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# **Submission on the proposed Commonwealth Integrity Commission**

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## Summary

We welcome the opportunity to present our views on the proposed Commonwealth Integrity Commission (CIC). The proposed CIC will consist of a 'law enforcement integrity division' incorporating the existing structure, jurisdiction and powers of the Australian Commission for Law Enforcement Integrity (ACLEI), and a new 'public sector integrity division'. Our comments are confined to the public sector integrity division.

The Commonwealth Government's proposal to establish a CIC is an important and timely initiative. It recognises the need for a central body at the federal level with ultimate responsibility for the prevention, detection and investigation of corruption across the public sector. Growing public concern about corruption and misconduct can erode trust in government and weaken democracy.

But the design of the CIC is extremely important for its actual and perceived effectiveness. The Government's initial proposal appears to exclude some powers required for an effective CIC:

- the CIC needs to be able to act on tips and information from the public, media and public officials (including whistle-blowers) – not just from other integrity agencies;
- the CIC should be empowered to investigate serious or systemic corruption risks as well as corrupt conduct; and
- the CIC should publish findings of fact as well as refer any criminal conduct to the Commonwealth Director of Public Prosecutions.

Adequate funding is also important. Unfortunately the proposed funding is insufficient given the CIC's proposed scope.

The Government should address these deficiencies before establishing the CIC. A poorly resourced and narrowly focused CIC is unlikely to be effective at weeding out corruption and serious misconduct.

Other reforms are also needed to strengthen the integrity of decision-making in the federal government. The Government should improve the transparency of policy making and strengthen the accountability of policy makers by:

- improving the visibility of major donors to political parties;
- publishing ministerial diaries so people know who ministers meet with;
- creating a public register of lobbyists with unescorted access to federal Parliament House;
- introducing a code of conduct for all parliamentarians, appointing an ethics adviser, and ensuring all codes of conduct are independently administered; and
- capping political advertising expenditure during election campaigns to limit the influence of money in politics.

Together with a well-designed and adequately-resourced CIC, these reforms would reduce the risk of outright corruption and undue influence.

## 1 Establishing a Commonwealth Integrity Commission is step in the right direction

On 13 December 2018, the Australian Government announced that it will establish a Commonwealth Integrity Commission (CIC) to strengthen integrity arrangements across the federal public sector. The public sector division of the CIC will have a broad jurisdiction, covering the public service, parliamentary staff, Commonwealth service providers and subcontractors, as well as elected officials.

This is a welcome announcement. State integrity commissions have identified cases of corruption and serious misconduct in many parts of politics and the public service.<sup>1</sup> It would be naïve to assume that corruption at the federal level is less prevalent or serious than at state level.

Further, public concern about corruption and misconduct by politicians is growing. Trust in government is at an all-time low: only a quarter of Australians surveyed in 2016 agreed that ‘people in government can be trusted to do the right thing’ and three-quarters agreed that ‘people in government look after themselves’.<sup>2</sup> In a 2018 survey, 85 per cent of Australians thought at least some federal MPs were corrupt.<sup>3</sup>

This widespread loss of trust has consequences. It can make legislating policy change more complex, because it is harder for governments without political capital to enact ‘difficult but

necessary’ reforms. Over time, widespread loss of trust in political institutions can undermine representative democracy.

While there are many causes of falling trust and increasing exasperation with the political establishment,<sup>4</sup> political scandals and failure to address public suspicions about corruption and misconduct are likely to have contributed.

Public suspicions about serious misconduct, if left to fester unresolved, can paralyse government and undermine democracy.

A well-designed and adequately-resourced CIC is needed to help identify where there is corruption and serious misconduct and to demonstrate to the public that government is serious about tackling it.

A recent review of Australia’s integrity system, led by Griffith University, proposed a specific model for a ‘custom-built Commonwealth Integrity Commission’.<sup>5</sup> Transparency International Australia has endorsed that model.<sup>6</sup> Their extensive work should guide the independent panel that will draft and design the final model.

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<sup>1</sup> For examples see CCC (Qld) (2017), IBAC (2017) and ICAC (2019a).

<sup>2</sup> Cameron and McAllister (2016).

