning?

Are you feeling more stressed and tired than you used to?

Any of these signs and many more, could be indicative of compromised breathing while you are asleep. This is known as sleep-disordered breathing or obstructive sleep apnoea (OSA). Good quality sleep is the foundation of all health. Without it your health and well-being and enjoyment of life will eventually suffer. Sleep is now recognised as one of the three pillars of health, alongside diet and exercise.

What is Sleep?

Scientists used to think that sleep was simply a switching off of consciousness from the world, but it is actually when the brain and the body get on with the daily maintenance of keeping you well. Without good quality restorative sleep, your health and well-being will start to suffer. It can creep up insidiously. You may not even notice the changes, or you may conclude that you are just stressed or getting older. Then again, you may be so used to feeling subpar that you think it's normal.

What is sleep-disordered breathing or sleep apnoea?

Sleep Apnoea occurs when a person's airway closes during sleep. When we go to sleep, the normal muscle tone that keeps us upright and functioning during the day switches off and gravity takes over. Some people have airways prone to collapse during sleep due to poor jaw development, a large tongue, bad posture, or weight gain. These people have a higher risk of suffering from sleep apnoea.

Sometimes airway collapse, partial or complete, can occur more than 40 times an hour. If it happens more than five times an hour, it is indicative of sleep apnoea.

As you can imagine, not being able to breathe is extremely stressful to the body. Blood pressure and heart rate see-saw throughout the night. The brain gets roused out of the deeper, restorative sleep, and sleep turns into a battle of survival rather than rest and recovery. This can markedly affect how you feel during your waking hours. Sleep should be a time for calming the heart and blood vessels, but untreated sleep apnoea causes cardiovascular stress all night.

Consequences of poor sleep

Sleep apnoea doesn't simply mean you're tired and you snore. It is implicated in a great number of medical conditions plaguing society, including:

- High blood pressure
- High cholesterol
- Heart disease
- Diabetes
- Cancer
- Headaches
- Depression
- Tiredness and sleepiness
- Difficulty concentrating
- Loss of enjoyment of life
- Weight gain / difficulty losing weight
- Gastric reflux
- Frequent night time urination and bed-wetting among children
- Erectile dysfunction and loss of libido
- Glaucoma and macular degeneration
- Alzheimer's disease and dementia
- ADHD and autism
- Chronic pain

Untreated sleep apnoea has significant health consequences. The most serious damage is to the heart and blood vessels.



health consequences of less than 5 are usually less impactful. On the other hand, how many airway collapses does it take for someone to die from it? Only one – the one they didn't wake up from.

Snoring

There are many forms of compromised breathing while you sleep. The most common one is snoring. Snoring is a sign of loaded breathing - difficulty getting the air from the outside, into your lungs. Snoring can occur alone (known as primary snoring) or as a sign of obstructive sleep apnoea (OSA).

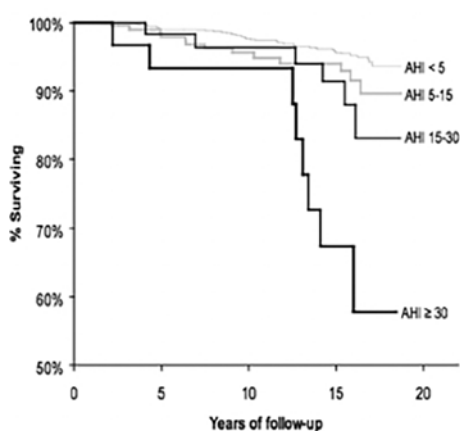
Even primary snoring is detrimental to your health and has been shown to lead to obstructive plaques developing in the carotid arteries in the neck. Snoring can also have very serious consequences during pregnancy leading to premature birth and life threatening pre-eclampsia in the mother. Snoring in children is never normal and needs immediate attention. If you hear snoring in either an adult or a child, the air is struggling to get into the lungs. It is not normal and it is not healthy but the good news is it can be treated. Your dentist with special training in treating sleep breathing disorders is a good place to start.

Obstructive sleep apnoea

Snoring can also be a sign of obstructive sleep apnoea, although you can have sleep apnoea and not snore. For people with OSA, their airway is completely or partially collapsing repeatedly while they are asleep. This stops the exchange of oxygen and carbon dioxide leading to oxygen depletion and carbon dioxide accumulation, both of which have very serious immediate and long term health consequences. Essentially people with OSA are suffocating in their sleep.

To recover from the collapse, the brain has to partially rouse, disrupting the restorative function of sleep and this process is repeated anywhere from 5 to 100 times every hour, all night long, every night, while they sleep. No wonder people with OSA usually do not wake feeling refreshed! Blood pressure and heart rates surge up and down in response to these collapses. No wonder OSA can lead to high blood pressure.

continued on page 22



SLEEP, Vol 31, No. 8, 2008

- People with sleep apnoea are at high risk of sudden death from heart attack or stroke.
- Severe sleep apnoea increases your risk of death from any cause 3.8 times. Sleep apnoea is a proven cause of high blood pressure.

The chance of premature death over a 16-to-18 year period worsens with sleep apnoea. This is demonstrated in the chart above.¹ The study found that people with severe sleep apnoea had a much higher risk of dying of any cause than people with no sleep apnoea:

- No sleep apnoea: 5% death rate
- Mild sleep apnoea: 10% death rate
- Moderate sleep apnoea: 15% death rate
- Severe sleep apnoea: 42% death rate

Pervasiveness

Even if one can't personally relate to these symptoms, police encounter the consequences of them every day. In fact the police force may be unique in this pervasiveness into all facets of life. From personal health and well-being, to enjoyment and quality of life, to the quality of family and work place relationships. Most people are subject to those challenges but very few encounter the unpredictable, life affecting incidents thrust into the working life of police.

Prevalence

A study undertaken in 1993 demonstrated that 9% of women and 24% of men had enough airway collapses every hour of sleep to be diagnosed with obstructive sleep apnoea², a sleep-breathing disorder. A more recent 2015 study found that number had increased to 83% of men and 60% of women between the ages of 40 and 70.³ Of these, 50% of the men and almost 25% of the women fell into the more significant moderate to severe OSA categories.

How many times should one's airway collapse during sleep? In reality, none, however less than 5 is considered normal. It isn't normal, it's just that the

If you suffer from any of the above conditions or symptoms, obstructive sleep apnoea should be ruled out. Diagnosis is determined by a sleep physician and by undergoing a sleep study, known as a PSG (polysomnogram). This study is usually done overnight in a sleep centre but may also be available to be done in your own bed at home, if necessary. If you suspect that you have sleep apnoea, a referral to the sleep physician via your GP can be arranged. If you doubt that you have sleep apnoea, a sleep screening, which is done in your own bed and may be available through your dentist with advanced training in treating sleep breathing disorders, may be possible as a first step. The purpose of the sleep screening would be to rule out sleep apnoea or identify you as being at possible risk to having sleep apnoea.

