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Challenges in establishing a federal integrity commission

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The need for a Commonwealth Integrity Commission

In each of my past roles as President of the Law Society, and of the Law Council of Australia and as current President of the NSW Council for Civil Liberties, I have advocated for the establishment of a Commonwealth integrity watchdog.

But that's not to say that civil liberties organisations and law associations in Australia have always wholeheartedly supported such agencies. For instance, NSW Council for Civil Liberties has in the past expressed serious reservations about anti-corruption agencies, which sit outside the established justice system and wield extraordinary coercive and covert powers. But we have cautiously shifted our position over time in response to the growing threat that increasingly complex forms of corruption pose to the public good in Australia.

In recent times, we have seen a plethora of concerning activities by government. There have been inquiries by the Auditor-General into Commonwealth grants programs, leading to allegations of pork-barrelling, which show why a national anti-corruption watchdog is needed.

If the public interest is to be protected against the corrosive effects of serious lapses in integrity and systemic corruption, NSWCCL acknowledges that the establishment of anti-corruption agencies equipped with extraordinary investigative powers – albeit with proper constraints and safeguards – is both necessary and proportionate.

In a 2020 letter to Tanya Davies MP regarding hearings in ICAC, the Law Society of NSW said:

> *The ICAC plays a key role in protecting the integrity of our public government institutions. Public confidence in the various integrity mechanisms available (of which the ICAC is but one) is particularly important in the context of low public trust in government. We understand that a study commissioned by the Museum for Australian Democracy and the Institute for Governance and Policy Analysis and conducted by the University of Canberra in 2016 found that only 5% of Australians "usually" trust government.*[1]

Corruption undermines the integrity of our political system. It distorts the policy-making process, diverts resources from public good objectives and undermines public trust in our politicians, governing institutions and public administration.

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1 https://www.lawsociety.com.au/sites/default/files/2020-12/Letter%20to%20Joint%20Committee%20on%20ICAC%20-%20Reputational%20impact%20on%20an%20individual%20being%20adversely%20named%20in%20the%20ICAC%27s%20investigations%20-%2028%20August%202020.pdf

Corruption harms everyone. It breeds inequality and injustice and undermines the ability of governments and people to fulfil their potential to achieve the common good, especially in challenging times.

Barriers to a Commonwealth Integrity Commission

So, why is it that we don't have an integrity commission at the Commonwealth level? There are a number of barriers – a lack of political will being one of them, which I'll come to in a moment. But there are other reasons, which are principled in nature and which deserve to be addressed.

Organisations like the NSW Independent Commission Against Corruption (ICAC) and the Victorian Independent Broad-based Anti-Corruption Commission (IBAC) are set up like royal commissions. They are inquisitorial in nature rather than adversarial like our courts, and the rules of evidence that apply in the courts, governing an individual's right to a fair trial, do not apply.

Understandably, this makes many people uncomfortable. Most in-principle arguments against a CIC stem from that fundamental difference and these arguments usually centre upon the following:

- coercive examination powers
- derivative use of coercively obtained evidence
- the impact on a person's reputation through public hearings
- the impact on legal professional privilege (or client legal privilege)

Examination powers

Strong, and even coercive, examination powers are justified on the basis that it is in the public interest for public sector corruption to be exposed and addressed and the process is not a criminal trial with binding consequences, but an investigation designed to ascertain the facts, expose corruption, and report their findings and recommendations, generally to Parliament. When a commission uncovers sufficient evidence of criminal offences it may refer the matter to that jurisdiction's Director of Public Prosecutions.[2] Proof is to the civil standard, reasonable satisfaction on the balance of probabilities – rather than the criminal standard which requires satisfaction beyond reasonable doubt.

But the fact is that, in reality, anti-corruption hearings can have harsh consequences for an individual the subject of an inquiry, and this raises serious concerns about the fairness of the procedure and 'natural justice'. It has been pointed out that it is the 'procedural flexibility which enables commissions to uncover and receive evidence not available in the usual court system, but which also creates the potential for lack of fairness to affected individuals'.[3]

With respect to IBAC, Liberty Victoria argued in 2010 against the power to compel witnesses to answer questions and the power to abrogate the privilege against self-incrimination, emphasising that 'the civil liberties these powers abrogate were hard won over many centuries' and that 'normal law enforcement agencies are denied these powers because of their potential for abuse'[4]. Liberty Victoria further argued that:

> *Legislation investing the anti-corruption body with these powers may well be inconsistent with some of the human rights contained in the Charter of Human Rights and Responsibilities, in particular*