<sup>3</sup> Transparency International Australia (2018).

<sup>4</sup> Wood, Daley and Chivers (2018), pp. 76-81.

<sup>5</sup> Brown et al. (2018).

<sup>6</sup> Lillywhite (2018).

## 2 Gaps in the jurisdiction and powers of the proposed CIC

We support the need for a CIC but there are several gaps in the powers proposed which will reduce its effectiveness in weeding out corruption and serious misconduct. And the modest budget proposed raises questions about whether it will be able to adequately fulfil its remit.

However, with some amendments and more funding, the model proposed could produce an effective body for preventing, detecting and investigating corruption.

### 2.1 The CIC should be able to accept tips from a broad range of sources

The new CIC public sector division should be resourced and empowered to **take tips and information from the public, media and public officials (including whistle-blowers)** on alleged corruption or serious misconduct.

The consultation paper rules out investigation of tips from the public about politicians and their staff.<sup>7</sup> It appears to exclude investigation of tips from public officials, media and whistle-blowers too. This will severely limit the CIC's ability to unearth and prevent corruption in the public sector.

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<sup>7</sup> 'The CIC will not investigate direct complaints about Ministers, Members of Parliament or their staff received from the public at large.' (Attorney-General's Department 2018, p.10). No reason is given.

<sup>8</sup> The Committee agreed that 'any new national integrity agency should be an 'umbrella' agency with which all Commonwealth integrity and corruption complaints could be lodged, but where the umbrella agency has the powers to require any other agency within the integrity framework to investigate integrity

The 2017 Senate Select Committee on a National Integrity Commission recognised that a gateway for whistle-blowers and public tips is needed.<sup>8</sup> People who may have knowledge of corruption from within the system currently have no obvious 'point of call' for reporting the conduct.

Instead of ignoring public tips, the CIC should be a gateway for them.

### 2.2 The CIC should be able to investigate corruption risks as well as corrupt conduct

The consultation paper specifies that the new CIC will investigate corrupt conduct that could constitute a criminal offence.<sup>9</sup> Yet only a narrow range of misconduct in public office constitutes a criminal offence, and these offences – such as bribery, extortion and abuse of public office – are very difficult to prove. This is because they typically require proof of an improper motive as well as a direct link between a financial contribution and specific actions.<sup>10</sup>

It's important that the new CIC is able to **investigate serious or systemic corruption risks as well as corrupt conduct**. Many investigations by state integrity commissions do not lead to criminal charges but still identify corruption vulnerabilities in

and corruption issues – even minor issues –and report back'. (Senate Select Committee 2017, p. 219).

<sup>9</sup> "The public sector division of the CIC will be responsible for investigating 'corrupt conduct' where the commissioner has a reasonable suspicion that the conduct in question constitutes a criminal offence." (Attorney-General's Department, 2018, p. 7).

<sup>10</sup> Tham 2010, p. 73.

policies, processes and practices.<sup>11</sup> These sorts of investigations help to improve public administration and inform education and outreach activities. The CIC should be able to investigate and report on cases of serious misconduct or corruption risk – even if it doesn't constitute a criminal offence.

### 2.3 The CIC should publish findings of fact

The consultation paper notes that the CIC public sector division should 'not make findings of corruption (or other criminal offending) ... [because these are] a matter for the courts to determine'. While we agree that only the courts should determine criminal conduct, we recommend that the CIC publishes *findings of fact* and refers suspected criminal conduct to the Commonwealth Director of Public Prosecutions.

Publishing findings of fact gives the public visibility of the CIC's work and can discredit false allegations. Without a public face, the CIC won't be able to help rebuild public trust or resolve concerns.

Publishing findings of fact also helps to inform the anti-corruption efforts of departments and agencies themselves, including other processes for sanctioning misconduct.

### 2.4 The CIC should engage in corruption prevention

We support the proposal in the consultation paper that the CIC would also take responsibility for corruption prevention through analysis and outreach. All state integrity agencies engage in

corruption prevention, including through education and analysis of risks and vulnerabilities in public administration.