The sleep screening and / or the PSG will quantify the number of times your airway collapsed every hour while you are asleep. It calculates the total number of collapses then divides it between the number of hours of sleep to come up with the apnoea-hypnoea index - AHI. The perfect AHI number is 0 however less than 5 is considered normal. With an AHI >5, a sleep breathing disorder is likely. If it is >30, this is considered severe sleep apnoea and your health risk is likely to already be compromised. An AHI between 5 to 15, and 15 to 30 is demarcated as mild and moderate sleep apnoea, respectively.

The terms mild and moderate can infer a lesser need to act upon the diagnosis however the opposite is true. An AHI >5 means that you already have sleep apnoea. The good news is that the lower the score, the more chance there is that the problem can be managed successfully to significantly decrease your risk to developing the serious health consequences that accompany having severe sleep apnoea. It also means that more treatment options are open to you.

Upper Airway Resistance Syndrome and Insomnia

Another group of people is highly symptomatic of having poor sleep but when you test them for sleep apnoea, their AHI comes back <5 and their sleep study comes back 'normal'. Common symptoms include

- Significant tiredness yet difficulty falling to sleep or staying asleep. (insomnia)
- Headaches
- Chronic pain
- TMJ pain and temporo-mandibular disorder (TMD)
- Difficulty concentrating
- Irritability
- Brain fog
- Highly stressed and feeling on edge
- Depression
- Previous diagnoses of
 - Fibromyalgia
 - Irritable bowel syndrome
 - Chronic fatigue
 - Migraine syndrome
 - Tension headache syndrome

More subtle signs of physiologic stress during sleep can be detected in the sleep screening or PSG and may leave clues, along with the symptoms that UARS is a possible cause. Your dentist with advanced training in the physiologic approach to treating sleep breathing disorders may be able to provide assistance in the management of possible UARS and substantially eliminate these symptoms.

In UARS, the sympathetic nervous system (the stress mechanism of the body) is on such high alert, that it does not permit the collapse of the airway when it detects that the airway is under threat. Instead it causes the partial arousal from sleep before the airway collapses hence significantly fragmenting the restorative function of sleep. This leaves sufferers highly symptomatic (and miserable) yet without an obvious organic cause of their disability. Left untreated, patients with UARS suffer needlessly and often lose hope of ever feeling normal again.

Treatment Options

The CPAP Machine has been the primary treatment for sleep apnoea since 1981. It was invented by Australian doctor and researcher, Professor Colin Sullivan from Sydney. It has saved and improved the quality of many thousands of lives around the world.

It is the first line of care for severe sleep apnoea and for patients with serious health issues, and is a very effective treatment. Some people have difficulty adjusting to and managing the CPAP. In these instances, a dental sleep appliance is much better than no treatment at all.

Sleep breathing disorders are endemic in society and the sleep fragmentation they cause has serious health consequences, yet they are both largely under-diagnosed and under-treated. At least 80% of people with sleep apnoea are unaware of it. Sleep disordered breathing affects men, women and children, the young, middle-aged and elderly. The only way to be sure is to be tested and if it comes back positive, effective treatment options are available.

The treatment needs to be tailored to the individual, and needs to be well tolerated and comfortable. One of the many possible options and one with excellent comfort and compliance (continuous nightly use) and treatment outcomes is a custom-made dental sleep appliance to support your jaw and airway. Speak to your dentist with advanced training in the physiologic approach to treating sleep breathing disorders to see if this option may be suitable for you.

Screening Questions

- Do you snore?
- Does your snoring bother others?
- Has anyone told you that you stop breathing during your sleep?
- Do you often feel tired, fatigued, or sleepy during daytime?
- Do you wake and not feel refreshed?
- Do you fall asleep as soon as your head hits the pillow?
- Do you have trouble getting to sleep or staying asleep?
- Do you get up to use the bathroom during the night?
- Do you frequently fall asleep in front of the television?
- Do you have or are you being treated for high blood pressure or diabetes or high cholesterol?
- Have you ever had angina, a heart attack or stroke?
- Do you have or are you being treated for depression?
- Do you have gastric reflux?
- Do you ever wake with a headache?
- Does your jaw click or did it in the past?
- Do you get neck pain?
- Have you been told that you grind your teeth?

In Conclusion

Unfortunately people are going to continue to fall asleep while driving, over react to incidents and perpetrate violent acts, make poor decisions and mix drugs and alcohol. Nothing less than

a huge national awareness campaign on the importance of great quality sleep will make an indent into this carnage, leaving police to mop up the all too often, tragic outcomes. The aftermath, sadly, is inherent in the nature of the job.

What you do have moderate control over though is your own health and well-being, your family and work relationships, the quality of your executive functioning, decision-making and coping abilities. Sleep apnoea robs you of both the quality

and quantity of your life. And seeing as we only have one life to live, and that we spend one-third of that asleep, optimising the quality of that sleep should be a high priority. Restorative sleep ranks on an equal par for good health with diet and exercise. In fact, good quality sleep is the foundation of all health.

Optimum sleep can restore and enhance your personal daily outcomes. And, in case you have any doubt, you are worth it!

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This is written with gratitude and respect for the importance and dedication of our Australian Police Force by Dr Anne-Maree Cole B.D.Sc MScMed (Sleep Medicine)

Anne-Maree Cole, BDS, MScMed,

Graduated from the University of Queensland, Australia, with honours in dentistry in 1982. In 2014, she completed a master's degree in sleep medicine from the University of Sydney. Her practice in Brisbane, Australia, is limited to the treatment of patients with craniofacial pain, TMD, obstructive sleep apnoea and sleep-disordered breathing and the prevention and treatment of these problems through various techniques including arch development and orthopaedic orthodontics using a balanced physiologic approach. Dr. Cole lectures nationally and internationally on sleep-disordered breathing, TMD and jaw development orthodontics. The dentists at James Street Dentists are qualified in treating sleep breathing disorders and can take care of all your dental needs.

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Different breeds of watchdog

Designing a federal corruption watchdog with teeth

HANNAH AULBY

On the 28th October 2018, the crossbench announced their intention to pursue the establishment of a National Integrity Commission, a federal anti-corruption watchdog. This briefing note summarises the case for a National Integrity Commission and makes recommendations for its design based on lessons learned from state corruption commissions.

Summary

A National Integrity Commission is needed to investigate and expose corruption and misconduct in our federal government and public sector. Currently there are significant gaps in the jurisdiction and investigative powers of the federal agencies responsible for scrutinising the public sector and government. No federal agency has the power to investigate corrupt conduct as state-based commissions do, which includes any behaviour that affects the honest and impartial exercise of public office. No agency can investigate misconduct of MPs, ministers or the judiciary. The agencies that do have strong investigative powers, such as the Australian Federal Police, can only use them when investigating criminal charges. No agency holds regular public hearings, meaning that corruption and misconduct is not properly exposed to the public.¹

The design of a National Integrity Commission is critical to ensure its success in investigating and exposing corruption. The Australia Institute's National Integrity Committee of former judges and corruption fighters has considered the lessons from our state corruption commissions and published six design principles as a benchmark for the establishment of a National Integrity Commission.

There are differences in the design and the effectiveness of the existing state-based anti-corruption commissions in Australia. Design features such as broad jurisdiction to investigate any conduct that may affect the impartial exercise of public office, and strong

investigative powers contribute to NSW ICAC being the most effective state anti-corruption agency. Regular public hearings make NSW ICAC more effective in exposing corruption to the public. These design features have led to NSW ICAC being the most effective of the state bodies, despite receiving less revenue than the other large state agencies.