[2] Integrity Commission Act (Tas) s 78(3)(d); CMC Act (Qld) s 49; ICAC Act (NSW) ss 53, 74A; PIC Act (NSW) s 15(1)(a)
[3] J. Ransley (1994) 'The Powers of Royal Commissions and Controls over Them', *Royal Commissions and the Making of Public Policy,* South Melbourne, Macmillan Education pp. 23-24 y
[4] Liberty Victoria (2010) 'Position Paper on the Proposed Victorian Integrity and Anti-Corruption Commission', Melbourne, Victorian Council of Civil Liberties, p. 2, http://www.libertyvictoria.org.au/

those in s 25(2)(k) (right not to be compelled to testify against oneself), s 24 (right to a fair hearing), s 13 (right to privacy and reputation), and s 8(3) (right to equal protection of the law).[5]

The Law Institute of Victoria (LIV) also expressed concerns in 2010 about the extent of IBAC's powers. While recognising that an anti-corruption body requires coercive powers for 'adequate information gathering', it emphasised that 'the exercise of such powers must be accompanied by appropriate safeguards to protect the rights of individuals'[6].

The LIV's concerns were most powerful with respect to abrogating the privilege against self-incrimination, stating that 'witnesses appearing before an anti-corruption body for questioning should be able to refuse to answer a question or to provide information to a Commissioner, on the grounds that such information might incriminate the person'[7].

The LIV further states that the privilege against self-incrimination in criminal proceedings is 'a fundamental human right' as expressed in section 25 of the Victorian Charter of Human Rights[8]. The LIV also argued that 'there should be extreme reluctance to allow abrogation of client legal privilege during anti-corruption investigations'[9].

The Law Council of Australia has also expressed similar serious concerns but, on balance, like NSWCCL, has supported a CIC, provided there are guaranteed safeguards in place to protect individual rights and freedoms.

A significant safeguard for witnesses appearing before commission hearings is a guaranteed right to legal representation, which has been advocated by the Law Council of Australia regarding a CIC as well as other law associations with respect to State anti-corruption bodies. The LIV stated in 2010 with respect to IBAC that: 'a practice to allow legal representation is insufficient and we strongly recommend that the right to legal representation for witnesses be entrenched and safeguarded under statute…'[10]

Derivative use of coercively obtained evidence

Although coercively obtained evidence cannot be used in civil or criminal proceedings against the person, this 'use immunity' does not generally restrict the use of derived material. This means that immunity from use in criminal or civil proceedings only affords partial protection and is not a comprehensive safeguard[11].

For instance, an answer compelled from a witness, although not itself available to be used, may point investigators in a direction or to another source allowing them to obtain admissible evidence against that person'[12]. Further, the immunity protects only the witness giving the evidence but if it also implicates another person, then the evidence may be used to support charges criminal or civil

[5] ibid., p. 3.
[6] Law Institute of Victoria (2010) 'Integrity and Anti-Corruption System Review', Submission to the Integrity and Anti-Corruption System Review, Melbourne, LIV, p. 8, http://www.liv.asn.au/Membership/Practice-Sections/Administrative-Law---Human-Rights/Submissions/Integrity-and-Anti-Corruption-System-Review.aspx?rep=1&glist=0&sdiag=0&h2=1&h1=0.
[7] ibid, p. 9.
[8] ibid.
[9] ibid.
[10] ibid p 10.
[11] https://apo.org.au/node/29523 p 9.
[12] Ibid, quoting Peter Hall

proceedings against that other person, and in disciplinary proceedings brought against public servants [13].

Impact on a person's reputation through public hearings

And of course, the use immunity does not protect reputations: "even though witnesses may be protected from having their evidence used against them in a court of law, they are not protected from the use it is put to by the media, except on the rare occasion when a commission imposes a suppression order. Such publicity may cause serious and damaging effects to reputation"[14].

In regard to public versus private hearings, the LIV stated that 'the public interest will usually fall in favour of private hearings' in order to 'protect the privacy and reputation of witnesses'[15].

There is good reason for the level of concern that has been expressed with respect to integrity commissions being able to hold public hearings. There is a serious tension between the potential for irreparable reputational damage for individuals being publicly investigated without the protection of a fair trial before a court and the desirability of a well-constituted Commonwealth integrity that can expose corruption in the public interest.

