TRANSPARENCY INTERNATIONAL AUSTRALIA

Governing for integrity
A blueprint for reform

A J Brown
Samuel Ankamah
Ken Coghill
Adam Graycar
Kym Kelly
Tim Prenzler
Janet Ransley

DRAFT REPORT

Australia's Second National Integrity System Assessment

April 2019

Griffith UNIVERSITY

About this report

This report presents draft recommendations from Australia's second National Integrity System Assessment, conducted under the **Australian Research Council Linkage Project, *Strengthening Australia's National Integrity System: Priorities for Reform***, led by Griffith University with project partners Transparency International Australia, New South Wales Ombudsman, Integrity Commissioner (Queensland), Crime & Corruption Commission (Queensland), Integrity Commission (Tasmania), Flinders University, University of the Sunshine Coast and our co-authors. See:

www.transparency.org.au/national-integrity-systems-assessment.

Views expressed are those of the authors and do not necessarily represent the views of the Australian Research Council or partner organisations.

This is a summary version of the research and recommendations.

Figure and Table numbers refer to the full text of the draft report.

For the full text, go to:

www.griffith.edu.au/anti-corruption.

Public comments and submissions

We welcome your comments and submissions on these recommendations by **10 May 2019.** Email us: nationalintegrity@griffith.edu.au

This report can be cited as: Brown, A J et al (2019). ***Governing for integrity: a blueprint for reform.*** Draft Report of Australia's Second National Integrity System Assessment. Griffith University & Transparency International Australia.

Governing for integrity: *a blueprint for reform*

A J Brown

Project Leader; Professor of Public Policy & Law and Program Leader, Public Integrity and Anti-Corruption, Centre for Governance & Public Policy, Griffith University; board member, Transparency International and Transparency International Australia

Samuel Ankamah

Research Fellow, Public Integrity & Anti-Corruption Research Program, Centre for Governance & Public Policy, Griffith University

The Hon Ken Coghill

Adjunct Professor, Swinburne University, Member of the Open Government Forum, board member of the Accountability Round Table, former Speaker of the Legislative Assembly of Victoria.

Adam Graycar AM

Professor of Public Policy, Griffith University; Visiting Professor, National University of Singapore; former Professor of Public Policy, Flinders University

Kym Kelly

Research Associate, Flinders University; former CEO, South Australian Departments of Justice & Attorney-General, former Commonwealth Attorney-General's Department

Tim Prenzler

Professor of Criminology, University of the Sunshine Coast

Janet Ransley

Professor and Director, Griffith Criminology Institute, Griffith University; former researcher and policy advisor, Queensland Legislative Assembly and Criminal Justice Commission

DRAFT REPORT

Australia's Second National Integrity System Assessment

April 2019

Contents

1. Introducing the Assessment 4

2. The state of Australia's integrity system 7

3. Australia's anti-corruption priorities in context 10

Recommendation 1: ***National integrity and anti-corruption plan*** 10

Recommendation 2: ***A truly 'national' integrity commission*** 12

4. Our main official corruption challenges 13

Recommendation 3: ***A modern, national definition of corrupt conduct*** 13

Recommendation 4: ***'Undue influence' as a new corruption marker*** 14

Recommendation 5: ***Comprehensive mandatory reporting*** 14

5. Preventing corruption 16

Recommendation 6: ***Strengthened corruption prevention mandates*** 17

Recommendation 7: ***Resources for prevention*** 17

Recommendation 8: ***A strategic corruption prevention framework*** 18

6. Political integrity 19

Recommendation 9: ***National political donations and finance reform*** 20

Recommendation 10: ***Lobbying and access*** 20

Recommendation 11: ***Meritocratic political appointments*** 21

Recommendation 12: ***Parliamentary and ministerial codes of conduct*** 21

7. Whistleblowing, civil society and the media 24

Recommendation 13: ***Direct accessibility to the public*** 25

Recommendation 14: ***Whistleblower protection that protects*** 26

Recommendation 15: ***Support for public interest journalism*** 26

8. Enforcing integrity violations 28

Recommendation 16: ***Justice in all integrity violation cases*** 28
Recommendation 17: ***Effective law enforcement support*** 28
Recommendation 18: ***Reform of public hearing powers*** 29
Recommendation 19: '***Sunlight' public reporting powers*** 29
Recommendation 20: ***Closing the cracks between agencies*** 29
Recommendation 21: ***Jurisdiction over private actors*** 30

9. Integrity agency accountability 31

Recommendation 22: ***Independence for core integrity agencies*** 31
Recommendation 23: ***Propriety and performance*** 32

10. Creating a 'system': coherence, coordination and resources 33

Recommendation 24: ***Coordination and cooperation*** 33
Recommendation 25: ***Sufficient, secure and stable resources*** 34

Appendix 1. National Integrity Commission options compared ***36***

Appendix 2. Research summary and acknowledgements ***39***

Comments and submissions

1. Introducing the Assessment

A strong system of public integrity and accountability is vital to Australia's future.

As a nation, we have a relatively strong reputation for the integrity of public decision making, institutions and our system of democracy – by international standards. But are we keeping pace with challenges and trends? Are we investing sufficiently in the development of our integrity systems to deserve that reputation? Do our citizens agree we have our challenges under control, and that our institutions are delivering quality of democracy and government?

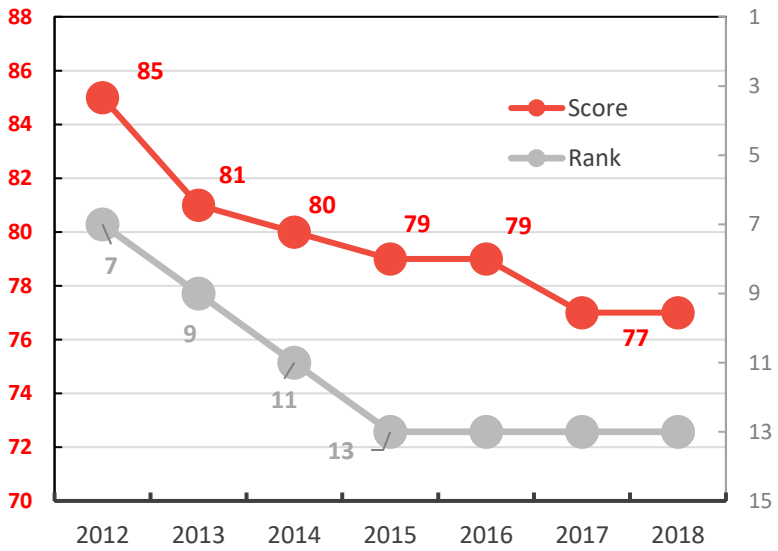
This report presents key results and draft recommendations from Australia's second **national integrity system assessment** – a collaborative, multi-stakeholder approach developed by Transparency International for evaluating the institutions and processes for upholding public integrity and controlling corruption.

An **integrity system** does not just fight corruption – it prevents corruption by going well beyond, to ensure high quality and responsive institutions, by ensuring officials and institutions act honestly, fairly, transparently, accountably and diligently in the discharge of the legitimate missions for which they have been entrusted with public power.

Corruption is the evidence that an integrity system is not in place or is failing – or that new challenges require attention. Transparency International defines corruption as 'the abuse of entrusted power for private gain', be it 'grand', 'petty' or political corruption.

For Australia, the need to act is clear. Contrary to the impression given by many international measures, we have our own history of official corruption, some of it serious, systemic, and recent or current. Internationally, since 2012, Australia's performance in perceived corruption control has fallen substantially on a range of the measures combined in Transparency International's **Corruption Perceptions Index** (Figure 1.1).

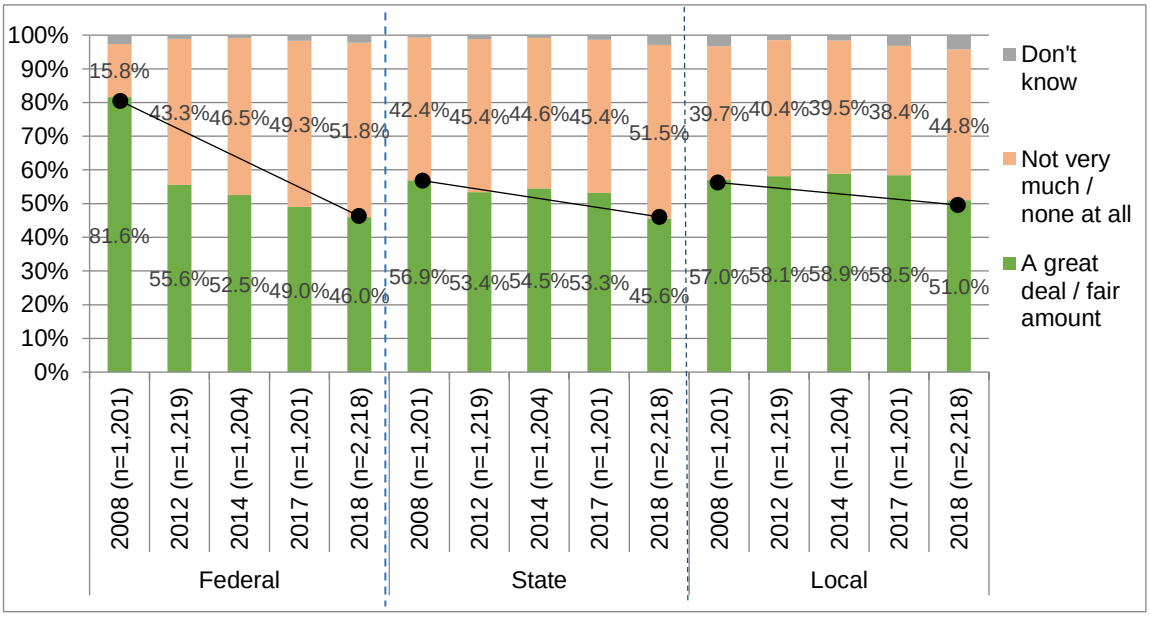
Figure 1.1. Australia's score on the Corruption Perceptions Index (2012-2018)



Source: Transparency International, Corruptions Perception Index 2018 (January 2019)

Figure 1.2. Trust and confidence in government in Australia (2008-2018)

How would you rate the **performance** of each of the following levels of government? (2008); Overall, how much **trust and confidence** do you have in each of the following levels of government to do **a good job in carrying out its responsibilities**? (2012-2018)



Source: Australian Constitutional Values Survey 2008-2017; Global Corruption Barometer Australia 2018: Griffith University (see Appendix 2).

Our research, using Transparency International's **Global Corruption Barometer** (Figure 1.2), confirmed that trust in public institutions is under unprecedented pressure – much of it driven by concern about corruption. Between a quarter and a third of all variation in Australian citizens' trust and confidence is owed to the level of corruption they perceive among elected officials, federal and state. Fortunately, we also know trust in government *rises* when citizens assess government to be doing a good job in fighting corruption.

This assessment responds to these challenges with a holistic appraisal of strengths and weaknesses in the integrity system, set out in the chapters that follow. **Appendix 2** provides more detail on the research undertaken.

Australia's first national integrity system assessment – ***Chaos or Coherence? Strengths, Opportunities and Challenges for Australia's Integrity Systems*** – was conducted in 2005 under a similar collaboration, led by Professor Charles Sampford. Several recommendations came to pass, including:

- Australia's first schemes of real-time disclosure of political donations
- Initial overhauls of Australia's whistleblower protection regimes
- Reform of 'freedom of information' laws to become 'rights to information' laws.

Calls for a second assessment, taking advantage of updates in TI's NIS methodologies, were supported by a workshop of Australian integrity agency thought leaders in 2014, and in 2016, by the **Senate Select Committee on a National Integrity Commission**.

In 2017, a second Senate Select Committee on a National Integrity Commission recommended that the assessment be used to help reach a 'conclusive' view on the options for strengthening the federal integrity system. The Australian Government has committed to consider the assessment in reforms to the National Integrity Framework under Australia's second **Open Government Partnership** National Action Plan.

The first recommendation of the original assessment was a **"national integrity commission" or "federal ICAC".** Fourteen years later, current debates show that the time appears to have finally come:

> 'That the Commonwealth Government's proposed new independent anti-corruption agency [ACLEI] be a comprehensive lead agency operating across the Commonwealth, not just a few agencies' (2005).

As seen below, this assessment strongly supports such a reform. A major purpose of many recommendations is to identify what a national integrity or anti-corruption commission should look like and how it should proceed – taking into account the different proposals made by all political parties, including the Australian Greens since 2010, the Labor Opposition in January 2018, and the Commonwealth Government's Commonwealth Integrity Commission proposal of December 2018.

In August 2018, we published the Options Paper: ***A National Integrity Commission: Options for Australia*** to help inform this debate. In November, the Options Paper directly informed the design of the *National Integrity Commission* and *National Integrity (Parliamentary Standards) Bills 2018,* introduced by Independent MP Cathy McGowan AO, which provide useful examples throughout this report.

Appendix 1 sets out and updates an evaluation of the present options for this new body, including the Labor and Government positions to date.

This report echoes our main view in the Options Paper: that a comprehensive reform blueprint, informed by best practice, is the best way to ensure "a federal ICAC" is designed to achieve its purpose along with other priority reforms. Even if important, as Table 1.1. shows, corruption investigation and exposure is just one of the 15 functions that form pillars of the national integrity system. The advantage of a National Integrity System Assessment is not to presume that one single institution can fix everything, like a 'silver bullet', but rather to view and strengthen the system as a whole.

What is needed is a comprehensive plan for how Australians can best govern themselves, and be governed with, integrity. This report sets out that plan.

Table 1.1. The public integrity functions (and key institutions) covered by National Integrity System Assessment

1	Financial accountability	Auditors-General
2	Fair & effective public administration	Ombudsman offices
3	Public sector ethical standards	Public Service Commissions
4	Ministerial standards	Cabinets / political executive
5	Legislative ethics & integrity	Ethics & Privileges, Expenses authorities
6	Election integrity	Electoral Commissions
7	Political finance & campaign regulation	Electoral Commissions
8	Corruption prevention	Anti-corruption agencies & other agencies
9	Corruption investigation & exposure	Anti-corruption agencies, police services
10	Judicial oversight & rule of law	Judiciary/Courts & DPPs
11	Public information rights	Information commissioners
12	Complaint & whistleblowing processes	Various integrity agencies
13	Independent journalism	Media
14	Civil society contribution to anti-corruption	Civil society / not-for-profit institutions
15	Business contribution to anti-corruption	Business

2. The state of Australia's integrity system

Australia has a complex integrity system – but no more complex than in other societies for whom well-functioning, accountable public institutions is an overriding goal.

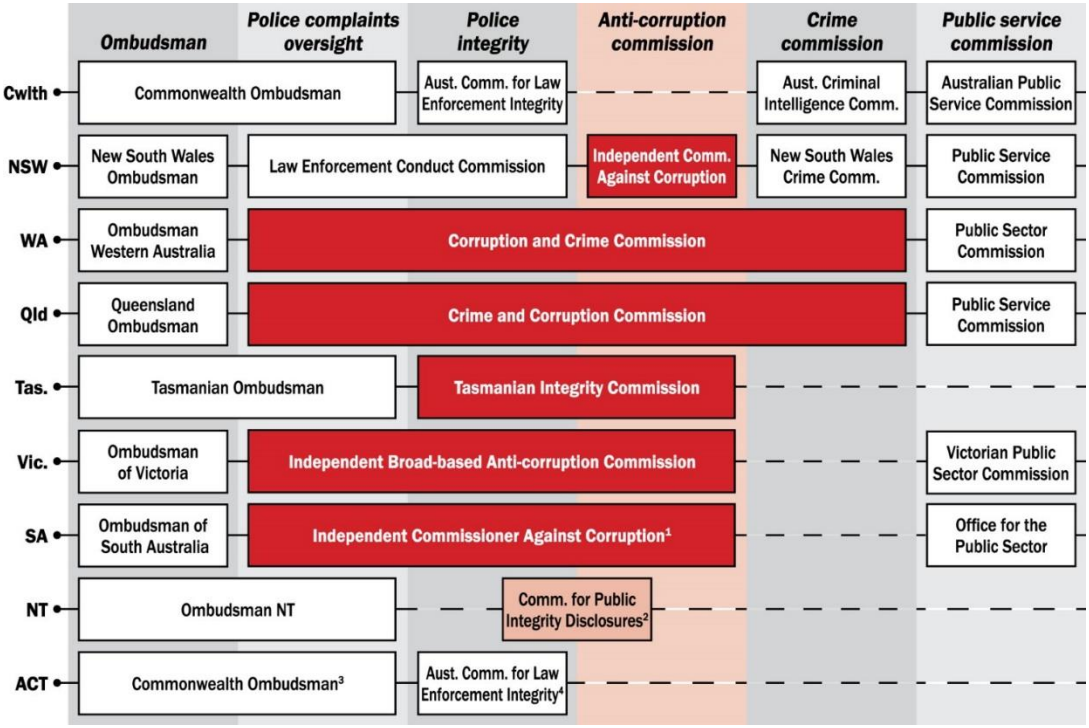
As a federal nation, Australia has not one but 10 public integrity systems – each of its State and federal systems together with how these operate as a national whole.

These systems have also been evolving rapidly. Four of the seven anti-corruption and police integrity commissions in Figure 2.3 did not exist at the time of the first NIS assessment, another has been transformed, and two new anti-corruption bodies have commenced in both Territories since the Figure was drawn.

As well as the Auditors-General and Electoral Commissioners of every jurisdiction, other core integrity agencies include Information Commissioners or equivalents – several of them also newly created since the first NIS assessment.

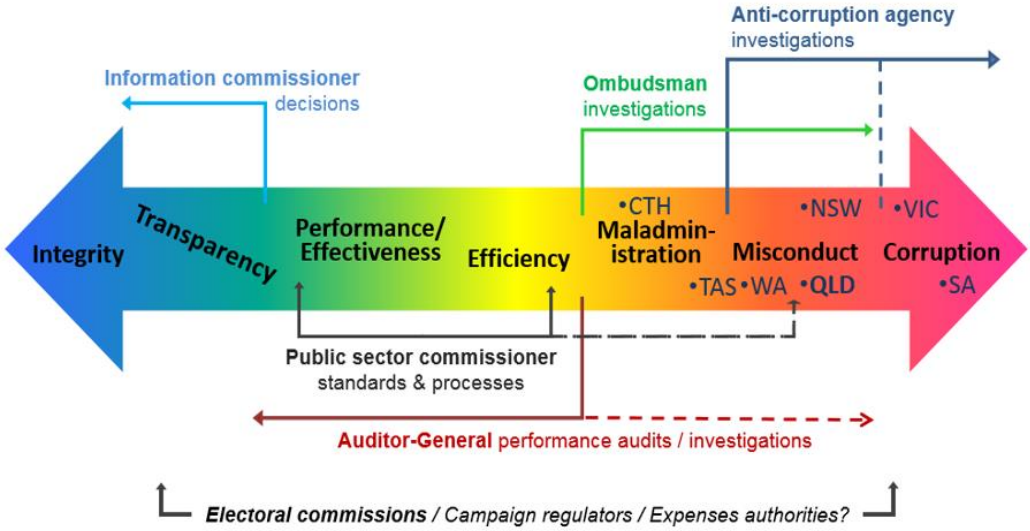
However, the key questions for an integrity system assessment are not how many actors are involved, nor simply whether they are efficient and accountable. The issue is whether the functions identified as important for maintaining integrity are being fulfilled to the highest achievable level, individually and collectively. And where they are not, what can be done to strengthen these processes or develop new ones.

Figure 2.3. Coverage of select integrity institutions in Australia



Source: Catherine Cochrane (2018), 'Boundary making in anti-corruption policy: behaviour, responses and institutions', *Australian Journal of Political Science* Vol 3, No. 4, pp.508-528. Note: Both the NT and ACT have also now established their own anti-corruption bodies.

Figure 2.5. Core integrity agency responsibilities



Source: A J Brown (2018), 'The Fourth, Integrity Branch of Government: Resolving a Contested Idea', Australian Political Studies Association 2018 Presidential Address, Brisbane, 24 July.

Integrity institutions also do not exist as silos, but have overlapping roles and jurisdictions, and constant interactions. These are at a policy level, operationally and, most importantly, in the ways they impact on culture, behaviour and performance across the public sectors and the community. Hence the need for a holistic approach.

The assessment approach involved a mixture of methods, focusing on five dimensions across all functions: (1) Scope and mandate, (2) Capacity, (3) Governance, (4) Relationships, and (5) Performance (see **Appendix 2** for more detail). This was a new framework, extended from the previous TI methodology and trialled here for the first time. The results provide a new overview of the integrity system as a whole.

Table 2.3. What contributes to integrity system performance? Strength of relationship between all dimensions (all functions) (National Integrity Survey)

	Scope & Mandate	Governance	Independence	Policy coherence	Social accountability	Operational coordination	Legal capacity	Resources	Performance
Scope & mandate	1	.824**	.807**	.820**	.758**	.805**	.759**	.736**	.863**
Governance		1	.838**	.808**	.752**	.777**	.733**	.691**	.812**
Independence			1	.782**	.734**	.762**	.774**	.714**	.805**
Policy / jurisdictional coherence				1	.782**	.877**	.680**	.720**	**.794****
Social accountability mechanisms					1	.770**	.662**	.695**	**.791****
Operational coordination						1	.660**	.645**	**.789****
Legal capacity							1	.751**	.723**
Resources								1	.705**
Performance									1

Source: National Integrity Survey (all respondents, n=107) – See Appendix 2.

Using the new National Integrity Survey, we more clearly identify the importance of relationships and interactions between integrity actors – their powers and duties for ensuring issues do not **fall through cracks in jurisdiction**; how well they **coordinate, cooperate and exchange information**; and their mechanisms for **informing and engaging with public stakeholders**. Table 2.3 shows all factors to have a strong link to the perceived performance of integrity functions. However, the three relationship factors proved highly important – more important, even, than agencies' legal capacity or financial resources. This provides new evidence of the crucial roles of coordination, cooperation and engagement in the integrity system.

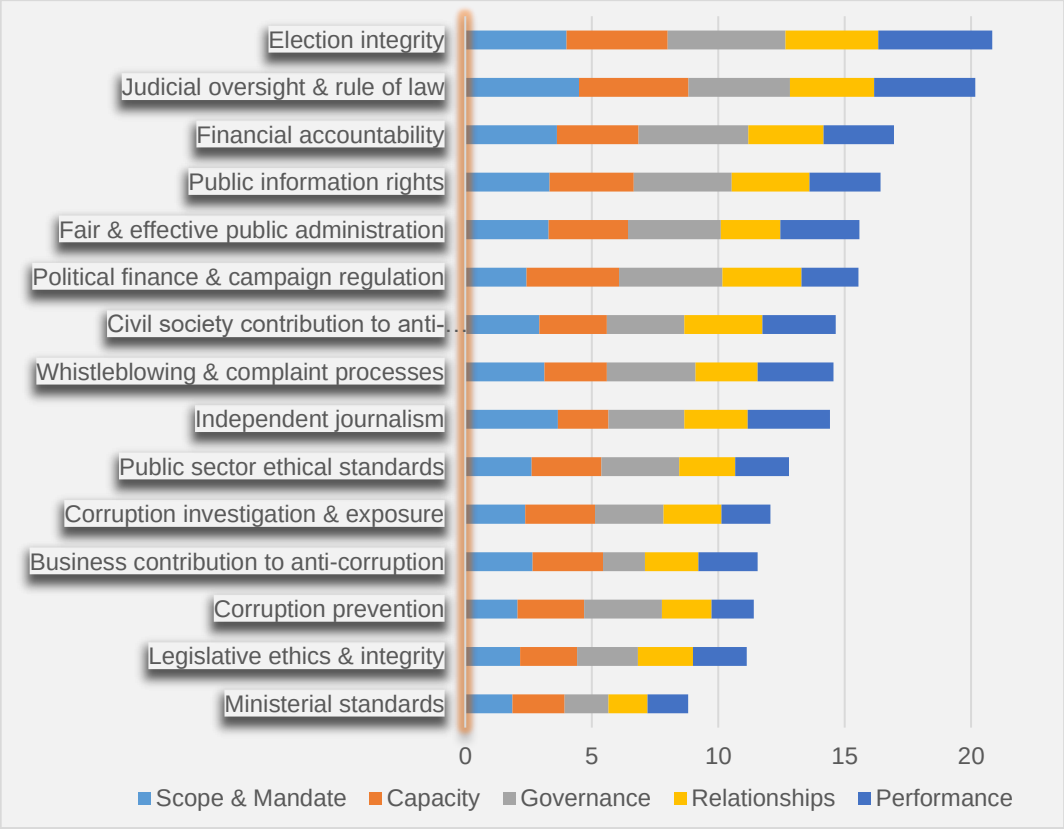
What is strong, and what is weak? The report deals with the system nationally, not just the Commonwealth level. But as a key example, Figure 2.10 sets out preliminary National Integrity Survey results from our expert and government respondents for all functions in the **Commonwealth integrity system**. It shows the variation in strength and performance between the different integrity functions or 'pillars' across the system – from *election integrity* and *judicial oversight* as the strongest, to *anti-corruption mechanisms, legislative ethics* and *ministerial standards* as the weakest.

These overall pictures help explain many of the recommendations that follow.

As our conclusions show, Australia's integrity systems have many strengths, but also many weaknesses. Departures from known best practice, failures to appreciate the context and challenges of modern integrity risks, inadequate political will, and legal and bureaucratic incoherence result in systems which are weaker and less cohesive than they should be. In some areas, such as corruption prevention and political integrity, our traditions mean we can and should be leading the world – but currently we are not.

These recommendations can turn that around.

Figure 2.10. State of the Commonwealth integrity system, by integrity function -- strongest to weakest (National Integrity Survey, experts & government, n=66)



3. Australia's anti-corruption priorities in context

The crucial first step in understanding strengths, weaknesses and reform priorities for Australia's national integrity system is to understand its context.

Australia's fall in score and ranking on **Transparency International's Corruption Perceptions Index** since 2012 tells us: first, Australia is lucky in that, in international terms, it is generally still not a 'high corruption' country; second, Australia is going in the wrong direction, and can and should do better, if it is to avoid that fate, rebuild public trust and regain a reputation for dealing well with integrity risks.

Successive Australian federal governments have acknowledged our greatest danger is to become complacent and shrug off risks of corruption. However, this danger has been realised – while maintaining a range of disparate responses to integrity and corruption issues, Australia has failed to maintain investment nationally in either the resources or coordinated approaches needed to protect public integrity in the face of domestic and international challenges.

This problem continues in current debate, including both Government and Opposition proposals for reform to establish a **Commonwealth / National Integrity Commission**. So far, this debate is confined to updating anti-corruption mechanisms *within* the federal public sector, much as if it was simply a State government.

This approach is insufficient. Australia is a federal system in which national priorities must take account of national and international issues, cross-sectoral issues, federal/state issues, the need for greater national coordination and cooperation, and the Commonwealth's different, broader anti-corruption roles.

The first step is to ensure reform includes provision for a strong national plan – something that government has not previously managed to achieve. Determining reform priorities requires a proper understanding of context, including:

- Our patchy track record in controlling the export of corruption, from Australia;
- Unmet challenges in controlling the import of corruption, into Australia;
- The intersection of corruption issues between business and public sectors; and
- The need for cooperation and coordination across Australia.

Recommendation 1: National integrity and anti-corruption plan

That the Commonwealth Government institute a **5 year integrity and anti-corruption plan for Australia**, including:

- Assessment and responses to all three areas of corruption risk: public integrity, business integrity, and Australia's international roles;
- Consultation and implementation involving the States, civil society and international partners; and
- A statutory basis for leadership, consultation, coordination and monitoring, through a national committee, to endure through parliamentary cycles.

This recommendation relates to: the **Commonwealth** government, but also requires participation and support of **all State and Territory** governments.

Box 3.1. National Coordination and Cooperation Provisions

National Integrity Commission Bill 2018 – Part 3, Division 7, ss. 36-41

36 Role of the National Integrity Commissioner

(1) It is the duty of the National Integrity Commissioner to:

(a) promote and assist in a comprehensive, efficient, nationally coordinated approach to the prevention, detection, reduction and remediation of corruption in:

(i) Australia generally; and

(ii) Australia's relations with other countries; and

(b) assist in the cooperative implementation of Australia's international anti-corruption responsibilities, including under the United Nations Convention Against Corruption (2005). …

37 National Integrity and Anti-corruption Plan

(1) The Minister is to publish a National Integrity and Anti-corruption Plan no less frequently than every 4 years, covering at least the next 4-year period.

(2) The National Integrity and Anti-corruption Plan must include the following:

(a) identification of key corruption threats and related risks to integrity affecting, or likely to affect, Commonwealth public administration;

(b) identification of key corruption threats and related risks to integrity affecting, or likely to affect, Australia generally;

(c) key mechanisms in place and any additional measures planned to mitigate corruption threats and risks to integrity;

(d) the role of business and the wider community in promoting integrity and combatting corruption in Australia;

(e) the role of the States and Territories in promoting integrity and combatting corruption in Australia;

(f) priority areas for Commonwealth reform or action to promote integrity and combat corruption; …

40 National Integrity and Anti-Corruption Advisory Committee

(2) The National Integrity and Anti-Corruption Advisory Committee consists of the following:

(a) the persons who, from time to time, hold the following offices:

(i) Secretary of the Department administered by the Attorney-General;

(ii) National Integrity Commissioner;

(iii) Australian Federal Police Commissioner;

(iv) CEO of the Australian Crime Commission;

(v) Chairperson of the Australian Securities and Investments Commission;

(vi) Chairperson of the Australian Competition and Consumer Commission.

(b) at least 3 representatives of State or Territory agencies with significant responsibility for integrity, ethics or the prevention of, or responses to, corruption;

(c) at least 2 representatives of civil society organisations concerned with integrity, ethics or the prevention of, or responses to, corruption;

(d) at least 2 representatives of business organisations concerned with integrity, ethics or the prevention of, or responses to, corruption;

(e) at least 2 persons with independent specialist expertise in integrity, ethics or the prevention of, or responses to, corruption;

(f) such other persons that, in the opinion of the Minister, can contribute to the development of the National Integrity and Anti-Corruption Plan.

The way forward requires a more coordinated and agile response to the nation's needs than previously considered – among Commonwealth agencies, but also nationally and internationally, and across the public-private divide. This means a national approach to coordination and planning of anti-corruption policies.

A national integrity or anti-corruption commission is certainly needed. As outlined in chapter 2, our assessment has already informed design of the *National Integrity Commission Bill 2018*, providing tangible examples of what is needed. This is a national integrity or anti-corruption commission with a scope and mandate which is indeed truly "national", and includes the necessary coordination and leadership mechanisms. This requires a shift in focus, away from designing an agency based only on existing state or law enforcement precedents, towards these larger goals.

Recommendation 2: A truly 'national' integrity commission

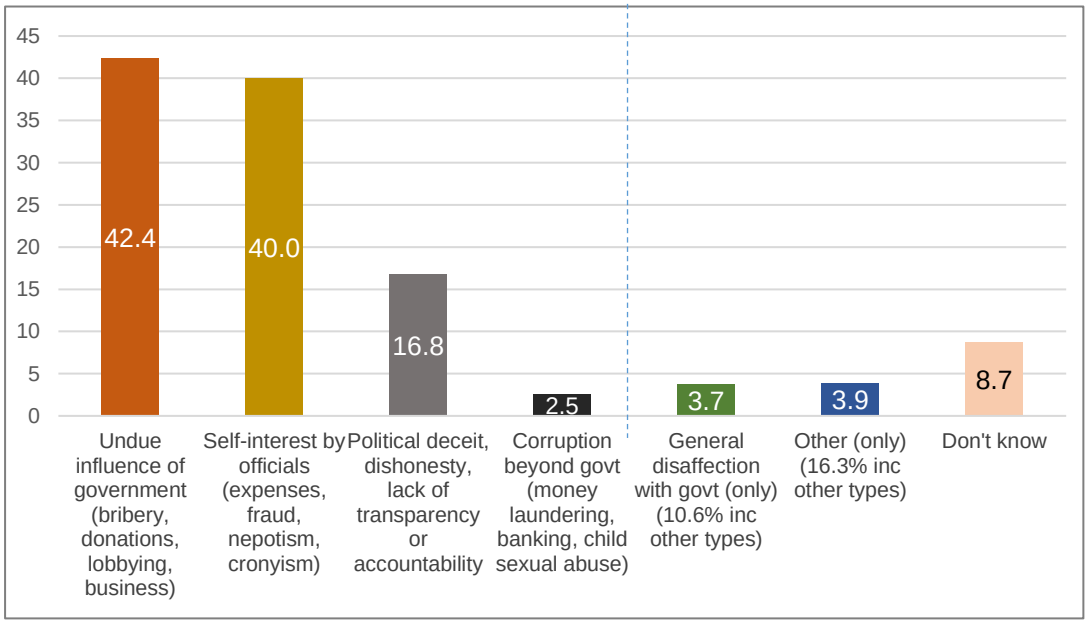
That Australia's proposed **Commonwealth / National Integrity Commission** be charged with responsibility for corruption prevention, detection and response ***not only* within federal public administration**, but also for:

- Assessment and strategies for responding to all corruption risks crossing sectoral and jurisdictional boundaries, within and involving Australia,
- Leadership, support and formal, ongoing coordination mechanisms for ensuring federal-state and international cooperation, and
- Mechanisms for ongoing involvement of civil society and business in the agency's policies and planning.

This recommendation relates to: the **Commonwealth** parliament, but also requires participation and support of **all States and Territories**.

Figure 4.1. Types of corruption perceived by Australian citizens

B4. 'What kind of corruption do you think is the main problem in government – please tell me the kind of actions or behaviour you have in mind?' (n=1,932)



Griffith University & TI Australia, Global Corruption Barometer Australia, May-June 2018 (n=2,218).
Note: Columns add to more than 100 per cent, as respondents could nominate more than one kind.

4. Our main official corruption challenges

Reduced trust and elevated scandals in Australian government in recent years have focused attention on the scale of our official corruption problems – and the issue of how corruption itself is understood and defined. Achieving a clearer picture of these challenges, and the adequacy of operating definitions of corruption is pivotal to identifying whether and how integrity systems may need to be strengthened.

For Australia there are four main issues:

- The changing profile of the *types* of misconduct and integrity violations classified by the community as 'corruption' – especially increasing concern about 'grey corruption' and 'undue influence';
- The extent of corruption risks going under-addressed, or unaddressed, in particular industry *sectors* – especially at Commonwealth level;
- Wildly varying *legal definitions* of official corruption across Australia, creating problems of inconsistency, confusion and uncertainty about the right systems and processes for responding to corruption; and
- *Disjunctions* between the amount of official misconduct that is known or perceived to occur, and the amount and effectiveness of official action to deal with that misconduct – given that only some of these definitions cover, or propose to cover, the spectrum of corruption risks in modern-day Australia.

These definitions are not only central to whether justice is achieved and accountability and trust maintained. They also define what preventive strategies are triggered to reduce reliance on a retrospective 'damage control' model of integrity; whether corrupt conduct is properly measured; and whether high-risk misconduct is detected before taking hold, through comprehensive reporting frameworks.