The design of a National Integrity Commission is critical to ensure its success in investigating and exposing corruption.

State Design Differences

New South Wales

- New South Wales' Independent Commission Against Corruption (NSW ICAC) is the only state corruption commission that regularly holds public hearings as part of its investigations.
- NSW ICAC is the only state agency that can make findings of corrupt conduct.²

- NSW ICAC has held 30 public hearings, 721 private examinations, and referred 76 people for prosecution over the past 4 years.³
- NSW ICAC is more effective as a result of its broad jurisdiction, regular public hearings and strong investigative powers. It can hold public hearings if the Commissioner deems it to be in the public interest. It can investigate any behaviour that may adversely affect the impartial or honest exercise of public office.⁴

Queensland

- Queensland's Crime and Corruption Commission (Qld CCC) has referred half as many people for prosecution as NSW ICAC despite receiving twice as much funding (\$213 million between 2012 and 2016, compared to NSW ICAC's \$104 million).⁵
- Qld CCC is limited in holding regular public hearings as the *Crime and Corruption Commission Act 2011* (Qld) states 'in general hearings will be not be in public'.⁶ Until it held a public hearing into the political financing of local government elections earlier this year, the Qld CCC had not held a public hearing since 2009.
- Qld CCC is limited to investigating corruption or misconduct that would, if proven, be a criminal offence or grounds for terminating services or someone holding an appointment.⁷
- Qld CCC cannot make findings of corrupt conduct.

Watchdog With Teeth

Table 1: Comparison of state anti-corruption commissions, 2012–2017

Body	Investigations commenced	Public inquiries	Private examinations	Investigation reports made public	Referrals for prosecution	Prevention recommendations
NSW ICAC	290	30	721 examinations	32	96	117
Qld CCC	293	2	36 days	1	33	165
WA CCC	250	5	52 examinations over 136 days	33	52	93
SA ICAC	219	N/A	36	2	21	14
Vic IBAC	90	5	Data not available	11	11	47 in 2016-17 [^]
Tas IC	14	0	0	5	0	21

Sources: Annual reports of NSW ICAC, Qld CCC, Vic IBAC, SA ICAC, WA CCC and Tas IC

Note: SA ICAC does not have the ability to hold public hearings, and was operational from 2013 onwards.

[^] Corruption prevention recommendations were not reported in IBAC Annual Reports except in 2016-17. Previous Annual Reports recorded 'corruption prevention initiatives', of which there were 298.

South Australia

- South Australia's Independent Commission Against Corruption (SA ICAC) is the only state anti-corruption agency that cannot open corruption investigation hearings to the public.⁸
- SA ICAC can only investigate corruption that is a criminal offense against specified act, or misconduct and maladministration if it is deemed serious or systemic.⁹
- SA ICAC cannot override parliamentary privilege, meaning members of parliament are likely to be protected from ICAC's investigative powers.
- SA ICAC is not properly resourced. Since its inception the SA ICAC has received only \$26.33 million in funding.¹⁰

Victoria

- Victoria's Independent Broad-based Anti-corruption Commission (Vic IBAC) can only investigate once it has a reasonable suspicion that a criminal offence has been committed.
- Vic IBAC can only hold public hearings if it can prove that there are exceptional circumstances and reputations will not be damaged.¹¹
- Vic IBAC has a larger budget than NSW ICAC (receiving \$118 million in funding between 2012-16, compared to NSW ICAC's \$104 million) but has made only 11 referrals for prosecution, compared to 96 from NSW.¹²

Recommendations

Taking into account the lessons from state corruption commissions, The Australia Institute's National Integrity Committee has published six design principles

as a benchmark for the establishment of a National Integrity Commission.

The National Integrity Committee's Principles for Designing a National Integrity Commission are:

- That the Commission is an independent statutory body that is provided with the required resourcing to enable it to promote integrity and accountability and to enable it to prevent, investigate and expose corruption.
- That the Commission has a broad jurisdiction, including the ability to investigate any conduct of any person that adversely affects or could adversely affect, directly or indirectly, the honest or impartial exercise of public administration, if the Commissioner deems the conduct to be serious or systemic.
- That the Commission be granted the investigative powers of a Royal Commission to undertake its work, to be executed at the discretion of the Commissioner.
- That the Commission may hold a public inquiry providing it is satisfied that opening the inquiry to the public will make the investigation to which the inquiry relates more effective, and would be in the public interest.
- That the Commission be governed by one Chief Commissioner and two Deputy Commissioners, appointed by the Minister on recommendations from a bipartisan Parliamentary committee. The Chief Commissioner is to be appointed for fixed non-renewable 5 year terms, and must be a judge or a retired judge or be qualified for appointment as a judge.

- That the Commission be empowered to make findings of fact, to be referred to a well-resourced and specialised unit within the DPP for consideration for prosecution.

Building on this framework, the National Integrity Committee has also published a Design Blueprint and an Implementation Plan for a National Integrity Commission, which cover in more detail aspects of design necessary to ensure a strong and effective watchdog.

The Australia Institute
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Former Labor MP Ernest Wong arrives at the Independent Commission Against Corruption. Credit: Louise Kennerley

‘A crime of the powerful’: what are Australia’s anti-corruption bodies?

The states and territories all have bodies to uncover dodgy dealings. How far can they go? And what powers are being mooted for a federal “ICAC”?

BY NICK BONYHADY

The Sydney Morning Herald

It can be hard to be a famous politician at a state level, competing with federal colleagues who rub shoulders with presidents and enjoy the Canberra spotlight.

But there is one path to fame that is almost guaranteed: appear before the anti-corruption body in your state.

Ernest Wong went from an obscure former backbencher to an oft-mentioned political figure during the current Independent Commission Against Corruption inquiry into dubious donations to the NSW Labor Party.

He is far from the only one. Premiers,

police officers, university staff and managers on state railway lines have all been hauled before anti-corruption bodies around the country over the years.

But it is the NSW Independent Commission Against Corruption, or ICAC – Australia’s oldest broad, independent anti-corruption body – that has grabbed far more headlines for rooting out rotten wheeler-dealers than other states’ corruption busters.

So where did Australia’s anti-corruption bodies come from? What makes the NSW ICAC different, and what’s next?

Why do we have dedicated anti-corruption bodies?

Corruption is hardly new in Australia, but particularly lurid examples surfaced in the late 1980s.

Investigative journalist Chris Masters’ 1987 groundbreaking expose of systematic corruption in the Queensland police force, *Moonlight State*, helped spark the long-running Fitzgerald inquiry, which uncovered pay-offs and cronyism galore and ultimately led to a

continued on page 28

police commissioner and four ministers being jailed.

In 1989, the year the Fitzgerald inquiry ended, the Queensland government established the Criminal Justice Commission to help restore confidence in the state's badly tarnished public institutions.

South of the border, the reformist Liberal government led by premier Nick Greiner established the Independent Commission Against Corruption about the same time: it was legislated in 1988 and began operating the next year.