It is also argued that public hearings can pose a risk of prejudicing a fair trial in the event of a criminal prosecution arising from the investigation, and that they can endanger a witness's personal safety. [16]

These are factors that should, and usually are, taken into account by commissions when determining whether it is in the public interest to hold a hearing in public or private.[17]

The impact on legal professional privilege (or client legal privilege)

Client legal privilege, also referred to as legal professional privilege, is a common law principle having the effect of protecting confidential information exchanged between clients and their lawyers. The privilege belongs to the client, and lawyers cannot be compelled to disclose information revealed to them by a client unless their client waives their privilege. The rationale for client legal privilege is that 'the public interest in the administration of justice' is served 'by encouraging full and frank disclosure by clients to their lawyers'.[18]

Subject to exceptions which vary from State to State in Australia, legal professional privilege is generally preserved in the enabling legislation of the anti-corruption commissions[19].

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[13] Ibid, quoting J. Ransley (1994) 'The Powers of Royal Commissions and Controls over Them', *Royal Commissions and the Making of Public Policy,* South Melbourne, Macmillan Education

[14] Ibid, quoting J. Ransley

[15] Op cit Law Institute of Victoria (2010) p 10.

[16] Op cit https://apo.org.au/node/29523 p9, quoting Hall and Donoghue

[17] Ibid.

[18] Ibid p 10, quoting Hall (2004)

[19] Ibid p 10, noting that Legal professional privilege is expressly protected in Queensland in s 192(2A) of the CMC Act. In NSW, legal professional privilege is limited to communications in relation to the appearance of a person at an ICAC examination or public inquiry or PIC hearing (see s 37(5) of the ICAC Act and s 40(5) of the PIC Act). In WA, legal professional privilege does not apply to any privilege of a public authority/officer (see s 144 of the CCC Act). In Tasmania, if a person's claim of privilege is not accepted by the Integrity Commission, that person may apply to the Supreme Court to have the privilege determined (see s 92 of the Integrity Commission Act).

Political barriers

Apart from these philosophical barriers, there are also practical, political barriers to the establishment of a Commonwealth integrity commission.

The Coalition Government has failed to enact the legislation necessary to establish a CIC despite Prime Minister Morrison promising to do so since 2018 and despite multiple inquiries and reviews dating back to 2016.

One of my first official meetings in 2020 as newly-elected President of the Law Council of Australia was with the then Attorney General, Christian Porter. This was well before any controversy around his alleged behaviour as a university student, which he has vehemently denied, came into public view. He promised that before the year was out, the Government would have the legislation in place.

Of course, despite years of consultation, that did not happen in 2020, it did not happen in 2021 despite promises by new Attorney-General Michaelia Cash, and it has not happened in 2022 despite the potential electoral boost that might have resulted from taking a strong stand in favour of an integrity watchdog.

The Government has released its draft legislation but, if passed by Parliament, would result in the weakest model in Australia.

I will consider in more detail the problems with this model later, together with the elements I would suggest should be incorporated in a preferred model, but for the moment, suffice to say, there has been a clear reluctance by the present Coalition Government to introduce a model that would be effective in exposing corruption and lapses in integrity among our federal politicians.

Where we see a reluctance by our political leaders for light to be shone on their activities, both political opponents and the electorate begin to ask why. Such reluctance draws suspicion.

Shadow Attorney-General Mark Dreyfus is reported to have said: "This is a government that lives in fear of accountability and what a powerful, independent, and transparent anti-corruption commission would reveal".[20]

And, of course, if the Government does have secrets to hide, no amount of pressure from civil society for the establishment of a properly empowered and resourced CIC will be sufficient to make them change their mind and establish a CIC without further delay. The only way for the public to show their displeasure is at election time.

Integrity and accountability are central to maintaining public trust and confidence in all levels of government and its agencies. They are fundamental to the delivery of citizens' expectations and aspirations for Australia to be a fair, prosperous and ethical society.

A more transparent and accountable public sector would improve public trust and confidence in the government, which has been in steady decline in recent decades. In a position paper published in 2020, Transparency International Australia reported that while the Government's leadership in the early part of the COVID-19 crisis:

[20] https://www.abc.net.au/news/2022-02-07/no-anti-corruption-commission-before-federal-election/100809796

did see a boost in public trust in government, the long-term trend has been one of decline. This downward trend is mirrored in Transparency International Corruption Perceptions Index: Australia's ranking on the global corruption scale has fallen steadily since 2012.
This synthesis of expert opinion is also mirrored in Transparency International Australia's survey of the Australian public's perception of corruption. Our most recent Global Corruption Barometer found:
85% of Australians believe that at least some federal members of parliament are corrupt.[21]

So, as I've said, in 2017, the NSW Council for Civil Liberties pushed aside its concerns about extra-judicial corruption watchdogs, and identified the urgent need for a broad-based national anti-corruption agency and called upon the Government to establish it without delay. The proviso was that there must be guaranteed safeguards in place to ensure fair processes, thereby protecting civil rights and freedoms.

