



February 2021

# **Submission on the Commonwealth Integrity Commission draft legislation**

Danielle Wood and Kate Griffiths

## Summary

We welcome the opportunity to provide input on the Commonwealth Integrity Commission (CIC) draft legislation. The CIC will consist of a 'law enforcement integrity division' building on 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 division.

The Commonwealth Government's commitment to establish a CIC 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 erodes trust in government and weakens democracy.

But the design of the CIC is extremely important for its actual and perceived effectiveness. The draft legislation excludes 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 agencies;
- the CIC should be empowered to investigate serious or systemic corruption risks in the public sector as well as illegal conduct (bringing the powers of the public sector integrity division in line with the law enforcement integrity division);
- the CIC should be empowered to report to the public on the outcomes of its investigations, including findings of fact; and

- the CIC should be established with the power and scope to lead corruption prevention efforts across the public sector.

Adequate funding is also important. The funding currently allocated for the CIC is likely to limit the effectiveness of the public sector division.

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 at the federal level. The Government should improve the transparency of policy making and strengthen the accountability of policy makers by:

- closing loopholes in the donations disclosure rules to provide visibility of major political donors and publishing information on high-level lobbying activity;
- 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 over public policy in Australia.

## 1 Establishing a Commonwealth Integrity Commission is the right move, but the draft legislation requires significant revisions to allay public concern

On 13 December 2018, the Australian Government announced that it would establish a Commonwealth Integrity Commission (CIC) to strengthen integrity arrangements across the federal public sector.<sup>1</sup> 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 was a welcome announcement at the time, but progress to date has been slow. The 2019-20 Budget noted that the Commonwealth Integrity Commission would be established by 1 January 2020,<sup>2</sup> yet more than a year later it still remains unclear when it will be established.

The original consultation process in early 2019 appears to have had little (if any) influence over the draft legislation put forward by the Government in November 2020.<sup>3</sup>

Three-quarters of the submissions in February 2019 highlighted deficiencies in the design of the public sector division of the CIC.<sup>4</sup> These deficiencies are yet to be remedied.

Meanwhile public concern about corruption and misconduct by politicians continues to grow.<sup>5</sup> Trust in government remains below half, despite a 'COVID boost'.<sup>6</sup> Only a quarter of Australians

surveyed in 2019 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>7</sup> In a 2018 survey, 85 per cent of Australians thought at least some federal MPs were corrupt.<sup>8</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 undermines representative democracy.<sup>9</sup>

While there are many causes of falling trust and increasing exasperation with the political establishment,<sup>10</sup> political scandals over many years 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.

---

<sup>1</sup> Attorney-General's Department (2018).

<sup>2</sup> Commonwealth Budget 2019-20, budget paper 4.

<sup>3</sup> Attorney-General's Department (2020a).

<sup>4</sup> Attorney-General's Department (2019).

<sup>5</sup> McAllister et al. (2019).

<sup>6</sup> Australian Leadership Index (2020).

<sup>7</sup> McAllister et al. (2019).

<sup>8</sup> Transparency International Australia (2018).

<sup>9</sup> Griffiths and Wood (2020).

<sup>10</sup> Wood, Daley and Chivers (2018), pp. 76-81.

A recent review of Australia's integrity system, led by Transparency International Australia and Griffith University, proposed a specific model for a national integrity commission.<sup>11</sup> Their extensive work should guide redrafting of the CIC legislation.

---

<sup>11</sup> Brown et al. (2020).

## 2 Gaps in the jurisdiction and powers of the public sector division

There are several gaps in the powers proposed for the public sector division of the CIC which will reduce its effectiveness in weeding out corruption and serious misconduct. The modest budget proposed also raises questions about whether it will be able to adequately fulfil its remit.

However, with amendments and some extra funding, the public sector division could be effective in preventing, detecting, and investigating corruption.

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

The 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 draft legislation prevents investigation of tips received directly from the public, junior public officials, journalists, and whistle-blowers. This will severely limit the CIC's ability to unearth and prevent corruption in the public sector.