Recommendation 3: A modern, national definition of corrupt conduct

That the Commonwealth lead the States in developing a **modernized, broad definition for triggering anti-corruption processes, aimed at any 'corruptive' conduct which undermines public trust** – including:

- all violations with significant potential to corrupt, or impair public confidence in the integrity of, public decision-making (whether intentionally or recklessly; and whether by public officials or private businesses and citizens);
- any breach of, or failure to have, enforceable codes of conduct covering high-risk activities including gifts and benefits, lobbying, conflicts of interest including political party and electoral interests, and principles for transparency, competition, fairness and value for money in procurement;
- not only criminal, but disciplinary or administrative misconduct of those kinds;
- equal application across all government agencies and functions.

This recommendation relates to: the **Commonwealth** government and to all States and Territories, especially **South Australia** and **Victoria**.

Meeting the challenge starts with a modernised definition of corrupt conduct which does not revolve around response type or seriousness (e.g. criminal or non-criminal), as currently mostly the case; nor, as in NSW, growing lists of types of behaviour (including crimes) which can be corrupt without reference to *why.* The central focus should be the risk posed by any type of conduct that could have a "corruptive" effect on public decision-making, or on public confidence in its integrity.

The place to start is the Commonwealth, where the need has long been recognised, but where the current proposals are fragmented and inconsistent.

However, it is also time for a consistent national approach – a first objective for the National Integrity and Anti-Corruption Advisory Committee, described in chapter 3.

Recommendation 4: 'Undue influence' as a new corruption marker

That the Commonwealth and States include, in their revised statutory definitions of corrupt conduct, clear principles affirming **why the pursuit or granting of 'undue influence' constitutes potential corruption on its own right**, for application in all systems protecting the integrity of decision-making including:

- Transparency and regulation of access to decision-makers
- Lobbying
- Political donations, support and endorsements
- Pre-appointment and post-separation employment
- Personal and professional relationships.

This recommendation relates to: the **Commonwealth** and **all States and Territories**.

Corruption challenges cannot be addressed if they are not identified, if the level of corruption or high-risk conduct is not measured properly, or if there are no requirements to report it. Reporting requirements must enable independent authorities to ensure corruption issues are not played down, mishandled or swept under the carpet.

Dealing with our corruption challenges begins with comprehensive mandatory reporting frameworks which recognise the full spectrum of high-risk conduct described above and apply equally to all agencies and officials. As shown by Figures 4.4 and 4.5 this is not the case now, especially for the Commonwealth – and would still not be the case under the Government's Commonwealth Integrity Commission proposal.

Recommendation 5: Comprehensive mandatory reporting

That the Commonwealth, and all States not already doing so, ensure a statutory system under which **all public agency heads and individual public officials must report any suspected/potential corrupt conduct**, in real time, to:

- Their own agency, or directly to the anti-corruption agency, in the case of all public officials; and
- Directly to the anti-corruption agency, in the case of all agency heads.

This recommendation relates to: the **Commonwealth** and **Tasmanian** governments.

Figure 4.4. Anti-corruption coverage: public sector employees (Australia) 2017

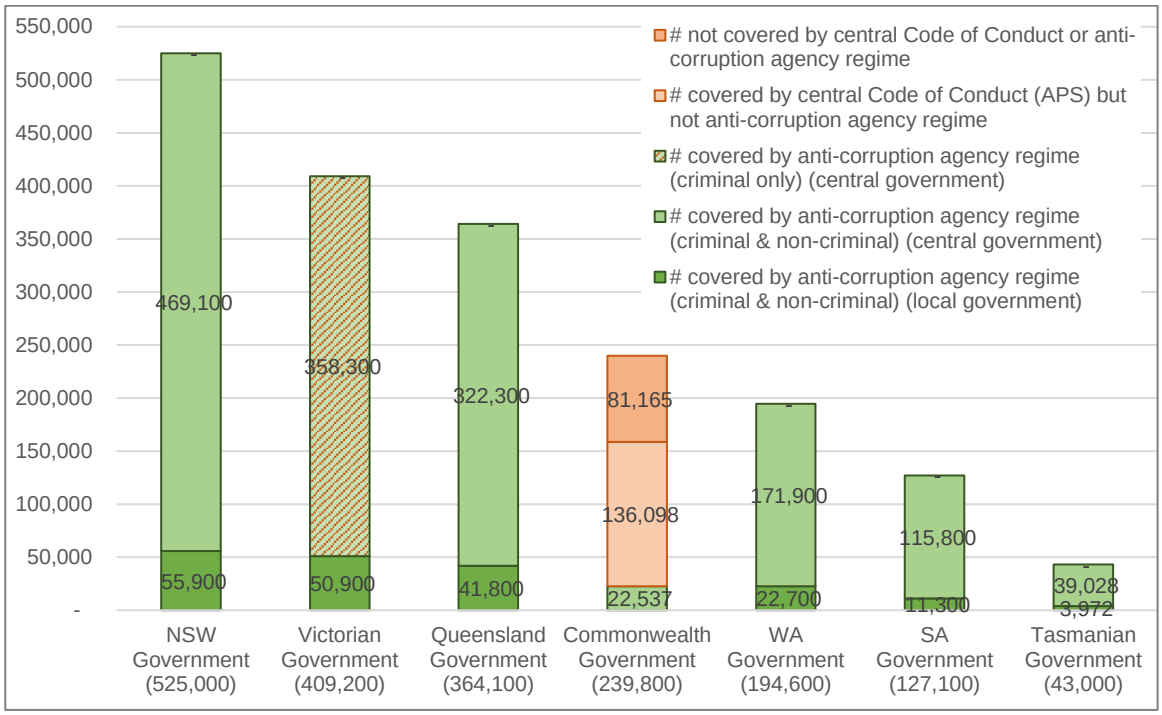
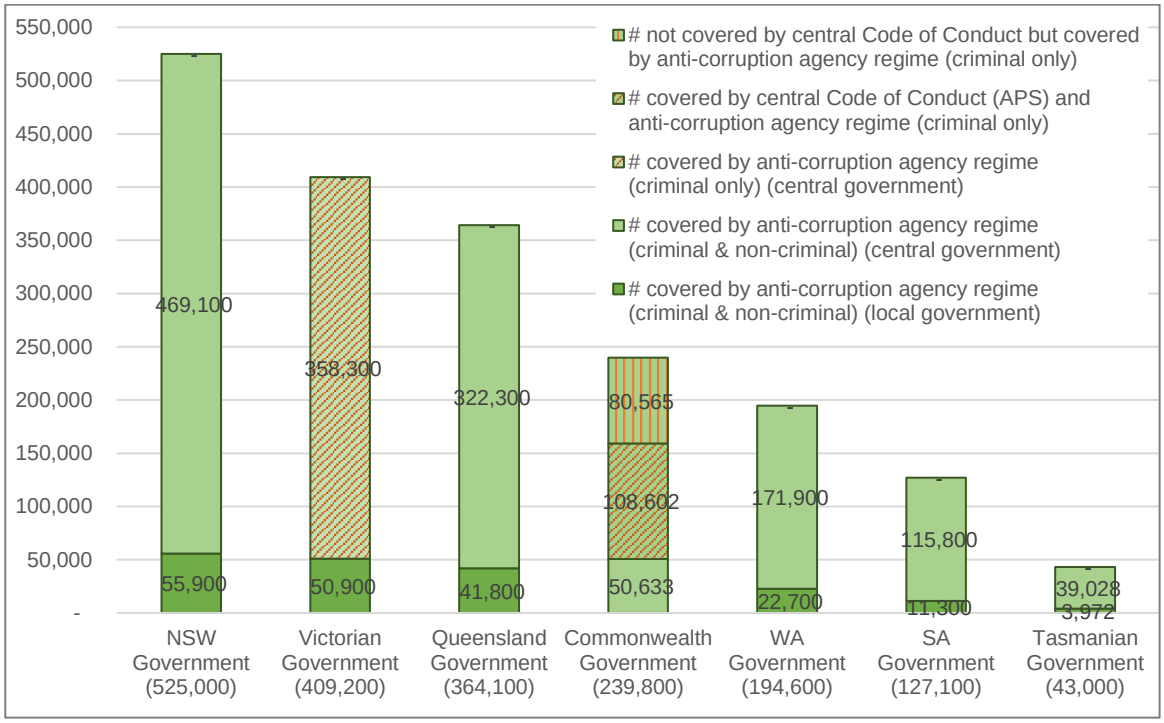


Figure 4.5. Proposed coverage (Commonwealth Integrity Commission proposal)



Sources: Australian Bureau of Statistics Series 6248.0.55.002 - Employment and Earnings, Public Sector, Australia, 2016-17; APS Statistical Bulletin 2017; *A Commonwealth Integrity Commission—proposed reforms,* Attorney-General's Department, Canberra, 13 December 2018.

5. Preventing corruption

Public sector integrity systems are designed to identify and respond to corruption, misconduct and undue influence, and promote ethical behavior, high integrity public decision-making, accountability and performance. An important part of this role is preventive – that is, not just fixing problems and ensuring accountability and justice after they arise but preventing them from occurring in the first place.

Integrity is supported institutionally in a wide variety of ways, including through leadership and culture, and the mutually reinforcing work of all integrity agencies. However, as corruption risks grow and change, there is increasing recognition that preventing corruption does not happen by accident or good intentions alone. It requires systematic attention and a program of activity, both by lead integrity agencies and within every institution, to support the desired culture.

Surprisingly, research, policy and practice in the prevention of corruption are much less advanced than other aspects of integrity. This is confirmed by new, national research undertaken as part of this assessment into:

- What international research and experience says about the best approach to preventing corruption, including lessons learned from other domains that could be applied to help develop effective corruption prevention strategies?
- What kinds of prevention activities are currently employed across Australian governments jurisdictions – how do they compare, and what may be missing?
- Is a more strategic framework needed for corruption prevention – and if so, what should be its elements?
- Is resourcing for prevention adequate, and if not what should it be?
- How should prevention responsibilities and activities be formally embedded in public integrity frameworks, in support of Australia's historical commitment to a 'pro-integrity' culture in public institutions, now and in the future?

There is need for a clear prevention mandate and defined role for the coordination of prevention focused activities, in each jurisdiction. Current approaches are at best ad hoc, patchy and inconsistent. While anti-corruption agencies (ACAs) see this as their responsibility, this is often not reflected in formal structures.

Each jurisdiction needs a lead agency, usually the relevant ACA, with a role and responsibility to coordinate prevention efforts. This mandate needs to be embedded in legislative and policy frameworks. Developments in NSW and the framework proposed by the *National Integrity Commission Bill 2018* provide a way forward.

While these conclusions relate primarily to ACAs, it is clear effective prevention involves integration of a wide range of integrity issues within any organisation, as well as alignment of objectives, information and outreach between integrity agencies. Strengthened institutional arrangements also need to reflect these needs.

Recommendation 6: Strengthened corruption prevention mandates

That the Commonwealth and each State government **strengthen the legislative and policy mandate of their lead agency for corruption prevention**, to include:

- Responsibility to implement and monitor a proactive program of corruption prevention and resistance-building
- Clear statutory requirements for all public sector entities to develop their own corruption prevention frameworks, which are publicly available and reported, and regularly monitored by the lead integrity agency, and
- Formal coordination and information sharing mechanisms across other integrity agencies within the jurisdiction and across jurisdictions.

This recommendation relates to: the **Commonwealth** and **all States and Territories**.

Resourcing is a key constraint limiting the range of prevention activities undertaken across the jurisdictions. This is an international problem; Transparency International's evaluation methodology for anti-corruption agencies rates 5 per cent or more of an ACA's budget spent on corruption prevention as being 'high'.

While resources will always be limited and contested, budget allocations to ACAs, and within ACAs or other relevant integrity agencies, need to reflect the true needs as well as true value – in cost-benefit or return-on-investment terms – of corruption prevention activities.

Recommendation 7: Resources for prevention

That as part of the proposed national benchmarking review of integrity expenditure (Recommendation 25), the Commonwealth and States identify **minimum thresholds for investment in a full program of corruption prevention activities**, incorporating reactive and proactive strategies, as a proportion of:

- Total public expenditure
- Total core integrity agency expenditure, and
- Lead anti-corruption agency expenditure.

Further, that ACAs and/or other integrity agencies responsible for prevention allocate a significant portion of their budget (greater than 5 per cent) to their prevention program, and publicly report on how the budget allocation is apportioned between prevention, investigations and other responsibilities.

This recommendation relates to: the **Commonwealth** and **all States and Territories**.

Within the prevention function, lead agencies also need to develop a cohesive strategic framework for prevention activities, based on research evidence. For most agencies, prevention is currently practiced in accordance with aspects of two models identified from research – a law enforcement model and a bureaucratic model – both of which lack an evidence base to support their main underlying assumptions.

No ACA currently adopts a cohesive framework around its bureaucratic measures, such as used in responsive regulation. Most agencies pay less attention to identifying situational factors that could be manipulated to reduce opportunities.

There is no one-size-fits-all, but essential elements of a more strategic framework are known. With this framework, the real work and value of prevention can be achieved.

Recommendation 8: A comprehensive corruption prevention framework

That the lead integrity agency of each jurisdiction develop and publicly articulate **an agreed framework for best practice in corruption prevention and resistance-building programs**, based on:

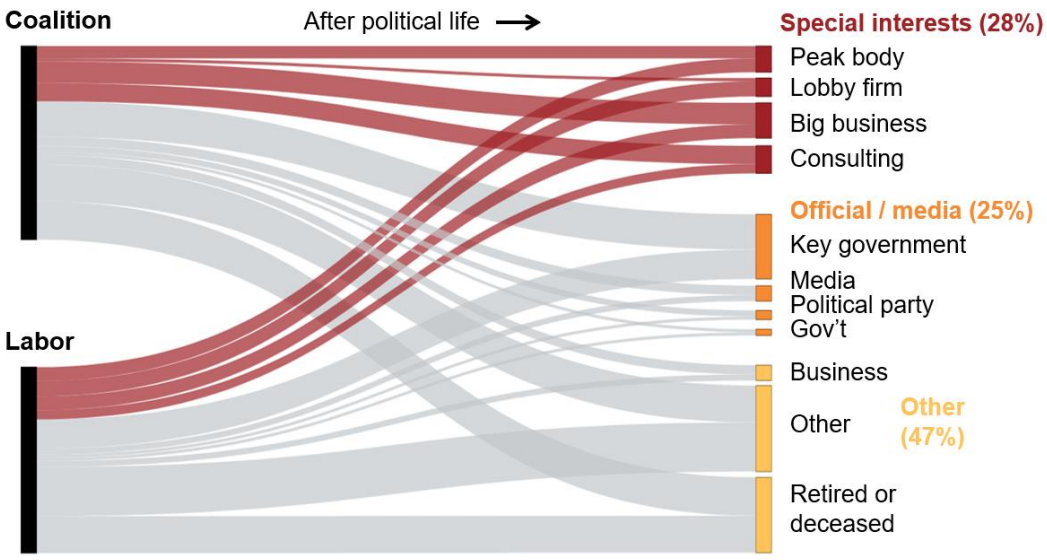
- A broad range of activities that does not over-emphasise education or law enforcement at the expense of other activities
- System-wide, agency specific and function specific strategies that specifically address situational contexts
- Graduated responses to detected breaches to maximise voluntary compliance (see also Recommendation 16)
- Targeted use of law enforcement

A comprehensive approach to performance measurement and data collection, focused on prevention outcomes rather than input activities.

This recommendation relates to: the **Commonwealth** and **all States and Territories**.

Figure 6.2. Federal ministerial employment after politics

GRATTAN Institute



Notes: Includes 191 people who were either federal ministers or assistant ministers and left politics in the 1990s or later. Some have had more than one role since. 'Big business' is Top 2000 Australian firms by revenue in 2016.

Source: Wood, D., Griffiths, K., and Chivers, C. (2018). *Who's in the room? Access and influence in Australian politics*, Grattan Institute, Figure 2.6.

6. Political integrity

Elected legislatures, executive government and political parties are core pillars of Australia's public integrity systems. However, political integrity regimes in Australia are in disarray, with occasional islands of best practice and innovation, but many languishing areas, especially at a Commonwealth level. The result is a fragmented, incomplete and often ineffective system.

Five key problems are eroding public confidence in parliamentarians and ministers, and weakening the fundamentals of democracy:

- Incoherent, inconsistent and ineffective political donation and finance regimes;
- Undue influence through unregulated or inappropriate lobbying and access;
- 'Revolving doors' or post-separation employment of ministers and senior staff;
- Risks of political cronyism in appointments, including the judiciary and tribunals;
- Regulation of parliamentary expenses.

Fortunately, solutions are apparent, through extensive work by parliaments and others on standards and features of the parliamentary system that can help bring confidence back to Australian politics. These include:

- A focus on principles of public trust;
- Robust parliamentary and ministerial code of conduct regimes;
- Systematic review of existing rules in each of these five areas, especially with a view to establishing greater national coherence and consistency; and
- Practical mechanisms for supporting compliance and enforcement with these principles, including prevention and advisory mechanisms, enforcement by parliaments and, when necessary, stronger integrity agencies.

The Grattan Institute's 2018 analysis of access and influence in Australian politics succinctly summarises why it is time for a comprehensive suite of practical reforms:

> *Publishing ministerial diaries and lists of lobbyists with passes to Parliament House could encourage politicians to seek more diverse input.*
>
> *More timely and comprehensive data would improve visibility of the major donors to political parties. Accountability should be strengthened through clear standards for MPs' conduct, enforced by an independent body.*
>
> *A cap on political advertising expenditure would reduce the donations 'arms race' between parties and their reliance on major donors.*
>
> *These reforms won't cure every ill, but they are likely to help. They would improve the incentives to act in the public interest and have done no obvious harm in jurisdictions where they have been implemented.*

Recommendation 9: National political donations and finance reform

That the Commonwealth, States and Territory governments establish a high level, national inquiry (royal commission) to **engage with the community to develop and recommend consistent principles for public funding of elections, expenditure regulation, political donation regulation and disclosure**, with a commitment to legislate accordingly -- including:

- The lowest realistic caps on both political donations and campaign expenditure, as well as low, consistent and universal disclosure thresholds
- Real-time disclosure
- Consistent and fair regulation of third parties, and
- Clear statements of objectives to ensure new regulations are interpreted with reference to the fundamental goals of political integrity, public trust and prevention of 'undue influence' as described in Recommendation 4; and apply equally to all persons, including not-yet-elected political candidates.

This recommendation relates to: the **Commonwealth** government and to all States and Territories, especially **Tasmania**

Seven out of Australian's nine jurisdictions still have no system of prompt or real-time disclosure of political donations. Rules and thresholds for donations, expenditure and disclosure vary wildly, inviting 'laundering' of donations through backdoor routes. One Australian State (Tasmania) still has no political finance disclosure regime at all. In the State (NSW) where most attempts have been made to limit or ban unwanted political finance, these have been inconsistent and politically partisan, in some cases struck down by the High Court of Australia for being too piecemeal.

It's time for a national inquiry to engage citizens in the process of setting consistent, evidence-based rules that the community and High Court alike can support – and to generate the political commitment for parliaments to legislate accordingly.

Recommendation 10: Lobbying and access

That the Commonwealth, States and Territory parliaments each legislate to **eliminate undue influence by vested interests in parliamentary and ministerial decision-making**, through provisions including:

- Stronger, more enforceable, independently administered registration and code of conduct requirements for lobbying activities (including in-house personnel)
- Real-time publication of records of lobbying activities, including diaries of ministers, ministerial staff and designated officials
- Information, training and support for community organisations with limited skills or resources necessary to lobby in the public interest
- Prohibition on the purchase of ministerial access or use of government resources as part of political party fundraising or electoral campaigns
- Express requirements for compliance with lobbying rules in parliamentary and ministerial codes of conduct, including published records and statements of reasons for all significant ministerial decisions
- A quarantine period of 3-5 years after serving in executive office, during which a former minister may not accept any substantial benefit from any entity or related entity with which they dealt in their portfolio.

This recommendation relates to: the **Commonwealth** and **all States and Territories**.

Figure 6.3. A ten-point plan for democratic regulation of election campaign funding

Source: Joo-Cheong Tham, 'Democracy before dollars: The problems with money in Australian politics and how to fix them', *Australian Quarterly* Vol 90, Issue 2 (Apr-June 2019), p.20.

Figure 6.4. A ten-point plan for democratic regulation of political lobbying

Source: Joo-Cheong Tham, 'Democracy before dollars: The problems with money in Australian politics and how to fix them', *Australian Quarterly* Vol 90, Issue 2 (Apr-June 2019), p.20.

Recommendation 11: Meritocratic political appointments

That the Commonwealth and each State and Territory parliament legislate to establish an **appointments commission, including civil society, to ensure independence, merit and public confidence** in all appointments to:

- Senior positions in the public service
- Senior diplomatic and trade posts (e.g. head of mission)
- The judiciary and independent tribunals, and
- The heads of core integrity agencies.

This recommendation relates to: the **Commonwealth** and **all State and Territory** governments.

Practical and effective precedents exist for official appointment processes to help remove the risk or appearance of politicization and cronyism in ministerial appointments – a prominent concern at both federal and state levels. They include the Commissioner of Public Appointments approach in the UK, which could be easily followed in Australia.

Already, every Australian house of parliament has or will soon have its own code of conduct – except the Western Australian Legislative Council, and both houses of federal parliament. The Victorian Parliament is the latest to legislate its codes, in 2019, following recommendations of the Commonwealth Parliamentary Association. The *National Integrity (Parliamentary Standards) Bill 2018* demonstrates the feasibility of a best practice regime at federal level – a fundamental step towards restoring trust in legislatures and ministers, currently one of the weakest areas in the integrity system.

Recommendation 12: Parliamentary and ministerial codes of conduct

That every Australian House of Parliament and every Cabinet that has not already done so, adopt a regime for a **code of conduct** which includes:

- The *values and conduct* which each member is obliged to observe, including with respect to disclosure and management of interests – renewed and re-adopted after each general election or appointment of each administration
- Appointment of a parliamentary *ethics or integrity adviser* or commissioner, to provide confidential advice to any member or their staff, and with whom every member is required to meet at least once every year
- *Professional development or training programs* to assist new and continuing members and their staff with ethical decisions and challenges
- A legislatively-based process for ensuring a culture of compliance and rigorous, non-partisan enforcement of the code
- Appointment of a *parliamentary standards commissioner or other independent investigator(s)* to determine the facts of any alleged breach, and report to the House or First Minister where evidence of breach is found
- Mandatory notification of possible *corrupt conduct or criminal breaches* to the jurisdiction's anti-corruption agency or Police, as the case may be.

This recommendation relates to: the **House of Representatives, Senate** and **WA Legislative Council** as the only Houses with no Code at all; and to all parliaments other than **Queensland** in respect of most other elements.

7. Whistleblowing, civil society and the media

Integrity agencies, parliaments and public institutions do not work alone. Far from it – processes of social accountability are now understood internationally to provide crucial triggers and drivers for any functioning integrity system.

Australia's national integrity system would simply not work, without voters to hold parliamentarians to account, citizens to assert their rights if treated unfairly, ethical public servants and private sector employees to speak up or provide evidence about wrongdoing, and media capable of reporting on accountability issues of public interest.

Our assessment nevertheless reveals that to a large extent, the crucial accountability roles of these social actors are taken for granted and continue to go substantially unsupported by the integrity system – even though they are under pressure and in some cases close to crisis.

On the positive side, Australia has advanced its commitment to the Open Government Partnership, with beneficial effects.

However, the integrity system faces five serious challenges:

- Inaccessibility of key integrity agencies to potential complainants, whistleblowers and informants, especially in relation to Commonwealth corruption matters – a problem *not* proposed to be fixed under current Government proposals;
- Insufficient resources and operational independence on the part of integrity agencies to handle citizen and whistleblower complaints directly, instead over-relying on 'devolution' or integrity issue referrals back to the decision-makers concerned;
- Public sector whistleblower protection regimes which are strong on paper but provide little actual protection – a problem for which neither the Commonwealth Government nor Opposition have yet promised a credible solution;
- Continuing barriers to government transparency and access to justice; and
- Critical reduction in the availability and capacity of independent journalism to play its accountability roles; a problem not offset – and indeed often boosted – by the rise of global platforms for unmediated social communication.

The Commonwealth has proposed that individual public servants and the public not be able to directly approach or make complaints to the proposed Commonwealth Integrity Commission (public sector division) Government – and instead would need to be referred there by other agencies. This reform would be in the opposite direction to best practice, with experience showing the need for integrity agencies to be *more* open, responsive and accessible to complainants, not less.

The proposed national integrity commission and bipartisan recommendations for whistleblower protection reforms create an important opportunity for addressing several of these issues, at the federal level. However, on both these potential advances, stronger action is needed than yet promised by any major party.


Australian Government
Attorney-General's Department

December 2018

A Commonwealth Integrity Commission—proposed reforms

This paper provides an overview of the Government's proposed model for reforms directed at improving the current federal integrity framework by creating a Commonwealth Integrity Commission. The paper outlines current integrity arrangements, provides detail on the key aspects of the proposed reforms, and explains the rationale f... welcomes public comment on the

... investigation into that matter.

The CIC will not investigate direct complaints about Ministers, Members of Parliament or their staff received from the public at large.

Misconduct that is not defined as a criminal offence at Commonwealth law is considered more appropriately dealt with by the entities where the misconduct occurs: public sector agencies for public servants; Houses of Parliament for parliamentarians; the Prime Minister for Ministers; the Special Minister of State for ministerial staff.

... investigate the matter.

The public will continue to be able to make complaints through existing mechanisms—for example by reporting a matter to a department or agency, or to another integrity agency like the Ombudsman or AFP. Those agencies will then determine whether the matter should be referred to the CIC in accordance with the referral arrangements indicated above.

... sector division of the CIC will be able to commence an own-motion investigation in ...

Recommendation 13: Direct accessibility to the public

That the Commonwealth and each State government ensure that the enabling legislation of each core integrity agency enables **citizens and public employees to gain full and direct access** to its services -- including:

- Freedom to complain directly to the agency about any matters in jurisdiction
- Clear principles for ensuring that matters are only 'devolved' or 'referred back' to the agency where the matter originated where this is the best of all options for investigation and resolution, and with prior consultation with the citizen or public employee;
- The right to have matters referred to other integrity agencies, without the citizen having to make multiple complaints, and
- Sufficient resourcing for integrity agencies to fulfil these rights.

This recommendation relates to: all Australian governments, especially the **Commonwealth** in respect of its Commonwealth Integrity Commission proposal.

Recommendation 14: Whistleblower protection that protects

That the Commonwealth and each State government reform its public interest disclosure (whistleblower protection) legislation to:

- Bring legal protections at least to the standard of Part 9.4AAA of the Corporations Act, as amended, by granting access to compensation where agencies fail to support and protect public interest whistleblowers
- Recognise collateral or 'no fault' damage as a basis for whistleblowers to be compensated for impacts of reporting, not simply direct reprisals
- Establish reward and legal support schemes to ensure the financial benefits to government of whistleblowing disclosures are reflected in support to whistleblowers themselves, individually and collectively, and
- Establish a properly resourced whistleblower protection authority, providing not only advice, support and referrals, but expert monitoring and oversight of responses to disclosures, and active protection including investigations into detriment, compensation and civil penalty actions.

This recommendation relates to: all Australian governments, especially the **Commonwealth** in respect of the *Public Interest Disclosure Act 2013* and other proposed whistleblowing reforms.

The Commonwealth's *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* has lifted the bar for rules to protect whistleblowers on paper, but major recommendations of the Parliamentary Joint Committee on Corporations and Financial Services remain unfulfilled, with no timetable for implementation of a 3-year-old review of the *Public Interest Disclosure Act 2013.*

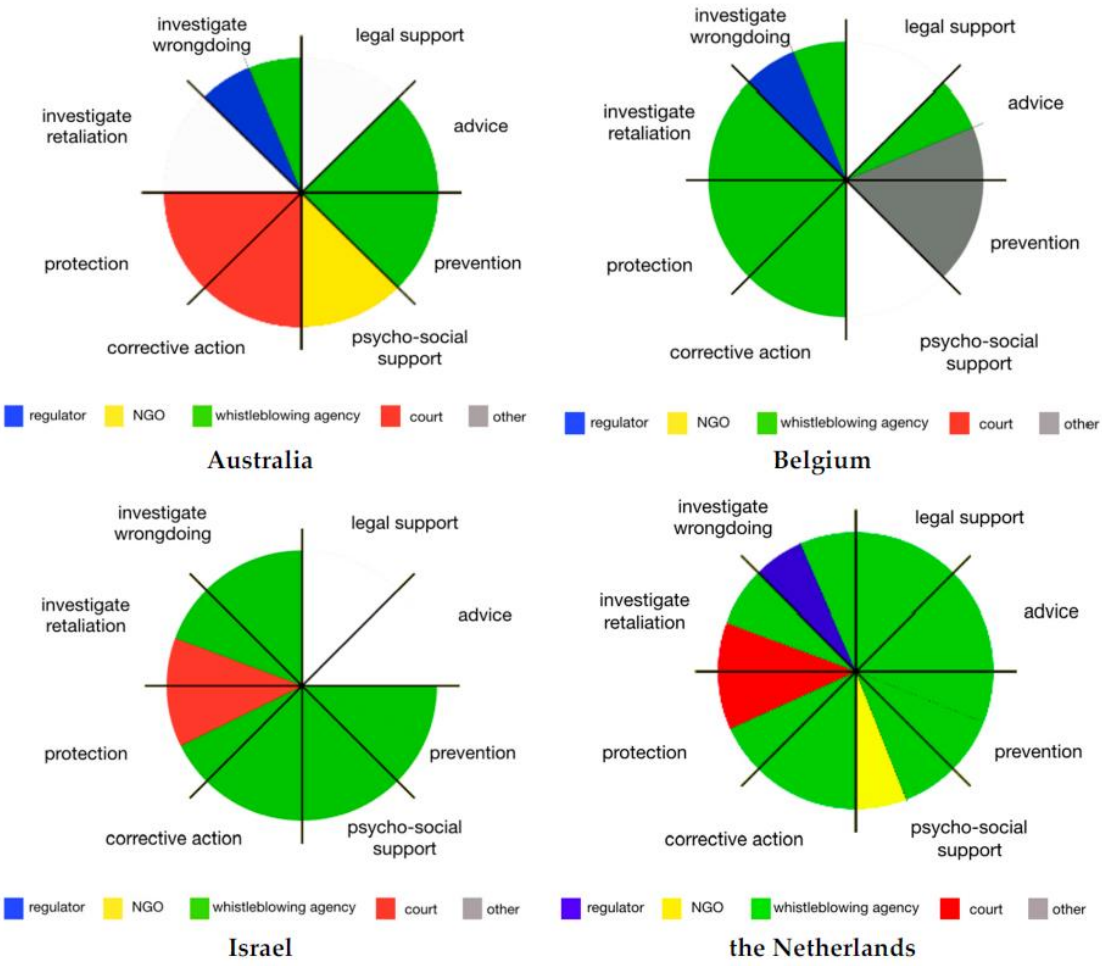
Investment in practical mechanisms to ensure proactive and reactive protection of whistleblowers remains weak – for public and private sectors – due to the lack of any agency with responsibility and specialist skill to police detrimental action.

The Opposition has proposed to implement further reforms, including a reward scheme, but its protection authority for the entire Australian workforce would consist of five (5) staff added to the wrong agency for the purpose (Commonwealth Ombudsman). This is not yet a credible proposal. It risks making whistleblowers worse off, by entrenching a system which encourages reporting but fails to provide meaningful protection or remedies.

Meanwhile, responses to the assessment suggest that **independent journalism** is the single highest performing 'pillar' of the national integrity system, relative to resources. However those resources are shrinking even further, with critical effect on the quantity and quality of public accountability, due to reduced funding and the effects of competition from largely unregulated, unmediated global communications platforms. Indeed, these platforms are creating as many accountability problems as they help solve.

A strategic shift in policy and resources is needed to sustain one of the most fundamental hallmarks of a functioning integrity system.

Figure 7.1: Institutional whistleblowing arrangements (public sector) (4 countries)



Source: Loyens, K.; Vandekerckhove, W. (2018) 'Whistleblowing from an International Perspective: A Comparative Analysis of Institutional Arrangements', *Administrative Science.* 2018, *8*, p.30

Recommendation 15: Supporting investigative journalism

That the Commonwealth Government implement a package of reforms to ensure the **future of investigative journalism** in Australia, including:

- Secure funding to public news services for investigative reporting on political accountability and integrity issues
- A special fund for public interest journalism beyond the public broadcasters
- Tax deductions or offsets for independent media outlets that meet public interest criteria
- An independent media integrity regulator with power to investigate and sanction misleading, deceptive and damaging breaches of editorial control by media organisations, especially open-source or "social" media platforms.

This recommendation relates to: the **Commonwealth** government.

8. Enforcing integrity violations

Much of the integrity system focuses on compliance – investigating and resolving complaints or other information about potential integrity breaches, ranging from corruption, misconduct and maladministration to financial accountability breaches, failure to observe electoral rules, and non-compliance with public information rights.

Despite the longstanding nature and well recognised role of integrity agencies, however, recent years have seen significant controversies over the nature and reach of their powers, their collective effectiveness and whether they all have the right tools to do their jobs. The assessment has focused on six specific problems.

First, gaps and disjunctions occur in the remedies integrity agencies may trigger or impose. In part this stems from misaligned legal definitions of corruption discussed earlier, but also from the fragmented or siloed nature of the remedies themselves. A seamless system of responses to integrity violations is needed, not only for effective prevention (Recommendation 8) but to achieve justice.

Recommendation 16: Justice in all integrity violation cases

That the integrity agencies of each Australian government (including law enforcement) develop a joint **framework for ensuring all integrity violations meet with a proportionate and, where appropriate, *visible* response** – (graduated response framework) covering:

- Criminal, disciplinary, civil and administrative options
- Restorative justice orders in criminal and non-criminal matters
- Anti-corruption agency input into disciplinary and administrative inquiries or proceedings, in referred, non-criminal matters
- Banning, disbarment and exclusion from public office
- Reclaiming of public contributions to superannuation or pensions
- Public cancellation or reversal of tainted decisions
- Public reporting on serious non-criminal ethics violations, and
- Presumptions against suppression orders and confidentiality clauses in all litigation (including criminal) or settlements relating to abuse of office.

This recommendation relates to: **all Australian governments**.

The relationship between anti-corruption agencies and the **criminal justice** system has been a concern, with some arguing these should operate independently, and others that there should be no non-criminal avenues for pursuing corruption. A root cause is delays and uncertainties in bringing criminal prosecutions after corruption investigations, contributing to a sense of impunity. In many jurisdictions, a more effective relationship between non-criminal and criminal paths must be rebuilt.