In 2017, NSWCCL put our views in a submission and gave oral evidence to the Senate Select Committee Inquiry on a National Integrity Commission (NIC), which continued the work of the 2016 Inquiry on the same topic.

Our view on balance was, and remains, that the threat of corruption to the public good in Australia – undermining the integrity of our political system, distorting the policy making process, diverting resources from public good objectives and generally undermining public trust in our political class, governing institutions and public administration – is too great, and is growing.

If not more effectively checked, corruption poses a threat to democratic values and processes–including individual rights and liberties. From a civil liberties perspective, the balance between greater public good and greater public harm has shifted. In our view the Government's claim that its current 'multi-agency' approach is effective is demonstrably wrong.

In its 2020 letter, the Law Society of NSW aptly said:

> *We acknowledge that the ICAC has broad powers, given that "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."*
>
> *We note that the ICAC is an investigative body, and not a court of law. Its function is not to adjudicate between citizens and the state, nor between citizens. In the Law Society's view, on balance, it appears that recent legislative and operational reforms have struck a better balance between the anti-corruption objectives of the ICAC, and risk of reputational damage to individuals involved in public inquiries. Current procedural fairness measures should continue to be afforded to witnesses involved in the ICAC's investigations.*[22]

If the public interest is to be protected against the corrosive effects of serious and systemic corruption, the establishment of anti-corruption agencies equipped with extraordinary investigative powers – albeit with proper constraints and safeguards – is both necessary and proportionate.

Individuals' civil liberties

NSWCCL's support for a CIC is entirely dependent on strong constraints and safeguards that establish the optimal balance between individual rights and the effectiveness of a CIC in exposing corruption for the public good. Getting this balance right has been well traversed in NSW since ICAC's establishment in 1988 and subsequently in other states as the operation of the state anti-corruption bodies has come

[21] https://transparency.org.au/a-fit-for-purpose-national-integrity-commission/
[22] Op cit p 1

under much scrutiny and review. The wealth of state level experience on which to develop its recommendations.

Several civil liberties must be considered in this context, including:

- the presumption of innocence,
- the right to a fair trial,
- a person's right not to self-incriminate,
- the right to equal treatment under the law and due process,
- the protection of legal professional privilege, and
- the right to not be defamed.

An appropriate model will protect these fundamental rights, as does the model proposed by Independent MP Helen Haines, for example.

That tension between the potential for unfair reputational damage to individuals being publicly investigated, versus the undoubted public good that flows from investigation and exposure of corruption through open hearings must be resolved. While hearings should generally be held in private, public hearings should occur where the public interest demands it.

CCL considers that ICAC's public hearings have overwhelmingly been of public benefit, providing proper transparency and allowing public scrutiny of part of its operations.

They have also exposed corruption in NSW and put pressure on Governments to reform.

Public hearings ensure proceedings are not cloaked in secrecy and increase public trust. Widespread corruption has been uncovered by inquiries dating back to the 1980's Fitzgerald inquiry investigating the Queensland police. This led to due resignations and imprisonment of corrupt former ministers and officials.

There has been criticism of NSW ICAC's use of public hearings, including from the Prime Minister over the treatment of former NSW Premier Gladys Berejiklian. Ms Berejiklian resigned as NSW premier after the state's Independent Commission Against Corruption (ICAC) announced it was investigating whether she breached public trust when she awarded grants to community organisations between 2012 and 2018, when she was in a personal relationship with then-MP Daryl Maguire. The Prime Minister likened ICAC to a "kangaroo court" and said she had been "done over by a bad process".[23]

CCL cannot agree with those criticisms. This was not an inquiry into the former Premier's personal relationship with a man – it was an inquiry that went to the heart of political integrity, considering whether in wielding her substantial powers as a politician she:

- "breached public trust by exercising public functions in circumstances where she was in a position of conflict between her public duties and her private interest",
- engaged in conduct that "constituted or involved the partial exercise of any of her official functions" in connection with grant funding,
- conduct that "constituted or involved the dishonest or partial exercise of any of her official functions and/or a breach of public trust by refusing to exercise her duty" to report matters to ICAC, or
- conduct that "was liable to allow or encourage the occurrence of corrupt conduct by Mr Maguire".