The 2017 Senate Select Committee on a National Integrity Commission recognised that a gateway for whistle-blowers and

---

<sup>12</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 and corruption issues – even minor issues –and report back'. (Senate Select Committee 2017, p. 219).

public tips is needed.<sup>12</sup> People who may have knowledge of corruption from within the system currently have no obvious 'point of call' for reporting the conduct. Reporting up the line may not be a safe option.

Instead of ignoring public tips, the CIC should be a gateway for them. The CIC should be able to make independent assessment of which claims warrant further investigation.

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

The draft legislation specifies that the public sector division will only investigate criminal conduct.<sup>13</sup> Yet only a narrow range of misconduct in public office constitutes a criminal offence, and these offences – such as bribery and extortion – 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>14</sup>

It's important that the CIC is able to **investigate serious or systemic corruption risks as well as corrupt conduct**. The law enforcement division of the CIC can investigate corrupt conduct more broadly – 'conduct that involves an abuse of office, perversion of the course of justice or corruption of any other

<sup>13</sup> "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." (Attorney-General's Department, 2020b).

<sup>14</sup> Tham 2010, p. 73.

kind... giving priority to serious and systemic corruption'.<sup>15</sup> This investigative scope should be extended to the public sector division too.

Many investigations by state integrity commissions do not lead to criminal charges but still identify corruption vulnerabilities in policies, processes and practices.<sup>16</sup> These sorts of investigations help to improve public administration and inform education and prevention activities. The CIC should be able to investigate and report on cases of serious misconduct or corruption risk – even if it does not constitute a criminal offence.

### 2.3 The CIC should publish findings of fact

The public sector division is not empowered to report to the public on the outcomes or findings of its investigations.

The draft legislation specifies that the Integrity Commissioner prepares reports on investigations for the Attorney-General and the referring agency only.<sup>17</sup> And there are further special provisions protecting politicians and their staff, for example, that these reports 'must not include any opinion, finding or recommendation about a parliamentarian, the office of a parliamentarian or a staff member of the office of a parliamentarian'.<sup>18</sup>

While we agree that only the courts should determine criminal conduct, and that suspected criminal conduct should be referred

to the Commonwealth Director of Public Prosecutions, we recommend that the CIC **publish findings of fact in relation to its investigations and actions taken** to reduce corruption risks.

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 resolve public concerns or rebuild public trust.

Publishing findings of fact also helps to inform the corruption prevention efforts of all departments and agencies.

### 2.4 The CIC should engage in corruption prevention

Some corruption prevention activities appear to be included within the functions of the CIC in the draft legislation.<sup>19</sup> Corruption prevention is a critical function of any integrity commission. All state integrity agencies engage in corruption prevention, including through education and analysis of risks and vulnerabilities in public administration.

But it is **not clear how this role will work within the narrow scope defined** for the public sector division. It is also unclear how the public sector division could fulfil the function of disseminating corruption prevention information and intelligence except via strict reporting lines behind closed doors. These restrictions to scope

---

<sup>15</sup> Attorney-General's Department (2020b).

<sup>16</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>17</sup> There are rules to enable tabling of reports in Parliament when a report relates to a law enforcement issue (but not a public sector issue).

<sup>18</sup> Attorney-General's Department (2020a), Section 184(9)

<sup>19</sup> For example, section 25(i) lists as a function of the Integrity Commissioner: 'to collect, correlate, analyse and disseminate information and intelligence in relation to patterns or trends, and the nature and scope, of corruption among those who are subject to this Act'.

and powers do not promote the sort of education and outreach needed for corruption prevention across the public sector.

A 2018 review highlighted a lack of leadership and coordination of corruption prevention approaches across the Commonwealth.<sup>20</sup> This should be a focus of the CIC's prevention activities.

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>21</sup>

## 2.5 The CIC should be adequately resourced

The 2019-20 Commonwealth Budget provided funding for the establishment of the CIC (\$104 million over four years). The allocated funding was phased in over the first two years, ramping up to \$30 million per year in regular funding. This looks to be too low, given the CIC is intended to cover both an expanded law enforcement division (currently ACLEI) and the new public sector division.

ACLEI's current budget is about \$20 million.<sup>22</sup> This suggests a very small annual budget of about \$10 million for the public sector division (or alternatively substantial cuts for the law enforcement division).