Where previous efforts to stamp out corruption had relied on traditional criminal offences such as fraud to bring dodgy operators to heel, ICAC was empowered to go after corruption in a broader sense.

It could force people to answer questions and it could hold public hearings that exposed the powerful to real scrutiny. Some evidence that would not be admitted to a court could be used freely at ICAC.

Then-premier Greiner outlined the case for these exceptional powers: "Corruption is, by its nature, secretive and difficult to elicit. It is a crime of the powerful. It is consensual crime with no obvious victim willing to complain.

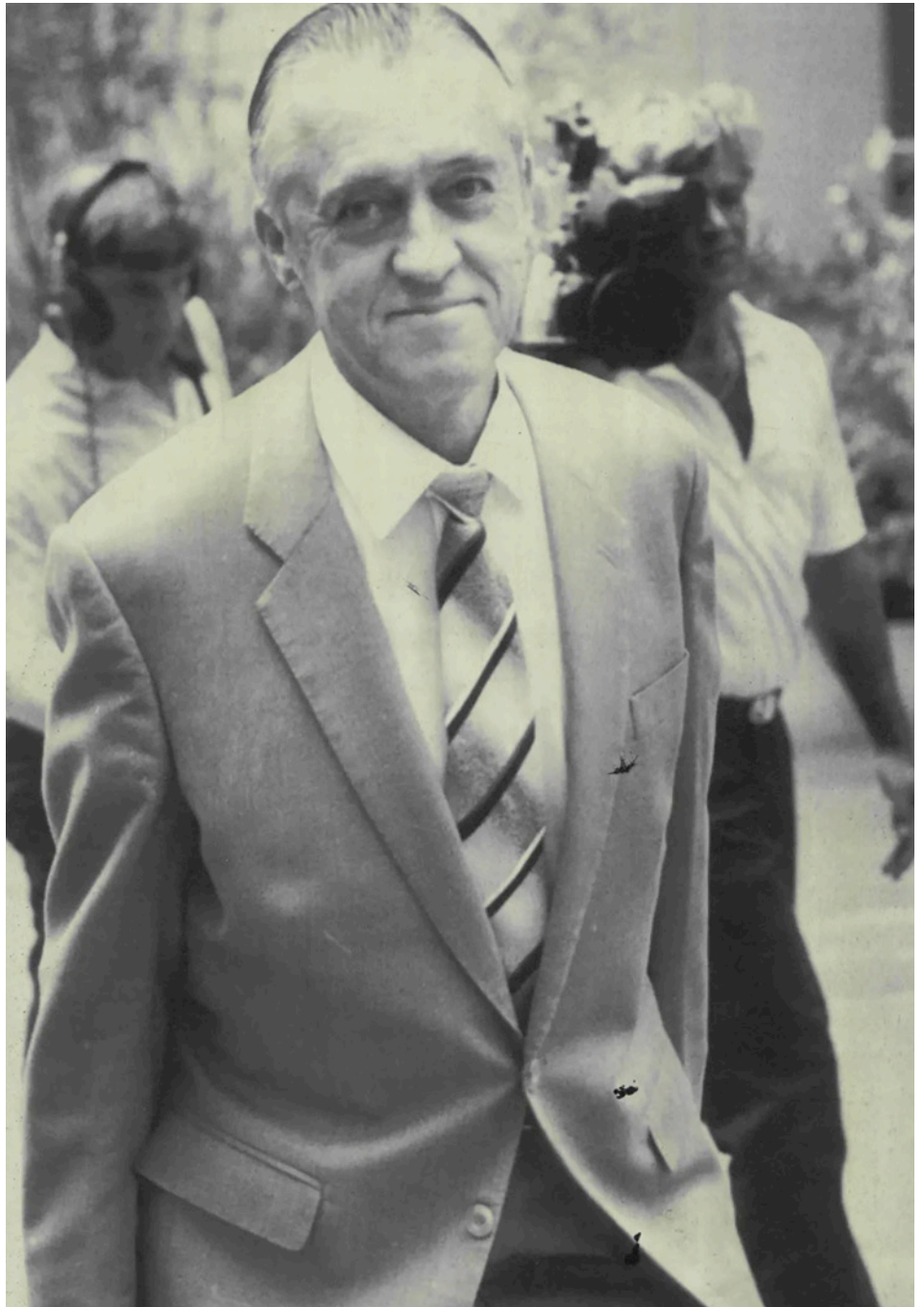
"The bottom line is simply this: the people of this state are fed up with half-hearted and cosmetic approaches to preventing public sector corruption."

And while ICAC has not been perfect (in 1992 the NSW Court of Appeal overturned an ICAC finding that Mr Greiner himself was found to have engaged in "technically corrupt" conduct), other states have followed NSW and Queensland by creating their own equivalent bodies.

How do those integrity organisations work?

Other states have organisations similar to ICAC but there are some crucial differences. Other anti-corruption bodies hold far fewer public hearings than ICAC, they cannot make findings of corruption and some can make their findings public only in limited circumstances.

Professor A.J. Brown, a corruption and integrity expert at Griffith University, says public hearings are perceived to be the most important weapon in the anti-corruption toolkit, even though more subtle means may yield equally useful results



Queensland police commissioner Terence Lewis, here at the Fitzgerald inquiry in 1988, was jailed for corruption. Credit: SN

A common, core feature of an anti-corruption body is that it is not a court and can't apply criminal sanctions, so anti-corruption commissions tend to make findings of conduct and then refer cases to other bodies for legal action.

What about at a federal level?

According to the anti-corruption organisation Transparency International, Australians' trust in politicians and government is dropping.

Australia has fallen from seventh place in 2012 in the organisation's annual Corruption Perceptions Index of nations to 13th in the 2018 edition.

And while all the states and territories have established ICAC-equivalent bodies, the federal government is only now in the process of drafting the legislation to do so.

The government's proposed model, for which full draft legislation is expected by the end of the year, would have two divisions: one for investigating law enforcement and the other for the rest of the public service. The public service division would have weaker investigative powers and would be unable to conduct public hearings. There would be no division to investigate misconduct by politicians. It would not be able to make findings of corruption.

What's the corruption body in your state?

- Victoria's body is called the Independent Broad-based Anti-corruption Commission. It was established in 2012 and can hold public hearings, but only in "exceptional circumstances" where it is in the "public interest" to do so. So far, six sets of public hearings have been held.
- The South Australia ICAC was established in 2013 and is very different to the NSW body of the same name. It can investigate only corruption that would be a criminal offence and it cannot hold public hearings, though this is under review.
- The Queensland Crime and Corruption Commission was established in 2001 although it has its roots in the post-Fitzgerald Criminal Justice Commission. It can hold public hearings but only where it is in the "public interest" to do so – a test that involves weighing the benefits of the public seeing the hearing against the damage to the reputations of people on the stand. There is a presumption against doing so.
- The ACT Integrity Commission was established in the middle of this year. It is still in the set-up phase and will begin receiving complaints from December 1. It can hold public hearings but, as with other states and territories, must pass a public interest test to do so.
- The Tasmanian Integrity Commission has the power to conduct public hearings where there is a "likely factual basis to support a finding of serious misconduct ... or systemic misconduct" and there is significant public concern or an investigation is being prevented from uncovering all the facts of the matter. To date, no public hearings have been held.
- Western Australia's Corruption and Crime Commission started operations in 2004 and "generally" does not hold public hearings, though it can if doing so would be in the public interest.
- The Northern Territory ICAC was established in late 2018. It can hold public hearings but has not done so yet.