Recommendation 17: Effective law enforcement support

That each Australian government review its public interest prosecution policies, resourcing for Directors of Public Prosecutions and training to ensure:

- DPPs know what to do with corruption matters when referred to them
- Priority attention is given by a senior (special) prosecutor to all official corruption matters referred to them, including whistleblower protection matters, independently of apparent "gravity" on conventional criteria
- Discretions to prosecute prioritise public interest over success, and
- Alternatives to criminal prosecution can be identified as part of the framework under Recommendation 16, including disciplinary, civil and administrative sanctions stemming simply from charge or prosecution (not conviction).

This recommendation relates to: **all Australian governments**.

This issue is also crucial to resolving controversy over when **public hearing powers** should be available to expose and investigate corruption, without undermining traditional rights and the role of criminal courts. Failed Commonwealth prosecutions in serious bribery cases confirm the consequences when agencies do not understand the limits of their own coercive hearing powers, whether public or private.

The Commonwealth's Integrity Commission proposal sidesteps rather than resolves this question, by using only criminal avenues and no public hearing powers to address corruption in 80 per cent of the federal public sector (including parliamentarians) – while preserving them for 20 per cent of federal officials. The better answer is to reform the tests for public hearings, making clear the purposes and stages at which they can be used, and ensuring conflict does not arise with criminal proceedings.

Recommendation 18: Reform of public hearing powers

That all legislation providing integrity agencies with **power to conduct compulsory (coercive) public inquiries** be reviewed to ensure:

- all anti-corruption agency heads have such a power
- the discretion to exercise the power is non-delegated, fully independent, and based on agency heads' assessment of the public interest
- other key criteria are satisfied including the public interest in knowing how corrupt conduct was caused, allowed to occur or go unrectified, or could be prevented, even if individuals cannot or are not proposed to be identified
- protections against the use of self-incriminating compelled evidence in proceedings against a person are real and upheld
- consultation occurs with the Director of Public Prosecutions with respect to the feasibility and merits of criminal prosecution using evidence proposed, intended or likely to be used or gained at a public hearing, *before* the decision is taken to use or call that evidence in a hearing
- guidelines are in place to ensure a public hearing is adjourned or ceased whenever significant evidence arises that means a matter the subject of a hearing could or should be prosecuted as a criminal offence.

This recommendation relates to: **all Australian governments**, especially NSW.

The collective experience of investigative agencies can be brought to bear to solve further key problems in different jurisdictions. These include the importance of flexible, independent public reporting powers (lacking or limited for South Australian and Tasmanian corruption investigations), and mechanisms to ensure integrity violations do not fall through the cracks of different jurisdictions (a positive example being South Australia's Office of Public Integrity).

Controversy also surrounds whether official corruption investigations should be entitled to pursue non-government actors. This question should be answered in the affirmative – experience in other integrity areas confirms the importance of agencies must be able to follow the trail where it leads, be it financial, administrative or corruption-related.

Recommendation 19: 'Sunlight' public reporting powers

That the enabling legislation of all core integrity agencies be reviewed to ensure **effective powers of public reporting at any time** on any matter relating to their mandate or responsibilities, not limited to powers to report to parliament, where determined by the agency head to be in the public interest, subject only to requirements for procedural fairness with respect to individuals or private entities.

This recommendation relates to: **all Australian governments**, especially Tasmania and South Australia.

Recommendation 20: Closing the cracks between agencies

That the enabling legislation of all core integrity agencies be reviewed to include **provisions supporting the mutual referral of integrity issues between agencies,** including information sharing and the following responsibilities:

- to ensure all complaints or information received are reasonably assessed for evidence of integrity violations in the jurisdiction of each other agency; and
- to directly refer significant or serious violations to that agency, if not themselves proposing to action the complaint or information; or
- to notify that agency of any significant or serious violations identified, if themselves proposing to action the complaint or information, unless there are strong public interest reasons for not doing so (e.g. destruction of evidence).

This recommendation relates to: **all Australian governments**.

Recommendation 21: Jurisdiction over private actors

That the enabling legislation of all core integrity agencies be reviewed to ensure any private person or company may be investigated, called on to provide evidence, or be subject to reporting, findings of fact or recommendations on a matter in jurisdiction, as if that person was a public official, including:

- following the money in cases of public financial accountability
- following the decisions in cases of outsourced/contracted public services, and
- following the conduct and its causes in cases of corrupt or official misconduct (broadly defined in Recommendation 3).

This recommendation relates to: **all Australian governments**.

9. Integrity agency accountability

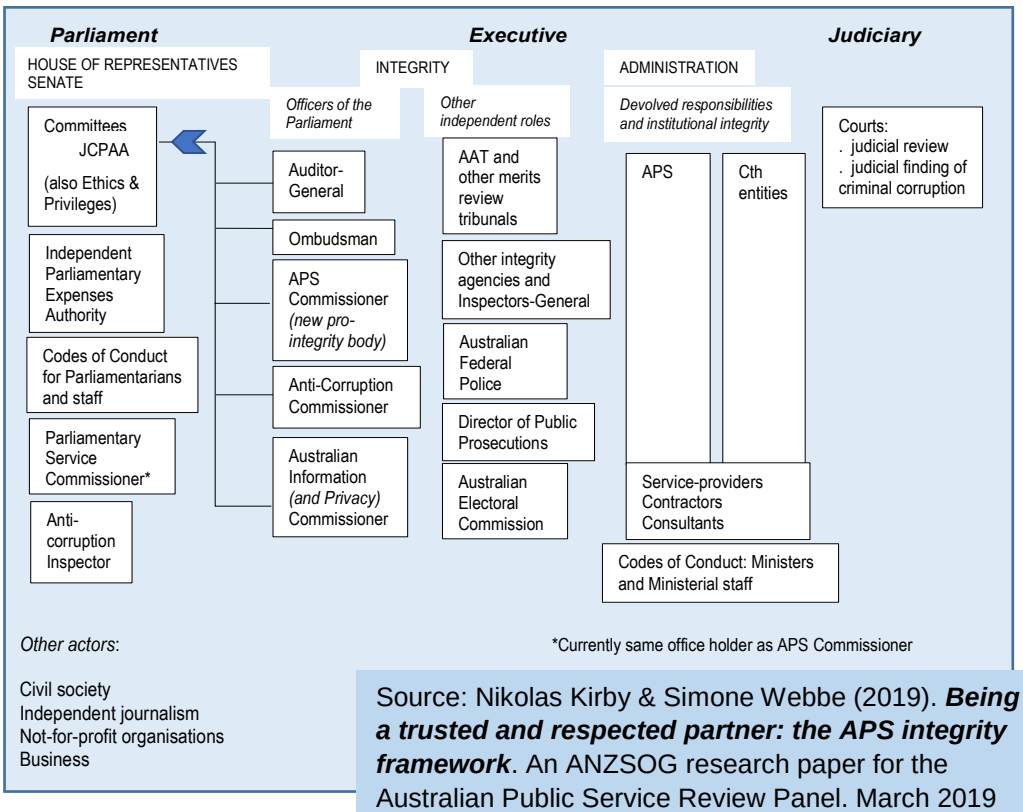
Accountability is not only a key purpose of the integrity system – it underpins it.

Australia has advanced systems of accountability governing its core, independent integrity agencies. Most are subject to oversight by special purpose parliamentary committees, as well as being subject to the rule of law and judicial review by the courts. To differing degrees, they may also oversight one another, in a network of mutual accountability. In most jurisdictions, special independent inspectors monitor the use by anti-corruption agencies and others of coercive or intrusive powers. Most of the guardians themselves have plenty of guards.

Controversies over accountability nevertheless remain. Many can be sourced to uncertainty as to the proper legal and constitutional position of independent integrity agencies. While only the courts exercise judicial power, and the remaining integrity agencies exercise executive and administrative power, they are relied on to be totally independent of the executive. Yet often this remains unclear, undermining their true line of accountability – which should be directly to the Parliament.

In Victoria, three agencies are enshrined in the Constitution as officers of the Parliament. But in other jurisdictions, especially the Commonwealth, they are usually treated as additional executive agencies. This needs to change.

Figure 9.1: A Commonwealth Integrity System Map for 2030



Source: Nikolas Kirby & Simone Webbe (2019). ***Being a trusted and respected partner: the APS integrity framework***. An ANZSOG research paper for the Australian Public Service Review Panel. March 2019

Related controversies have surrounded the appointment processes for integrity agency heads, and security and stability of their budgets (see chapter 10). Australia and New Zealand have strong experience in how to ensure the accountability of integrity agencies to the people, via the Parliament, by strengthening this parliamentary relationship in ways that respect and support political independence. It is time to consolidate this experience into principles followed by all jurisdictions. While judicial officers are not parliamentary officers, they are a bedrock of the integrity system, to whom the remaining principles should apply no less.

Recommendation 22: Independence for core integrity agencies

That the head of each core integrity agency in all jurisdictions be recognised as **an independent officer of the Parliament,** via amendment of their enabling legislation and, where appropriate, the Constitution of the jurisdiction, to ensure:

- Appointment with bi/tripartisan support from their parliamentary committee (and appointments commission, including civil society: Recommendation 11);
- They are removable only upon the address of both houses of parliament on grounds of proven incapacity or misbehaviour;
- Express freedom from government or ministerial direction or intervention;
- Budgetary security including the right to directly address the parliament, via the presiding officer(s) or parliamentary committee, on their annual budget.

This recommendation relates to: **all Australian parliaments.**

Parliamentary committee oversight arrangements vary, are sometimes missing for particular agencies, go unsupported and can lack structure and clarity. Some inspectors are established as themselves independent integrity agencies, with potential to confuse core agency accountability to the Parliament. Consolidated best practice experience from Victoria and Queensland is proposed as a basis for a more coherent model in all jurisdictions.

Recommendation 23: Propriety and performance

That each core integrity agency be subject to oversight by **a bi/tripartisan statutory standing committee of the Parliament, supported by a parliamentary inspector** for agencies making significant use of coercive or intrusive powers – including:

- A statutory cycle of multi-year corporate planning and reporting, matched to multi-year performance review by the committee, using an ongoing, public performance evaluation and monitoring framework;
- Coordination and integration between the performance monitoring and evaluation of separate agencies as needed, with the option of multi-year reviews of the integrity system as a whole;
- A duty on each agency to respond to all committee recommendations;
- An inspector with mandate, powers and resources to continually ensure – on behalf of the committee and parliament – the lawfulness, probity and propriety of agency actions and personnel, especially in *ex parte* proceedings and involving use of any coercive or intrusive powers.

This recommendation relates to: **all Australian parliaments.**

10. Creating a 'system': coherence, coordination and resources

How well does the integrity system function, as 'a system'? What is needed to ensure integrity agencies and processes work as more than simply of the sum of their parts, and together have the resources needed to fulfil their critical roles?

Overall, the assessment confirms the performance of policy coherence and coordination, operational cooperation between integrity agencies, and strong relationships with public stakeholders (social accountability actors) as all being crucial to integrity system's performance. On evidence from the National Integrity Survey, these relationships between different parts of the system are even more important than questions of individual agencies' legal powers and financial resources (Table 2.3).

Coordination and cooperation varies widely across Australia. Many previous recommendations identify opportunities for strengthening these relationships. Chapter 3 (Recommendation 2) calls for mechanisms for ensuring national coordination across the federal system, while others stress greater national consistency and coherence in legal standards and approaches, including learning from best practice within Australia.

There is also vital need for greater coordination and cooperation *within* each jurisdiction. Without coordination, there is little prospect of a coherent and efficient integrity system at any level, let alone nationally. With new agencies and responsibilities, as occurring in many areas and recommended in others, the need for coordination only grows.

In most cases, coordination is ad hoc and informal. However, where standing coordination arrangements exist – generally or on specific issues – there appear to have been real benefits including reduced conflict and confusion, and better problem solving. The breadth of issues at Commonwealth level especially mitigates in favour of well-structured coordination, to ensure the National / Commonwealth Integrity Commission plays its role as just one partner, in place of assumptions or fears that it should override or become responsible for all. No mechanisms have yet been proposed by Government, but the *National Integrity Commission Bill 2018* provides for an 'integrity coordinating committee', built on Western Australian experience, as a new general model.

Recommendation 24: Coordination and cooperation

That each jurisdiction establish a **statutory integrity coordinating committee** to support policy coherence and operational coordination between core integrity agencies and their mandates, including:

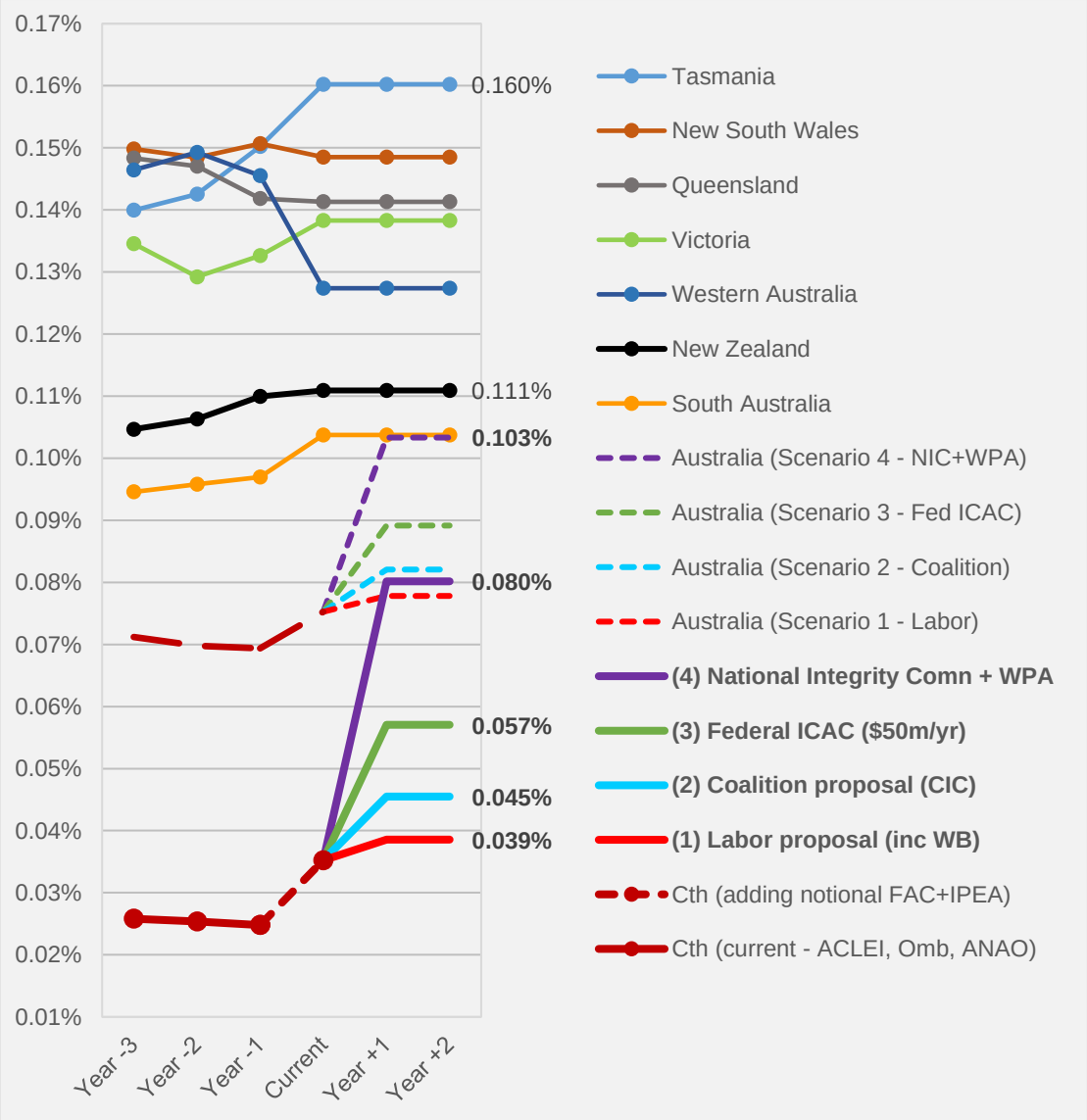
- For the Commonwealth, provisions based on Part 3, Division 6 of the *National Integrity Commission Bill 2018* (Commonwealth Integrity Coordination Committee);
- Mechanisms for information sharing; and joint planning, research, outreach, education, training, and advice to government on integrity policy issues; and
- Participation of civil society, stakeholders and independent experts in planning, policy recommendations and advice to government.

This recommendation relates to: **all Australian governments.**

Resources underpin the entire integrity system, but the financial positions of agencies vary wildly, within and across jurisdictions – including for the judiciary. Budgets remain highly dependent on the government of the day, and the imposition of 'efficiency dividends' and other requirements threaten to erode the capacity of what should be treated as core institutions of the system of government.

Overall, investment in our integrity institutions appears low. Combined national expenditure on core independent integrity agencies (anti-corruption, ombudsmen and auditors-general) amounts to only 0.069% of total public expenditure. The Commonwealth's is only 0.025%. By contrast, the states vary between 0.103% and 0.160%, with New Zealand's expenditure at 0.111% (Figure 10.3). In other words, the Commonwealth spends, at best, **around a quarter** of what most states spend; and in all, Australia's public sector spends **a third less** than New Zealand, pro rata, on the same core public integrity functions.

Figure 10.3. Core integrity agency expenditure as a proportion of total public expenditure – current versus Government, Opposition & other proposals



Note: Expenditure on/by the Auditor-General, Ombudsman, anti-corruption agency and any specialist police conduct agency in each jurisdiction, plus estimates of specialist law enforcement agency contributions to anti-corruption in jurisdictions with no anti-corruption agency.

Figure 10.3 also shows four future scenarios based on current proposals for a new National or Commonwealth integrity commission, as well as for a federal whistleblower protection authority (see chapter 7).

Comparison with existing State commissions indicates a realistic budget for a State-style anti-corruption commission (ICAC) at federal level would be around **$50 million** (Scenario 3). Previous estimates for an agency charged with these functions, plus implementation of a strategic approach to corruption prevention across the Commonwealth, plus the whistleblower protection functions recommended by the Parliamentary Joint Committee, indicate a minimum cost of around **$100 million** per year. Figure 10.3 shows this investment (Scenario 4) would succeed in lifting Australia's national spending ratio on core integrity functions to 0.103% -- the equivalent of the least-spending state.

To date, however, the Labor Opposition has attached an estimate of only $58.7 million over forward estimates (**$19.6 million** per year) to its proposed integrity commission, plus **$1.1 million** for the five (5) public servants proposed for a whistleblower protection authority (Figure 10.3, Scenario 1). Meanwhile the Government has estimated much more than that – **$30 million** per year – for a Commonwealth Integrity Commission with a narrower, criminal-only jurisdiction and no public hearings (Scenario 2).

Under neither of these scenarios would Commonwealth spending on core integrity functions reach even 0.050% of total public expenditure. As such, neither the Opposition nor the Government proposals as yet entail lifting Commonwealth integrity expenditure to a credible level – especially the Labor proposals.

Australia faces a crucial opportunity to 'walk the talk' of an improved and strengthened national integrity system. Credible answers to these questions of resources will be the final factor in determining whether we take it.

Recommendation 25: Sufficient, secure and stable resources

That the Commonwealth initiate, and all States and Territories support, a **national benchmarking review of integrity agency budget needs and expenditure** – e.g. by the Productivity Commission – in order to establish:

- Clear guidance to parliaments on the best parameters for setting budget allocations for integrity agencies, and the judiciary, including the inapplicability of 'efficiency dividend' criteria (see also Recommendation 22);
- The benefits-to-cost or returns-on-investment ratios of a comprehensive program of corruption prevention, and minimum thresholds for such investment and internal allocations, as proposed by Recommendation 7;
- Thresholds for funding of all core integrity agencies, and the judiciary, as a proportion of total public expenditure – with a target of **not less than 0.2 per cent** in respect of combined core integrity agency budgets.

Further, as an interim step in bringing the Commonwealth up to par, that **the Government and Opposition commit to minimum initial funding for their proposed National / Commonwealth Integrity Commissions** of at least:

- **$50 million per annum** for a basic ICAC-style commission (as opposed to less than $20 million proposed to date by Labor, and $30 million by the Coalition); and
- **$100 million per annum** if proposing to include a strategic approach to corruption prevention and whistleblower protection as recommended by the Senate Select and Parliamentary Joint Committees (see also Recommendation 14).

This recommendation relates to: all governments but especially the **Commonwealth.**

Appendix 1: National Integrity Commission options compared

The options compared

In August 2018, the assessment team set out three options for evaluating possible strengthening of Australia's Commonwealth integrity system, in the paper ***A National Integrity Commission: Options for Australia***. The paper rated these options against three sets of issues:

- an analysis of key existing strengths of the Commonwealth integrity system, detailed in Part 2 of the paper (Table 5)
- the options' contribution to addressing the seven major areas of weakness identified in Part 3 of the paper (Table 6):
    1. No coordinated oversight of high-risk misconduct
    2. Most strategic areas of corruption risk unsupervised
    3. No coherent system-wide corruption prevention framework
    4. Inadequate support for parliamentary and ministerial standards
    5. Low and uncertain levels of resourcing
    6. Cross-jurisdictional challenges (public and private)
    7. Public accessibility & whistleblower support (public and private)
- key priorities identified by the Senate Select Committee on a National Integrity Commission (Table 7).

The options selected were:

1. An integrity and anti-corruption coordination council
2. An independent commission against corruption (ICAC)
3. A custom-built Commonwealth integrity commission model

The options ranged from minimalist to comprehensive and were not mutually exclusive.

As outlined in chapter 2, all federal political parties have now committed to a reform of this kind, going beyond option 1. The federal Labor Opposition published a position on a proposed National Integrity Commission in January 2018. In November 2018, federal Independent MPs Cathy McGowan and Rebekha Sharkie (Centre Alliance) introduced a *National Integrity Commission Bill* and *National Integrity (Parliamentary Standards) Bill*, informed by the options paper, and the Greens introduced an almost identical *National Integrity Commission Bill*. The Commonwealth Government published a 'Commonwealth Integrity Commission' proposal for public consultation in December 2018.

The following tables update the comparison showing all three proposals to date, against the criteria and options originally set out in the paper.

Table A5. Options' contribution to existing strengths & attributes of the integrity system (Options Paper, Part 2)

	Option 1. Coordination Council	Government **Commonwealth Integrity Commission** proposal	**Opposition (ALP)** commitments to date	**Option 2.** An ICAC	National Integrity Commission & Parl. Standards Bills 2018	**Option 3.** Full Integrity Commission model
(1) support the collaboration necessary to maximise the Commonwealth's cross-jurisdictional roles	Low	Low	Low / Unknown	Medium	High	High
(2) ensure that domestic and international corruption are given sufficient priority within a wide range of risks	Low	Low	Low / Unknown	Low	Medium	Medium
(3) build consensus on the meaning and value of 'integrity' for the purpose of modern service	High	Low	Low / Unknown	Medium	Medium	High
(4) robust strategies for ensuring a culture of public integrity is pursued in practice, not simply in abstract	Low	Medium	Medium	Medium	High	High
(5) ensure the *right* approaches to corruption-prevention and integrity-building for Cth public sector	Medium	Low	Low / Unknown	Medium	High	High
(6) strengthen additional pro-integrity functions beyond those lying with ACLEI or an anti-corruption agency	Medium	Low	Low / Unknown	Low	High	High
(7) meet "best practice" criteria for anti-corruption investigation legal thresholds and investigative powers	High	Medium	High	High	High	High
(8) support effective, ongoing partnership between core integrity agencies, including mutual accountability	Medium	Low	Low / Unknown	Low	High	High
(9) maintain, clarify and enhance the accountability of agencies to the people, through the Parliament	Low	Medium	Medium	Medium	High	High

Table A6. Options' contribution to addressing key weaknesses (Options Paper, Part 3)

	Option 1. Coordination Council	Government **Commonwealth Integrity Commission** proposal	**Opposition (ALP)** commitments to date	**Option 2.** An ICAC	National Integrity Commission & Parl. Standards Bills 2018	**Option 3.** Full Integrity Commission model
3.1. No coordinated oversight of high-risk misconduct	Low	Low	Medium / Unknown	High	High	High
3.2. Most strategic areas of corruption risk unsupervised	Low	Medium	Medium / Unknown	High	High	High
3.3. No coherent system-wide corruption prevention framework	Medium	Low	Low / Unknown	Medium	High	High
3.4. Inadequate support for parliamentary and ministerial standards	Low	Low	Medium / Unknown	Medium	Medium	High
3.5. Low and uncertain levels of resourcing	Low	Medium	Low	Medium	Not applicable	High
3.6. Cross-jurisdictional challenges (public and private)	Medium	Low	Low / Unknown	Low	High	High
3.7. Public accessibility & whistleblower support (public and private)	Low	Low	Medium	Medium	High	High

Appendix 2: Research summary and acknowledgements

Research summary

Research for this assessment took the form of desktop research; expert and public responses to two discussion papers on a federal anti-corruption agency, released in March 2017 and August 2018; discussion at expert and stakeholder workshops in Brisbane (March 2017) and Canberra (August 2018); and the following primary research.

National Integrity Survey 2018

The National Integrity Survey was an online survey open between June 2018 and January 2019, asking respondents to rate each of the 15 integrity functions they were familiar with, in any or all Australian jurisdictions. The survey consisted of 14-15 questions per function, on 5 dimensions, developed as an extension of the existing 2009 Transparency International National Integrity System toolkit. Each question asked for a rating on a 5 point scale:

Scope and mandate	1	How well institutionalised?
	2	Comprehensiveness of mandate? (1)
	3	Comprehensiveness of mandate? (2)
Capacity	4	Legal capacity?
	5	Adequacy of resources?
	6	Independence?
Governance	7	How accountable?
	8	Strength of integrity mechanisms?
	9	Transparency?
Relationships	10	Policy / jurisdictional coherence?
	11	Operational coordination?
	12	Social accountability mechanisms?
Performance	13	How effective at achieving mandate (1)?
	14	How effective at achieving mandate (2)?
	15	How effective at (additional mandate)?

Participation was invited from all federal and state public integrity agencies including the courts, relevant parliamentary committees, a wide range of independent academic experts, and business and civil society stakeholders including members of the Australian Open Government Partnership Network and Transparency International Australia. The survey resulted in useable responses from **107 individuals**: 37 experts in academia, government and business (including research team members), 29 government agency representatives, and 41 private individuals.

Results reported in this draft report are raw, unmoderated results, based on the mean scores of all respondents, not standardised in any way. Results should be treated as preliminary and indicative only. Further analysis will be provided in the final report.

Interviews

The research also involved 50 face-to-face interviews with a wide cross-section of stakeholders from Queensland, NSW, South Australia, Victoria and the Commonwealth between June 2016 and February 2019, including 29 current or former senior officers of integrity agencies across those jurisdictions, Departmental staff, eight journalists, five civil society representatives, four whistleblowers and two parliamentarians. Agencies and individuals were selected on the basis of their ability to help answer in-depth questions on the same themes above. Interviews were transcribed and analysed using NVivo.

Global Corruption Barometer (Australia) 2018

This survey of citizen opinion and experience was conducted nationally by telephone by OmniPoll on behalf of Griffith University among a stratified random sample of 2,218 respondents aged 18 years and over, in the period May 21 - June 27, 2018. Sample quotes were set by gender, location/region, and age. Results are post-weighted for national representativeness using Australian Bureau of Statistics data on age, region, level of education, as well as voting preference using the most recent previous Newspoll and OmniPoll surveys.

The survey built on previous editions of the Global Corruption Barometer, the world's largest survey of public opinion and experience on corruption, administered by Transparency International (see http://www.transparency.org/research/gcb). The most recent previous GCB was conducted nationally by telephone by Action Mark Research (Adelaide) for Transparency International, among 1,002 respondents, in the period 6 September to 12 October 2016.

The research also drew on results from the Australian Constitutional Values Survey (2008-2017), conducted nationally by telephone for Griffith University by Newspoll Limited (2008-2014) and OmniPoll (2016-2017).

Acknowledgements

This research was conducted under the **Australian Research Council Linkage Project, *Strengthening Australia's National Integrity System: Priorities for Reform***, led by Griffith University and supported by project partners Transparency International Australia, New South Wales Ombudsman, Integrity Commissioner (Queensland), Crime & Corruption Commission (Queensland), Integrity Commission (Tasmania), Flinders University, and University of the Sunshine Coast.

We thank the Australian Research Council and all project partners for their funding and in-kind support.

Views expressed are those of the authors and do not necessarily represent the views of the Australian Research Council or partner organisations.

The authors also thank Dr Loucas Nicolaou, Dr Nerisa Dozo, partner investigators John McMillan AO, Chris Wheeler, Richard Bingham, Dr Nikola Stepanov and Dr Rebecca Denning, and Transparency International Australia partners Serena Lillywhite and Greg Thompson for invaluable assistance and inputs throughout the assessment.

Comments and submissions

We welcome public comments and submissions on the recommendations arising from the assessment.

Please send them by **10 May 2019** to:

nationalintegrity@griffith.edu.au

For further information:

Dr Samuel Ankamah
Research Fellow
National Integrity System Assessment
Centre for Governance & Public Policy
Griffith University

+61 07 3735 3986

4. Australia's official corruption challenges

4.1. The issues

Even if Australia still ranks relatively high on international governance indices, reduced trust and elevated scandals in Australian government in recent years have focused attention on the scale of our official corruption problems – and the issue of how corruption itself is understood, measured and defined. Achieving a clearer picture of the nature of these challenges, and the adequacy of operating definitions of corruption, legal categories and agency responsibilities, is pivotal to identifying whether and how integrity systems may need to be strengthened.

For Australia there are four main issues:

- The changing profile of the *types* of misconduct and integrity violations classified by the community as 'corruption' – especially increasing concern about 'grey corruption' and 'undue influence';
- The extent of corruption risks going under-addressed, or unaddressed, in particular government and industry *sectors* – especially at Commonwealth level;
- Wildly varying *legal definitions* of official corruption across Australia, creating problems of inconsistency, confusion and uncertainty about the right systems and processes for responding to corruption; and
- As a consequence, *disjunctions* between the amount of official misconduct that is known or perceived to occur, and amount and effectiveness of official action to deal with and prevent that misconduct – given that only some of these definitions cover, or propose to cover, the spectrum of corruption risks relevant to modern-day Australia.

These definitions are central not only to whether justice is achieved, accountability is upheld and trust is maintained. They also define what preventive strategies are triggered, to reduce reliance on a retrospective 'damage control' model of integrity; whether corrupt and high-risk misconduct is properly identified, measured and monitored; and whether it is detected and stopped before taking hold, through comprehensive reporting frameworks.

These issues have special significance for design of the proposed **Commonwealth / National Integrity Commission**. They determine whether its scope and mandate will be narrow, criminal, fragmented and confusing, as proposed – or broader and systemic to meet these challenges. However, these are also issues for State governments, given the variations in legal definitions of corruption already confusing the Australian public sector landscape. Arriving at a more unified understanding of our corruption challenges is the second fundamental step in identifying reform priorities.

4.2. The state of the debate

Types of official corruption in Australia

Corruption, defined by Transparency International as 'the abuse of entrusted power for private gain', takes a wide variety of forms – including '**grand**', '**petty**' and '**political**' corruption.[1] Australian experience confirms that serious threats also lie in conduct which crosses these categories; and, especially, conduct which is widely seen as corrupt but treated as minor by law, and/or where rules and laws are considered ambiguous: '**grey corruption**'.[2]

Grand corruption

As outlined in chapter 3, Australia is at extremely low risk of converting to kleptocracy or total systemic capture of public decision-making by non-public interests, as is the norm in some countries. However, the potential is demonstrated by a history of exposure to near-grand corruption at State level, for example in pre-Fitzgerald Queensland or under 'WA Inc'.

At a federal level, the relative speed of adoption of a foreign interference regime in 2018, including the banning of foreign political donations following the resignation of Senator Sam Dastyari[3], reflects a recognition that acceptance of grand corruption in other jurisdictions can lead rapidly to capture of policymakers in ways that may seem individual and minor, but could rapidly become systemic, and lead to similar practices.

'Petty' corruption

Individual acts of official bribery, kickbacks, embezzlement of public funds or self-enrichment by public officials are also not the norm in Australia. TI's Global Corruption Barometer confirms that on average, less than two per cent of adult citizens have had to give a bribe, gift or favour to obtain a public service or decision to which they are entitled. Nevertheless, individual level corruption is real, ever-present and carries serious risks:

- Bribery, kickbacks and self-enrichment offences are routinely encountered and dealt with by all of Australia's State anti-corruption agencies;[4]

---

[1] https://www.transparency.org/cpi2010/in_detail. For analysis teasing out distinctions between corruption as a political system or democratisation problem, and those who see it as a structural, principal-agent problem, see Heywood (2017, pp. 22-25).

[2] Prenzler, T., Horne, B., and McKean, A. (2018), 'Identifying and preventing gray corruption in Australian politics', in M. Edelbacher & P. C. Kratcoski (Eds.), *The Prevention of fraud and corruption: Major types, prevention and control* (pp. 61-81), New York: Springer. For an outline of the classification approach being applied in this section, examining 'types, activities, sectors and places' (TASP), see Graycar, A, & Sidebottom, A. (2012), 'Corruption and control: a corruption reduction approach', *Journal of Financial Crime*, Vol. 19, No. 4, pp.384-399.

[3] https://theconversation.com/the-foreign-donations-bill-will-soon-be-law-what-will-it-do-and-why-is-it-needed-107095. Senator Dastyari was previously a leading champion of foreign bribery law reform.

[4] Australia Institute, http://www.tai.org.au/sites/default/files/National%20Integrity%20Commission%20-%20Design%20Blueprint%20Part%201%20-%20Jurisdiction.pdf

- Individual-level corruption has recently been found not only among junior and frontline officials, but senior elected officials at local and State level, convicted and imprisoned for serious corruption offences – for example, in New South Wales through the work of the Independent Commission Against Corruption,[5] and in Queensland through the work of the Crime and Corruption Commission;[6]
- These risks also present in Commonwealth administration, as discussed below;
- Abuse of travel and other 'entitlements' by politicians, most visibly at the Commonwealth Government level, has been a serious recurring problem; including use of travel for family holidays, normal commuting to work, attendance at party-political events, and engaging in business activities such as purchasing investment properties;[7]
- These kinds of abuse of position are also associated with a range of others with highly 'corruptive' effects on decision-making and public confidence, including:
  - Gifts and benefits to politicians and public servants (often seen as thinly veiled bribery, especially in procurement), including theatre and concert tickets, tickets to sporting events, and free travel and holidays;
  - Excessive expenditures in areas such as consultancies, 'vanity' public work programs, mismanaged infrastructure projects, office refurbishments, luxury travel, chartered use of military aircraft instead of commercial flights, overly generous pensions and 'life gold' travel passes for retired politicians; and
  - 'Cronyism and 'nepotism' associated with employment positions being assigned without open advertising and competitive selection, including electoral office positions, ministerial media positions, diplomatic and trade posts (including as perceived rewards for political loyalty or for vacating office) – and including judicial and tribunal appointments, with the further 'corruptive' effect of politicising these independent bodies, undermining their purpose and effectiveness.[8]

Political corruption

Further, like all democracies, Australia is directly exposed to **political corruption** risks, in which entrusted power may be corrupted for illegitimate gains, in the form of party-political, organisational or ideological gain, or favouritism of a particular industry or social group. As

[5] See e.g. https://www.icac.nsw.gov.au/investigations.