Even if the funding is split evenly between the two divisions, then this still leaves the federal public sector integrity division substantially smaller than state integrity agencies in NSW (\$24 million),<sup>23</sup> Western Australia (\$30 million),<sup>24</sup> Victoria (\$40 million),<sup>25</sup> and Queensland (\$57 million).<sup>26</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 2020 review estimated the cost of a well-functioning Commonwealth integrity agency at \$100 million per annum (including ACLEI, corruption prevention, and whistle-blower protection). It noted that this represents less than 0.1 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>27</sup>

---

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

<sup>21</sup> ICAC (2019b).

<sup>22</sup> Commonwealth Budget 2020-21, budget paper 4.

<sup>23</sup> NSW Independent Commission Against Corruption budget in 2017-18 (ICAC, 2018).

<sup>24</sup> WA Corruption and Crime Commission budget in 2017-18 (CCC (WA), 2018).

<sup>25</sup> Victorian Independent Broad-based Anti-corruption Commission budget in 2017-18 (IBAC, 2018).

<sup>26</sup> Queensland Crime and Corruption Commission budget in 2017-18 (CCC (Qld), 2018).

<sup>27</sup> Brown et al. (2020).

### 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>28</sup>

Many Australians are suspicious that interest groups with the resources or connections to lobby and influence politicians get special treatment.<sup>29</sup> In a 2018 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>30</sup> And the number was even higher among those who had worked in federal government.<sup>31</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>32</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

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

In a 2018 Grattan Institute report,<sup>33</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 \$14,300 to \$5,000, require political parties to aggregate multiple donations from the same donor, and require 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.

---

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

<sup>29</sup> Transparency International Australia (2018), Cameron and McAllister (2016), and Wood, Griffiths and Chivers (2018).

<sup>30</sup> A telephone poll of 2,218 adults conducted by Griffith University and Transparency International Australia in May-June 2018.

<sup>31</sup> Transparency International Australia (2018) and Wood, Griffiths and Chivers (2018).

<sup>32</sup> Wood, Chivers and Griffiths (2018).

<sup>33</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>34</sup>

Codes of conduct need to be administered and enforced by an independent body, including the current code of conduct for federal ministers. Current arrangements are ineffective.<sup>35</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 Independent Parliamentary Expenses Authority (IPEA).

Investigating issues of non-compliance under codes of conduct is appropriately out of scope for the CIC. Administration of codes of conduct and minor breaches should not be its focus. But it is important to have an independent body like IPEA administering them so that serious breaches can be referred to the CIC for a fuller investigation.

A separate ethics adviser should also be appointed, to enable parliamentarians to seek advice when they are in doubt.

---

<sup>34</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).

### 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>36</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.

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 an improved CIC, these reforms would strengthen integrity arrangements across the federal public sector and offer a more comprehensive response to the public's concerns.

<sup>35</sup> Wood, Griffiths and Chivers (2018).

<sup>36</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).

## References

Attorney-General's Department (2018). *A Commonwealth Integrity Commission – proposed reforms*. Consultation paper, 13 December:

<https://www.ag.gov.au/Consultations/Pages/commonwealth-integrity-commission.aspx>

Attorney-General's Department (2019). *Submissions received for the Commonwealth Integrity Commission Consultation*. 5 March:

<https://www.ag.gov.au/integrity/publications/submissions-received-commonwealth-integrity-commission-consultation>

Attorney-General's Department (2020a). *Commonwealth Integrity Commission Bill – Exposure Draft*. November:

<https://www.ag.gov.au/integrity/publications/commonwealth-integrity-commission-bill-exposure-draft>

Attorney-General's Department (2020b). *Commonwealth Integrity Commission Fact Sheet*. November:

<https://www.ag.gov.au/sites/default/files/2020-11/Commonwealth%20Integrity%20Commission%20Fact%20Sheet.pdf>

Australian Leadership Index (2020). Australian Leadership Index – Data Portal: <https://www.australianleadershipindex.org/portal/>

Brown et al. (2018). Brown, A., Graycar, A., Kelly, K., Coghill, K., Prenzler, T. and Ransley, J. *A National Integrity Commission – Options For Australia*. August. Griffith University.