Former NSW Labor boss Jamie Clements outside the ICAC hearing into cash payments into the NSW branch of the Labor Party in October. Credit: Peter Rae

The government says its model avoids tarnishing the reputation of those on the stand without the protections of a court and that it properly preserves the ability to make findings with the weight of "corruption" for judges.

"The whole *raison d'être* of ICAC is the exposure of corruption," former ICAC commissioner David Ipp said in 2014. "The idea of exposing corruption behind closed doors is oxymoronic."

Professor A.J. Brown says the government's model has deep weaknesses.

"The proposal announced in December was worded so that it wouldn't

normally take information from public servants, whistleblowers or members of the public," says Professor Brown.

"It would have to have complaints and tips-offs referred by other bodies before it would investigate it. That is highly impractical. That is highly unlikely to be achieved in practice."

A committee of former senior judges, including Mr Ipp along with Anthony Whealy, David Harper, Stephen Charles and Paul Stein also excoriated the model in a submission on the legislation earlier this year.

"The government model falls disastrously short of providing an

effective body to counter and expose corruption at a federal level," the former judges wrote.

An alternative model submitted by former independent MP Cathy McGowan would much more closely mirror the NSW model, with public hearings and investigations into politicians.

It would also strengthen protections for whistleblowers at a time when they have increasingly come under attack, says Professor Brown, who was involved in drafting Ms McGowan's bill as part of his work as a board member for Transparency international.



Independent MP Helen Haines. Mick Tsikas/AAP

As the government drags its heels, a better model for a federal integrity commission has emerged

YEE-FUI NG

Senior Lecturer, Faculty of Law, Monash University

Independent MP Helen Haines has just introduced a bill into parliament that seeks to establish a robust new federal integrity commission.

This is a consensus bill that involved consultation with legal academics, panels of retired judges, civil society stakeholders, ethicists and MPs.

Without the government's support, it is unlikely to pass. But it is a move designed to force the government's hand.

The need for a federal integrity commission is just as important as ever, with the government now plagued by multiple scandals involving the misuse of federal funds, such as the Western Sydney airport deal, the ASIC chair's tax advice bill, the Angus Taylor water buyback scheme and the "sports rorts" affair.

A strong — and independent — integrity commission would be able to investigate such issues thoroughly. It shouldn't be left to the government to monitor itself any longer.

What makes this proposal worth considering

Overall, the bill proposes a robust commission with strong powers, coupled with checks and balances to ensure it does not abuse its powers.

Perhaps most significantly, the proposed integrity commission would have the power to conduct public hearings if it believes it's in the public interest, balancing the seriousness of allegations with any unfair prejudice to a person's reputation or unfair exposure of a person's private life.

This is a proportionate model that enhances public trust through public hearings, but also takes into account legitimate concerns about damage to an individual's reputation.

By contrast, the government's

proposed CIC would not have the power to conduct public hearings.

Haines's proposed commission would also have the power to make findings of fact and recommendations in a public report. It could refer matters involving criminality to law enforcement authorities.

The commissioner would be a statutory office holder who is independent of government. He or she would be supported by several assistant commissioners to allow for internal checks and balances.

And the body would include a whistleblower protection commissioner, which is particularly necessary given how weak Australia's whistleblower laws are considered to be.

Importantly, the bill would provide for external accountability mechanisms to



The AFP is investigating possible criminal offences linked to the \$30 million land deal for the new Sydney airport. Mick Tsikas/AAP



Bridget McKenzie was forced to resign after the sports rorts affair. Mick Tsikas/AAP



The Morrison government has been criticised for postponing its proposed integrity commission. Mick Tsikas/AAP



The NSW ICAC is currently investigating former MP Daryl Maguire's alleged misuse of public office for personal gain. ICAC handout

“watch the watchdog” via parliament and the courts.

Specifically, there would be oversight by a parliamentary joint committee to ensure the body’s compliance with the law, due process and other standards. Its decisions would also be subject to judicial review.

The commission’s funding would need approval by the joint parliamentary committee, as well, which provides some financial protection. This is important as the NSW Independent Commission Against Corruption (ICAC) has had its budget severely cut following its explosive revelations of corruption in government.

Haines’ bill also proposes a corruption prevention program for the Commonwealth public sector. This is a positive, pro-integrity function that monitors major corruption risks across all sectors.

Why the government’s model has been criticised

The government’s CIC model is a watered-down version of Haines’s proposed body. It has been criticised for a few reasons.

The first is that it would fail to achieve its main aim of exposing corruption in the public sector.

The bar for investigation is too high, requiring a reasonable suspicion of corruption amounting to a criminal offence before an inquiry can even begin. This is a difficult hurdle to clear.

Lessons from the state anti-corruption commissions show evidence of corruption is typically unveiled through investigations themselves (based on credible allegations), rather than before an investigation begins.

Another major criticism is the proposed CIC will not have the power to hold public hearings.

Public hearings ensure proceedings are not cloaked in secrecy. They also increase public trust. Widespread corruption has been uncovered through such hearings in the past, such as the Fitzgerald inquiry in the 1980s into corruption in the Queensland police force. This led to the resignations and imprisonments of various former ministers and officials.

The time to act is now

All states now have an anti-corruption commission and the federal government is lagging behind.

A bill is now before parliament that puts forward a strong, yet proportionate, vision for an integrity commission with robust powers and both internal and external accountability mechanisms.

It has been developed through a strong consultative process with legal experts, academics and civil society.

In short, it is a better model than what the government has proposed. It is now time for the government to move forward to promote political integrity — without any further delay.

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THE CONVERSATION

Disclosure statement

Yee-Fui Ng has received funding from the NSW Independent Commission Against Corruption for a commissioned project on lobbying regulation.



What might a National Integrity Commission look like?

CAT BARKER

Australia looks set to have a National Integrity Commission (NIC) of some description in the near future, with the proposal now supported by the Coalition, the Australian Labor Party, the Australian Greens and at least some of the current cross-bench.

However, there is disagreement on the particular model to be adopted and differences in the published costings. In light of the funding in the 2019–20 Budget for a Commonwealth Integrity Commission (CIC), this FlagPost provides a brief overview of the different models.



Australian Greens

The creation of an NIC is a long-standing policy of the Greens. In August 2009, the then leader of the Greens, Senator Bob Brown, put forward a motion calling on the Rudd Government to consider the establishment of an NIC. It was not passed, with Labor and Coalition senators voting against it. The Greens have since introduced Bills to establish an NIC in 2010, 2012, 2013 (restored to the notice paper in 2016), 2017 and 2018.

The National Integrity Commission Bill 2018 (No. 2) is based largely on the Bill introduced by the Independent Member, Cathy McGowan (see below), with two key changes: a more restricted definition of 'corrupt conduct' in relation to current and former public officers (see subclause 9(4)) and limiting

investigations of conduct that occurred before the provisions commence to the preceding ten years.