[6] See e.g. http://www.ccc.qld.gov.au/corruption/past-investigations.

[7] See https://www.crikey.com.au/2013/12/10/flying-high-labor-ministers-racked-up-millions-in-vip-travel/; http://www.abc.net.au/news/2015-08-03/matthewson-entitlements-war-not-over/6666884; ANAO (2015a), *Administration of travel entitlements provided to parliamentarians: Department of Finance*, Canberra, Australian National Audit Office; Conde, J., Tune, D., Jenkins, H., Nelson, B., and Bardo Nicholls, L. (2016), *An Independent parliamentary entitlements system: Review*, Canberra, Commonwealth of Australia.

[8] https://www.theguardian.com/australia-news/2019/feb/21/full-of-liberal-mates-labor-accuses-coalition-of-stacking-tribunal.

seen above, many forms of 'petty' corruption can cross over into, or accompany, the more serious and damaging problem of political corruption.

However, political corruption can also involve integrity violations which, in any other context, would not necessarily be regarded as improper or unlawful, and may even be applauded. The main categories are:

- Political donations and campaign resources – where private support for the political process can be positive, but in reality, accusations and suspicions of undue influence abound due to liberal political donations laws that lack adequate bans or limits on high-risk donors, are easily circumvented or not enforced, and lack real-time disclosures;[9]
- Undue influence associated with lobbyists' access to politicians, by 'purchasing access' at expensive party funding raising events, and through a 'revolving door' of politicians and their senior staff joining lobbying firms and exploiting political contacts, or vice versa;
- Abuse of political control over spending, to either influence political outcomes or repay political debts, including use of 'government' advertising and 'electorate' communication expenses as de facto party-political advertising, especially when ramped up prior to the official election period; and 'pork barrelling' involving excessive and unjustified promises at election times without proper scrutiny of policy merits.[10]

Political corruption risks facing Australia, especially at the Commonwealth level, have been widely documented[11] and are further discussed in Chapter 6.

Grey corruption

The above types of alleged misconduct, on top of historical and international issues listed in chapters 1 and 3, have contributed to a rolling crisis of confidence across all levels of government in recent years. Deterioration in Australia's integrity ratings and public confidence in government are associated not only with these recurring scandals in state and local jurisdictions, and their escalation at the federal level since 2013, but with perceptions – especially at the national level – that institutions and accountability are not keeping up.[12]

---

[9] See Coghill, K. (2016, March 30), 'Federal donation rules dangerously weak', *Australian Financial Review*, p. 35.

[10] https://www.crikey.com.au/2014/05/21/porkies-the-biggest-broken-promises-in-australian-politics/; ANAO (2015b), *The Award of funding under the Safer Streets Program*, Canberra, Australian National Audit Office; http://www.theaustralian.com.au/national-affairs/15-public-sector-executives-take-home-over-1m/news-story/5e67f5ca424f8cd41f957e95f6359985; http://www.news.com.au/national/politics/the-10-most-outrageous-things-pollies-have-spent-our-money-on/news-story/254c2cb0858b56fb89ed65f547bee3f0; http://www.news.com.au/national/for-a-ping-pong-table-just-the-tip-of-the-local-council-spending-iceberg/news-story/1eb40349ae59cdd788ec86a84608e5ab; https://www.theguardian.com/australia-news/2015/sep/04/tony-abbotts-first-two-years-despite-the-daily-battles-hes-losing-the-war; Uren, D. (2016, June 25), 'Coalition wins hands down on pork-barrelling', *The Australian*, p. 6.

[11] See e.g. Wood, D., Griffiths, K., and Chivers, C. (2018), *Who's in the room? Access and influence in Australian politics*, Melbourne, Grattan Institute.

[12] Transparency International, http://transparency.org.au/corruption-perceptions-index-cpi-2017-

As can be seen, much uncertainty stems from the fact that while some forms of corruption are both wrong and clearly illegal (e.g. bribery), their true prevalence and scale can be difficult to establish. However, many of these types of conduct are not clearly illegal, and often not even hidden, because they involve conduct which 'normally' is either lawful or only represents a minor infraction at law, or about which laws and rules are ambiguous ('grey corruption').

Much of the 'influence trading' in political corruption involves no current breach of law, and may seem built into the political process. Corruptive conduct by individuals or industries aimed at securing undue influence over decision-making, or officials inviting or acting on that influence, is defended on the basis that it is not only lawful, but pursued purely (or mostly) for public benefits and not any individual, commercial or political gain. Even nepotism and cronyism in appointments are defended on the basis that open selection and merit procedures were simply unnecessary, as the result was still the 'best person for the job', and the decision-maker did not individually 'benefit' as a result of this minor deviation from procedure.[13]

Recognising this wider spectrum of corruption is vital, because it identifies both where the highest risks of more 'serious' corruption may lie, and also where many of the real, most serious and damaging forms of corruption as perceived by the community, *already* lie.

In international rankings, the 2017 World Economic Forum Global Competitiveness Index (see in chapter 3), Australia ranked 16th out of 137 countries for overall 'ethics and corruption' (a score of 5.5/7). However, within this score, while Australia ranked relatively well for 'irregular payments and bribes' (12th/137, 6.2/7), it ranked less well for 'diversion of public funds' (14th/137, 5.7/7), 'favouritism in decisions of government officials' (21st/137, 4.5/7), and 'public trust in politicians' (22nd/137, 4.6/7).[14]

Within Australia, the true range of problems as defined by the community, is directly revealed by the 2018 Global Corruption Barometer (Appendix 2). For the first time worldwide, our assessment asked Australian citizens to nominate the types of conduct that concerned them, when they identified official corruption as being any level of problem in Australia. Figure 4.1 sets out the results. Of the 1,932 respondents (86 per cent) who said that official corruption was a very big, quite big, or quite small problem in Australia, the vast majority (92 per cent) were able to give examples – with a very large majority (at least 83 per cent) nominating types of conduct matching the broad definition of corruption at the start of this chapter. Significantly, very few (4 per cent) mentioned only issues that appeared to relate to policy or political disaffection with government, as opposed to some concept of corruption. In addition, of those who did nominate corruption issues, very few (2.5 per cent) mentioned issues that related

---

shows-australia-falls-corruption-perceptions-index-scores/; Prenzler, T., Horne, B., and McKean, A. (2018), 'Identifying and preventing gray corruption in Australian politics' in M. Edelbacher & P. C. Kratcoski (Eds.), *The Prevention of fraud and corruption: Major types, prevention and control* (pp. 61-81), New York: Springer.

[13] This issue was at the heart of the ICAC investigation in 1992, which led to the resignation of NSW Premier Nick Greiner. See Prenzler, T. (2013) *Ethics and Accountability in Criminal Justice*, Australian Academic Press, Brisbane, p. 23.

[14] http://reports.weforum.org/global-competitiveness-index-2017-2018/competitiveness-rankings/#series=GCI.A.01.01.02

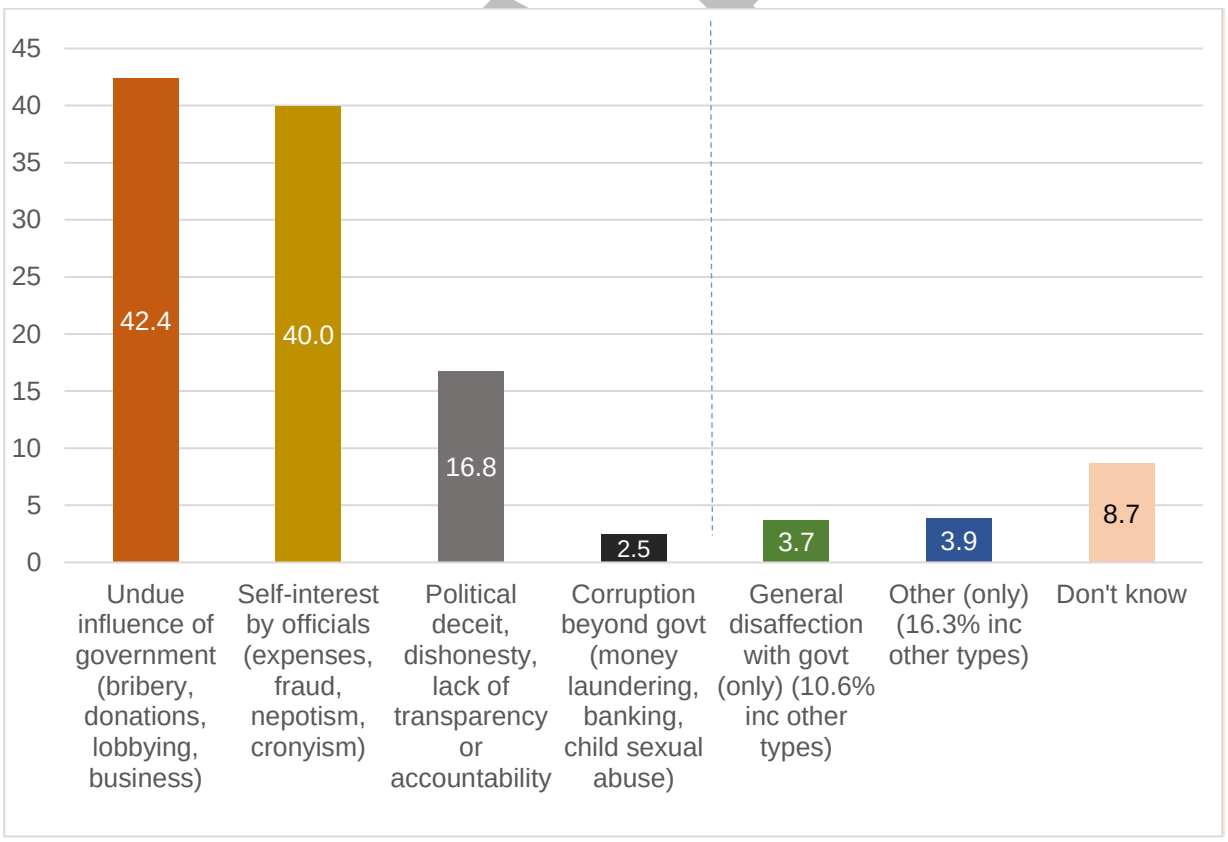
mostly to non-government corruption, such as banking misconduct or institutional responses to child sexual abuse.

The result was strong evidence that Australians see corruption in government as falling into three main groups of problems, consistent with the spectrum described above. General accountability failures associated with political dishonesty, deceit or non-disclosure by government were identified by 17 per cent of respondents. Self-enrichment by politicians and officials (and their family and friends), ranging from embezzlement to abuse of expenses to nepotism and cronyism, was identified by 40 per cent of respondents.

However, the largest group of concerns (42 per cent of respondents) were those associated with undue influence, access and perversion of decision-making by particular interests. Whether this occurred through 'hard' corruption in the form of direct bribery (i.e. purchased decisions), or 'soft' or 'grey' corruption in the other forms described above, was less significant than the underlying purpose and effect of the actions or behaviour identified (undue influence).

Figure 4.1. Types of corruption perceived by Australian citizens

B4. 'What kind of corruption do you think is the main problem in government – please tell me the kind of actions or behaviour you have in mind?' (n=1,932)

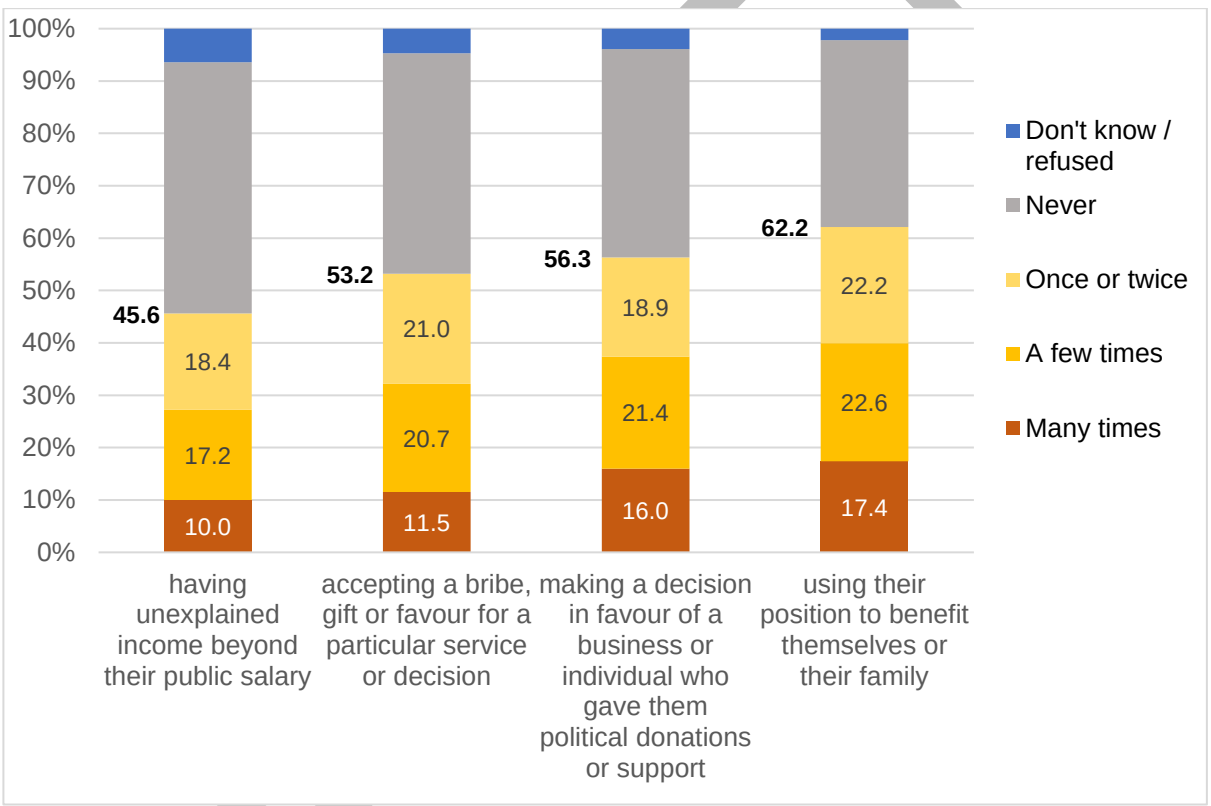


Source: Griffith University & TI Australia, Global Corruption Barometer Australia, May-June 2018 (n=2,218).
Note: Columns add to more than 100 per cent, as respondents could nominate more than one kind.

As shown in Figure 4.2, a similar pattern was revealed when all respondents were asked if they had specifically witnessed or suspected evidence of corruption, even if they had not themselves had to pay a bribe. As already indicated, while few reported that they personally had to pay a bribe (2 per cent), over half of respondents (53 per cent) said they had personally witnessed or suspected this to be occurring. Concerns about self-enrichment and undue influence were even higher. Indeed, respondents who had ever worked in the federal government were more likely than other respondents to report having witnessed or suspected an official or politician of making a decision in favour of someone who provided political donations or support (68 per cent, against the national average of 56 per cent).[15]

Figure 4.2. Incidence of witnessed/suspected corruption (2018)

In the past 12 months, how many times have **you personally witnessed, or suspected**, a government official or politician doing the following things? (n=2,218)



The key lesson from the above findings is that a narrow or selective focus on corruption as simply petty/criminal, or grand/criminal, is not going to reveal or explain what is really going on, or where the main challenges lie.

---

[15] Those who had ever worked in federal government (n=245) had seen more instances of an official or political making a decision in favour of someone who gave them a political donation or support (M = 2.34, SD = 1.15) compared to those who had not worked in federal government (M = 2.09, SD = 1.16), t = 3.19 (df = 2212), p = 0.14).

High risk areas (activities and sectors)

As identified in chapter 3, official corruption challenges are also not uniformly distributed across society, but vary across industry and public sectors. For example, dealings between government and the natural resources sector are well known internationally for their concentration of corruption risks, and this is confirmed by some of the above cases, and more generally, for Australia.[16]

At the hard end of criminal corruption, the Australian Criminal Intelligence Commission has identified areas of the public sector – both federal and state – as most at risk of corruption by serious and organised crime: primarily 'procurement across all levels of government', 'frontline agencies', and 'agencies without established anti-corruption practices'.[17]

Applying these criteria together, it becomes easier to see why most if not all States have been strengthening their integrity and anti-corruption systems over the past decade, as described in chapter 2 – as well as why the Commonwealth has come under such strong pressure to follow suit. The question is how well these reforms are aligned to addressing the actual types and risks of corruption described above.

For example, in **procurement of goods, equipment, facilities and services**, the proposed inclusion of the entire Commonwealth public sector in the jurisdiction of an anti-corruption agency is clearly long overdue. While it is the fourth largest government in Australia in terms of employment (Figures 4.4 and 4.5 below), the Australian Government is the single largest public procurer, with Commonwealth contracts over $10,000 amounting to $251.9 billion in 2012-2017, disbursed through up to 70,000 procurement actions per year.[18]

In 2016-17 alone, Defence procurement amounted to $32.7 billion. The ANAO has commented on the failure of defence procurement procedures to mitigate corruption risks,[19] which are plainly high, with Australia letting contracts to at least two suppliers subject to criticism in recent years: French submarine maker DCNS and German military vehicle supplier Rheinmetall.[20] However, as Table 4.1 shows, Defence procurement has not been subject to any overall system of anti-corruption oversight within the Commonwealth.

Moreover, nor is whole-of-government travel, the second largest area of procurement – despite being the subject of recent scandal, including the coincidences that one major travel

---

[16] http://transparency.org.au/our-work/mining-for-sustainable-development/mining-in-australia/

[17] Australian Criminal Intelligence Commission (2017), *Organised Crime in Australia 2017* <https://www.acic.gov.au/sites/g/files/net1491/f/2017/08/oca_2017_230817_1830.pdf>

[18] See https://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/.

[19] See https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting.

[20] Both companies received a "D" categorisation in Transparency International's most recent Defence Companies Anti-Corruption Index (2015), meaning that they exhibited limited evidence of ethics and anti-corruption programmes based on publicly available material; see http://companies.defenceindex.org/view-report-dataset/.

supplier was a large political donor to the Coalition party/government that let the contract, and had then also chosen not to charge the relevant Finance Minister and his family for their personal travel.[21] The only one of these agencies whose procurement fell within the oversight jurisdiction of the Commonwealth's only specialist anti-corruption agency (ACLEI), in this period, was Department of Home Affairs (formerly Immigration and Border Protection).

Table 4.1. Commonwealth procurement: top 10 agencies (2016-17)[22]

2016-17 Procurement Contracts: Top 10 Agencies

	2016-17		RANK		
Agency	**Value $m**	**% of total Value**	**2016-17**	**2015-16**	**2014-15**
Department of Defence*	32,721.7	69.1	1	1	N/A*
Commonwealth of Australia#	2,555.5	5.4	2	Null	Null
Department of Education and Training	1,347.9	2.9	3	6	28
Department of Health	1,183.8	2.5	4	7	9
Department of Human Services	1,122.9	2.4	5	4	7
Department of Immigration and Border Protection	1,016.6	2.2	6	3	5
Australian Taxation Office	713.1	1.5	7	9	10
Department of Foreign Affairs and Trade - Australian Aid Program	565.6	1.2	8	5	6
Department of Foreign Affairs and Trade	519.8	1.1	9	11	14
Department of the Environment and Energy	432.6	0.9	10	N/A*	N/A*

Red boxes indicate agency/area not subject to the jurisdiction of ACLEI or independent anti-corruption agency to date.

Notes:

* Formation of new entities following Machinery of Government changes means they can't be compared to entities of previous financial years.

Whole of Australian Government Air Travel Services, including entities' estimate of air travel spend across a five year period from 2016 to 2021.

Law enforcement is a specific sector of recognised risk, at both federal and state levels. The Australian Criminal Intelligence Commission identifies corruption as one of the six enablers of serious and organised crime in Australia, even while assessing there to be, currently, 'limited evidence of serious and organised crime involvement in public sector corruption.'[23]

[21] Helloworld Ltd: see https://www.smh.com.au/politics/federal/cormann-had-no-idea-a-travel-company-had-given-him-a-free-trip-20190218-p50ym5.html.

[22] Source: https://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/.

[23] Australian Criminal Intelligence Commission (2017), *Organised Crime in Australia 2017* <https://www.acic.gov.au/sites/g/files/net1491/f/2017/08/oca_2017_230817_1830.pdf>

At state level, where police corruption has been a primary focus in the creation and subsequent mandate of all anti-corruption agencies, the risk has continued to manifest in a number of ways, including the detection and prosecution of a senior NSW (and former federal) crime commissioner for drug importation in 2012.[24]

While the Australian judiciary continues to be free of evidence of any significant level of corruption, the legal system in general is open to corruption risks, especially in State criminal law enforcement areas. This is highlighted by the current Victorian Royal Commission into the Management of Police Informants, including examination of allegations that a high-profile defence lawyer in the area of organised crime simultaneously served as a long-term police source and informed on her clients.[25]

At a federal level, the importance of addressing law enforcement integrity risks was central to the creation of ACLEI in 2006, oversighting the Australian Federal Police and Australian Crime Commission – and the subsequent expansion of its jurisdiction to include AUSTRAC, Australian Customs and Immigration enforcement areas (now the Australian Border Force and Department of Home Affairs, as mentioned above), and enforcement officers in the Commonwealth Department of Agriculture and Water Resources (including the former Quarantine service).

As discussed in chapter 2, these progressive expansions have come as a result of recommendations from ACLEI's parliamentary oversight committee, and, in each case, the extension has confirmed the reality of corruption, uncovering more of it in each additional agency. However, there has been recent evidence of both continuing risks and continuing inadequacy of this incremental response.[26]

This forms the background to all political parties' commitment to reform at the federal level, including the current Government's proposal to establish a Commonwealth Integrity Commission under which another four regulatory agencies would be added to ACLEI's current jurisdiction, as also recommended by the parliamentary committee for many years:

- Australian Taxation Office (ATO)
- Australian Securities and Investments Commission (ASIC)
- Australian Prudential Regulatory Authority (APRA), and
- Australian Competition and Consumer Commission (ACCC).[27]

---

[24] See https://www.dailytelegraph.com.au/top-cop-mark-william-standen-walked-a-very-crooked-path/news-story/19581864ad3e5d61702fc3fa76f9d2b0?sv=5293e79c675894c72e37f0d2290b2490.

[25] https://www.rcmpi.vic.gov.au/home

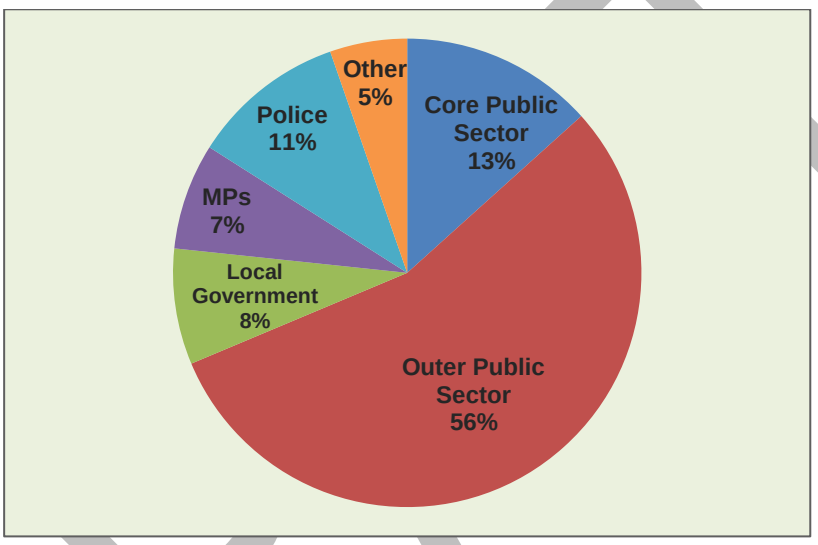
[26] See e.g. Richard Baker, Lucy Cormack and Nick McKenzie, https://www.smh.com.au/national/outgunned-federal-corruption-agencies-not-up-to-the-task-20181125-p50i6i.html (26 November 2018).

[27] Australian Government (2018). *A Commonwealth Integrity Commission—proposed reforms,* Attorney-General's Department, Canberra, 13 December 2018 < https://www.ag.gov.au/Consultations/Pages/commonwealth-integrity-commission.aspx>

At all levels of government, all types of corruption risk are known to be higher among **frontline and outlying** agencies, especially those lying beyond the 'core' public service.

This is confirmed by experiences in the Australian states, where all agencies are covered by anti-corruption agency oversight, but where the bulk of corruption investigations over the past decade have ended up focused not only on high-risk core public sector agencies, but on the statutory authorities and controlled entities of the 'outer' public sector, as shown in Figure 4.3. A review of 135 publicly reported investigations from State anti-corruption agencies over the period 2007 to 2017 showed that over half of reported corruption investigations focused on statutory authorities and independent entities, especially in the major jurisdictions (NSW, Queensland and to a lesser extent WA).[28]

Figure 4.3. Focus of State anti-corruption agency reports by sector (2007-17)



Source: Ken Coghill & Marco Bini (2018), 'Jurisdictional Variation in Anti-Corruption Investigations in Australia' (forthcoming), Figure 2.

Local government, a sector which is frontline and dispersed, and involves a high degree of discretionary decision-making power, is also generally recognised as high risk – as borne out by investigations in all States.[29]

This distribution of risk is also evident at the federal level – also contributing to the major current momentum for enlargement of anti-corruption agency jurisdiction beyond law

[28] See Ken Coghill & Marco Bini (2018), 'Jurisdictional Variation in Anti-Corruption Investigations in Australia' (forthcoming), reviewing 135 investigation reports in the period 2007-2017: NSW ICAC (68), Qld CMC (15), WA CCC (36), Tas IC (3), SA ICAC (1), Vic IBAC (12). Excludes annual reports and educational reports. Of the examined reports in NSW, 85% involved the outer public sector. Victoria had a 50/50 split between departments and the outer public sector.

[29] See, for example, Operation Belcarra in Queensland at http://www.ccc.qld.gov.au/corruption/operation-belcarra; and Operation Atlas in New South Wales at https://www.icac.nsw.gov.au/investigations/past-investigations/investigationdetail/65.

enforcement (see above). In addition to corruption in law enforcement areas such as Border Protection, some of the worst corruption involving any Australian government entities (bribery of foreign officials) has been conducted by outlying Commonwealth-licensed and owned, or formerly owned, companies: the Australian Wheat Board[30] and Reserve Bank of Australia's banknote printing enterprises.[31]

Such events have contributed to a general realisation of the weak and fragmented approach to dealing with all types of corruption risk across the federal public sector. Despite repeated official claims to the contrary over many years, including recently,[32] there is little question that corruption risks extend across this sector no less than others, in addition to being highly concentrated in some areas as noted.[33]

The special exposure of the parliamentary or political sector, highlighted above, is also a core issue in the proposed Commonwealth reforms – discussed further in chapter 6.

However, how different corruption risks are assessed and recognised in different sectors, across government, leads directly to questions about the nature of formal systems for doing so. The key question is: to what extent are legal institutions and frameworks configured to ensure the full spectrum of risks is capable of being recognised, identified and acted on?

The salience of this issue is demonstrated further in **Figures 4.4 and 4.5**, showing the very different distribution of risk, in terms of sophistication of anti-corruption oversight and control, across the federal public sector and all States. As shown, the Commonwealth employs approximately 240,000 of the nation's 1.9 million public officials and employees. However, in almost all States, corruption risk is met by making all public employees subject to the jurisdiction of a central anti-corruption agency with scope and mandate capable of spanning the full range of corruption types – including criminal and non-criminal, and both hard and 'softer' (grey corruption) matters.

---

[30] Commissioner Terence Cole, *Report of the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme*, 24 November 2006, Attorney-General's Department (Australia).

[31] See https://www.cdpp.gov.au/news/former-rba-and-securency-employee-sentenced.

[32] Senate Select Committee on a National Integrity Commission, Answers to Questions on Notice, APSC (5 July 2017), p3. https://www.aph.gov.au/DocumentStore.ashx?id=d8e5d17b-6dd2-4086-a2e0-7dff86d527e4; Senate Select Committee Public Hearing, John Lloyd (5 July, 2017) p 14: http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/4486468b-1349-4a12-b7d5-00da3a85b172/toc_pdf/Select%20Committee%20on%20a%20National%20Integrity%20Commission_2017_07_05_5243_Official.pdf;fileType=application%2Fpdf#search=%22committees/commsen/4486468b-1349-4a12-b7d5-00da3a85b172/0000%22 (accessed 10/7/2018).

[33] In 2017, 5% of 98,943 Australian Public Service employees said they had witnessed another employee engaging in corrupt behaviour (of whom 64% reported cronyism; 26% nepotism in the workplace; and 21% official decisions that improperly favoured a person or company): https://stateoftheservice.apsc.gov.au/2018/01/aps-values-code-conduct-2/. This was despite the APS Employee Census survey defining a high threshold for corruption: 'The dishonest or biased exercise of a Commonwealth public official's functions. A distinguishing characteristic of corrupt behaviour is that it involves conduct that would usually justify serious penalties, such as termination of employment or criminal prosecution'.

In the Commonwealth, however, only approximately 22,537 or **nine per cent** of all employees are partly covered by an equivalent regime, in the five agencies oversighted by ACLEI. Instead, another 136,000 or **57 per cent** are employed in Australian Public Service (APS) agencies which remain subject only to the central Code of Conduct regime under the *Public Service Act* 1999.[34] The remaining 81,000 or **34 per cent** are located in separate, outlying parts of the sector, subject to separate disciplinary and integrity regimes with no central, coordinated anti-corruption oversight or support at all.[35]

In all cases, agencies and employees are also subject to criminal law and the jurisdiction of police (for the Commonwealth, since 2014, through the Australian Federal Police Fraud & Anti-Corruption Centre). However, this is only for criminal offences and clearly does not deal with the full spectrum of risks discussed above, nor involve central reporting or oversight mechanisms for identifying risks.

This state of affairs helps further explain the shift to reform at the federal level. However, not all the proposed reforms would address this situation.

Figure 4.5 shows how the public sectors would compare, under the current Commonwealth government proposals. As noted in chapter 2, as well as adding the above four additional APS and non-APS agencies to the ACLEI jurisdiction, all other Commonwealth agencies would become subject to oversight by the 'public sector division' of the Government's proposed Commonwealth Integrity Commission – but only in respect of revised criminal offences. This criminal corruption jurisdiction would therefore replicate the existing criminal law jurisdiction of the Australian Federal Police.

However, as Figure 4.5 shows, this would represent only a marginal difference, since it would not address the spectrum of corruption types described above, especially those relating to grey corruption.

---

[34] Total 152,095 (63 per cent) of all Commonwealth employment: see http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6248.0.55.002Main+Features12016-17?OpenDocument (accessed 5/7/2018); APSC, Annual Report 2016-2017, p 5 https://www.apsc.gov.au/sites/g/files/net4441/f/2016-17_sosr.pdf (accessed 5/7/2018).

[35] In total 87,705 employees (37 per cent of the sector) are in these entities. The largest is the Australian Defence Force (58,612 employees), subject to its own *Defence Force Discipline Act 1982,* and its own statutory Inspector-General, providing a military justice, grievance and redress system rather than anti-corruption oversight: see http://www.defence.gov.au/mjs/organisations.asp#1. Also in the non-APS group are Australian Security and Intelligence Organisation (ASIO) and Australian Secret Intelligence Service (ASIS), subject to oversight by the Inspector-General of Intelligence & Security, but this is again primarily a complaints body (to ensure these agencies 'act legally and with propriety, comply with ministerial guidelines and directives and respect human rights') rather than an anti-corruption body. NB the 1,154 employees of the Parliamentary Departments are non-APS but have the same conduct regime and Commissioners as for the APS, and so are less separate.