Brown et al. (2020). Brown, A., Ankamah, S., Coghill, K., Graycar, A., Kelly, K., McMillan, J., Prenzler, T. and Ransley J. National

Integrity System Assessment, Australia, November 2020:

<https://transparency.org.au/australias-national-integrity-system/>

Cameron, S. M. and McAllister, I. (2016). *Trends in Australian Political Opinion Results from the Australian Election Study 1987–2016*. Australian National University.

<http://australianelectionstudy.org/>

CCC (Qld) (2017). *Past investigations*, Queensland Crime and Corruption Commission:

<http://www.ccc.qld.gov.au/corruption/past-investigations>

CCC (Qld) (2018). *Annual Report 2017-18*. Queensland Crime and Corruption Commission: <http://www.ccc.qld.gov.au/research-and-publications/publications/ccc/corporate/ccc-annual-report-2017-18>

CCC (WA) (2018). *Annual Report 2017-18*. Western Australia Crime and Corruption Commission:

<https://www.ccc.wa.gov.au/annualreports>

Griffiths, K. and Wood, D. (2020). “Negotiating the grey zone: Special interests, money and the democratic deficit”. Griffith Review. Edition 67: Matters of Trust.

<https://www.griffithreview.com/articles/negotiating-the-grey-zone/>

IBAC (2017). *Investigation summaries*, Victorian Independent Broad-based Anti-corruption Commission:

<https://www.ibac.vic.gov.au/investigating-corruption/past-investigation-summaries>

IBAC (2018). *Annual Report 2017-18*. Victorian Independent Broad-based Anti-corruption Commission:

<https://www.ibac.vic.gov.au/publications-and-resources/article/annual-report-2017-18>

ICAC (2018). *Annual Report 2017-18*. NSW Independent Commission Against Corruption:

<https://www.icac.nsw.gov.au/documents/about-the-icac/corporate-reporting/5325-icac-annual-report-2017-18-1/file>

ICAC (2019a). *Past investigations*, NSW Independent Commission Against Corruption:

<https://www.icac.nsw.gov.au/investigations/past-investigations>

ICAC (2019b). *The role of internal audit and work review in detecting corruption*. NSW Independent Commission Against Corruption: <https://www.icac.nsw.gov.au/preventing-corruption/detecting-corrupt-conduct/internal-audit-and-work-review/1534>

Legislative Assembly of Queensland (2018). *Code of Ethical Standards*.

<https://www.parliament.qld.gov.au/documents/assembly/procedures/codeofethicalstandards.pdf>

Lillywhite, S. (2018). Speech on a National Integrity Commission – Options for Australia, August: [http://transparency.org.au/tia/wp-content/uploads/2018/08/Lillywhite-Speech\\_NIC-Options-for-Australia.pdf](http://transparency.org.au/tia/wp-content/uploads/2018/08/Lillywhite-Speech_NIC-Options-for-Australia.pdf)

McAllister, I., Sheppard, J., Bean, C., Gibson, R., and Makkai, T. (2019). Australian Election Study 2019, December 2019:

<https://australianelectionstudy.org/>

Senate Select Committee (2017). Select Committee on the National Integrity Commission: Report.

[https://www.aph.gov.au/select\\_integritycommission](https://www.aph.gov.au/select_integritycommission)

Tham, J-C. (2010). *Money and politics: the democracy we can't afford*. University of New South Wales Press Pty Ltd.

Transparency International Australia (2018). Rising Corruption Concern Drives Support For Federal Integrity Body: Global Corruption Barometer Survey Results:

<https://transparency.org.au/media-release-gcb-survey-2018/>

Wood, D., Chivers, C. and Griffiths, K. (2018). States and territories have improved integrity measures, but Commonwealth lags far behind. *The Conversation*, November 2:

<https://theconversation.com/states-and-territories-have-improved-integrity-measures-but-commonwealth-lags-far-behind-105046>

Wood, D., Daley, J., and Chivers, C. (2018). *A crisis of trust: The rise of protest politics in Australia*. Grattan Institute:

<https://grattan.edu.au/report/a-crisis-of-trust/>

Wood, D., Griffiths, K., and Chivers, C. (2018). *Who's in the room? Access and influence in Australian politics*. Grattan Institute:

<https://grattan.edu.au/report/whos-in-the-room/>