The Greens' 2019 election policy states that its proposal for a federal anti-corruption commission has been costed by the Parliamentary Budget Office (PBO) at \$75.6m over the forward estimates.

Australian Labor Party

For many years, Labor remained open to considering an NIC, but said that the case had not yet been made to establish one. Then in January 2018, Labor announced it would establish an NIC, with legislation to be introduced within 12 months of being elected to government.

Although Labor has not set out its model in detail, it has stated that it will be

based on seven principles. These include that the NIC would:

- 'operate as independent statutory body, with sufficient resources to ensure it is able to carry out its functions regardless of the government of the day'
- have 'sufficiently broad jurisdiction and freedom of action to operate as a standing Royal Commission into serious and systemic corruption by Commonwealth parliamentarians or their staff, public servants, statutory office holders, the Commonwealth judiciary and the Governor-General'
- be granted the investigative powers of a Royal Commission

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- have the discretion to hold public hearings when it determines that it is in the public interest and
- be empowered to make findings of fact (and to refer actions that may constitute criminal conduct to the Australian Federal Police (AFP) or the Commonwealth Director of Public Prosecutions (CDPP)).

Labor's policy stated that its proposal had been costed by the PBO at \$58.7 million over the forward estimates, but that the final costs would be determined once the design was finalised. Following the 2019–20 Budget, Labor stated that it would 'at least be matching' the Government's funding commitment, and would go further if necessary.

Cross-bench Bill

Ms McGowan's National Integrity Commission Bill 2018, which she introduced in November 2018, would establish an NIC that includes a National Integrity Commissioner and a Whistleblower Protection Commissioner, and incorporates the existing Law Enforcement Integrity Commissioner. The National Integrity Commissioner would be responsible for investigating suspected corruption (based on a broad definition of 'corrupt conduct'), and for promoting integrity and preventing corruption, including assisting agencies with preparation of biennial integrity and anti-corruption plans, providing education and training, developing and implementing a research strategy and leading and coordinating national efforts to prevent, detect, reduce and remediate corruption.

Coalition

Having previously resisted calls for an NIC, the Government announced in December 2018 that it would establish a CIC and released a consultation paper on its proposed model. The Government then sought public submissions and established a Review Panel to advise it on development of legislation for the CIC (37 submissions have been published on the Attorney-General's Department website).

The proposed CIC would consist of a law enforcement integrity division (LEID) that continues the current structure and remit of the Australian Commission for Law Enforcement Integrity (ACLEI) (with its jurisdiction extended to four additional

agencies) and a public sector integrity division (PSID) to cover the remaining public sector. The LEID would investigate corrupt conduct (giving priority to serious and systemic corruption) on the basis of the existing definition of corrupt conduct in the *Law Enforcement Integrity Commissioner Act 2006*. The PSID would only investigate 'conduct capable of constituting a nominated range of specific criminal offences. It will only investigate criminal offences, and will not make findings of corruption at large'. The threshold for commencing investigations would be higher for the PSID and while the LEID would have discretion to hold private or public hearings, the PSID would be limited to private hearings. The CIC would also have responsibility for prevention, analysis and outreach activities across government.

The 2019–20 Budget allocated \$104.5 million over four years (including capital funding of \$10.0 million) to establish the CIC.

Some key points of difference

Overall, the Government's proposed model limits investigations to a narrower range of suspected corrupt conduct than the NICs proposed in the Greens and McGowan Bills, largely because of limitations on the PSID in both the definition of corrupt conduct and the threshold for commencing an investigation. While Labor's policy does not include a proposed definition of corrupt conduct or threshold for investigation, the Shadow Attorney-General's criticism of the limits placed on the PSID suggests that Labor expects its model to have a broader remit.

Under the Greens, McGowan and Labor models, the NIC would have the discretion to hold public hearings. Under the Government's proposal, only the LEID component would have the discretion to hold public hearings (as ACLEI currently does). Existing state and territory anti-corruption commissions are able to hold public inquiries or hearings if the relevant threshold is met.¹ The Senate Select Committee on a National Integrity Commission reported that 'The effectiveness and use of public versus private hearings by state anti-corruption agencies, and whether or not an NIC should be empowered to hold public hearings were the subject of lengthy debate' during its inquiry, but it did not make a recommendation on the matter.

The Senate inquiry also considered evidence on the appropriate role of the proposed NIC in making findings of corrupt conduct. The Greens and McGowan Bills appear to allow the NIC broad discretion to make reports (including findings and recommendations) about corruption issues (in line with ACLEI's current powers). Under the Government's model, the PSID 'will not make findings of corruption at large'. This approach is intended to avoid what the Government considers to be a 'key flaw' of various state agencies—that 'findings of corruption can be made at large without having to follow fundamental justice processes'. Labor's proposed NIC appears to fall somewhere in between: it 'will only be empowered to make findings of fact', with 'findings that could constitute criminal conduct' to be referred to the AFP or the CDPP.

The Greens and McGowan Bills would each establish a Whistleblower Protection Commissioner within the NIC, the functions of which would include receiving and investigating 'disclosures of wrongdoing' and providing 'advice, assistance, guidance and support to persons and agencies who disclose wrongdoing'. The Government and Labor proposals are silent on this aspect, though Labor has separately committed to establishing a Whistleblowing Protection Authority.

All of the proposals include broader preventative and educative functions for the NIC/CIC. However, the lack of detail on this aspect in the Government and Labor proposals makes it difficult to draw any meaningful comparisons on the scope of those functions.

References

1. *Independent Commission Against Corruption Act 1988* (NSW), section 31; *Crime and Corruption Act 2001* (Qld), section 177; *Corruption, Crime and Misconduct Act 2003* (WA), section 140; *Integrity Commission Act 2009* (Tas), section 48; *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), section 117; *Independent Commissioner Against Corruption Act 2017* (NT), sections 39, 40 and 46; *Integrity Commission Act 2018* (ACT), section 143. The *Independent Commissioner Against Corruption Act 2012* (SA) does not currently permit public hearings. This will change if the Independent Commissioner Against Corruption (Investigation Powers) No. 2 Amendment Bill 2018 is passed (see proposed Schedule 3A).



Australian Attorney-General Christian Porter unveils the proposed watchdog on Monday. Picture: AAP

Federal MPs to face corruption scrutiny

GREG BROWN

Journalist

A new commonwealth anti-corruption body proposed by the Morrison government would conduct secret hearings and investigations of criminal offending by MPs and public servants before findings were passed to prosecutors, opening up a major political battle with Labor, which wants proceedings to be public.

Attorney-General Christian Porter said a Commonwealth Integrity Commission could be set up by early next year as he released draft legislation for a two-tier body that would subject law enforcement officials to greater public scrutiny than politicians, triggering an immediate backlash from Labor.

The proposal was also criticised by the Greens and key Senate crossbenchers within hours of its release, crueling hopes of the proposal passing parliament in its current form, with the design of the new watchdog to be put to a five-month consultation period.

Claiming the body would have stronger investigatory powers than a royal commission, Mr Porter said he did not think politicians and senior public servants accused of corruption should be subjected to public hearings.