Figure 4.4. Anti-corruption coverage: public sector employees (Australia) 2017

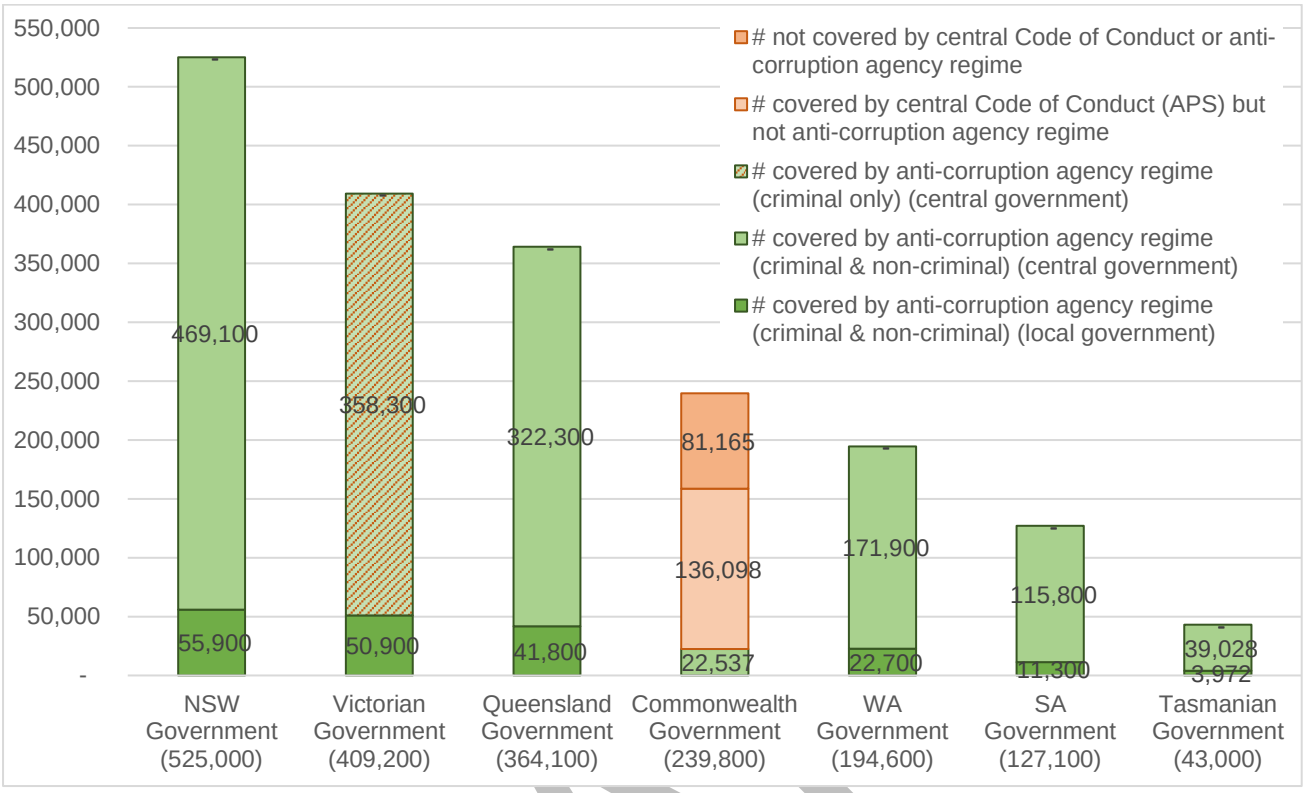
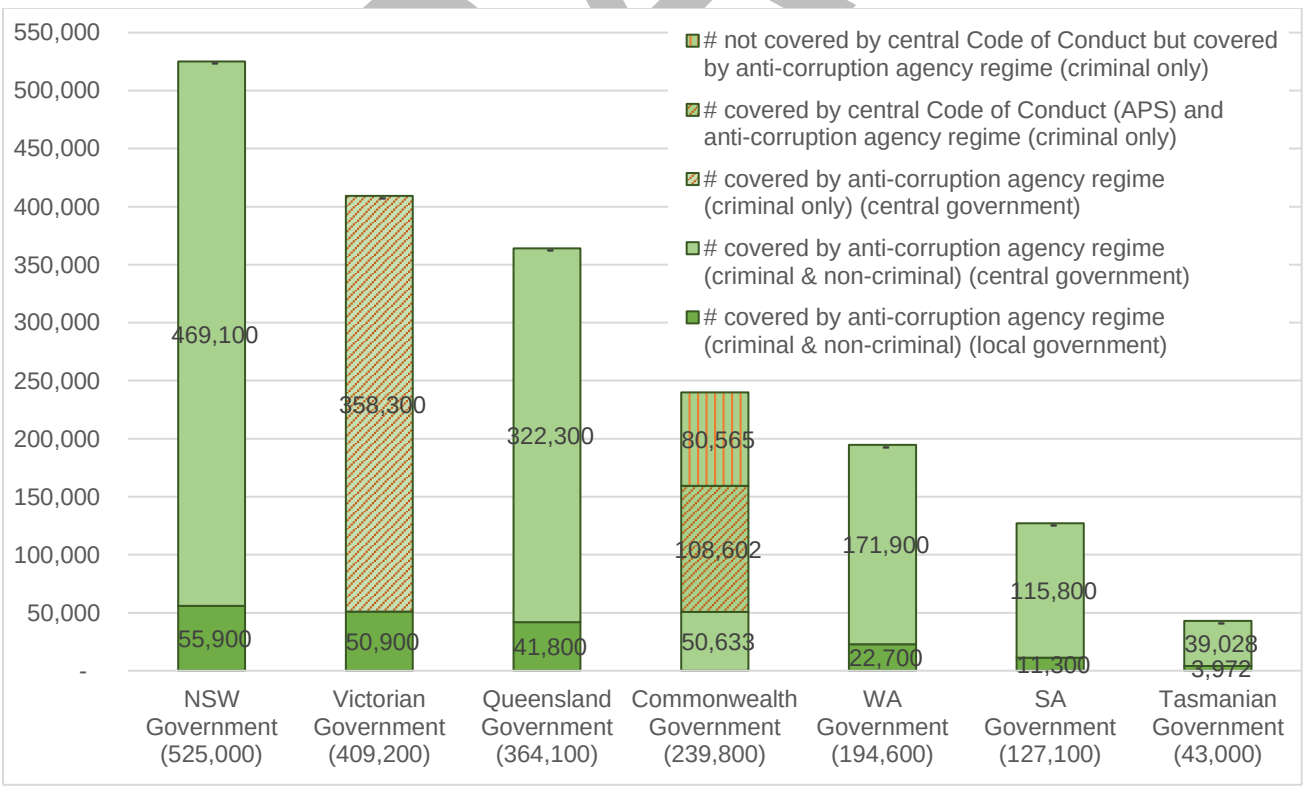


Figure 4.5. Proposed coverage (Commonwealth Integrity Commission proposal)



Sources: Australian Bureau of Statistics Series 6248.0.55.002 - Employment and Earnings, Public Sector, Australia, 2016-17; APS Statistical Bulletin 2017; *A Commonwealth Integrity Commission—proposed reforms,* Attorney-General's Department, Canberra, 13 December 2018.

Confused legal definitions of corruption

The major challenge becomes how well-placed Australia's integrity systems are to recognise and respond to these corruption risks, in terms of legal definitions. Other questions about integrity institutions, such as their functions, powers and resources, are the focus of later chapters. Here, there are two key questions. How well do current statutory approaches to how corruption is defined and identified align with the above issues and risks? And, how well do current reform proposals align?

Legal definitions of official corruption vary widely Australia, with most current and proposed approaches not well matched to these risks and challenges. While variety is not unusual in a federal system, for Australia it now means inconsistency, confusion and uncertainty have become serious impediments to effective response, and threaten to become worse.

There are currently two main approaches: narrow and broad. For both, however, a major problem is the extent to which most definitions hinge either on the type or seriousness of the response to particular behaviour (e.g. whether a particular act is a crime), or on growing lists of such types of behaviour (including crimes), with only secondary or unclear reference to *why* this conduct is deemed corrupt.

- Under ***narrow definitions*****,** the only conduct captured is particular, existing crimes. Indeed, broader definitions evolved from the late 1980s in direct response to the inability of the normal criminal justice system to deal adequately with corruption in this way, as traditional offences requiring proof beyond reasonable doubt in a criminal court.

  More recently, revival in use of the common law offence of 'misconduct in public office'[36] – and its codification, albeit in sometimes quite inconsistent ways, in some jurisdictions – has restored some flexibility to the criminal prosecution of corruption, and breadth to these definitions.[37] Nevertheless, for practical purposes, agency jurisdictions are confined to what might be able to be proved in a criminal court. In a turning back of the clock, Victoria (2011) and South Australia (2012), two of the more recent states to create anti-corruption agencies, confined themselves to this remit, with the role of the SA ICAC modelled on a closed-door, federal law enforcement agency.[38]

---

[36] See David Lusty, 'Revival of the common law offence of misconduct in public office', (2014) 38 Crim LJ 337.

[37] See Tasmanian Integrity Commission (2014), *Prosecuting Serious Misconduct in Tasmania: The Missing Link: Interjurisdictional review of the offence of 'misconduct in public office'*, October 2014 https://www.integrity.tas.gov.au/__data/assets/pdf_file/0004/296734/IC_-_Interjurisdictional_review_of_the_offence_of_misconduct_in_public_office.PDF.

[38] See Figure 4.4 and 4.5 above. The practical jurisdiction of the SA ICAC is somewhat broader, because the agency was also given power to investigate 'maladministration' (albeit, confusingly, with an overlapping mandate, different powers and different definition to that of the State Ombudsman); and because an Office of Public Integrity was also created, overseen by the ICAC, to which any form of misconduct must be reported for triaging to different agencies as necessary. See *Independent Commissioner Against Corruption Act 2012* (SA).

- ***Broad definitions*** define corruption as *either* a criminal *or* a serious disciplinary breach capable of justifying termination of employment, which satisfies a number of criteria consistent with a broader concept of corruption. The substantive criteria usually follow the form of the NSW *ICAC Act* 1988 and can involve any of:[39]
  - conduct of an official that involves the dishonest or partial exercise of official functions
  - conduct of an official that involves a breach of public trust
  - conduct of an official that involves the misuse of official information or material
  - conduct of any person that adversely affects, or could adversely affect the honest or impartial exercise of official functions by a public official or authority.

  NSW also includes a long list of criminal offences that can constitute corrupt conduct by any person, if it 'adversely affects' or could adversely affect 'the exercise of official functions by any public official' – a section that famously saw the NSW and High Courts decide that this did not mean any exercise of official functions, such as affecting the 'efficacy' of public administration, but only the *honest and impartial* exercise or 'probity' of official functions.[40] This narrowing led to addition of a further category:

  - conduct of any person that impairs, or could impair, public confidence in public administration *and* could involve any of a further list of (mostly) criminal conduct, including collusive tendering, fraudulent applications for licences, and other dishonest use of public funds, assets, revenue or employment.

  However, no States or territory follows this broad approach the same way. Queensland has long been similar to NSW, but used the term 'official misconduct' from 1991 until 2014, when it was narrowed to 'corrupt conduct' along with requirements that this must also always be intended for someone's personal benefit, akin to a criminal standard. These were much criticised, and removed in 2018.[41] The result is now a similar, though simpler version than NSW, which does not focus so heavily on criminal offences.

  Some variations are narrower, such as the WA Corruption and Crime Commission's jurisdiction over 'serious misconduct' (defined somewhat circularly as either a criminal offence or when an officer acts 'corruptly'), with all other 'misconduct' (much of which would be 'corrupt' in NSW or Queensland) referred to the Public Sector Commission.[42] However,

---

[39] Section 8(1), *Independent Commission Against Corruption Act 1988* (NSW).

[40] Section 8(2): see *ICAC v Cunneen* [2015] HCA 14, leading to amendments based on the recommendations of Murray Gleeson AC QC & Bruce McClintock SC, *Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption: Report* (30 July 2015).

[41] See Queensland *Crime and Corruption Commission Act 2001*, s.15 – most recently revised in 2018. For background, see A J Brown, https://www.brisbanetimes.com.au/national/queensland/will-queensland-corruption-reforms-pervert-the-course-of-history-20140506-zr5pv.html; https://www.brisbanetimes.com.au/national/queensland/labors-first-test-putting-integrity-before-politics-in-queensland-20150213-13e56w.html.

[42] *Corruption, Crime and Misconduct Act 2003* (WA), s.4, as amended in 2015.

approaches can also be even broader – Tasmania's Integrity Commission investigates any 'misconduct', as low as any breach of an applicable code of conduct.

At the Commonwealth level, National Integrity Commission Bills introduced but not passed by the Parliament have all tended to propose a broad approach, based on NSW – including those introduced by the Greens in 2017 and prior. After the NSW *Cunneen* decision, above, the Australia Institute's National Integrity Committee has advocated that the definition be even broader still, and go well beyond corruption or wrongdoing to include any conduct of any person 'that has the potential to impair the efficacy' of any exercise of an official function.[43]

The *National Integrity Commission Bill 2018,* introduced by Cathy McGowan MP, copied the NSW ICAC definition but without going so far, extended corrupt conduct to mean any official conduct that involved 'dishonest or partial exercise' of any functions, breach of trust, etc, if it represented a breach of any applicable code of conduct, rather than if only a criminal or sackable offence.[44]

These definitions are a cause for confusion. Even the broad definitions retain a focus on criminal offences which limits their scope; while the inconsistencies mean a high risk that conduct which would be reportable in one jurisdiction, is not reportable in another.

Proposals at the Commonwealth level demonstrate the confusion, and potential pitfalls, most clearly of all. Since 2011, parliamentary committees have argued for a 'more detailed and comprehensive definition' of corruption under Commonwealth legislation.[45] At present, however, rather than sorting this out, the proposed approach is a bifurcated one, in which the Commonwealth would *simultaneously* take:

- A very **broad approach** to corruption among the nine federal agencies to be covered by the *Law Enforcement Integrity Commissioner Act 2006 (Cth)* – which has long defined 'corrupt conduct' and 'corruption issues' as relating to any abuse of office by an official,[46] going well beyond criminal offences and providing a very flexible jurisdiction; and
- A very **narrow approach**, in which for the remaining 81 per cent of the federal public sector, including parliamentarians, corruption would be defined only in relation to a revised list of criminal offences, with a very explicit intention to exclude everything other than criminal matters from the Commonwealth Integrity Commission's jurisdiction and funnel all complaints through government departments.

---

[43] See Australia Institute (2019), *Feedback on the Consultation Paper – A Commonwealth Integrity Commission – proposed reform*, Appendix B, p.17 http://www.tai.org.au/sites/default/files/National%20Integrity%20Committee%20-%20Feedback%20on%20the%20Consultation%20Paper.pdf. Emphasis added.

[44] *National Integrity Commission Bill 2018,* House of Representatives, 26 November 2018: www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6217;

[45] Parliamentary Joint Committee on ACLEI (2011): see Senate Select Committee, 2.26. Abuse of public office is also a broad offence, hinging on use of office to dishonestly obtain a benefit or cause a detriment, under s.142.2 of the Commonwealth Criminal Code.

[46] See ss.6-7 of the Act.

While the Government claimed that this proposed threshold 'avoids a broad and confusing swathe of potentially minor irregularities or misconduct',[47] it is plainly unworkable, and has been much criticised. Indeed, within the nine agencies covered by ACLEI, different officials engaging in the exact same type of grey corruption (e.g. making decisions in the presence of an undisclosed conflict of interest) might be subject to wildly different standards and consequences depending on whether they were seen as exercising a law enforcement function, or not – itself a very unclear line.

Table 4.1, from an Attorney-General's Department discussion paper in 2012, confirms the impracticality. It shows how even on the most narrow conception of corruption, the types of, and responses to, misconduct work on a continuum which bleeds into one another, given the spectrum of issues and remedies involved.[48] Setting standards and processes which seek to prevent high-risk, non-criminal misconduct from coming onto the 'corruption' radar is fraught with danger.

Table 4.1. Maladministration, Impropriety and Corruption (AGD 2012)

Maladministration	Improper behaviour	Corruption
• Managing badly • Inefficiency • Bad judgement and decisions • Incompetence • Lack of due process	• Inappropriate personal behaviour (e.g. harassment) • Misuse of government systems • Misuse of government resources (could also be corruption)	• Misuse of entrusted power or office for private gain
Behaviour that may be administrative misconduct		
	Behaviour that may be criminal	

Problems arising from misaligned definitions and processes

Recent high-profile controversies serve to further highlight the deficiencies in current legal definitions of corruption and misconduct in public office – especially where a reversion to reliance on the criminal process is concerned. Experience is pointing to a mismatch between the problem of 'grey corruption' discussed above, and need for clearer rules and more efficient and effective responses, and the way such cases are playing out:

---

[47] Attorney-General's Department, https://www.ag.gov.au/Consultations/Documents/commonwealth-integrity-commission/cic-consultation-paper.pdf, p. 13.

[48] Attorney-General's Department, *Discussion Paper: Australia's Approach to Anti-Corruption*, Prepared as part of development of the National Anti-Corruption Plan, March 2012, p.7.

- **Onus of proof** – Peter Slipper

  In 2012, the former Speaker of the House of Representatives visited three wineries in the Canberra region via taxi at a cost to taxpayers of $954. A Federal Police investigation led to Slipper being convicted of an offence of 'dishonestly caus(ing) a loss' to the Commonwealth, under section 135.1(5) of the *Commonwealth Criminal Code Act 1995*. He successfully appealed to the ACT Supreme Court, with the Judge accepting the claim that it could not be proven that the visits did not involve 'parliamentary business'.[49] The decision was seen as a major setback to enhanced political accountability, and a case of judicial reasoning at odds with common sense and public opinion.[50]

- **Intent to privately gain** – Ian MacDonald and John Maitland

  This case has foundered on uncertainty over the intent needed to prove improper favourable treatment by a politician and financial gain by the associate. Following an ICAC investigation, in 2017 former NSW Minister for Minerals MacDonald was found guilty of 'wilful misconduct in public office' by granting a coal exploration licence to his friend Maitland. The latter obtained a benefit of approximately $6 million from the sale of shares related to the licence,[51] and was convicted of being an accessory. In 2019 the NSW Court of Criminal Appeal quashed the convictions and ordered a retrial, on the basis that the trial judge had not adequately informed the jury of the lack of evidence of intent by both men.[52]

- **Private conduct which impairs confidence** – Margaret Cunneen SC

  Already mentioned, this case showed how a public servant used conflict over the scope of the definition of corrupt conduct to escape consequences for actions outside their employment, alleged to potentially bring the relevant office into disrepute. In 2014, Cunneen SC, a senior NSW prosecutor, was accused of wrongdoing by advising the girlfriend of one of her sons to claim chest pains in order to avoid a breathalyser test following a car crash. The ICAC's intent to investigate this as corrupt conduct was successfully challenged in the NSW Court of Appeal and High Court, on the basis this was not conduct that 'could adversely affect, either directly or indirectly, the exercise of official functions by any public official' (see earlier). The DPP later assessed there to be no case for a criminal charge of perverting the course of justice, but the issue generated enormous controversy, including allegations of oppressive conduct by the ICAC, while some felt that a serious issue of public sector misconduct was left unresolved.[53]

---

[49] Slipper v Magistrates Court of the ACT and Turner and Commonwealth Director of Public Prosecutions [2014] ACTSC 85 (9 May 2014).

[50] E.g., *Courier Mail* (2015, 2 March), Lying a slippery business, p. 24; Waterford, J. (2015, March 1), 'Putting in the golden slipper', *Canberra Times*, p. A017.

[51] https://www.smh.com.au/national/nsw/former-nsw-labor-minister-ian-macdonald-and-union-friend-john-maitland-s-convictions-thrown-out-20190225-p51002.html.

[52] Maitland v R; Macdonald v R [2019] NSWCCA 32 (25 February 2019).

[53] E.g., https://www.abc.net.au/news/2015-04-16/bradley-cunneen,-icac-and-unintended-

- **Abuse of power, not for direct gain** – Nassir Bare

  This Victorian case highlighted the discretion available to integrity commissions in selecting cases for investigation, and the threat this can pose to ensuring integrity and justice. In 2009 the Office of Police Integrity (OPI) refused to investigate allegations of a racially charged serious assault by police on a teenager. This was despite the OPI's responsibility under its governing legislation to investigate 'serious misconduct',[54] and the high risk of more serious corruption unfolding where such abuses of power go unchecked. A community legal centre sought a review of the decision in the Supreme Court, arguing that the OPI's remit of the matter to the Victoria Police violated the *Victorian Charter of Human Rights and Responsibilities*. In 2015, the Victorian Court of Appeal eventually ordered the review, in the form of referral of the complaint for a fresh decision by the Independent Broad-based Anti-Corruption Commission (IBAC), which subsumed the OPI.[55] The IBAC elected to investigate and found there was insufficient evidence of an assault. However, the implication remained that Victorians had no right to an independent investigation of alleged police misconduct of a serious nature.[56]

- **Under the carpet or through the cracks?** – Commonwealth Fraud Control

  Finally, one of the most immediate consequences of misaligned definitions and over-reliance on criminal standards is that of high-risk misconduct simply falling through the cracks. At Commonwealth level, in a preview of what seems likely if corruption is restricted only to criminal offences, prioritisation of the tangible concept of 'fraud' over the idea of 'corruption' has long seen the latter classed as just part of the former.[57] *Commonwealth Fraud Control Policy* defines 'fraud' broadly, to include any conduct which involves 'dishonestly obtaining a benefit or causing a loss',[58] but the imputation of criminal intent and exclusion of wider concepts such as partiality or breach of trust results in a narrow picture. Moreover, despite the creation of the Australian Federal Police Fraud & Anti-Corruption Centre in 2014, Commonwealth agencies are not under any obligation even to report fraud to the AFP – rather they are simply 'encouraged' to seek guidance in serious or complex fraud matters.[59] Between July 2014 and April 2017, the Fraud & Anti-Corruption Centre received only 34 referrals related to corruption for the

---

consequences/6395050; https://www.smh.com.au/national/nsw/margaret-cunneens-prayers-answered-icac-commissioner-megan-latham-resigns-20161123-gsvx9h.html.

[54] *Police Integrity Act 2008*, s.6(2)(a).

[55] Bare v IBAC [2015] VSCA 197.

[56] IBAC (2016), *Operation Darby: An investigation of Mr Nassir Bare's complaint against Victoria Police*, Melbourne, Independent Broad-based Anti-corruption Commission; Melbourne; Police Accountability Project (2017), *Independent Investigation of Complaints against the Police Policy Briefing Paper*, Melbourne, Flemington and Kensington Community Legal Centre.

[57] See Peter Roberts 2005, 'Don't rock the boat: The Commonwealth National Integrity System Assessment', Australian Journal of Public Administration, Vol. 64, No. 2, pp. 48-53.

[58] Commonwealth *Fraud Guidance and Australian Government Investigation Standards*, Par 14, p.C7.

[59] Commonwealth Fraud Guidance, pars.71-72, p.C16.

> entire Commonwealth Governmment.[60] The Commonwealth's chief misconduct handling guide reminds agencies that they 'will need to consider referral' to the AFP if investigations concern 'fraud or other criminal behaviour' under 'the agency's fraud control policy and procedures' – but makes no mention of corruption.[61]

The common element of such examples is the concern that due to the legal rules and processes, the intended independent scrutiny and accountability of persons in official positions may not be being achieved. Because of how corruption is understood and defined, breaches can go unresolved, unaddressed or undetected in the first place, leaving perceptions of impunity and a failure of accountability. The question becomes what to do about it.

4.3. The way forward

The above data and discussion highlights the need for reforms at federal, state and local government levels to improve probity, put a stop to scandals, demonstrate accountability when ethical breaches occur, and improve confidence in the integrity of the public sector by addressing issues of concern to the public.

The primary issue of 'coverage' can be conceptualised in terms of 'breadth' and 'depth', or 'horizontal' and 'vertical' dimensions of the jurisdiction of integrity systems. To extend the metaphor, criminal matters represent only 'the tip of the iceberg'. Horizontally, there is a need for all public entities to be subject to common ethical standards and enforcement. Vertically, there is a need for an enforceable set of values that includes criminal, civil and disciplinary matters, without the capacity for offenders at any level to evade accountability. Properly identifying corruption risks is also the first step in the move away from a 'high trust' model of accountability, based on ad hoc retrospective 'damage control', to a model of preventive behaviour management and full accountability, further discussed in the next chapter.

Further, the debate over a new Commonwealth approach to defining corruption brings the problems into sharp relief. It confirms the extent to which concern over the process for *how* corruption should be handled[62] – i.e. criminally, via administrative processes or otherwise – has been used to turn back the clock in terms of thinking about *what* it is, narrowing the concept quite inconsistently with the risks described earlier in this chapter. Moreover, this loss of perspective on what amounts to "corruption", as opposed to other crimes or integrity violations, was well demonstrated when the Attorney-General confused the terms 'partial' and

---

[60] Senate Select Committee Report, 2017, par.2.64-2.65. Two-thirds were not even investigated, the reasons being lack of evidence, no Commonwealth offence identified, and not meeting AFP criminal investigation thresholds.

[61] APSC, *Handling misconduct: a human resource manager's guide* (June 2015), par 6.3, 6.3.1, 6.3.2 <https://apsc.govcms.gov.au/handling-misconduct-human-resource-managers-guide>.

[62] This position was widely seen as evidencing a misplaced concern for damage to reputations from anti-corruption agency investigations: see Australia Institute, http://www.tai.org.au/content/response-federal-icac-announcement-government; Remeikis, A., and Knaus, K. https://www.theguardian.com/australia-news/2018/dec/13/morrison-government-announces-new-federal-anti-corruption-commissions.

'impartial' – long standing features of all the existing State definitions of corruption – the concept of political 'balance' that defines duties of journalists such as the ABC's Andrew Probyn.[63] Not only is it insufficient to assume that corruption is always criminal, but this assumption seems to be blinding policymakers to the range of forms that it actually takes, and hence the scope of responses needed.

The first purpose of a clear conception of corruption – even ahead of seeing it stopped and prevented – is to see it detected. And on this issue, too, existing debates have clear lessons for reform. In all jurisdictions, except Tasmania, the definition of corruption is accompanied with comprehensive obligations on public officials and agency heads to report that corruption through to a central point, to ensure it cannot slip through the cracks or be swept under the carpet, in the manner suggested by the AFP Fraud & Anti-Corruption Centre statistics.

Comprehensive mandatory reporting obligations are only recent in some jurisdictions,[64] but they are the pivotal first step in addressing our challenges. Conduct or issues that are morally or ethically questionable but not (yet) criminal, as typical of grey corruption, are only likely to come to the fore in any systematic way through such reporting. Jurisdictions which lack this kind of regime, providing at least one oversight agency with a unified picture, lack the ability to estimate the possible incidence and changing nature of integrity concerns, to monitor them, to take them over when needed, and to provide assurance regarding the quality and consistency of agency responses.

The choice is again stark due to the Commonwealth's options. As one senior Commonwealth policy official confirmed, most of the sector is without any such system:

> Well, there's not a central requirement to report to one place all anti-corruption matters. So, there are certain requirements on agencies about obviously dealing with corruption that they identify, but they don't necessarily need to report it. If they're dealing with it themselves, … there's no current requirement for them to report it to a single central space in government (Interview 6).

However, ACLEI's jurisdiction already involves a well-developed mandatory reporting framework, in support of its broad definition of corruption,[65] requiring that 'as soon as practicable after the head of a law enforcement agency becomes aware of an allegation, or

---

[63] See A J Brown, 'National Integrity Commission's chief architect: Attorney-General's fears overblown', *The Mandarin,* 29 November 2018: https://www.themandarin.com.au/102027-national-integrity-commissions-chief-architect-attorney-generals-fears-overblown/.

[64] See recent amendments to Victoria's IBAC legislation to establish mandatory agency reporting, following NSW and, originally, Queensland. In Tasmania, a mandatory reporting framework was recommended but not adopted by Government: see: https://www.integrity.tas.gov.au/__data/assets/pdf_file/0003/361713/Government_Response_to_Independent_Review_of_the_Integrity_Commission_Act.pdf

[65] See Part IV, *Australian Federal Police Act* 1979, and Australian Federal Police Categories of Conduct Determination 2013; AFP (2017) Annual Report, p.114. https://www.afp.gov.au/sites/default/files/PDF/ Reports/ amended14122017-afp-annual-report-2016-2017.pdf (Accessed 5/7/2018). See also https://www.legislation.gov.au/Details/F2013L01429 for detail of the four categories of misconduct.

information' raising a corruption issue, she or he must notify ACLEI, with details and an assessment.[66] Options then follow for direct investigation by ACLEI, joint investigation, referral back with oversight, or referral back with an obligation to report the outcome.

However, the current Commonwealth Integrity Commission proposal would extend that system to only nine agencies and 21 per cent of Commonwealth employees. For the remaining heads of departments, agencies, Commonwealth companies and corporations, the mandatory obligation to report would only kick in for issues 'considered to meet the requisite threshold' – meaning only criminal offences. Further, only agency heads would be obliged to report matters to the Integrity Commission, with no obligation or mechanism proposed to require individual officers to report these concerns to the CIC.

Mandatory reporting is an important aspect of reform, with a clear need to ensure misconduct at all levels is subject to disclosure to properly constituted authorities. With these issues now acute at the national level, there is opportunity for the Commonwealth to provide the new best practice benchmark for other jurisdictions to follow – not simply on reporting frameworks but the very concept of corruption itself.

4.4. Conclusions and recommendations

Action is needed to eliminate the disjunctions between the amount of official misconduct that is known or perceived to occur and official action taken on cases, flowing from the limits and inconsistencies of legal definitions – current and proposed.

Only some of the definitions proposed or currently in practice cover the spectrum of corruption risks relevant to modern-day Australia. None are well framed for triggering the full range of responses to ensure corruption is identified, reported and prevented. Further remedies for this mis-alignment are proposed through later chapters. Chapter 5 pays attention to how 'graduated' responses to unethical conduct can be tied into more effective preventive strategies. Chapter 6 addresses undue influence in politics. Chapter 7 addresses the need to match mandatory reporting requirements with adequate whistleblower protections, while chapter 8 recommends a wider range of mechanisms for dealing with public sector misconduct well beyond the fraught path of criminal prosecutions.

Here, meeting the challenge starts with a modernised definition of corrupt conduct which does not revolve around the response type or seriousness (e.g. criminal or non-criminal), as currently mostly the case and proposed by the Commonwealth Government; nor, as in NSW, around growing lists of types of behaviour (including crimes) which can be corrupt, without reference to *why.* The central focus of a broad but simplified definition should be the risk posed by any type of conduct that could have a "corruptive" effect on public decision-making, or on public confidence in its integrity.

The place to start is the Commonwealth, where the need has long been recognised, but where current proposals are fragmented and inconsistent. However, it is also time for a consistent national approach; one which might also lead to greater consistency and coordination in

[66] Law Enforcement Integrity Commissioner Act 2006, s.19(2).

criminal offences and other responses. Its development could be a first objective of the National Integrity and Anti-Corruption Advisory Committee, described in chapter 3.

Recommendation 3: A modern, national definition of corrupt conduct

That the Commonwealth lead the States in developing a **modernized, broad definition for triggering anti-corruption processes, aimed at any 'corruptive' conduct which undermines public trust** – including:

- all violations with significant potential to corrupt, or impair public confidence in the integrity of, public decision-making (whether intentionally or recklessly; and whether by public officials or private businesses and citizens);
- any breach of, or failure to have, enforceable codes of conduct covering high-risk activities including gifts and benefits, lobbying, conflicts of interest including political party and electoral interests, and principles for transparency, competition, fairness and value for money in procurement;
- not only criminal, but disciplinary or administrative misconduct of those kinds;
- equal application across all government agencies and functions.

This recommendation relates to: the **Commonwealth** government and to all States and Territories, especially **South Australia** and **Victoria**.

While Australia's definitions of corrupt conduct should be broad, to address the full spectrum of our challenges, they also need clearer content. Concepts of 'partiality', while still relevant for controlling improper favouritism and bias, have proved confusing and no longer help address major areas of concern about 'undue influence'. Stronger rules and guidance for regulating influence-trading are needed, as discussed in chapter 6 – but a clear concept of 'undue influence' itself is usually missing, leaving these as paper compliance exercises rather than genuine anti-corruption controls.

Recommendation 4: 'Undue influence' as a new corruption marker

That the Commonwealth and States include, in their revised statutory definitions of corrupt conduct, clear principles affirming **why the pursuit or granting of 'undue influence' constitutes potential corruption on its own right**, for application in all systems protecting the integrity of decision-making including:

- Transparency and regulation of access to decision-makers
- Lobbying
- Political donations, support and endorsements
- Pre-appointment and post-separation employment
- Personal and professional relationships.

This recommendation relates to: the **Commonwealth** and **all States and Territories**.

Corruption challenges cannot be addressed if they are not identified, if the level of corruption or high-risk conduct is not measured properly, if there are no requirements to report it. Reporting requirements must enable independent authorities to ensure corruption issues are not played down, mishandled or swept under the carpet. Dealing with our corruption challenges begins with comprehensive mandatory reporting frameworks, which recognise the

full spectrum of high-risk conduct, and apply equally to all agencies and officials. This is not the case with the present Commonwealth Integrity Commission proposal.

Recommendation 5: Comprehensive mandatory reporting

That the Commonwealth, and all States not already doing so, ensure a statutory system under which **all public agency heads and individual public officials must report any suspected/potential corrupt conduct**, in real time, to:

- Their own agency, or directly to the anti-corruption agency, in the case of all public officials; and
- Directly to the anti-corruption agency, in the case of all agency heads.

This recommendation relates to: the **Commonwealth** and **Tasmanian** governments.

6. Political integrity

6.1. The issues

Elected legislatures, executive government and political parties are core pillars of Australia's public integrity systems. The legitimacy of democracy rests on the population feeling that it can rely on parliamentarians and councillors to discharge their responsibilities as public officers entrusted with responsibility for the public trust. As shown in chapters 1 and 3, however, the declining levels of trust in politicians recorded in many democracies threatens to undermine national stability and hence security – with Australia at a critical turning point.

Political integrity regimes in Australia are in disarray, with occasional islands of best practice and innovation, but many languishing areas, especially at a Commonwealth level. The result is fragmented, often incomplete and ineffective. For example, seven out of Australian's nine jurisdictions still have no system of prompt or real-time disclosure of political donations. Rules and thresholds for donations, expenditure and disclosure vary wildly, inviting 'laundering' of donations through backdoor routes, and in some cases have been struck down by the High Court for being too piecemeal. One Australian State (Tasmania) still has no political finance disclosure regime at all.

This is just one of many problems eroding public confidence and weakening the fundamentals of democracy. This chapter deals with five key problems:

- Incoherent, inconsistent and ineffective political donation and finance regimes;
- Undue influence through unregulated or inappropriate lobbying and access;
- 'Revolving doors' or post-separation employment of ministers and senior staff;
- Risks of political cronyism in appointments, including to the judiciary and tribunals;
- Regulation of parliamentary expenses.

Fortunately, solutions are apparent, through extensive work by parliaments and others on standards and features of the parliamentary system that can contribute to integrity performance and help bring confidence back to Australian politics. These include:

- A focus on principles of public trust;
- Robust parliamentary and ministerial code of conduct regimes;
- Systematic review of existing rules in each of the above five areas, especially with a view to establishing greater national coherence and consistency; and
- Practical mechanisms for supporting compliance and enforcement with these principles, including prevention and advisory mechanisms, enforcement by parliaments and, when necessary, stronger integrity agencies.

6.2 The state of the debate

The complexity of political integrity

The complexity of political systems accounts for many of the integrity challenges they face. Their components lack the fixed interconnections of clockwork mechanisms. Rather, their interconnections are sometimes tight, sometimes loose, and in extreme cases break down completely. Particular components may at times dominate others, or become weak and lack influence. The rules that regulate the system may serve vested interests or serve the aggregate interests of the polity – the public trust. The rules are dynamic in that they may be widely practiced at one period, and lacking integrity in another period.

This highlights the continued, fragmented nature of the system, likely to continue to give rise to public integrity concerns. For a long time, there has been uncertainty about the degree of inconsistency between the types of integrity standards imposed by parliaments on other public officials and the wider community, on one hand, and the systems of 'puzzling self-regulation' maintained by parliamentarians and ministers towards themselves.[1]

As shown in chapters 1 and 3, the declining levels of trust in politicians means this complexity must now be addressed. – with Australia at a critical turning point. This is shown not only by the 2018 Global Corruption Barometer survey conducted as part of this assessment:

- While the Roy Morgan *Image of the Professions* survey has shown consistently low ratings for public views of the 'ethics and honesty' of federal and state parliamentarians since 1989, in 2017 they remained near the bottom of all occupations, with only 16% at 'high' or 'very high', down one percentage point from 2016;[2]
- During recent federal parliamentary expenses scandals, a ReachTEL poll showed high levels of opposition to wasteful travel expenditures by politicians, and 73.4 per cent support for 'a new federal anti-corruption commission to oversee political donations, allowances and entitlements', with 10.8% opposed;[3]
- A 2017 public opinion survey on improving Australian democracy, for the Centre for Policy Development, found 77 per cent support for 'independent federal corruption commission', but even higher support – 79 per cent – for 'strengthening the code of conduct for parliamentary behaviour'.[4]

The current complexity is explained by the fact that more than in any other areas of the integrity system, relationships, duties and standards overlap the three functional sectors of society: state (or public); civil society; and market (or economic) social sectors (Figure 6.1). Political parties perform civil society functions, whilst members of parties elected to parliament or local

---

[1] John Uhr (2005), Terms of Trust: Arguments Over Ethics in Australian Government, UNSW Press, p.147.