[23] https://www.abc.net.au/news/2021-11-25/federal-iac-bill-vote-parliament-helen-haines/100649316

These are all proper matters for an anti-corruption body to consider. Ms Berejiklian was treated respectfully as a witness to the inquiry and asked proper questions. As former CCL President and former NSW DPP Nicholas Cowdery said in November 2021: “An assessment of Berejiklian’s experience of ICAC provides no basis, as the Prime Minister asserts, for withholding a federal commission or designing one that is intended to prevent political corruption from being exposed, as the Government would have it.”

What should the scope be?

What do we expect of our politicians? It is essential that our leaders and their agencies act for the good of the public – that they act in the public interest and not in their own private or party interests.

If there is evidence that a politician or federal bureaucrat has committed a criminal act, then the criminal justice system suffices. What is lacking is a body that can investigate activities that don’t necessarily amount to crimes – we expect more of our federal leaders than merely not being criminals!

Surely Australians would want our commission to investigate the scandals that have plagued Australian politics? Under the Coalition Government’s Commonwealth Integrity model, none of those scandals would be investigated – not the 2021 Commuter Car Park Project pork-barrelling allegations, the 2020 Sports Grants scandal, the 2019 Crown Casino scandal, allegations of conflict of interest (such as the 2019 allegations involving Minister Angus Taylor’s family business), or potential breaches of the Ministerial Code of Conduct (such as those alleged in 2019 to have been committed by Christopher Pyne and Julie Bishop).

Independent MP, Dr Helen Haines, who has been the main proponent of the cross-bench anti-corruption commission model is recently reported to have said: "We knew a government that sees no difference between taxpayer money and Liberal National party money wouldn’t value integrity, but now they have proven it".[24]

Under the Government’s model, investigations can’t even begin unless a **high bar** is reached of reasonable suspicion of one of a small number of specifically defined crimes. The state anti-corruption commissions’ experiences demonstrate that evidence of corruption is typically unveiled **during** investigations themselves (based on credible allegations).

So, if the conduct doesn’t meet that high bar, even if there were clear and compelling prima facie evidence of breaches of codes of conduct or of other corrupt behaviour, the Commission would have no power even to begin an investigation. Such a limited scope would be unconscionable.

While criminal conduct should, naturally, be a priority, the commission should also be able to investigate other serious forms of misconduct. For example, links between financial contributions and political favours should be explored even if an improper motive – required to meet the criminal threshold – can’t yet be established.

[24] https://www.abc.net.au/news/2022-02-07/no-anti-corruption-commission-before-federal-election/100809796

What should the model be?

Transparency and public hearings

Acknowledging that serious reputational damage may be occasioned by the holding of public hearings, central to NSWCCL's support for a CIC was that it should have this power, to be exercised only where appropriate.

NSWCCL considers that in NSW, ICAC's use of public hearings has overwhelmingly benefited the public good. It has also provided proper transparency to ICAC's investigations which, by allowing public scrutiny of part of ICAC's operations, provides an important dimension of oversight of the agency. It has also been hugely important in exposing the level and nature of corruption in NSW which is a positive in itself- but also generates much needed pressure on Governments to take appropriate anti-corruption action.

The public hearings, in so far as they have built considerable community support for ICAC, also provide some level of protection from inappropriately motivated Government interventions around ICAC's powers.

In its 2020 letter regarding public hearings in ICAC, in making recommendations for the protection of a witness's reputation, the Law Society said that it:

> *agrees with the views of Transparency International Australia (in submissions made in respect of a national integrity commission) that "public hearings for the purpose of an investigation are, in proper situations, essential to the effective operation of an anti-corruption agency." In the Law Society's view, the capacity of ICAC to hold a public hearing can play an important deterrent role, and public hearings can also hold the ICAC to account in respect of the integrity of the investigation itself.*[25]

Mitigating risk of reputational damage

In acknowledging that anti-corruption investigations carry the risk of reputational damage to individuals, and the Law Society of NSW points out that this may have been particularly true prior to the 2015 legislative amendments to ICAC, and its own adjustments to its operational approach. In its letter of 2020, the Law Society made a number of observations with a view to mitigating the risks of reputational damage that may be applied to a Commonwealth Integrity Commission. They included the following[26]:

1. If there is to be a public hearing, one way of managing the risk to reputational damage would be the use of non-publication and name suppression orders as permitted by the current legislation, and the use of pseudonyms and redactions. The ICAC could consider making available more detailed guidance in respect of the question of exercising the discretion to make suppression and non-publication orders, without undermining the value of public hearings.