Under the draft legislation unveiled on Monday, the CIC would investigate referrals of corruption, conduct private hearings and submit its findings to the Director of Public Prosecutions.

The DPP would then recommend whether police should lay criminal charges against an alleged corrupt official.

Mr Porter said it would be up to the CIC — a proposed statutory agency that would subsume the Australian Commission for Law Enforcement Integrity — to determine with “great care” whether to publicly reveal the investigation of federal MPs.

The body would have powers to compel people to give sworn evidence at hearings and provide information including documents, with potential prison terms of up to two years for non-compliance.

It would also have powers to search people, arrest people, seize property,



Opposition legal affairs spokesman Mark Dreyfus. Picture: Kym Smith

They have not listened to the criticisms that said that you cannot just investigate criminal offences. They have not listened to the criticisms that said that an integrity commission that is worth its name must be able to start its own investigations.

tap phones and use other surveillance devices.

Investigators would be able to assume false identities and confiscate passports.

The CIC would not initiate investigations and could only respond to referrals, although there would be mandatory reporting of suspected corrupt behaviour by heads of government departments and agencies.

Mr Porter said that the government did not want to make the same mistake as state corruption bodies in NSW and Western Australia where careers had been “absolutely destroyed” by public hearings. “We do not consider that a body with this type of power should be having at its discretion the ability to hold public hearings,” Mr Porter said.

“It is a fair and reasonable thing to note that the public part of the process will be in a court once the public sector division has used the powers greater than a royal commission to investigate anything that it considers evidence as a reasonable suspicion of corruption. The government takes the view that ultimately a court should be making a public determination of guilt or innocence, not a report.”

Labor, the Greens and key crossbenchers — including Rex Patrick, Jacqui Lambie and Stirling Griff — savaged the draft laws for not including

public hearings, while One Nation’s two senators reserved judgment.

The government needs the support of three out of five crossbenchers to pass legislation that is opposed by Labor and the Greens, with opposition legal affairs spokesman Mark Dreyfus warning on Monday that the proposed body was the “sort of integrity commission that you have when you don’t want to establish an integrity commission”.

“They have not listened to the criticisms that said that you need to have public hearings,” Mr Dreyfus said. “They have not listened to the criticisms that said that you cannot just investigate criminal offences. They have not listened to the criticisms that said that an integrity commission that is worth its name must be able to start its own investigations.”

The government has brought forward the draft legislation just weeks after Mr Porter said he was delaying its release because there were “more immediate priorities” during the COVID-19 pandemic.

Scott Morrison also came under attack from Labor during the last parliamentary fortnight for holding off on establishing a new corruption watchdog, a Coalition election commitment, with the opposition linking the delay to allegations of inappropriate spending by senior executives at the corporate regulator and Australia Post.

Australia Post chief executive Christine Holgate resigned on Monday over Cartier watch bonuses while the former deputy chairman of the Australian Securities and Investment Commission, Daniel Crennan, resigned over \$70,000 in relocation costs.

Law Council of Australia president Pauline Wright criticised the bill for imposing different trigger points for the commencement of corruption investigations for politicians and law enforcement officials.

“There should be an alignment of powers between the divisions and the same broad definition of ‘corrupt conduct’ should apply,” Ms Wright said.

She said there should be discretion to hold hearings in public “if in the public interest to do so”.

Under Mr Porter’s proposed body, politicians and most senior public servants would come under the Public Sector Integrity Division, which could only pursue potentially criminal conduct.

Officials in law enforcement agencies would come under the purview of a separate division subject to public hearings at the discretion of investigators.

Mr Porter said he would consider how members of the federal judiciary could be subject to “an enhanced system of integrity” after they were excluded from the remit of the CIC. The commission will have a \$147m budget over the forward estimates and 172 staff.



Could there be corruption in the halls of Australia's Federal Parliament?

A bark with bite:

Australia needs an ICAC-styled national independent watchdog

RACHEL GRAY

UNSW's Dr Mark Rolfe supports the independent funding model proposed by ICAC for a national anti-corruption body.

Politicians often give "rubbish reasons" for cutting funds to Australia's essential state and federal anti-corruption watchdogs, says UNSW's Dr Mark Rolfe.

"I say they are rubbish reasons because it just means they reduce the number of people who are involved in that agency or department," says Dr Rolfe, a political expert from UNSW Arts & Social Sciences.

He cites 'efficiency dividends' as one of their main excuses for cutting funds to anti-corruption authorities.

Budget cuts to the Independent Commission Against Corruption (ICAC) and the Australian National Audit Office (ANAO) are causes for major concerns, Dr Rolfe says.

The ANAO — responsible for exposing the sports rorts scandal involving former Liberal MP Bridget McKenzie — has had \$14 million cut from its operations in the 2020 federal budget.

And ICAC is being expected to make nearly \$8.5 million in savings in the nine years to 2029. In 2019, ICAC Commissioner Peter Hall told a parliamentary inquiry that the state watchdog would have to let frontline staff go as a result of the \$673,000 in cuts forecast in the first round beginning in 2020.

Dr Rolfe says for ICAC and the ANAO, budget cuts mean reduced numbers of people to "go ferreting around" in places to expose political corruption.

"Reduced budgets mean reduced investigations," he says.

ICAC's most recent high-profile political case investigated the business dealings of former Liberal Party MP Daryl Maguire. Mr Maguire has admitted to using his parliamentary position for personal gain, including an illegal cash-for-visa scheme. ICAC has not yet set a date for the final report but it will be delivered "in due course", a spokesperson says.

It is an investigation that heard evidence from NSW Premier Gladys Berejiklian, after transcripts of phone calls forced her to admit the pair had been in a "close personal relationship".

Ms Berejiklian has said she was unaware of Mr Maguire's business dealings.

Dr Rolfe says he will be surprised if NSW Treasurer Dominic Perrottet announces further funding cuts for ICAC in the upcoming NSW budget. The UNSW politics lecturer says it would be too close to the recent inquiry involving party members Mr Maguire and Ms Berejiklian. "I don't think that'd be good publicity for the state Liberal party," Dr Rolfe says. "But funding cuts might happen later on."

In an unrelated inquiry, the Australian Federal Police is investigating an ANAO report that found land in Badgerys Creek valued at \$3 million was sold to the government for \$30 million.



And among other political investigations, in 2017 ICAC found former Labor ministers Eddie Obeid, Tony Kelly and Joe Tripodi had engaged in serious corrupt conduct over such dealings as the push for a public-private contract with the Australian Water Holdings company.

The need for a national independent watchdog

Dr Rolfe says Australia needs an independent national watchdog like ICAC because there are likely to be “plenty more Maguires” sitting on federal parliamentary backbenches.

He has also dismissed as “a joke” the Morrison government’s plan for a national integrity commission.

“It’s not going to be looking at politicians or at the relations of ministers and departments, which is what the current ICAC does,” he says.

The federal government’s proposed Commonwealth Integrity Commission (CIC) would have two ‘integrity divisions’: one for the police force, and the other for public servants.

The Public Service Integrity Division (PSID) is unlikely to have public hearings, investigations would be limited to criminal conduct rather than ‘corruption at large’, and whistle-blower protections are also unlikely.