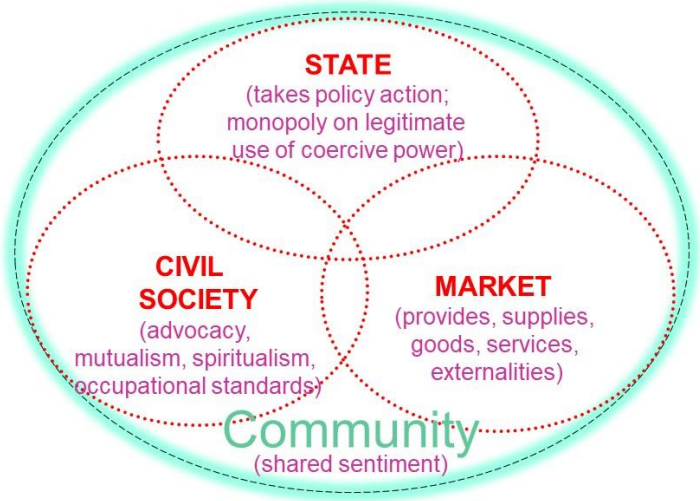
[2] C:/Users/User/Downloads/7244-Image-of-Professions-2017-Professions-Table-May-2017%20(1).pdf

[3] https://www.reachtel.com.au/blog/7-news-national-poll-30july2015

[4] https://cpd.org.au/wp-content/uploads/2017/12/Discussion-Paper-Final-December.pdf

government councils, and independent MPs and councillors, perform state sector functions, but with strong responsibility for ensuring the health of, and for regulating, market functions, while also serving the community – at multiple levels. Accordingly, political integrity concerns the manner in which MPs and councillors perform their functions, but these functions are inherently more diverse than those of any other type of public official.

Figure 6.1: Social Sectors



As discussed in chapters 2 and 7, in a democracy like Australia, the conduct and processes of the Legislative and Executive branches of government are also critically important to ensuring the integrity of the government system as a whole. This includes the health of the entire system of public administration and regulation controlled by the Executive, the Judicial branch through appointments and the allocation of resources, and oversight of the nation's other 'horizontal accountability' or integrity agencies. Political integrity affects the operation of all other branches of government.

Political integrity in any part of the Australian federation can also affect the rest, because political parties, constituencies and government responsibilities are not separated by jurisdiction – the same political forces and risks, and often the same individuals, are engaged in all of them, to a higher degree than in other parts of the integrity system.

It is this complexity with its multiplicity of transactions that creates special opportunities for corruption to distort the operation of any level of the system and any actor or institution within it. As shown in chapter 3, while there are always risks of simple self-enrichment or "hard" corruption, the bigger problems are those of grey corruption, and especially undue influence -- the distortions that occur when transactions fail to serve their intended objectives and instead operate in the direct or indirect interests of the parties to those transactions. The interests actually served may be those of either the individuals conducting such transactions or organisations with which they are associated.

In Australia, these risks are playing out in five key areas – in all of which, standards and processes for managing these risks remain patchy or incomplete, especially at the crucial Commonwealth level.

1) Political finance and campaign regulation

Increasing attention is being given by scholars to practical solutions to problems, created by donations to candidates and political parties including examining the utility of overseas models in areas such as bans and limits on corporate donations.[5]

Money paid to political candidates and parties remains one of the highest risks to both the reality and public perceptions of the integrity of the political system. The fact that the vast majority of businesses do not donate to parties or candidates raises worrying issues around the small minority that do. Here directors' duties become relevant. The Corporations Act requires each director to act in the interests of their company – not corporations in general, but the corporation of which she or he is a director. Thus, if a board member authorises a donation, she or he does so, in the interests of the business, that is expecting the political party (or candidate) to act in the interests of that business – not necessarily the public interest.

However, the elected politician (whether or not the member of a party) is obliged to act in the public interest ahead of any private interest, such as that business. This brings us to the question of whether the donor-business is in effect attempting to bribe the prospective members of parliament. Alternatively, is the director authorising misuse of the business's funds, other than in the interests of the company?

The extraordinary donation of almost $2 million by the National Australia Bank (NAB) in 2017-18 to the Liberal Party, then in Government, and facing demands for a Royal Commission into banking, illustrates the point. In what way was the donation in NAB's interests unless as an attempt to block a rigorous inquiry? The other three major banks - ANZ, CBA and Westpac – also made donations, albeit rather smaller, in the same period.

These donations by businesses that operate in a highly regulated sector highlight the Incoherent, inconsistent and often ineffective political donation and finance regimes at national, state and territory levels. The NAB donation was over 300 times the cap on donations applying in NSW and 500 times the new Victorian cap. However, it was entirely free of any limit according to national or any other state or territory regulation.

Thresholds for disclosure extend from $1,000 (ACT, NSW, Qld, Vic), $1500 (NT), $2,300 (WA) $5,000 (SA) to $13,500 (national). Tasmania has no requirement whatsoever. More rigorous standards have spread through the three most populous states, but even then each differs from the other, for example donation disclosure periods are seven days (Qld), and 21 days (Vic and NSW). [6] There is no coherence or consistency.

---

[5] Orr, G. (2016), 'Party finance law in Australia: Innovation and enervation', *Electoral Law Journal*, 15(1), 58-70.

[6] See https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/5621507/upload_binary/5621507.pdf (Accessed 11 March, 2019)

Notwithstanding diverse regulatory responses, there is widespread community concern over the price being paid by the public, and the public interest, by parliamentarians' and political parties' pursuit of campaign finance and other forms of electoral and campaign support – ranging from the corrupting influence of foreign political donations,[7] to ongoing concern over real and perceived links between political donations and specific government decisions, especially business and developmental approvals,[8] to concerns over the use of political fundraising vehicles and weak electoral laws to circumvent stronger campaign finance and disclosure laws in other jurisdictions.[9]

As mentioned in chapter 4, private support for the political process can be positive, but in reality, accusations and suspicions of undue influence abound due to liberal political donations laws that lack adequate bans or limits on high-risk donors, are easily circumvented or not enforced, and lack real-time disclosures.[10] Regulation such as that in NSW has sought to reduce the risks associated with high risk donors – overwhelmingly donors in industries subject to the creation of enormous wealth by the exercise of local government or ministerial discretion e.g. to re-zone land, award construction contracts or approve defence procurement. Queensland has followed suit.

However, while some of these restrictions have been upheld by the High Court, the latest NSW attempt to ban political contributions and restrict third-party electoral campaigning, directed against the union movement, was recently struck down by a unanimous High Court, on the basis that it infringed the Constitution's implied freedom of political communication. The chief message of the decision was not that limiting or regulating such expenditure is impermissible, but that the approach taken was piecemeal as it could not be shown that it was proportionate to its purpose, or indeed reasoned in any way. This left it open to simply being capricious or partisan.

As publicly reported, the High Court said that while aiming to "prevent the drowning out of voices in the political process by the distorting influence of money" was a legitimate purpose, the lead judgment of Chief Justice Susan Kiefel and Justices Virginia Bell and Patrick Keane concluded that "no inquiry as to what in fact is necessary to enable third-party campaigners reasonably to communicate their messages appears to have been undertaken".[11] As Professor Anne Twomey commented, "the court did not itself decide that the $500,000 cap was inadequate - just that it had not received sufficient evidence to be satisfied that it was

---

[7] See http://www.abc.net.au/news/2017-12-12/sam-dastyari-resigns-from-parliament/9247390, 12 December 2017.

[8] See Transparency International Australia (2017), *Corruption Risks: Mining Approvals in Australia, Melbourne* http://transparency.org.au/our-work/mining-for-sustainable-development/mining-in-australia/; The Australia Institute (2017), 'The tip of the iceberg: political donations from the mining industry' http://www.tai.org.au/content/tip-iceberg-political-donations-mining-industry.

[9] See ABC Four Corners, 'Democracy for Sale', 23 June 2014 http://www.abc.net.au/4corners/democracy-for-sale/5546008.

[10] See Coghill, K. (2016, March 30), 'Federal donation rules dangerously weak', *Australian Financial Review*, p. 35.

[11] Pelly, M 2019 Election boost for labor as High Court rejects NSW donation laws https://www.afr.com/business/legal/election-boost-for-labor-as-high-court-rejects-nsw-donation-laws-20190129-h1alqm.

necessary", leaving the way open for the NSW government to "conduct an inquiry in the future that would provide sufficient evidence for it to justify a similar cap and to enact it". [12]

In summary, seven out of Australian's nine jurisdictions still have no system of prompt or real-time disclosure of political donations. Rules and thresholds for donations, expenditure and disclosure vary wildly, inviting 'laundering' of donations through backdoor routes. One Australian State (Tasmania) still has no political finance disclosure regime at all. In the State (NSW) where most attempts have been made to limit or ban unwanted political finance, these have been inconsistent and politically partisan, in some cases struck down by the High Court of Australia for being too piecemeal.

2) Lobbying and access

The risks of the integrity of the democratic system being undermined and compromised through undue influence associated with lobbyists' access to politicians, by 'purchasing access' at expensive party funding raising events, and similar issues have been outlined in Chapter 4.

Tham's recent article adds to our understanding of the insidious risks to political integrity (see Figure 6.4, below).[13] The Grattan Institute's report *Who's in the room? Access and influence in Australian politics*, also provides compelling evidence of the extent to which the public interest can be easily subverted by the privileged access granted to lobbyists seeking favourable treatment for the vested interests they represent.[14] The laxness of current Australian regulatory regimes for lobbying, especially at the federal level, are well laid out in these analyses.

3) Revolving doors

Whenever a retired MP is reported as taking a highly paid post-parliamentary position it raises suspicions that it is somehow improper and part of a "revolving door" in which it becomes legitimate for MPs to work for sectional outside interests who may have benefitted from their ministerial or parliamentary activities.[15] The movement of staff to and from ministerial offices and private sector offices in the same portfolio also raises concern.

---

[12] Michaela Whitbourn 2019 High Court strikes down NSW laws slashing unions election ad spending https://www.smh.com.au/national/nsw/high-court-strikes-down-nsw-laws-slashing-unions-election-ad-spending-20190129-p50u9b.html

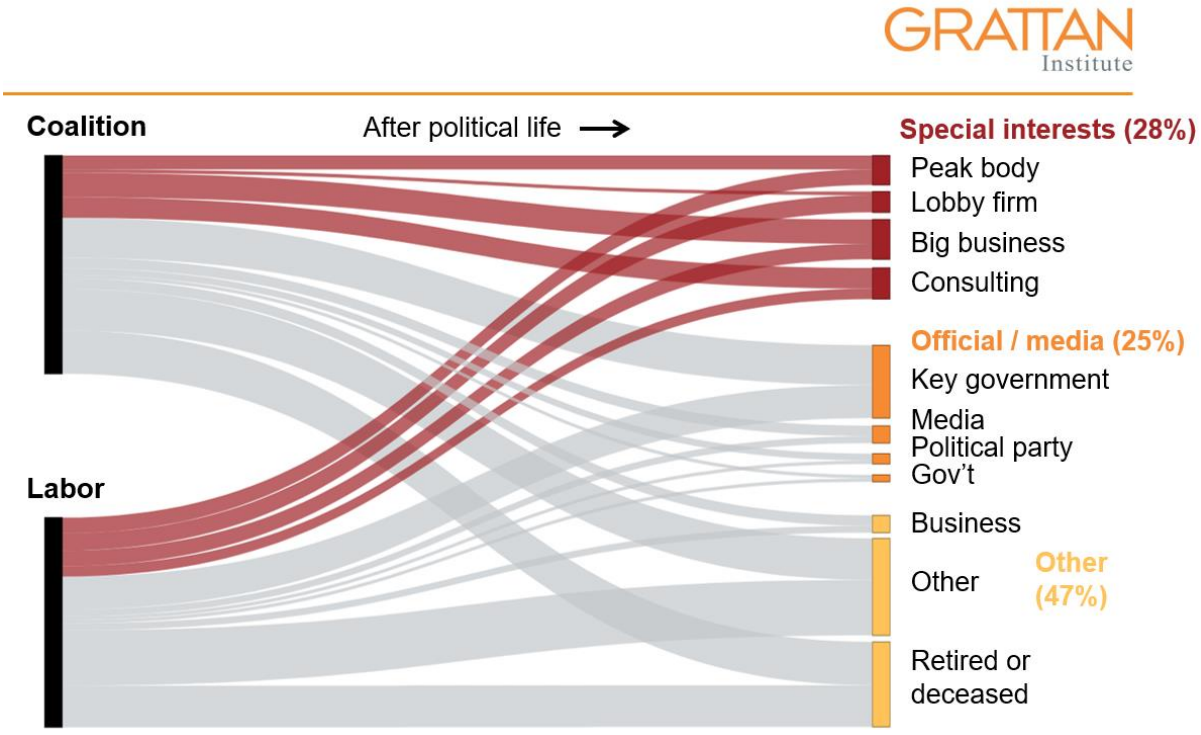
[13] Joo-Cheong Tham, 'Democracy before dollars: The problems with money in Australian politics and how to fix them', *Australian Quarterly* Vol 90, Issue 2 (Apr-June 2019), p.20.

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

[15] Examples include a position taken by former Minister Andrew Robb <https://www.smh.com.au/national/liberal-andrew-robb-took-880k-china-job-as-soon-as-he-left-parliament-20170602-gwje3e.html>, and a position accepted by former Minister Bruce Billson, reviewed in detail by the Senate Select Committee, pars. 2.324-2.331 & 4.159-4.162.

It must also be acknowledged that relatively few MPs remain in parliament until retirement age (often in the 70s) and that many leave parliament having acquired knowledge, skills and abilities which are valuable to employers and the economy more generally. It would be wasteful of human resources to deny them opportunities for employment that do not arise from improper actions or relationships.

Figure 6.2. Federal ministerial employment after politics



Notes: Includes 191 people who were either federal ministers or assistant ministers and left politics in the 1990s or later. Some have had more than one role since. 'Big business' is Top 2000 Australian firms by revenue in 2016.

Source: Wood, D., Griffiths, K., and Chivers, C. (2018). *Who's in the room? Access and influence in Australian politics*, Grattan Institute, Figure 2.6 'A quarter of federal ministers or assistant ministers take on roles with special interests after politics'. Based on Grattan analysis of Parlinfo.aph.gov.au (2018), LinkedIn (2018), Wikipedia (2018), news articles and various internet sources.

However, there is the clear problem of perceptions of public office as a form of "revolving door" in which it becomes legitimate for elected or senior officials to use their official experience in service of sectional outside interests, post-employment but also possibly even while employed, or shortly before leaving employment, in ways that influence decision-making in ways it would not have otherwise been influenced.[16]

[16] Examples include a position taken by former Minister Andrew Robb <https://www.smh.com.au/national/liberal-andrew-robb-took-880k-china-job-as-soon-as-he-left-parliament-20170602-gwje3e.html>, and a position accepted by former Minister Bruce Billson, reviewed in detail by the Senate Select Committee, pars. 2.324-2.331 & 4.159-4.162.

These issues apply more broadly than just politicians and their staff. It all a part of the broader challenge of regulating undue influence, discussed previously. But the issues become most acute and obvious, in terms of their corrosive impact on trust and the difficulty of enforcement, when it comes to ministers, parliamentarians and their staff.

Figure 6.2, reproduced from the Grattan Institute's comprehensive analysis of this problem, demonstrates the reality and importance of addressing this challenge.

4) Political cronyism in appointments

Appointments to senior positions in which it is essential that they make decisions on merit are among the most important to the integrity of the democracy. Judges are crucial to judicial independence and the rule of law. Their appointments must be based on merit, and must not risk the erosion of actual or perceive independence from the executive.

The Law Council of Australia[17] has recently explicitly criticised the federal government for politicisation of appointments to the Family Court and to the Administrative Appeals Tribunal. Family Court appointments have also been castigated by retiring Family Court Judge, Peter Murphy[18], who used the term "finger puppets" to drive home the point about perceived lack of independence of the appointees from the executive.

The political integrity of the judicial branch is rarely challenged in Australia, either in terms of direct financial undue influence or other corruption, or political corruption in respect of judges or their courts being subjected to pressure from political actors, or bending to political considerations. However, the process of judicial and tribunal appointment is important and could potentially affect political integrity. It would be particularly dangerous to Australian democracy for Australia's to suspect that judicial appointments had become politicised and that accordingly decisions of the courts may be influenced by the Executive.

A flurry of recent appointments by Attorney General Porter, including some reported to have personal or political associations, has led to strong criticisms.[19] The Law Council has endorsed a judicial commission process.[20]

Similar concerns arise in relation to senior public service appointments such as heads of department.

---

[17] See https://www.abc.net.au/news/2019-02-22/government-slammed-for-appeals-tribunal-appointees/10835856.

[18] Murphy, P. 2019 https://www.afr.com/business/legal/retiring-judge-blasts-finger-puppet-appointments-20190311-h1c8zg

[19] Law Council of Australia 2019 AAT appointments must be transparent and merit-based https://www.lawcouncil.asn.au/media/media-releases/aat-appointments-must-be-transparent-and-merit-based

[20] Law Council of Australia 2019 Increased judicial appointment transparency and intention to boost legal aid funding applauded https://www.lawcouncil.asn.au/media/media-releases/increased-judicial-appointment-transparency-and-intention-to-boost-legal-aid-funding-applauded-

5) Regulation of parliamentary and ministerial expenses

As mentioned in chapter 4, there is also the wider problem of abuse of political control over spending, to either influence political outcomes or repay political debts, including use of "government" advertising and "electorate" communication expenses as de facto party-political advertising, especially when ramped up prior to the official election period; and 'pork barrelling' involving excessive and unjustified promises intended to attract electoral support, without proper scrutiny of policy merits.

The Federal government has taken some action to provide greater public confidence that elected officials cannot abuse their expenses (formerly 'entitlements') through creation, in 2017, of the Independent Parliamentary Expenses Authority (IPEA).[21]

However, there is a major design flaw in this model which flows from long-standing administrative arrangements: IPEA is an executive branch agency with no apparent recognition of the separation of powers. IPEA's membership is the gift of the Governor General who acts as advised by the Executive and one member is selected explicitly by the Minister. There is no reference to either House or Presiding Officer. Furthermore, the IPEA has an 'extremely limited mandate' of advice, monitoring, reporting, and auditing relating only to expenses.[22]

6.3. The way forward

Fiduciary duty and the public trust

The answer lies in a return to the public trust principle – the central objective of representative democracy in every Australian jurisdiction. This ancient principle, derived from Justinian law, remains a core pillar which fortunately is enjoying something of a revival. Members of the parliament and councillors who create laws and make public policy are public officers and they have "a fiduciary relation towards the public" and "undertake and have imposed upon them a public duty and a public trust".[23]

This fiduciary responsibility reflects a fundamental common law principle - the public trust principle, which stipulates that every person elected or appointed to a public position is appointed as a trustee and is responsible for the public trust, i.e. those things that the community holds in common. In other words, policy and law must be made and applied in the interests of the public in general, ahead of any personal or special interests. As trustees, public

---

[21] For some background, see L. Thompson (2015), **'**Can Bronwyn Bishop learn anything from the UK expenses scandal? *The Conversation,* 22 July 2015.

[22] Hoole & Appleby (2017), 'Integrity of Purpose…'; see *Independent Parliamentary Expenses Authority* Act *2017* (Cth) ss 3 and 10.

[23] Adapted from Solomon, D. (2018). *Public office as/is a public trust*. Paper presented at the Australasian Study of Parliament Group 2018 Annual Conference, Brisbane, p.4.

officers must put the public interest ahead of private interests, whether those are their personal, family, business, political donor or even political party interests.

Table 6.1: Nolan Principles and Fitzgerald Principles compared

The Nolan Principles (1995)	The Fitzgerald Principles (2015)
Selflessness - Members of Parliament should act solely in terms of the public interest.	Govern for the peace, welfare and good government of the State.
Integrity - Members of Parliament must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.	Make all decisions and take all actions, including public appointments, in the public interest without regard to personal, party political or other immaterial considerations.
Objectivity - Members of Parliament must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.	Treat all people equally without permitting any person or corporation special access or influence.
Accountability - Members of Parliament are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.	
Openness - Members of Parliament should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.	Promptly and accurately inform the public of its reasons for all significant or potentially controversial decisions and actions.
Honesty - Members of Parliament should be truthful.	
Leadership - Members of Parliament should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.	

The public trust principle is reflected in the values that MPs are expected to observe in practicing political integrity. These have been spelled out by the UK's Committee on Standards

in Public Life (the Nolan Committee),[24] and more recently, in Australia, in Tony Fitzgerald's "Principles of accountability and good governance".[25] These authorities provide useful guidance on the principles that can and should underpin political integrity (Table 6.1).

Robust code of conduct regimes

The question becomes how such principles can be institutionalised. A third authoritative source on political integrity is the Recommended Benchmarks for Democratic Legislatures, published by the CPA, UNDP and World Bank Institute,[26] which include:

> *10.1.1 Legislators should maintain high standards of accountability, transparency and responsibility in the conduct of all public and parliamentary matters.*
>
> *10.1.2 The Legislature shall approve and enforce a code of conduct, including rules on conflicts of interest and the acceptance of gifts.*
>
> *10.1.3 Legislatures shall require legislators to fully and publicly disclose their financial assets and business interests.*
>
> *10.1.4 There shall be mechanisms to prevent, detect, and bring to justice legislators and staff engaged in corrupt practices.*

These Benchmarks make clear that a code of conduct is a set of rules to be adopted by a house (or The chamber) of parliament by which MPs are bound to certain minimum standards of behaviour, for which they are accountable through transparency and enforcement instruments. To that extent, the house's MPs would not be entirely unconstrained agents but could be held to those standards and could be penalised according to enforcement provisions for a breach of a provision of a code.

Whilst codes of conduct are intended to support the public trust principle, there is another more common use of the word trust which is relevant to political integrity: the extent to which the people accept, believe and respect the words and actions of political actors. As the Benchmarks provided no further guidance on the content or enforcement of codes of conduct, the CPA commissioned an investigation and further recommendations.[27]

---

[24] The Seven Principles of Public Life for holders of public office ("Nolan Principles") (Committee on Standards in Public Life (UK),1995.

[25] Fitzgerald QC AC, Tony (2015) Open Letter: Accountability and Transparency in Queensland. https://d3n8a8pro7vhmx.cloudfront.net/theausinstitute/pages/82/attachments/original/1421825645/FITZGERALD_OPEN_LETTER__FINAL_.pdf?1421825645.

[26] Commonwealth Parliamentary Association, UNDP and World Bank Institute 2006 *Recommended Benchmarks for Democratic Legislatures* http://www.cpahq.org/cpahq/Main/Document_Library/Benchmarks_for_Democratic_Legislatures/Recommended_Benchmarks_for_Democratic_Legislatures.aspx

[27] Coghill, Neesham & Kinyondo 2015. *Recommended Benchmarks for Codes of Conduct Applying to Members of Parliament*. Commonwealth Parliamentary Association. http://www.cpahq.org/CPAHQ/CMDownload.aspx?ContentKey=81941905-eb05-4791-abeb-83a04a55bedb&ContentItemKey=9bd04488-8829-4592-a574-a801da458d2a. The research comprised of an initial survey of Commonwealth national, state, provincial and territory parliaments,

As codes of conduct may be applied to houses of parliament from as small as St Helena (11 MPs) to as large as the UK House of Commons (650 MPs), these recommendations outline design principles to be adapted to local circumstances rather than highly prescriptive provisions. The recommended design features include: (1) a statement of the values and principles adopted by the house, (2) declaration by each MP of private interests that have potential to create a conflict of interest, (3) proscriptions on misuse of public office, (4) rules on accepting or donating gifts of material goods or services, (5) appointment of an ethics adviser whom MPs may consult confidentially, (6) provisions for independent, non-partisan investigation to determine the facts concerning alleged breaches, (7) imposition of penalties where the facts confirm breaches, and (8) measures to foster a culture of ethical conduct, the latter to include (9) periodic review of each code.

The separation of powers between Legislative and Executive branches (as well as the doctrine of parliamentary privilege) requires caution around establishment of any anti-corruption agency with jurisdiction over non-Ministerial members of parliament, unless the agency reports to the Presiding Officers of the Parliament.

Note the central roles of transparency (e.g. disclosure of private interests) and accountability (e.g. independent investigation of complaints of breaches) in the recommended features. These in turn are supported by provisions to inform and assist MPs to recognise and resolve ethical issues.

Of the codes provided by participating CPA parliaments, very few included comprehensive coverage of the nine features recommended. As shown in Table 6.2, most Australian houses of parliament do have a code of conduct.

The more recent codes are the most comprehensive and most consistent with the CPA recommendations. Victoria's code adopted in 1978 was recognised as lacking many of the features recommended by the CPA. The new Victorian Code was enacted in February 2019 and reflects the CPA recommendations in most but not all respects; for example, the parliament is yet to appoint an ethics adviser.[28]

However, there are also exceptions, the most surprising being the House of Representatives and the Senate. The House of Representatives and Senate each have schemes for the disclosure of private interests, albeit flawed (entries may be hand-written, some are illegible, and are infrequently updated). However, neither House has a code of conduct.

A report on a possible code was published in 2011 by the relevant House of Representatives committee.[29] The Report's Appendix 5 provided a Draft Code of Conduct for Members of the House of Representatives. Its provisions were very general and aspirational, including "key principles": Loyalty to the nation and Regard for its Laws; Diligence and Economy; Respect

---

interviews of selected informants and a workshop . The resulting recommendations were published by the CPA in 2015.

[28] Victoria, *Independent Remuneration Tribunal and Improving Parliamentary Standards Bill* 2019 – pending final passage as at March 2019. Part 8 includes the new code of conduct.

[29] House of Representatives Standing Committee of Privileges and Members' Interests (2011) *Draft Code of Conduct or Members Of Parliament. Discussion Paper*. This paper is sometimes referred to by the title of Chapter 3: *Should there be a code of conduct?*

for the Dignity and Privacy of Others; Integrity; Primacy of the Public Interest; Personal Conduct; and Registration of Interests. These principles were not ambitious.

The House of Representatives endorsed the Draft Code by a narrow majority (60:58) in 2012. However, the Senate Committee reported that it "does not consider it necessary to put in place a formal code in order to better articulate the standards expected of parliamentarians".[30] The proposal did not proceed, leaving the Houses of the Australian Parliament out of step with international standards.

Table 6.2. Australian parliamentary codes of conduct

State/Territory parliament	Chamber e.g. House/Senate	Notes on codes of conduct (2019)
New South Wales	Parliament of New South Wales (Legislative Assembly)	Code of Conduct for Members (Adopted 5 May 2015, Constitution (Disclosures by Members) Regulation 1983 includes disclosure of pecuniary interests
New South Wales	Parliament of New South Wales (Legislative Council)	Code of Conduct for Members (Adopted 5 May 2015, Constitution (Disclosures by Members) Regulation 1983 includes disclosure of pecuniary interests
Australian Capital Territory	Legislative Assembly	Code and Declarations are contained in the Standing Orders (
Northern Territory	Legislative Assembly	Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008
Queensland	Legislative Assembly	Code of Ethical Standards;
South Australia	Legislative Assembly	2002 Code of Conduct adopted and in 2004 a Statement of Principles for MPs and in May 2016 both Houses of Parliament resolved to adopt the Statement of Principles - (2017)
South Australia	Legislative Council	2002 CoC and in 2004 a Statement of Principles for MPs and in May 2016 both Houses of Parliament resolved to adopt the Statement of Principles - (2017
Tasmania	Legislative Assembly	Adopted 2018; applies to MHAs & MLCs
Tasmania	Legislative Council	Adopted 2018; applies to MHAs & MLCs
Victoria	Legislative Assembly	New Code of Conduct applying to MLAs & MLCs substituted by Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019
Victoria	Legislative Council	New Code of Conduct applying to MLAs & MLCs substituted by Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019
Western Australia	Legislative Assembly	Members of Parliament (Financial Interests) Act 1992 (WA), Code Of Conduct For Members Of The Legislative Assembly Adopted by the House on 28 August 2003;
Western Australia	Legislative Council	*NIL*

[30] Senate Standing Committee of Senators' Interests (2012) Code of Conduct Inquiry Report 2/2012, 29 November 2012. ISBN 978-1-74229-736-1.

Federally, publication of the Options for a National Integrity Commission paper gave new impetus to reform efforts. These came from cross-bench parliamentarians and culminated in a private members bill, the *National Integrity (Parliamentary Standards) Bill*, introduced by Cathy McGowan MP in late 2018. This bill closely reflects the CPA recommendations.[31]

Enhanced and consistent regulatory approaches

The second key element of the way forward, is upgraded rules and support or enforcement mechanisms on each of the issues listed earlier.

1) Political finance and campaign regulation

Muller provides an authoritative source on current regulation of electoral funding in Australian jurisdictions,[32] having regard to all but the most recent (January 2019) High Court decision clarifying to effects of constitutional provisions. Tham's recent article also provides a valuable review and recommends ten major reforms (Figure 6.2).[33] Accordingly, this analysis draws on Muller's data and Tham's ten-point plan.

In summary, reform are needed which already have widespread acceptance and which could greatly improve perceptions and likely the reality of political integrity. Several State and Territory regulatory regimes, especially NSW, already have provisions with much greater capacity to enhance political integrity than the federal scheme. A robust package of reforms would include:

- A cap on the aggregate per annum on all donations and other payments or goods or services made by any donor to one or more candidates, political parties or associated entities, modelled on the NSW provision (currently $6,300 for parties; note that Victoria's limit is $4,000 over a four-year parliamentary term).[34]
- Disclosure within two business days to the Electoral Commission and on the recipient's website of all donations and other payments or goods or services valued at or above, say,

---

[31] *National Integrity (Parliamentary Standards) Bill 2018* https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r6233

[32] Muller, D 2018. Election funding and disclosure in Australian States and Territories: a quick guide (updated 28 November 2018) https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1819/Quick_Guides/ElectionFundingStates

[33] Tham, Joo-Cheong 2019, 'Democracy before dollars: The problems with money in Australian politics and how to fix them', *Australian Quarterly* Vol 90, Issue 2 (Apr-June 2019)

[34] For details see: NSW Electoral Commission 2019 *Caps on Political Donations* https://www.elections.nsw.gov.au/Funding-and-disclosure/Political-donations/Caps-on-political-donations

$1000 made by any donor and/or to a candidate, political party (modelled on the NSW provision but with a shorter period).[35]

- A cap on expenditure in respect of each election by any candidate, political party (House of Representatives - $250,000 per electorate; Senate, if no HoR candidates endorsed – $1,250,000 for the most populous state & proportionate to population for each other state and territory; these sums are approximately equivalent to those applying in NSW.)[36]
- Disclosure within two business days to the Electoral Commission and on each candidate's and political party's website of all election-related expenditure incurred for goods or services valued at or above, say, $1000 (modelled on the NSW provision but with a shorter period).[37]
- Public funding of candidates and political parties capped at current levels ($2.74 per first preference vote), subject to refund to the Electoral Commission of any unexpended amount.

For such a scheme to withstand High Court scrutiny, and achieve a seamless national scheme, the obvious need, however, is for an inquiry that is national in scope, with support and commitment of all parties in all jurisdictions. A royal commission similar to those recently established on shared policy issues, such as into institutional responses to child sexual abuse or aged care, provide a model. This step is vital to generating the necessary political momentum to not only settle on agreed rules, but put them in place.

[35] For details see: NSW Electoral Commission 2019 *Disclosures* https://www.elections.nsw.gov.au/Funding-and-disclosure/Disclosures

[36] For details see: NSW Electoral Commission 2019 *What are the expenditure caps for State elections?* https://www.elections.nsw.gov.au/Funding-and-disclosure/Electoral-expenditure/Caps-on-electoral-expenditure/What-are-the-expenditure-caps-for-State-elections

[37] For details see: NSW Electoral Commission 2018 *Disclosures* https://www.elections.nsw.gov.au/Funding-and-disclosure/Disclosures

Figure 6.3. Ten-point plan for democratic regulation of election campaign funding

Source: Joo-Cheong Tham, 'Democracy before dollars: The problems with money in Australian politics and how to fix them', *Australian Quarterly* Vol 90, Issue 2 (Apr-June 2019), p.20.

Figure 6.4. Ten-point plan for democratic regulation of political lobbying

Source: Joo-Cheong Tham, 'Democracy before dollars: The problems with money in Australian politics and how to fix them', *Australian Quarterly* Vol 90, Issue 2 (Apr-June 2019), p.20.

2) Lobbying and access

A system of soft and hard regulation is needed to minimise those risks. There are two complementary aspects of a proposed system for reducing adverse effects of lobbying. The primary objective should be to encourage and facilitate acceptable voluntary behaviour by those involved in lobbying activity, whether in lobbying or as the targets of lobbying activities. However, the experience of lobbying in recent times indicates that voluntary behaviour must be under-written by regulation and sanctions where acceptable standards of conduct are breached.

Measures to curb the risks to integrity posed by lobbying should include registration of lobbyists, including in-house personnel, representing interests seeking policy or administrative intervention. Lobbyists must be required to subscribe to a code of conduct for lobbyists, based on self-regulation supported by a commissioner with investigative and disciplinary powers, including suspension or termination of registration e.g. similar to the Queensland regime.[38] [39]

There should be specific reference in the Ministerial code of conduct to ministers' obligations to comply with provisions affecting lobbying. Lobbying activity must be disclosed publicly, including (1) real-time publication of diaries of ministers, ministerial staff and other relevant public officials and (2) real-time publication by lobbyists of their lobbying activities.

It must be standard practice that a statement of reasons and processes is recorded and published for every significant exercises of ministerial authority.

Recognising that there may be valid public interest reasons for lobbying, information, training and other relevant support should be available to community organisations and other lobbyists with limited skills or other resources necessary to lobby in the public interest.

3) Revolving doors

To avoid the damaging impact of suspicions on political integrity, it should be a condition of appointment that, after ceasing to hold appointment as a minister or parliamentary secretary, he or she may not accept any substantial benefit relating to their role, for a substantial period. This should include not having any role as a lobbyist, above.

While period of 18 months are currently often mentioned, the whole principle is that such conflicting roles and positions should be deterred altogether if possible – not simply put off. Ministers and other senior officials receive the high salaries that they do, and generous superannuation, specifically to help ensure that their decisions are not impugned by the reality or appearance of improper interests. In our assessment, a period of 3-5 years would be more appropriate and effective.

---

[38] Queensland Integrity Commissioner 2019 *Lobbying* https://www.integrity.qld.gov.au/

[39] Queensland Integrity Commissioner 2013 *Lobbyists Code of Conduct* https://www.integrity.qld.gov.au/assets/document/catalogue/general/lobbyists_code_of_conduct_Sept_2013.pdf

The types of benefit precluded should include any significant benefit (e.g. employment, a directorship, provision of services pursuant to a contractual relationship, gift or other relationship):

- relating to contracting or accepting employment with, and making representations to, entities with which they had direct and significant official dealings, or, in the case of former ministers, contacting former Cabinet colleagues[40; 41] or
- in relation to lobbying of the government or any other body for the exercise of government discretion, legislative authority or the allocation of public resources.[42]

4) Political cronyism in appointments

The UK addressed the risk of personnel being appointed by the political executive according to personal or political associations or sympathies rather than merit, by creating the Commissioner for Public Appointments.[43] This is a logical solution to the wide-ranging debates that Australian jurisdictions have experienced, particularly over improved mechanisms for judicial appointments.