The consultation paper notes that 'no single body is collecting consistent, across-the-board data about integrity issues in order to get a "big picture"'. We agree this should be a role for the CIC. Many state integrity agencies, informed by the reports and complaints they receive, identify 'risk areas' and then publish resources in these areas. ICAC in NSW also uses data analysis to help identify patterns that may indicate fraudulent activity.<sup>12</sup>

A recent review highlighted a lack of leadership and coordination of corruption prevention approaches across the Commonwealth.<sup>13</sup> This should be a focus of the CIC's prevention activities.

### 2.5 The CIC should be adequately resourced

The consultation paper proposes an operating budget for the CIC of approximately \$30 million per year. This looks to be too low, given the CIC is intended to cover both the expanded law enforcement division (formerly ACLEI) and the new public sector division.

If the proposed budget were to be split evenly between the two divisions, then this would leave the federal public sector integrity division substantially smaller than state integrity agencies in NSW

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<sup>11</sup> For example, IBAC (2017) lists several cases where it identified problems with procurement and recruitment processes while investigating allegations of serious misconduct by public officials.

<sup>12</sup> ICAC (2019b).

<sup>13</sup> Brown et al. (2018).

(\$24 million),<sup>14</sup> Western Australia (\$30 million),<sup>15</sup> Victoria (\$40 million),<sup>16</sup> and Queensland (\$57 million).<sup>17</sup>

As noted in the consultation paper, ACLEI's budget for 2018-19 is \$11.587 million. Presumably this would need to grow with an expanded remit. The Government has proposed that the law enforcement division's jurisdiction be expanded to include four large and specialised federal government agencies,<sup>18</sup> in addition to the five agencies already within ACLEI's remit.<sup>19</sup>

Adequate funding is essential to ensure the CIC is effective at weeding out corruption and serious misconduct and resolving the public's concerns. At a minimum, the budgets of the larger state integrity agencies should be guide. A recent review estimated the cost of a well-functioning Commonwealth integrity agency at \$47 million per annum (including ACLEI). It noted that this represents only 0.045 per cent of total public expenditure, well short of the levels of investment of any Australian state, or of New Zealand, on core public integrity agencies.<sup>20</sup>

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<sup>14</sup> NSW Independent Commission Against Corruption budget in 2017-18 (ICAC, 2018).

<sup>15</sup> WA Corruption and Crime Commission budget in 2017-18 (CCC (WA), 2018).

<sup>16</sup> Victorian Independent Broad-based Anti-corruption Commission budget in 2017-18 (IBAC, 2018).

<sup>17</sup> Queensland Crime and Corruption Commission budget in 2017-18 (CCC (Qld), 2018).

<sup>18</sup> The law enforcement division's expanded jurisdiction would include the Australian Competition and Consumer Commission (ACCC), Australian

Prudential Regulation Authority (APRA), Australian Securities and Investments Commission (ASIC), and the Australian Taxation Office (ATO).

<sup>19</sup> ACLEI's existing jurisdiction includes the Australian Federal Police (AFP), Australian Criminal Intelligence Commission, Australian Transaction Reports and Analysis Centre (AUSTRAC), Department of Home Affairs, and prescribed aspects of the Department of Agriculture and Water Resources (DAWR).

<sup>20</sup> Brown et al. (2018).

### 3 Other reforms needed to strengthen integrity arrangements

An integrity commission – even a powerful and properly resourced one – is not enough on its own to prevent misconduct in public office. Some forms of misconduct – such as favouring special interests – may not be illegal, but still have large costs for society and undermine public trust.<sup>21</sup>

Many Australians are suspicious that interest groups with the resources or connections to lobby and influence politicians get special treatment.<sup>22</sup> In a recent public survey, 56 per cent of respondents said they had ‘personally witnessed’ public officials making decisions that favoured a business or individual who gave them political donations or support – or at least ‘suspected’ public officials were doing so.<sup>23</sup> And the number was even higher among those who had worked in federal government.<sup>24</sup>

The CIC should be supported by broader institutional reforms to improve transparency and accountability in policy making and reduce ‘grey area’ misconduct. The Commonwealth lags state governments in addressing these concerns.<sup>25</sup>

#### 3.1 Improve transparency in policy making

Public cynicism about corruption and special-interest influence is partly born of secrecy. Greater transparency around money and access in politics would give the public, media and parliament

itself more opportunity to scrutinise the policy-making process and call out undue influence or give voice to under-represented views.