“The commission proposal came out in late 2018, in advance of the federal election,” Dr Rolfe says. “And it’s been slow ever since [the election in May 2019]. So it was only advanced then for publicity purposes by [Prime Minister] Scott Morrison.”

Federal Attorney-General Christian Porter said this year that the draft bill for the CIC was ready for release but had been put on hold while the government focused on COVID-19.

But Dr Rolfe says the federal government had all of 2019 to get the draft legislation for a national integrity commission on corruption up and running.

“We now get these excuses from Christian Porter that we’re busy with coronavirus – as if a government can’t do more than one thing at a time,” Dr Rolfe says.

“But I don’t think Morrison wants a federal ICAC looking under all the rocks and stones and discovering things under there that might damage his government.

“So I doubt anything serious will come from the integrity commission. If it ever gets to parliamentary legislation, it will be opposed by Labor and Greens who won’t take it seriously.”

A watchdog barking at defence

Dr Rolfe says any national anti-corruption watchdog should be empowered to look into departments such as Defence.

“They’re spending tens of billions of dollars on submarines, the F-35s, on new frigates, and a lot of the time we don’t know what the workings are of the funding and supplies,” he says.

“So I think there’s a great deal of room there for investigation, which is also why the government doesn’t want it.”

Towards an independent ICAC funding model

Dr Rolfe says all state, territory and national watchdogs should be funded by

the recent model proposed by ICAC in order to limit budget cuts by government.

“A way of dealing with taxpayers’ money is by getting it out of the reach of politicians,” Dr Rolfe says.

“So that is by setting up a funding model that assures those so-called ‘efficiency dividends’ are not applied to the Audit Office, ICAC or any other oversight body such as the Ombudsman office.”

He says the ICAC funding model would have an independent budget assessor nominated by a panel of two, consisting of either the Ombudsman, the chair of the Independent Pricing and Regulatory Tribunal and an information assessor.

The nominees, he says, would then take their proposed ICAC budget to the NSW Parliament “because Parliament is the body that authorises the spending of money”.

The budget would then be put to the presiding officers; the speaker and the president of the two houses, he says.

“The independent budget assessor would then have access to consultants who would look at the budget provided by ICAC,” he says. “The independent budget assessor would work with ICAC and the Treasury. And if there’s a conflict between Treasury and ICAC, the assessor would make the decision and that person’s authority would hold.”

“It is like an independent arbitrator model,” he says. “So that would be one way of being able to properly assess a budget and to remove it from political interference.”

Why the resistance to a national anti-corruption commission?

IAN CUNLIFFE

Scott Morrison and Christian Porter are insisting that a new federal integrity body could not look at old corruption. What is that about?

Is it because there are skeletons in too many people's closet? Is it the extent to which Alexander Downer and other senior officials benefitted financially from their activities during the Australian Government's shenanigans on behalf of Woodside and others over oil and helium, which should always have been Timor-Leste's, in the Timor Sea?

Proposing the case for the commission feels like pushing against one of those beautifully crafted doors that will open to the slightest touch. Everyone supports a federal anti-corruption commission, including 85% of the population. Federal Labor came out in support in January 2018.

In December that year, Prime Minister Morrison, with Attorney-General Christian Porter at his side, announced he would move to establish one. An appropriate discount needs to be made for propensity of this Government to announce many more things than it ever gets around to doing. Indeed, the Big Announcement seemed to be a cunning ploy to buy time and do nothing. That seems a likely story with what Morrison and Porter called the Commonwealth Integrity Commission.

All eight states and territories have such an anti-corruption body. There seems to be a goodly amount of corruption and lack of integrity across the country to give them all plenty to do. So it would be surprising if the biggest spending Australian government by far – the Federal Government – was spared the cancer of corruption when it is part and parcel of public life in the states and territories.

In the latest case to hit the headlines, it has been shown that being a member of the NSW's Parliament doesn't preclude a person from finding the richest pickings in the federal arena – I refer to the activities of former NSW politician Daryl Maguire and his bags of cash for migration visas. His long-time squeeze, NSW Premier Gladys Berejiklian, dismissed Maguire's

extra-curricular activities as just the sweet nothings of a big talker.

But in the federal sphere of migration, Maguire was apparently able to find those shopping bags full of cash that seem to proliferate around Macquarie and Sussex Streets in Sydney. That Maguire has fallen to a NSW probe says much about NSW having an ICAC and the Feds having nothing comparable.

While there is an Australian Commission for Law Enforcement Integrity (ACLEI), few people would even know of its existence. It is this body that Morrison and Porter proposed to transform into the Commonwealth Integrity Commission. The ACLEI was established 14 years ago. Its latest annual report (2018-19) is an underwhelming document, with the Commissioner's foreword reporting "five prosecutions arising from ACLEI investigations being concluded, all with convictions. A further five prosecutions were before the courts at the end of the reporting period, and two people were awaiting sentencing". No further detail was given.

An internet news search for ACLEI reveals that one of its long-running investigations was against the former Australian Border Force commissioner, Roman Quaedy. ACLEI found he acted corruptly, but he is not to be prosecuted due to insufficient evidence. There is apparently also an inquiry into Crown Casino's arrangements to facilitate the entry into Australia of rich gamblers.

The case for ICAC-type bodies is made in an understated way even on the website of the federal Attorney-General's Department: "Corruption has a corrosive impact on society. It undermines democracy and the rule of law, as well as distorting market forces and paving the way for organised crime and terrorism."

To its great discredit, the Federal Government has been far more active in prosecuting public servants who have

drawn public attention to corrupt and other highly inappropriate activity by their superiors and colleagues than in punishing the corrupt conduct.

If it is to continue without an effective anti-corruption body, the Commonwealth might like to find a Latin scholar to render a motto for the Coat of Arms. The present motto "Australia" is prosaic. In Latin, "Protect the guilty. Kill the messengers" would be apt and have gravitas. Witness K, Richard Boyle, David McBride and many other whistleblowers dealt with in secret would be appropriately honoured.

Hark back to the days when demonstrations were lawful and shouted slogans succinct: "We need an ICAC. And we need it now." But not just any ICAC. It needs sharp teeth, powerful jaws and eyes that can penetrate into murky places.

Morrison and Porter seem to be proposing a sleepy body similar to the Australian Commission for Law Enforcement Integrity, with limited jurisdiction and few powers. Would Daryl Maguire have come to attention under such a body? Would Eddie Obeid and his colleagues? I doubt it.

Maybe Morrison and Porter just really don't like anti-corruption bodies, and take the view that, if we have to have one at all, it should be as weak and hamstrung as possible.

Ian Cunliffe

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others, He would befriend them
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That was His way of sharing the
inner-peace and mind of purity. It paves
the way for the liberation of the mind
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2,500 years later, the Academy is
continuing the tradition as taught by
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Vajra Sheng-Yuan, one of the followers
at the Academy, will host a charity
piano concert at Hobart Town Hall,
featuring works from Beethoven,
Chopin and Liszt, on 13 Dec.

Funds raised will be donated to Variety
Children Tasmania. Find out more at
<https://www.eventbrite.com.au/e/shen-g-yuan-lynch-charity-piano-concert-2020-tickets-121837734945>



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