The Commissioner's responsibilities "include ensuring that ministerial appointments are made in accordance with the Governance Code and the principles of public appointments".[44] The Principles (Table 6.2) parallel the Nolan Principles (Table 6.1 above).

This type of arrangement should be adopted as the norm on the part of Australian federal and state governments, for all senior government appointments for which the reality and appearance of political independence is an important component, and/or in areas in which cronyism or the appearance of it appears to be an issue. For small jurisdictions, such a commissioner can cover all such appointments, preventing the need for separate judicial appointments commissions.

---

[40] Taken directly from s.35, *The Federal Accountability Act 2006* (Canada).

[41] Approaches taken in other jurisdictions vary and were surveyed in Ian Holland (2002) 'Post-separation Employment of Ministers' *Department of the Parliamentary Library* available at http://www.aph.gov.au/Library/pubs/rn/2001-02/02rn40.htm and Deirdre McKeown, (2006) 'A survey of codes of conduct in Australian and selected overseas parliaments' *Department of the Parliamentary Library* available at http://www.aph.gov.au/library/intguide/POL/conduct.htm. For example, where a Code approach is taken and bans imposed on related employment, it will be found that there is a general ban of two years in South Australia and a permanent ban prohibiting the changing of sides in the USA and Canada.

[42] A five-year ban on lobbying was provided for in legislation passed in 2006 in Canada as part of the Harper Government's election policy program (*The Federal Accountability Act 2006*).

[43]Commissioner for Public Appointments 2019 https://publicappointmentscommissioner.independent.gov.uk/

[44] Gov.UK 2019 *Governance Code for Public Appointments* s2. Principles of Public Appointments https://www.gov.uk/government/publications/governance-code-for-public-appointments

Table 6.3. The Principles of Public Appointments

The Principles of Public Appointments apply to all those involved with public appointments processes.
A. Ministerial responsibility-The ultimate responsibility for appointments and thus the selection of those appointed rests with Ministers who are accountable to Parliament for their decisions and actions. Welsh Ministers are accountable to the National Assembly for Wales.
B. Selflessness-Ministers when making appointments should act solely in terms of the public interest.
C. Integrity-Ministers when making appointments must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
D. Merit-All public appointments should be governed by the principle of appointment on merit. This means providing Ministers with a choice of high quality candidates, drawn from a strong, diverse field, whose skills, experiences and qualities have been judged to meet the needs of the public body or statutory office in question.
E. Openness-Processes for making public appointments should be open and transparent.
F. Diversity-Public appointments should reflect the diversity of the society in which we live, and appointments should be made taking account of the need to appoint boards which include a balance of skills and backgrounds.
G. Assurance–There should be established assurance processes with appropriate checks and balances. The Commissioner for Public Appointments has an important role in providing independent assurance that public appointments are made in accordance with these Principles and this Governance Code.
H. Fairness–Selection processes should be fair, impartial and each candidate must be assessed against the same criteria for the role in question.

5) Regulation of parliamentary and ministerial expenses

IPEA should be a federal parliamentary agency, integrated with the code of conduct described above, in recognition of the separation of powers IPEA should be managed in the same way as the Parliament's Department of Parliamentary Services and responsible to the Presiding Officers.[45] The IPEA have a comprehensive mandate including providing advice, monitoring, reporting, and auditing expenses.[46]

Expenses incurred by ministers in the conduct of their ministerial responsibilities are attributable to the associated appropriations and should be met from them. Ministers' agencies should be responsible for administering those expenses in the same way as their other

[45] Department of Parliamentary Services 2019 https://www.aph.gov.au/about_parliament/parliamentary_departments/department_of_parliamentary_services

[46] Hoole & Appleby (2017), 'Integrity of Purpose…'; see *Independent Parliamentary Expenses Authority Act 2017* (Cth) ss 3 and 10.

expenditure, and similarly subject to external audit by the Auditor General. Ministers would remain accountable to parliament in the same way as for their other responsibilities.

Presiding Officers' expenses are analogous to ministers' expenses and should be handled by their parliamentary departments in an equivalent manner.

New or strengthened institutions to support

The crucial third element, as reflected in the CPA recommendations on codes of conduct, is the significant shift from rules that are intended as statements of intent, or effectively voluntary, to rules designed for independent enforcement, and which are actually enforced.

This shift is occurring, because the parliamentary or political sphere has now become recognised as a distinct concentration of corruption risk, to a greater extent than previously, particularly at a federal level. The assessment showed that this risk is increasingly felt at senior levels of public administration and among independent integrity officers, where previously, the slow pace of political integrity reform has been left as solely a matter for parliament itself.

One senior Commonwealth official told the assessment quite plainly that there is 'a gap around adequate oversight of parliamentarians and ministers and their staff', given that existing integrity entities 'don't have coverage of that', or at best, in some cases, only 'limited coverage or limited reach' (Interview 7).[47]

This also confirms that addressing weaknesses in the regimes for political finance, disclosure, lobbying, outside employment, post-separation employment and improper influence, larger solutions are needed than simply an anti-corruption commission. Within the Parliament itself, there must be a willingness to stamp out unacceptable behaviour and non-partisan enforcement. Complaints alleging breaches of the code of conduct should be referred to the MP's Presiding Officer who would immediately refer it to an independent investigator, except that if a breach of the criminal law is alleged, the complaint would be referred by the Presiding Officer to the police or corruption control commission as appropriate. The independent investigator would determine the facts of the alleged conduct and report to the Presiding Officer. If the facts appeared to support the complaint, the Presiding Officer would table the report for decision and penalty by the House.

As argued earlier, of the 10 key areas of action required for political finance reform, a crucial one is having 'an effective compliance and enforcement regime'. This may include support from an anti-corruption body, as in NSW or elsewhere, but for the Commonwealth, it hinges first on 'an adequately resourced Australian Electoral Commission which adopts a regulatory approach toward political finance laws'.[48]

---

[47] See also evidence of the Commonwealth Ombudsman to the Senate Legal and Constitutional Affairs Legislation Committee, Hansard, 8 February 2019 <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NationalIntegrityComm>.

[48] Joo Cheong Tham (2017), 'Ten-point plan to clean up money in federal politics', *Accountability and the Law Conference,* Parliament House, Canberra, August 2017; see Figure 6.2.

The Senate Standing Committee of Senators' Interests identified key areas for improvement: the value of strengthening ethical support and advice for parliamentarians generally, for example through creation of a Parliamentary Integrity Commissioner to help prevent and resolve integrity issues. The latter part of this proposal is not desirable for the obvious reason that this could create a conflict in which Commissioner could find her or himself investigating a matter they had advised on. Advice must be separated from investigation of ethical conduct.

There is clear scope for increasing expertise and advice to parliamentarians and ministers to manage and prevent integrity concerns.[49]

However, the gap will remain the ability of the parliament and Prime Minister to demonstrate that when perceived breaches arise, they have been examined with sufficient independence and robustness. Police or anti-corruption agency involvement is appropriate if breach of criminal law or other corruption is suspected. In other cases, departmental review is a tepid option and may be adequate. However, it should be within the authority of a House to apply the code for MPs to a complaint alleging a breach of the ministerial code, including referral to police or an anti-corruption agency.

The Committee also proposed strengthening the processes available to the Prime Minister to help enforce the Statement of Ministerial Conduct.[50] It must be remembered that all ministers would be bound by a code of conduct for MPs. The ministerial code should complement the MPs code. Ministers are already accountable for the performance of the responsibilities as members of the Executive Branch. Compliance with the ministerial code should be accepted as a key part of ministerial responsibility.

To be an effective solution, any option requires parliamentarians to establish a culture of compliance with clear standards, through their own codes of conduct, against which they are prepared to hold themselves and colleagues to account.[51]

This also requires addressing other gaps in the integrity system. Integrity and accountability arrangements also need to apply to ministerial and electoral staff.[52] For example, at the Commonwealth level, the whistle-blower protections in the *Public Interest Disclosure Act 2013* are not available to officials who disclose any wrongdoing on the part of parliamentarians, nor any of the staff of members of parliament. Anyone wishing to disclose even abuse of expenses to the IPEA would not have the benefit of those protections.

---

[49] See for example, Queensland's *Integrity Commissioner Act*, and the role of the Tasmanian Parliamentary Standards Commissioner including providing advice to MPs regarding conduct, propriety, ethics and codes of conduct: *Integrity Commission Act 2009* (Tas), section 28(1)(a).

[50] Senate Standing Committee of Senators' Interests (2012) Code of Conduct Inquiry Report 2/2012. pars. 4.155 and 4.164.

[51] For the regime recommended by the Commonwealth Parliamentary Association, see *Recommended Benchmarks for Codes of Conduct applying to Members of Parliament*, Commonwealth Parliamentary Association, 2015 <http://www.cpahq.org/CPAHQ/CMDownload.aspx?ContentKey=81941905-eb05-4791-abeb-83a04a55bedb&ContentItemKey=9bd04488-8829-4592-a574-a801da458d2a>.

[52] M Abbott & B Cohen (2014) 'The accountability of ministerial staff in Australia', *Australian Journal of Political Science* 49(2), 316-333.

6.4. Conclusions and recommendations

The Grattan Institute's analysis of access and influence in Australian politics succinctly summarised why it is time for a comprehensive suite of practical reforms:[53]

> Publishing ministerial diaries and lists of lobbyists with passes to Parliament House could encourage politicians to seek more diverse input. More timely and comprehensive data would improve visibility of the major donors to political parties. Accountability should be strengthened through clear standards for MPs' conduct, enforced by an independent body. A cap on political advertising expenditure would reduce the donations 'arms race' between parties and their reliance on major donors. These reforms won't cure every ill, but they are likely to help. They would improve the incentives to act in the public interest and have done no obvious harm in jurisdictions where they have been implemented.

As set out above, a range of integrity reforms are needed which will enhance the performance of the parliamentary system and the broader system of government. These simple but strong reforms would allay suspicions and improve public confidence in Australia's political integrity.

Reform could go broader – and include the use of deliberative democratic techniques to resolve policy questions raising difficult, conflicting perceptions of the public trust. But what is certain here, is that we know what is needed to address the most basic concerns about integrity.

However, also consistency with a single, rigorous national standard is highly desirable as political integrity is a national issue that affects the entire Australian community. A uniform approach should also facilitate compliance with the Constitution's implied freedom of political communication.

Seven out of Australian's nine jurisdictions still have no system of prompt or real-time disclosure of political donations. Rules and thresholds for donations, expenditure and disclosure vary wildly, inviting 'laundering' of donations through backdoor routes. One Australian State (Tasmania) still has no political finance disclosure regime at all. In the State (NSW) where most attempts have been made to limit or ban unwanted political finance, these have been inconsistent and politically partisan, in some cases struck down by the High Court of Australia for being too piecemeal.

It's time for a national public inquiry that engages the community in a deliberative process, to finally set the consistent, evidence-based rules that the community and High Court alike would support – and to generate the political commitment of all parliaments to legislate accordingly. Australia should take advantage of the demonstrated successes of well designed and conducted community engagement processes to address such issues.[54] We need a national

---

[53] Wood, D., Griffiths, K., and Chivers, C. (2018), *Who's in the room? Access and influence in Australian politics*, Melbourne, Grattan Institute, p. 3.

[54] For a recent review, see Department of Industry, Innovation and Science 2017 *Hidden in Plain Sight* https://ogpau.pmc.gov.au/sites/default/files/posts/2017/12/9a_-_discover_report.pdf

public inquiry that engages the community in deliberative process, and commitment to legislate accordingly, by all parliaments.

Recommendation 9: National political donations and finance reform

That the Commonwealth, States and Territory governments establish a high level, national inquiry (royal commission) to **engage with the community to develop and recommend consistent principles for public funding of elections, expenditure regulation, political donation regulation and disclosure**, with a commitment to legislate accordingly -- including:

- The lowest realistic caps on both political donations and campaign expenditure, as well as low, consistent and universal disclosure thresholds
- Real-time disclosure
- Consistent and fair regulation of third parties, and
- Clear statements of objectives to ensure new regulations are interpreted with reference to the fundamental goals of political integrity, public trust and prevention of 'undue influence' as described in Recommendation 4; and apply equally to all persons, including not-yet-elected political candidates.

This recommendation relates to: the **Commonwealth** government and to all States and Territories, especially **Tasmania**

Recommendation 10: Lobbying and access

That the Commonwealth, States and Territory parliaments each legislate to **eliminate undue influence by vested interests in parliamentary and ministerial decision-making**, through provisions including:

- Stronger, more enforceable, independently administered registration and code of conduct requirements for lobbying activities (including in-house personnel)
- Real-time publication of records of lobbying activities, including diaries of ministers, ministerial staff and designated officials
- Information, training and support for community organisations with limited skills or resources necessary to lobby in the public interest
- Prohibition on the purchase of ministerial access or use of government resources as part of political party fundraising or electoral campaigns
- Express requirements for compliance with lobbying rules in parliamentary and ministerial codes of conduct, including published records and statements of reasons for all significant ministerial decisions
- A quarantine period of 3-5 years after serving in executive office, during which a former minister may not accept any substantial benefit from any entity or related entity with which they dealt in their portfolio.

This recommendation relates to: the **Commonwealth** and **all States and Territories**.

Practical and effective precedents exist for official appointment processes to help remove the risk or appearance of politicization and cronyism in ministerial appointments – a prominent concern at both federal and state levels. They include the Commissioner of Public Appointments approach in the UK, which could be easily followed in Australia.

Recommendation 11: Meritocratic political appointments

That the Commonwealth and each State and Territory parliament legislate to establish an **appointments commission, including civil society, to ensure independence, merit and public confidence** in all appointments to:

- Senior positions in the public service
- Senior diplomatic and trade posts (e.g. head of mission)
- The judiciary and independent tribunals, and
- The heads of core integrity agencies.

This recommendation relates to: the **Commonwealth** and **all State and Territory** governments.

Already, every Australian house of parliament has or will soon have its own code of conduct – except the Western Australian Legislative Council, and both houses of federal parliament. The Victorian Parliament is the latest to legislate its codes, in 2019, following recommendations of the Commonwealth Parliamentary Association. The *National Integrity (Parliamentary Standards) Bill 2018* demonstrates the feasibility of a best practice regime at federal level – a fundamental step towards restoring trust in legislatures and ministers, currently one of the weakest areas in the integrity system.

Recommendation 12: Parliamentary and ministerial codes of conduct

That every Australian House of Parliament and every Cabinet that has not already done so, adopt a regime for a **code of conduct** which includes:

- The *values and conduct* which each member is obliged to observe, including with respect to disclosure and management of interests – renewed and re-adopted after each general election or appointment of each administration
- Appointment of a parliamentary *ethics or integrity adviser* or commissioner, to provide confidential advice to any member or their staff, and with whom every member is required to meet at least once every year
- *Professional development or training programs* to assist new and continuing members and their staff with ethical decisions and challenges
- A legislatively-based process for ensuring a culture of compliance and rigorous, non-partisan enforcement of the code
- Appointment of a *parliamentary standards commissioner or other independent investigator(s)* to determine the facts of any alleged breach, and report to the House or First Minister where evidence of breach is found
- Mandatory notification of possible *corrupt conduct or criminal breaches* to the jurisdiction's anti-corruption agency or Police, as the case may be.

This recommendation relates to: the **House of Representatives, Senate** and **WA Legislative Council** as the only Houses with no Code at all; and to all parliaments other than **Queensland** in respect of most other elements.

Griffith UNIVERSITY
Queensland, Australia

TRANSPARENCY INTERNATIONAL
the global coalition against corruption

CORRUPTION IN 2030: WHAT WILL IT LOOK LIKE AND HOW WILL WE HAVE BEATEN IT?

A J BROWN – CHAIR, TRENDS & VISION COMMITTEE, TI BOARD

Professor of Public Policy & Law, Griffith University, Australia

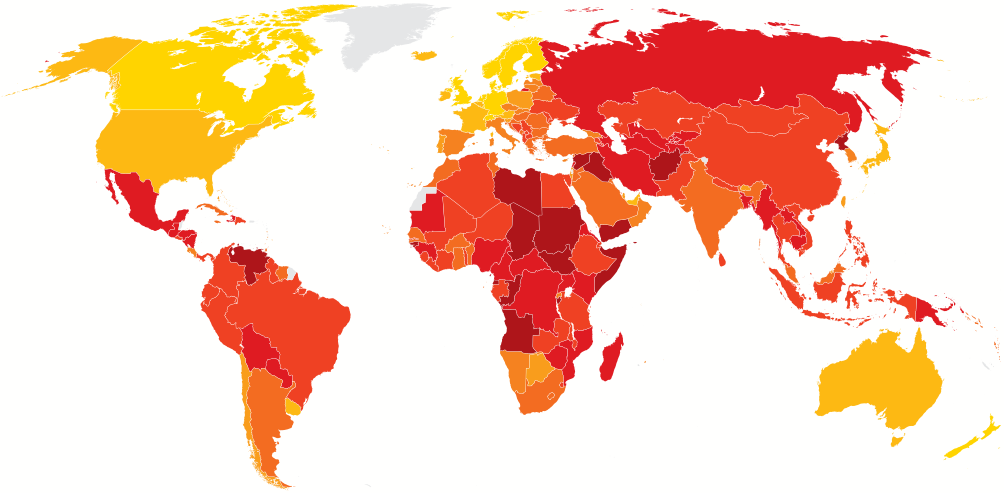
International Society for the Reform of Criminal Law – Brisbane, 10 July 2019

NSW ICAC EXHIBIT

TRANSPARENCY INTERNATIONAL
the global coalition against corruption
25 YEARS

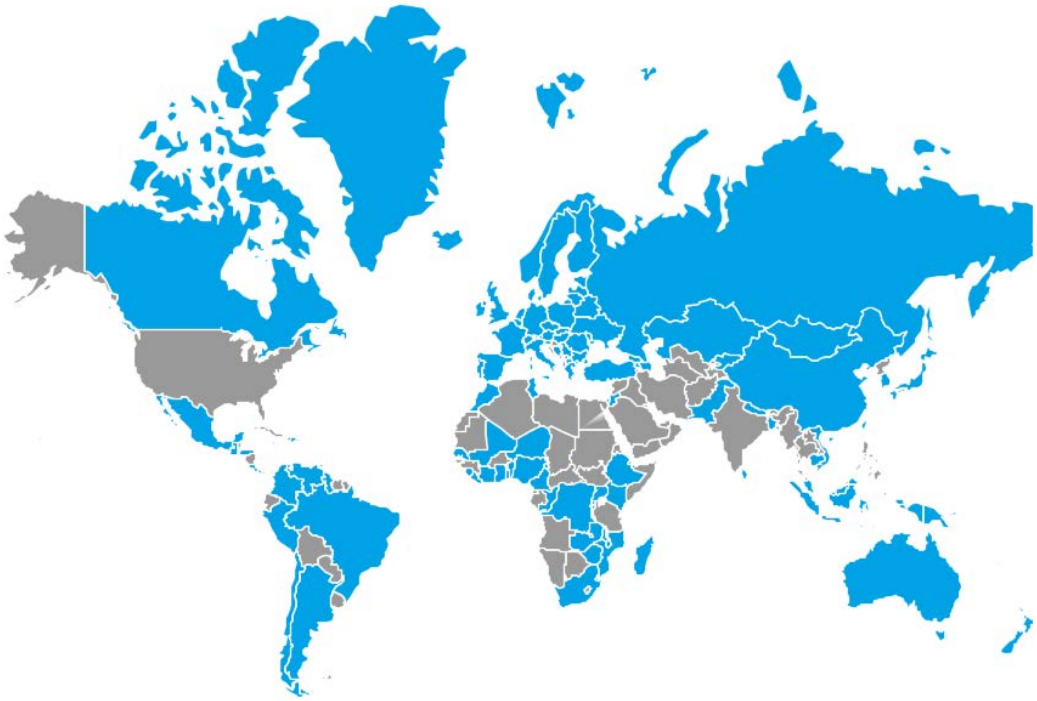
CORRUPTION PERCEPTIONS INDEX 2018

The perceived levels of public sector corruption in 180 countries/territories around the world.



SCORE	COUNTRY/TERRITORY	RANK
88	Denmark	1
87	New Zealand	2
85	Finland	3
85	Singapore	3
85	Sweden	3
85	Switzerland	3
84	Norway	7
82	Netherlands	8
81	Canada	9
81	Luxembourg	9
80	Germany	11
80	United Kingdom	11
77	Australia	13
76	Austria	14
76	Hong Kong	14
76	Iceland	14
75	Belgium	17
73	Estonia	18
73	Ireland	18
73	Japan	18
72	France	21
71	United States	22
70	United Arab Emirates	23
70	Uruguay	23
68	Barbados	25
68	Bhutan	25
67	Chile	27
66	Seychelles	28
65	Bahamas	29
64	Portugal	30
63	Brunei Darussalam	31
63	Taiwan	31
62	Qatar	33
61	Botswana	34
61	Israel	34
60	Poland	36
60	Slovenia	36
59	Cyprus	38
59	Czech Republic	38
59	Lithuania	38
58	Georgia	41
58	Latvia	41
58	Saint Vincent and the Grenadines	41
58	Spain	41
57	Cabo Verde	45
57	Dominica	45
57	Korea, South	45
56	Costa Rica	48
56	Rwanda	48
55	Saint Lucia	50
54	Malta	51
53	Namibia	52
52	Grenada	53
52	Italy	53
52	Oman	53
51	Mauritius	56
50	Slovakia	57
49	Jordan	58
49	Saudi Arabia	58
48	Croatia	60
47	Cuba	61
47	Malaysia	61
47	Romania	61
46	Hungary	64
46	Sao Tome and Principe	64
46	Vanuatu	64
45	Greece	67
45	Montenegro	67
45	Senegal	67
44	Belarus	70
44	Jamaica	70
44	Solomon Islands	70
43	Morocco	73
43	South Africa	73
43	Suriname	73
43	Tunisia	73
42	Bulgaria	77
41	Burkina Faso	78
41	Ghana	78
41	India	78
41	Kuwait	78
41	Lesotho	78
41	Trinidad and Tobago	78
41	Turkey	78
40	Argentina	85
40	Benin	85
39	China	87
39	Serbia	87
38	Bosnia and Herzegovina	89
38	Indonesia	89
38	Sri Lanka	89
38	Swaziland	89
37	Gambia	93
37	Guyana	93
37	Kosovo	93
37	Macedonia	93
37	Mongolia	93
37	Panama	93
36	Albania	99
36	Bahrain	99
36	Colombia	99
36	Philippines	99
36	Tanzania	99
36	Thailand	99
35	Algeria	105
35	Armenia	105
35	Brazil	105
35	Côte d'Ivoire	105
35	Egypt	105
35	El Salvador	105
35	Peru	105
35	Timor-Leste	105
35	Zambia	105
34	Ecuador	114
34	Ethiopia	114
34	Niger	114
33	Moldova	117
33	Pakistan	117
33	Vietnam	117
32	Liberia	120
32	Malawi	120
32	Mali	120
32	Ukraine	120
31	Djibouti	124
31	Gabon	124
31	Kazakhstan	124
31	Maldives	124
31	Nepal	124
30	Dominican Republic	129
30	Sierra Leone	129
30	Togo	129
29	Bolivia	132
29	Honduras	132
29	Kyrgyzstan	132
29	Laos	132
29	Myanmar	132
29	Paraguay	132
28	Guinea	138
28	Iran	138
28	Lebanon	138
28	Mexico	138
28	Papua New Guinea	138
28	Russia	138
27	Comoros	144
27	Guatemala	144
27	Kenya	144
27	Mauritania	144
27	Nigeria	144
26	Bangladesh	149
26	Central African Republic	149
26	Uganda	149
25	Azerbaijan	152
25	Cameroon	152
25	Madagascar	152
25	Nicaragua	152
25	Tajikistan	152
24	Eritrea	157
23	Mozambique	158
23	Uzbekistan	158
22	Zimbabwe	160
20	Cambodia	161
20	Democratic Republic of the Congo	161
20	Haiti	161
20	Turkmenistan	161
19	Angola	165
19	Chad	165
19	Congo	165
18	Iraq	168
18	Venezuela	168
17	Burundi	170
17	Libya	170
16	Afghanistan	172
16	Equatorial Guinea	172
16	Guinea Bissau	172
16	Sudan	172
14	Korea, North	176
14	Yemen	176
13	South Sudan	178
13	Syria	178
10	Somalia	180

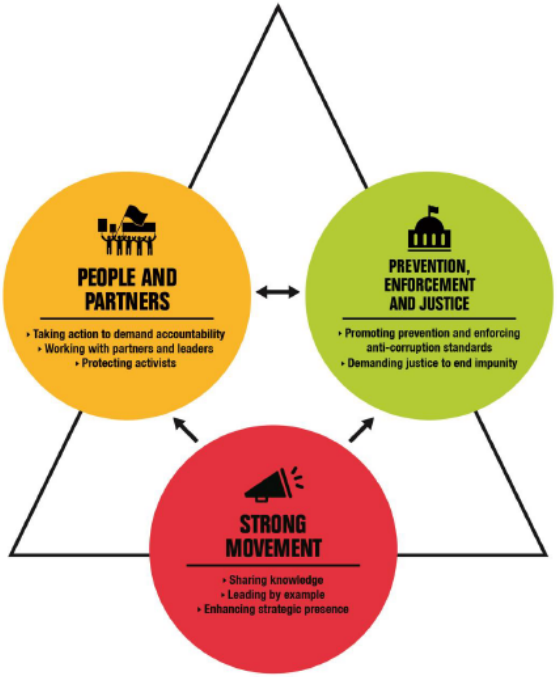
NSW ICAC EXHIBIT



25 YEARS

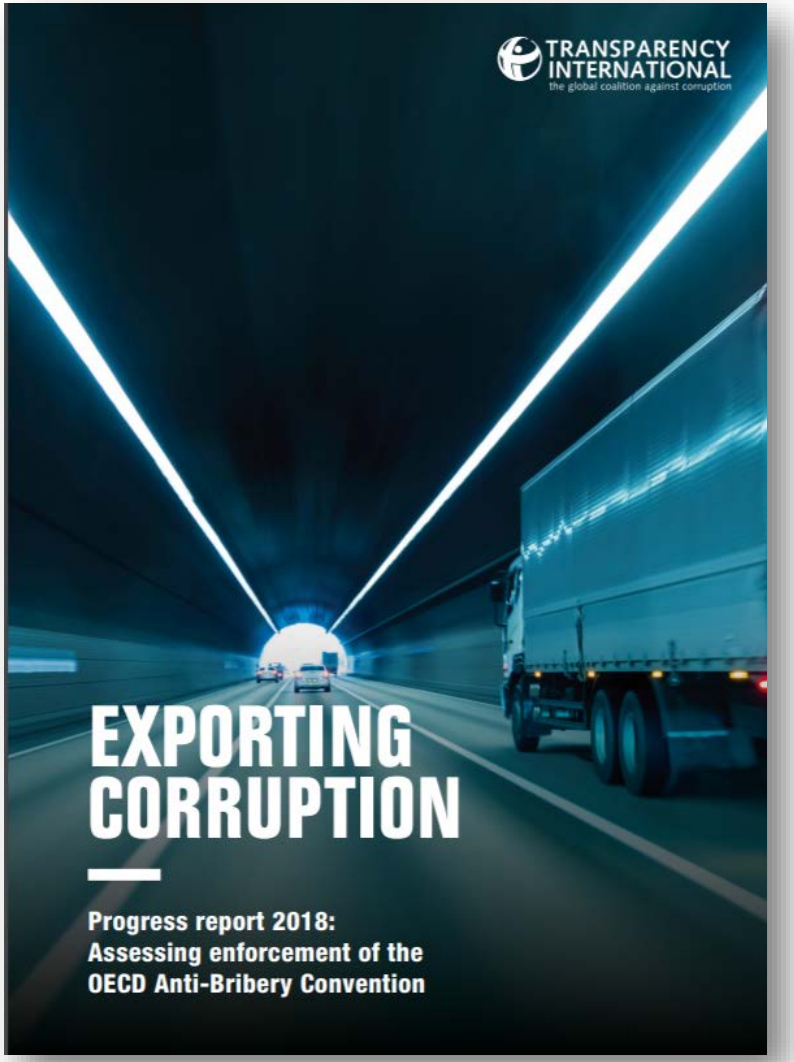
STRATEGY 2015-2020

TOGETHER AGAINST CORRUPTION



BEYOND 2020.
TI INTO THE FUTURE.

NSW ICAC EXHIBIT

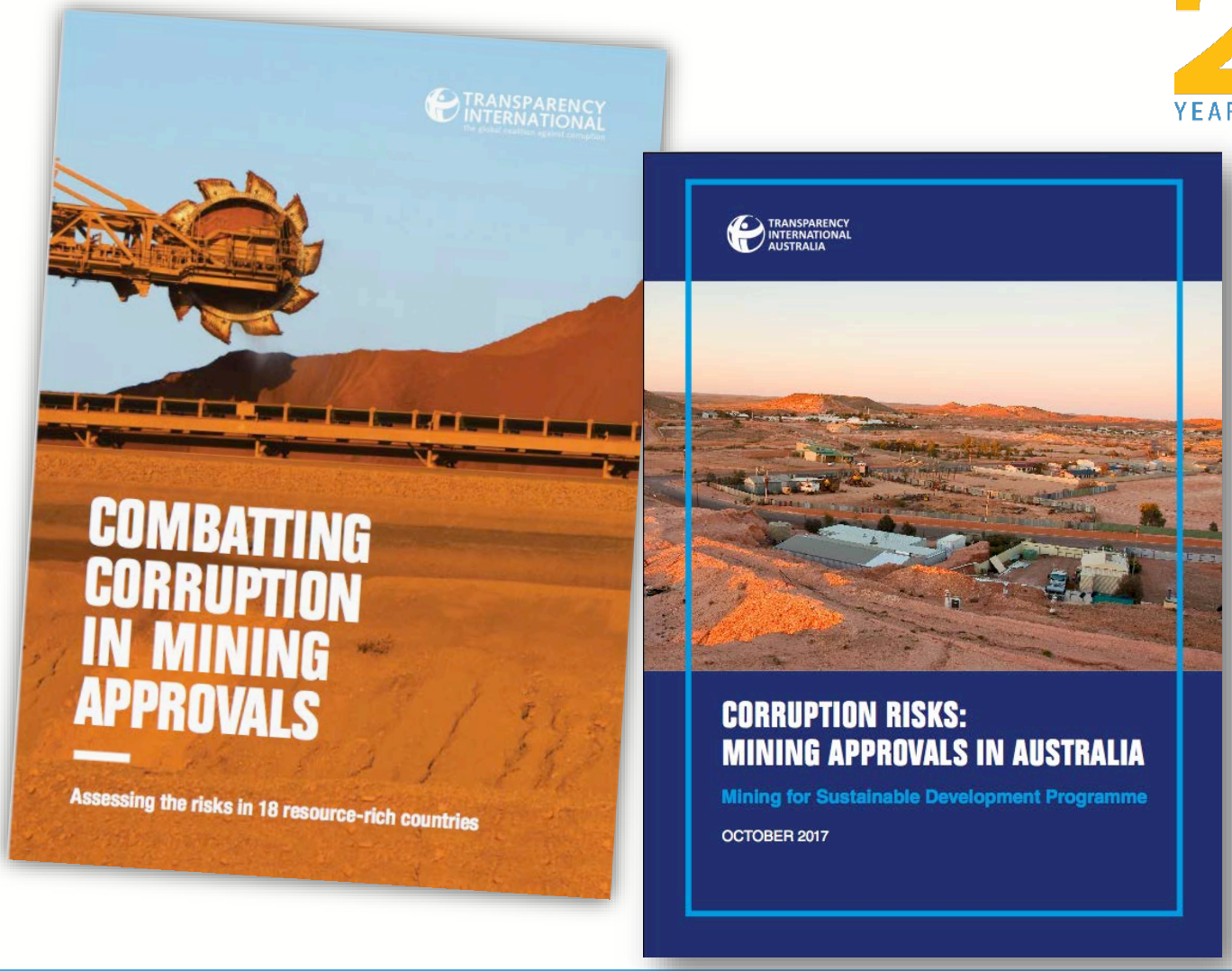


តម្លាភាពកម្ពុជា
TRANSPARENCY INTERNATIONAL
Cambodia

Business Integrity & Legal Training

Youth-led and Community-led Projects

NSW ICAC EXHIBIT



NSW ICAC EXHIBIT

25 YEARS

TRANSPARENCY INTERNATIONAL

SCHOOL ON INTEGRITY

NSW ICAC EXHIBIT

Griffith UNIVERSITY
Griffith Business School
Queensland, Australia

Graduate Certificate in Integrity and Anti-Corruption

Core courses

- Strategic Approaches to Integrity and Anti-Corruption
- Prudence, Ethics and Accountability

Electives

- Managing Whistleblowing: New Rules, New Policies, New Vision
- Business Ethics and Corporate Governance
- Interdisciplinary Professional Ethics
- Globalisation and Corporate Social Responsibility
- Professional Ethics and Corruption Prevention
- Safety Ethics and Accountability
- Leaders, Ethics and the Law
- Democratisation Business and Governance in Asia
- Crime, Business and Politics in Asia
- From Policy and Delivery: Commissioning Public Services
- The Political, Legal and Governance Environment

'Integrity and accountability are becoming the lifeblood of successful organisations. This program offered me insights not only into how we can better fight corruption at home and abroad, but practical strategies for building and protecting integrity in today's institutions.'

—Hugh Jorgensen
Policy Officer, Australian Department of Foreign Affairs and Trade

Our experts

Professor AJ Brown
Program Director

Professor Brown has 25 years' experience in Australia's integrity systems, and international research on integrity and accountability, leading some of the world's largest projects on public integrity systems and whistleblowing in the public and private sectors. He serves on the Australian and global boards of Transparency International.

Professor Adam Graycar AM

Professor Graycar has extensive policy experience over 22 years in Australia's Commonwealth and South Australian Governments, including as the longest serving director of the Australian Institute of Criminology, and head of the Cabinet Office, Government of South Australia.

Dr Sandra Lawrence

Dr Lawrence has an extensive research and teaching background in human resource management and ethical leadership. She has recently been responsible for one of the world's largest datasets on whistleblowing processes and outcomes through Griffith's 'Whistling while they work' project.

Professor John Kane

Professor Kane is a leading teacher and research in political and public policy leadership. He has been four times visiting professor to Yale University, and authored several books.

Professor Gary Sturgess AM

Professor Sturgess is one of Australia's most experienced public policy practitioners. An advisor to many governments nationally and internationally, he has served as Director-General of the NSW Cabinet Office where he led the design and implementation of the NSW Independent Commission Against Corruption.

NSW ICAC EXHIBIT

Son of Equatorial Guinea's president convicted of corruption in France

27 October 2017

Teodorin Obiang given suspended sentence in France for plundering public money to fund jet-set lifestyle in Paris

TRANSPARENCY INTERNATIONAL FRANCE

The case against Obiang was initiated by Transparency International France and Sherpa, a French civil society organisation, in 2008. Getting here has taken almost a decade of arguments, a change to French law and a crowdfunding campaign to ensure the witnesses could travel to Paris to testify.