2. The *Independent Commission Against Corruption Act* 1988 (ICAC Act) requires that the Chief Commissioner, and at least one other Commissioner, agree to a public hearing, otherwise (with a limited exception) hearings are to take place in private.

[25] op cit p. 2.
[26] op cit p. 2.

3. In determining whether to hold a public inquiry, the ICAC must consider a number of factors, including the public interest, and any risk of undue prejudice to a person's reputation, including prejudice that might arise from not holding an inquiry.

4. While there may be instances where corrections of the record would be appropriate, the Law Society did not support a presumption that anyone found corrupt by ICAC (or through another civil forum) has the right to exoneration if a criminal prosecution is not successful.

5. There is merit in considering a mechanism to enable public acknowledgement where a person has suffered significant reputational damage due to an ICAC investigation, in circumstances where criminal proceedings are never instituted.

6. In the Law Society's view, it was important to continue to ensure that procedural fairness is afforded to witnesses involved in the ICAC's investigations and public hearings. In this regard, they noted that in 2018, procedural guidelines pursuant to s 31B of the ICAC Act relating to the conduct of public inquiries to ICAC staff and counsel assisting the ICAC were tabled.

The Government's model

The Government's model has been criticised by the legal profession including the Law Council of Australia as being overly secretive and lacking teeth. It would impose a different and less stringent process on investigations into the activities of politicians and bureaucrats as opposed to law enforcement agencies.

After comparing the features of the existing state integrity commissions with the models proposed by the Morrison Government, the ALP and Helen Haines, the Centre for Public Integrity concluded that "the Government's CIC would be the weakest and least effective integrity agency in the country"[27].

The flaws in the Government's proposed model include an artificial division between matters involving law enforcement agencies (where NSW ICAC-type procedures would apply and in which extended ACLEI functions would exist) and public sector entities, including politicians.

This would see the public sector and politicians held to a less exacting standard and:

- whistle-blowers and the public would be unable to initiate consideration of an inquiry,
- own-motion inquiries could not be initiated,
- no public hearings could be conducted,
- no findings of corruption could be made, and
- no reports could be made public.

Any fair and robust Commonwealth integrity commission would hold everyone to the **same high standards**.

NSWCCL recommended features

NSWCCL made a number of formal recommendations to the Select Committee in 2017 with regard to the features of a properly constituted CIC. Many of these features have been incorporated in the Helen Haines model.

Having regard to the public discourse since 2017, it is NSWCCL's position that a Commonwealth Integrity Commission should:

- have jurisdiction across the totality of national public administration

[27] https://publicintegrity.org.au/wp-content/uploads/2021/10/Weakest-watchdog-FINAL-25.10.21-.pdf

- have the power to investigate conduct by a person not a public official when the corrupt conduct will have an adverse effect on public administration, allowing investigation of those who seek to unduly influence public decision-making.
- have the power to hold public hearings and issue public reports where it is in the public interest to do so. The decision to exercise this power in individual investigations should be decided based on public interest and fairness criteria similar to those in section 31 of the ICAC Act (1988) NSW.
- It should have the power to investigate without first reaching an evidentiary threshold – the appropriate function of an investigation is to find evidence to determine whether any misconduct has occurred.
- It should be able to commence own-motion and third-party investigations.
- It should be able to conduct its investigations with the same powers as a royal commission to hold compulsory hearings (both private and public), conduct public inquiries and make public reports wherever it is in the public interest to do so.
- It should be able to make findings of fact, to be referred to the Director of Public Prosecutions or other enforcement agencies for consideration for prosecution in criminal cases.
- It should be able to make other findings of fact, and issue enforceable recommendations.

Where to from here?

The Commonwealth is now the only jurisdiction in Australia without an independent, specialist anti-corruption agency.

- The Government should take action to establish a broad-based Federal Integrity Commission as quickly as possible
- Australia needs stronger freedom of information and whistle-blower protection laws and a significant reduction of current secrecy laws and provisions relating to public administration are integral to a credible and effective national anti-corruption strategy
- Further work through COAG to develop a comprehensive national framework and strategy to address corruption and assess the nature, extent and impact of corruption in Australia is essential. However, this ongoing project should not delay the threshold decision to establish a broad-based national anti-corruption agency without further delay.