In a recent report,<sup>26</sup> we recommended several reforms to reduce the secrecy around money and access in politics:

- Improve the ‘visibility’ of major political donors by lowering the donations disclosure threshold from \$13,800 to \$5,000, requiring political parties to aggregate multiple donations from the same donor, and requiring more timely release of donations data;
- Create a public register of lobbyists who have unescorted access to federal Parliament House; and
- Publish ministerial diaries so people know who ministers meet with.

Transparency is not enough on its own – strong voices are still needed to call out problems, and voters still need to hold elected officials to account. But transparency gives them better information to do so.

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<sup>21</sup> Wood, Griffiths and Chivers (2018).

<sup>22</sup> Transparency International Australia (2018), Cameron and McAllister (2016), and Wood, Griffiths and Chivers (2018).

<sup>23</sup> A telephone poll of 2,218 adults conducted by Griffith University and Transparency International Australia in May-June 2018.

<sup>24</sup> Transparency International Australia (2018) and Wood, Griffiths and Chivers (2018).

<sup>25</sup> Wood, Chivers and Griffiths (2018).

<sup>26</sup> Wood, Griffiths and Chivers (2018).



### 3.2 Set clear standards for policy makers

The public is clearly concerned about the standard of ethical conduct of politicians, even if corrupt conduct is rare. Clear standards around conflicts of interest – as currently exist for ministers – should apply to all parliamentarians. A code of conduct for parliamentarians should at a minimum clarify rules on accepting corporate hospitality, gifts and secondary employment. A broader code would set a standard for the public, media and parliament to hold elected officials to.<sup>27</sup>

Codes of conduct need to be administered and enforced by an independent body. Current arrangements are ineffective.<sup>28</sup> Arms-length administration of the rules is necessary to build public confidence that codes of conduct are respected and adhered to. This could be an additional role for the new Independent Parliamentary Expenses Authority.

An independent body should have an educative role, to help parliamentarians, ministerial staff and lobbyists understand their responsibilities and disclosure obligations.<sup>29</sup> A separate ethics adviser should be appointed, to enable current and former parliamentarians to seek advice when they are in doubt.

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<sup>27</sup> An example of such a code is the Queensland Parliament's Code of Ethical Standards, which is built on fundamental principles of: integrity of the Parliament; primacy of the public interest; independence of members; appropriate use of information; respect for people; and appropriate use of entitlements. Legislative Assembly of Queensland (2018).

<sup>28</sup> Wood, Griffiths and Chivers (2018).

<sup>29</sup> It could even play a broader role in professional development, see Coghill (2008a and 2008b).

The independent body should be able to investigate non-compliance with codes of conduct, publish its findings, and refer breaches when they occur.

We note that investigating issues of misconduct or non-compliance under codes of conduct is explicitly out of scope for the CIC.<sup>30</sup> We agree that administration of codes of conduct and minor breaches should not be the focus of the CIC. But it is important that serious breaches can be referred to the CIC for a fuller investigation.

### 3.3 Cap political advertising expenditure during election campaigns

Political advertising expenditure should be capped during election campaigns to limit the influence of money in politics.<sup>31</sup> Capping expenditure would help reduce the reliance of political parties on major donors and limit the 'arms race' between parties for more donations.

Political advertising by other groups, such as unions and industry peak bodies, should also be capped to prevent them 'swamping' public debate during election campaigns.

<sup>30</sup> 'It is intended that the public sector division will focus on the investigation of serious or systemic corrupt conduct, rather than looking into issues of misconduct or non-compliance under various codes of conduct.' (Attorney-General's Department 2018, p. 7).

<sup>31</sup> Advertising accounts for most campaign spending by the major parties in Australia and is easier to identify and regulate than other political expenditure (Wood, Griffiths and Chivers, 2018).



Further detail about the need for and nature of these broader reforms is provided in the attached Grattan Institute report, *Who's in the room? Access and influence in Australian politics*.

Together with the new CIC, these reforms would strengthen integrity arrangements across the federal public sector and offer a more comprehensive response of the public's concerns.

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