NSW ICAC EXHIBIT

ORGANISED CRIME • 7 MARCH 2019

TROIKA LAUNDROMAT SIGNALS A DIFFERENT KIND OF FINANCIAL CRISIS

The **Troika Laundromat investigation**, launched this week by the Organized Crime and Corruption Project (OCCRP) and 20 media partners, shines a spotlight on a cast of new and familiar characters in the ongoing saga surrounding flows of dirty money through the world's financial system. This time, European banks not previously connected to such schemes appear as supporting characters, with flashbacks to previously revealed fraud and money laundering scandals.

The findings draw on a massive – possibly the largest ever – leak of bank records, emails and contracts. Investigative journalists sifted through 1.3 million bank transactions between 233,000 companies and individuals, with a total value over US$470 billion, dated between 2006 and 2012.

HOW IT WORKED

At the centre of the investigation is Troika Dialog, a private Russian investment bank set up in the 1990s that was acquired by state-owned Sberbank in 2012. Troika's stated objective was to attract foreign investors to Russia. But, as the leaked bank records reveal, it did more than just that.

Troika Dialog created at least 75 companies registered in tax haven jurisdictions like the

THE GLOBAL ANTI-CORRUPTION CONSORTIUM

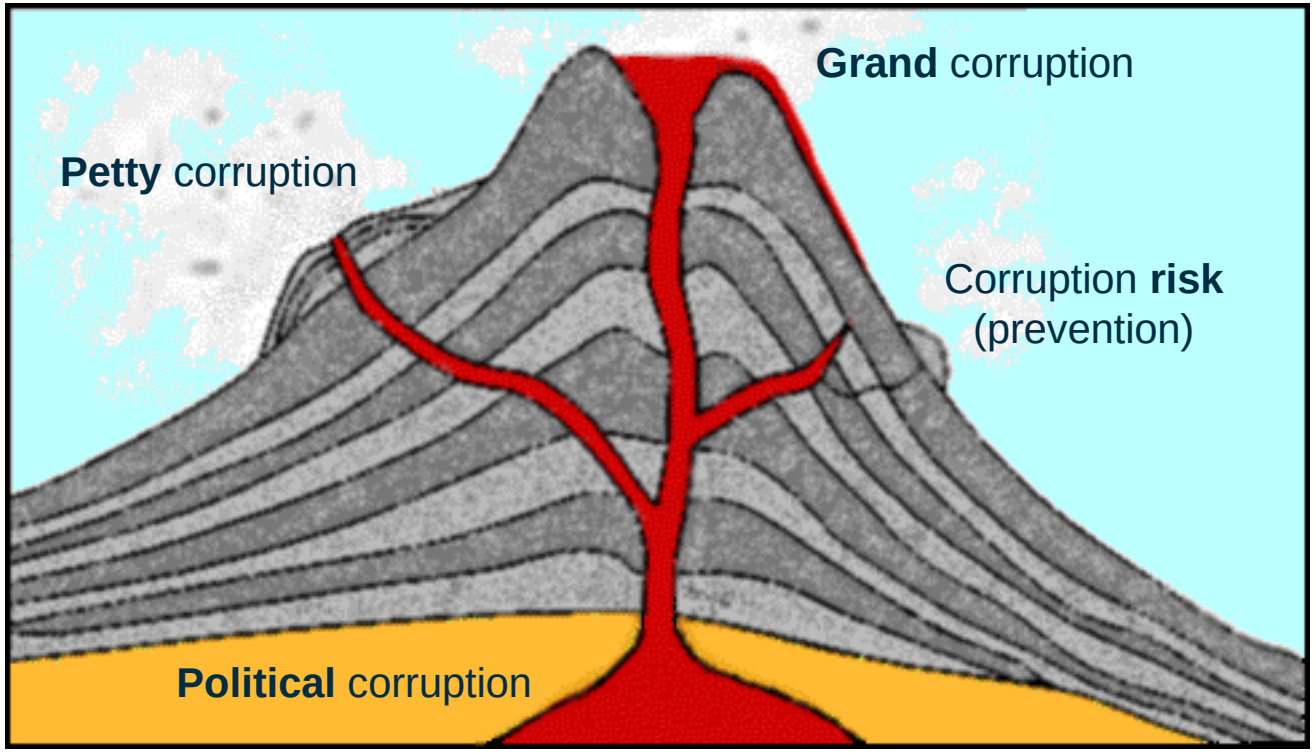
Since 2016, OCCRP and Transparency International have been working together to ensure that the corruption uncovered in investigations are followed up on,

CORRUPTION IN 2030 ?

BEYOND 2020.
TI INTO THE FUTURE.

25 YEARS

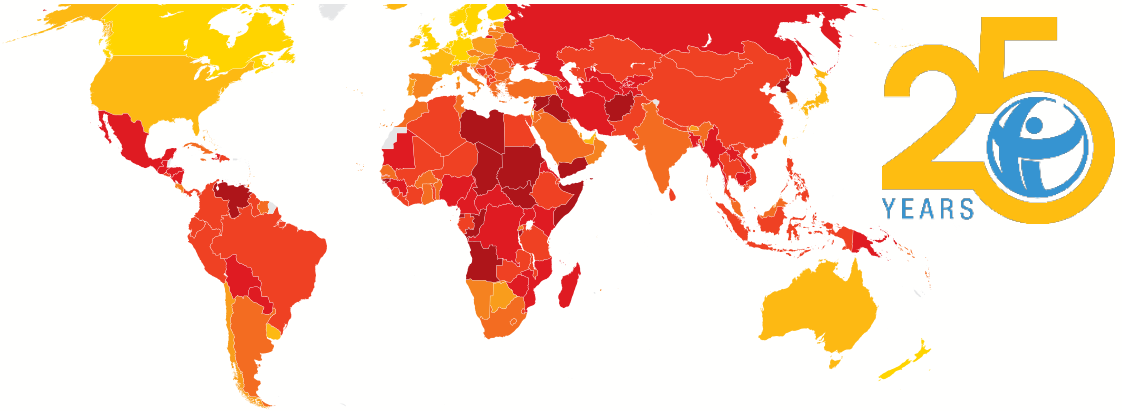
"The abuse of entrusted power for private gain" … "or political gain"



NSW ICAC EXHIBIT

CORRUPTION PERCEPTIONS INDEX 2018

The perceived levels of public sector corruption in 180 countries/territories around the world.



IN THE LAST 7 YEARS:

20 COUNTRIES **IMPROVED*** Including:

- ARGENTINA: ▲8, Since 2015
- CÔTE D'IVOIRE: ▲8, Since 2013
- GUYANA: ▲9, Since 2012

16 COUNTRIES **DECREASED*** Including:

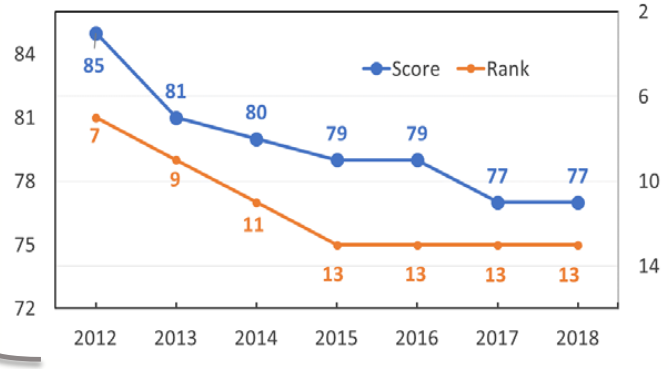
- HUNGARY: ▼9, Since 2012
- MEXICO: ▼7, Since 2013
- MALTA: ▼6, Since 2012

THE REMAINING COUNTRIES MADE LITTLE OR NO PROGRESS IN THE FIGHT AGAINST CORRUPTION IN RECENT YEARS

*Statistically significant

AUSTRALIA

▼8 Since 2012

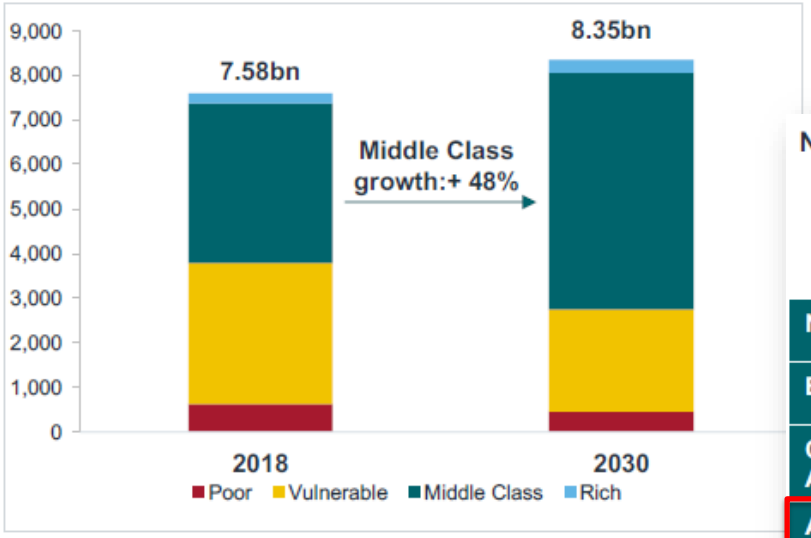


MAJOR CHALLENGES FOR CORRUPTION CONTROL

- Socio-economic trends & impacts on values
- Technological liberalisation & (non)(over)regulation
- Quality of government (political integrity)
- Enforcement environment & commitment

1) CONTEXT: ECONOMIC LIBERALISATION

Global population by income group, 2018 and 2030 (in million)



Source: Brookings (2018): A global tipping point: Half the world is now middle class or wealthier

Number (in millions) and share of global middle class by region

	2015		2030	
	#	%	#	%
North America	335	11%	354	7%
Europe	724	24%	733	14%
Central and South America	285	9%	335	6%
Asia Pacific	1,380	46%	3,492	65%
Sub-Saharan Africa	114	4%	212	4%
Middle East and North Africa	192	6%	285	5%

Source: Brookings (2017): The unprecedented expansion of the global middle class – An Update

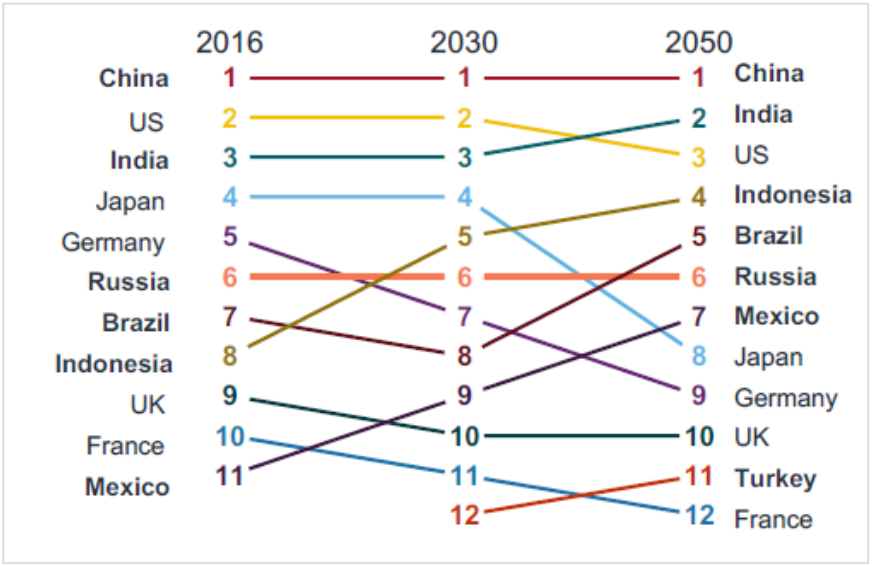
NSW ICAC EXHIBIT

By 2030, global economic power will have significantly shifted towards emerging markets:

- China will be world's largest economy with its GDP estimated to more than double from $11.4t in 2016 to **$26t**
- By 2050, China and India together are estimated to account for **35% of global GDP**
- **The GDP of the E7** (China, India, Indonesia, Brazil, Russia, Mexico, and Turkey) will grow from around the **same size to the G7 in 2015** to **double its size in 2040**

The shift in global economic power towards emerging markets will come with increased influence of the **E7 on global governance**.

Projected GDP rankings (at PPPs)*



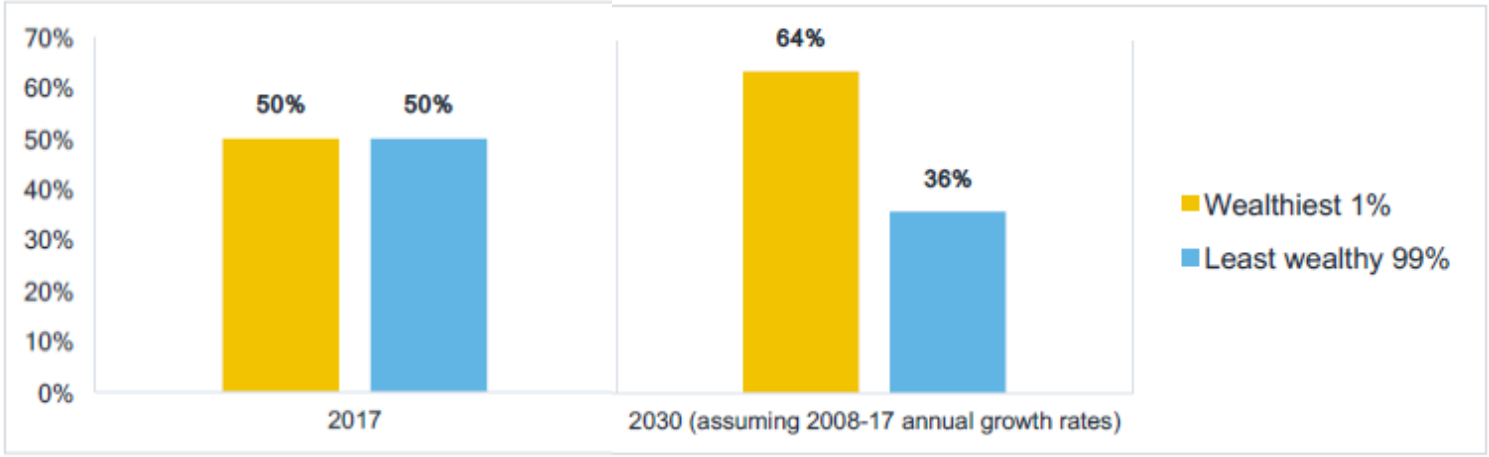
Sources: Graph and text: PWC (2017): *The long view: how will the global economic order change by 2050?*, *emerging markets highlighted in bold; Text: HSBC (2018): The world in 2030*

GLOBAL ECONOMIC COORDINATION, STABILITY, REFORM, (INCLUDING ANTI-CORRUPTION FACTORS) … BUT

WEALTH RISING (ESPECIALLY IN ASIA-PACIFIC)
BUT SO IS INEQUALITY WORLDWIDE …

"CASH IS KING" versus "PROBITY CULTURE"

Estimated distribution of global wealth, 2017-2030



Sources: Graph and Text: UK House of Commons wth.co.uk/house-commons-library-research/); Text: Opinium Research (2018): Global Inequality; World Inequality Lab (201

2) TECHNOLOGICAL LIBERALISATION … threefold impacts

- New **concentrations of** (under-regulated) **corporate power**
  - *Technology companies (information platforms)*
  - *Social effects of the next 'wave' of automation*
  - *Artificial intelligence - "algocracy"*

- Continually increasing **speed** and **flexibility** in **financial flows** – battle between **accountability** and **anonymity / impunity**
  - *Curse for corruption control?*
  - *Cures ???*

- Long-term **political impacts** of new information age on:
  - *Political participation* ✓
  - *Political education and knowledge* ***?***
  - *Political information, media and discourse* ***X***
  - *Political rights (pendulum swinging back)* ***?***

NSW ICAC EXHIBIT

25 YEARS

The Cambridge Analytica scandal changed the world – but it didn't change Facebook

18 March 2019

Far-right Facebook groups 'spreading hate to millions in Europe'

22 May 2019

Avaaz uncovers 500 accounts using fake news to spread white supremacy message

Mueller report suggests the 'fake news' came from Trump, not the news media

18 April 2019

The Washington Post
Democracy Dies in Darkness

NSW ICAC EXHIBIT

Indonesia election: Prabowo claims victory despite early counts showing loss

Former army general say he is 'the president of all Indonesians' but credible surveys put Joko Widodo in the lead

Search The Guardian International edition

18 April 2019

Indonesia riots: six dead after protesters clash with troops over election result

Vehicles set alight in Jakarta after supporters of losing candidate take to the streets

Wed, 22 May 2019

Indonesia restricts WhatsApp, Facebook and Instagram usage following deadly riots

TechCrunch

14 hours ago

On Wednesday, chief security minister Wiranto, who uses just a single name, said access to social media would be blocked in some areas.

The restrictions - including on photo and video sharing - aimed to control the spread of misinformation, he said.

NSW ICAC EXHIBIT

OPEN DATA, FREE MEDIA and WHISTLEBLOWER PROTECTION versus
NEW SURVEILLANCE, STATE POWER and INFORMATION CONTROL

25 YEARS

How a meeting in a cafe with a journalist prompted Australia's biggest foreign bribery case

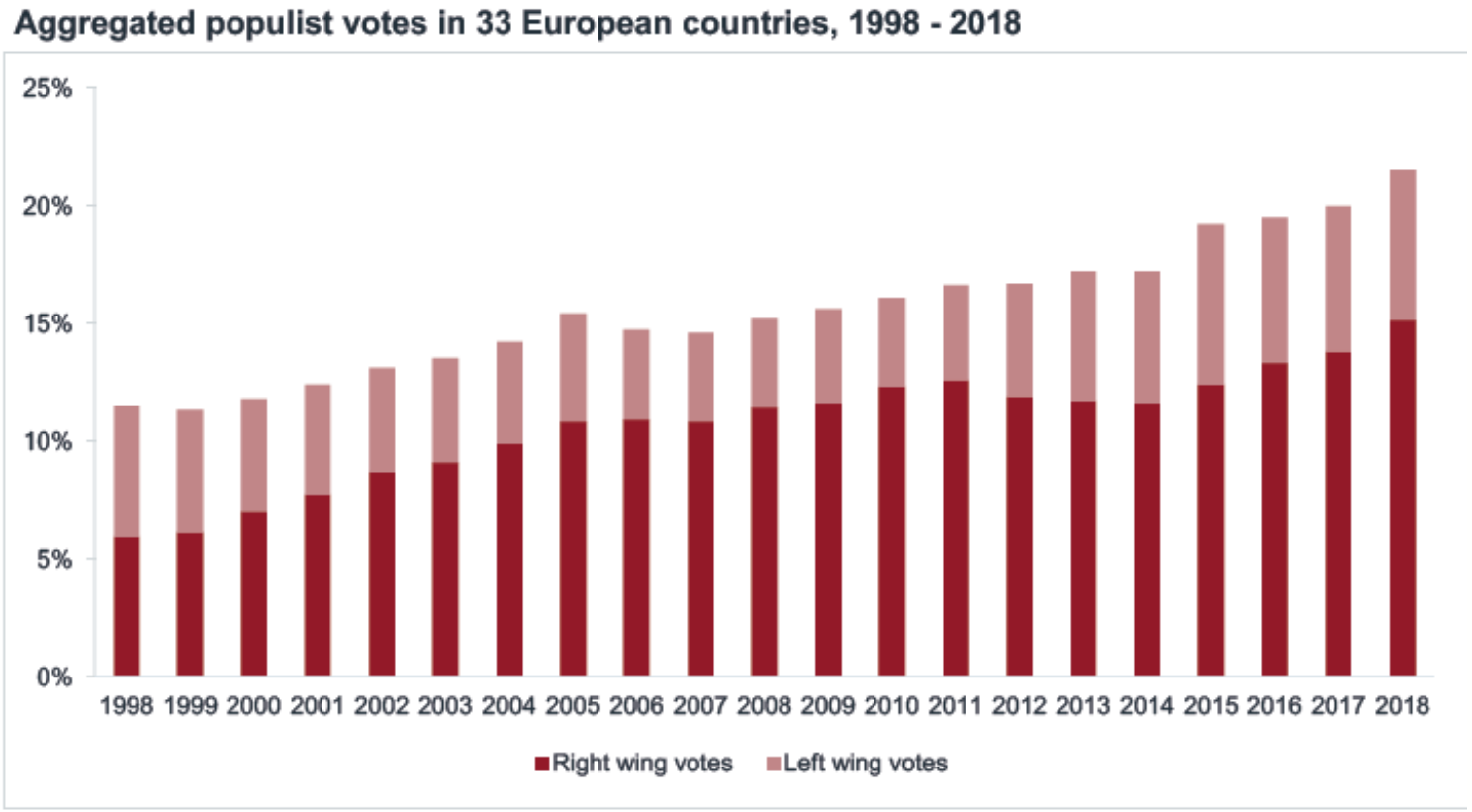
By **Richard Baker & Nick McKenzie**
November 30, 2018 — 3.00pm

CNN BUSINESS

Outrage over police raids of Australian journalists

NSW ICAC EXHIBIT

3) QUALITY OF GOVERNMENT (POLITICAL INTEGRITY)



Sources: Graph and text: TIMBRO Populist Index, 2018; Text: Barclays (2016): Politics of Rage; Kossow (2019): Populism and corruption – Transparency International Anti-Corruption Helpdesk Answer

NSW ICAC EXHIBIT

AUSTRIA

25 YEARS

> The Strache video exemplifies how corrupt politicians regard public contracts as a bartering tool that can be used to pay back political favours.
>
> Around the world, public contracts for infrastructure projects are one of the areas most susceptible to corruption.

Patricia Moreira
Managing Director,
Transparency International

TRANSPARENCY INTERNATIONAL
the global coalition against corruption

NSW ICAC EXHIBIT

14 May 2019

Donald Trump and Viktor Orbán praise each other at White House meeting - video

The US president, Donald Trump, met with Hungary's far-right prime minis
White House on Monday. Welcoming Viktor Orbán, Trump said he is 'proba
a little bit controversial, but that's OK'.

● Trump praises Hungary's far-right leader Orbán: 'He's a respected man' -

12 June 2019

The New York Times

Trump Embraces Poland's President and Promises Him More U.S. Troops

President Trump and President Andrzej Duda of Poland spoke to reporters at the White House on Wednesday. Mr. Trump later signed an agreement to send an additional 1,000 American troops to Poland. Doug Mills/The New York Times

NSW ICAC EXHIBIT

The Sydney Morning Herald

POLITICS FEDERAL CONFLICT OF INTEREST

Coalition orders investigation on whether Pyne and Bishop are breaching ministerial standards

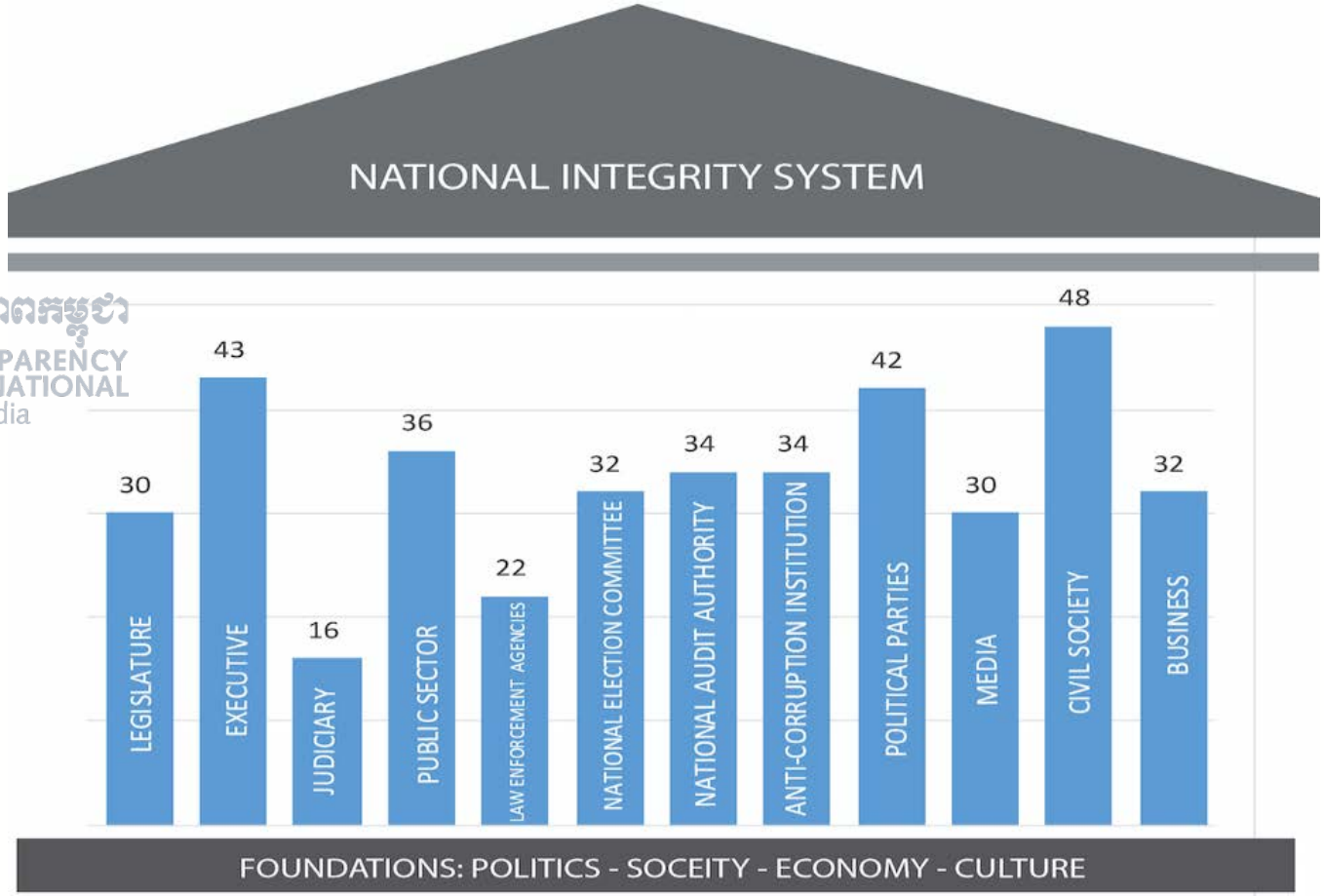
By Max Koslowski and Richard Baker

Updated July 4, 2019 — 3.12pm, first published at 1.03pm

Former ministers Christopher Pyne and Julie Bishop have come under fire over their post-politics jobs. ALEX ELLINGHAUSEN

NSW ICAC EXHIBIT

4) ENFORCEMENT ENVIRONMENT & COMMITMENT TO CHECKS AND BALANCES



NSW ICAC EXHIBIT

Griffith UNIVERSITY

A National Integrity Commission – *Options for Australia*

TRANSPARENCY INTERNATIONAL AUSTRALIA

Governing for integrity
A blueprint for reform

A J Brown
Samuel Ankamah
Ken Coghill
Adam Graycar
Kym Kelly
Tim Prenzler
Janet Ransley

DRAFT REPORT

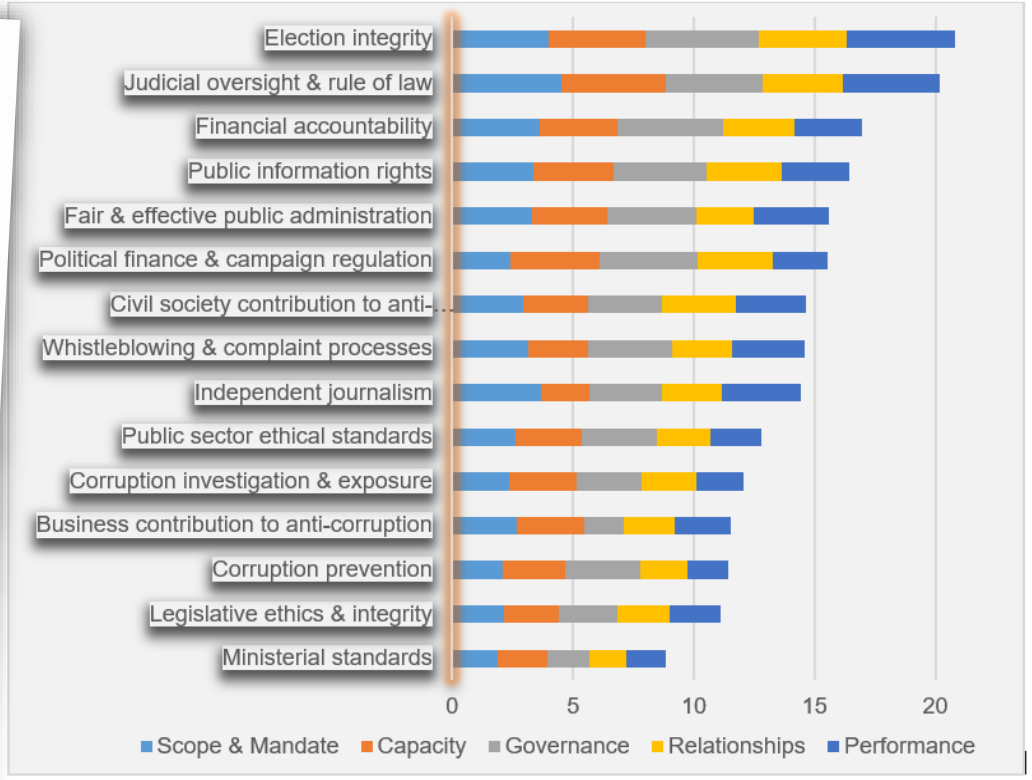
Australia's Second National Integrity System Assessment

April 2019

Griffith UNIVERSITY

25 YEARS

Figure 2.10. State of the Commonwealth integrity system, by integrity function -- strongest to weakest (National Integrity Survey, experts & government, n=66)



www.transparency.org

NSW ICAC EXHIBIT

Australian Government
Department of Foreign Affairs and Trade

ANTI-CORRUPTION AGENCIES STRENGTHENING INITIATIVE

25 YEARS

TRANSPARENCY INTERNATIONAL BANGLADESH
Social movement against corruption

TRANSPARENCY INTERNATIONAL
the global coalition against corruption

STRENGTHENING ANTI-CORRUPTION AGENCIES IN ASIA PACIFIC

Executive Summary Regional Synthesis Report
Key Findings and Recommendations

www.transparency.org

NSW ICAC EXHIBIT

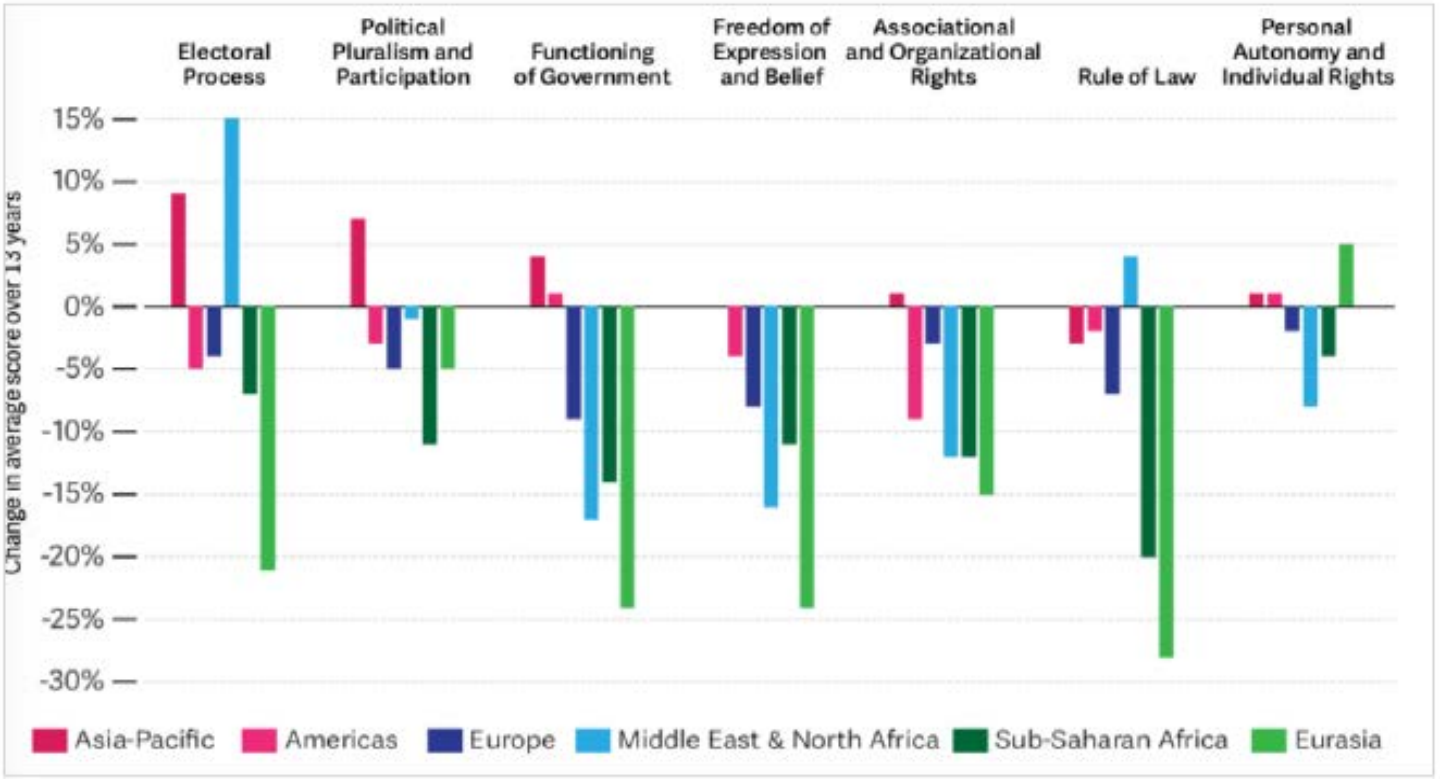
Public mobilisation
for independence of the
anti-corruption agency
(Indonesia, June 2017)

Public mobilisation for
independence of the **judiciary**
(Poland, June 2018)

NSW ICAC EXHIBIT

CHECKS & BALANCES – CURRENT (13 YEAR) TRENDS

FREEDOM IN THE WORLD 2019 (FREEDOM HOUSE)



HOW WILL WE SUCCEED (!) BY 2030 ???

1) **Political integrity** paramount
   Law & regulatory reform against political corruption

2) Education, **shared values** and social mobilisation
   '*Ethical universalism' versus 'particularism'*

3) Continued **evolution in concepts** of corruption
   From 'bribery' to 'theft' to 'unaccountable / undue influence'

4) Enhanced, speedier **international enforcement action**
   Existing agencies & mechanisms… or whole new frameworks?

5) Deeper **collaboration** between independent enforcement institutions, media and civil society organisations for *all purposes.*