

22 May 2020

Committee Secretary
Department of the Senate
By email: covid.sen@aph.gov.au
By online submission

TI AUSTRALIA SUBMISSION TO SENATE SELECT COMMITTEE ON COVID-19

Dear Secretary,

Transparency International Australia is pleased to submit some brief comments to the Senate Select Committee's Inquiry into the Australian Government's response to the Covid-19 pandemic and any related matters, established on the 8 April 2020. We would welcome your consideration of the matters we raise in this submission.

TRANSPARENCY INTERNATIONAL AUSTRALIA

TI Australia (TIA) is part of a global coalition to fight corruption and promote transparency, integrity and accountability at all levels and across all sectors of society, including in government. TIA was launched in March 1995 to raise awareness of corruption in Australia and to initiate moves to combat it. TIA believes that corruption is one of the greatest challenges of the contemporary world. Corruption undermines good government, distorts public policy, leads to the misallocation of resources, harms private and public sector development and particularly hurts the poor. It drives economic inequality and is a major barrier in poverty eradication. Tackling corruption is only possible with the cooperation of a wide range of stakeholders. We engage with the private sector, government and civil society to build *coalitions against corruption*. Coalitions against corruption will help shape a world in which government, politics, business, civil society and the daily lives of people are free of corruption.

[TI Australia](#) is the national chapter of [Transparency International \(TI\)](#), the global coalition against corruption, with a presence in over 100 countries.

TI Australia is registered with the Australian Charities and Not-for-Profits Commission (ACNC).

INTRODUCTION

Corruption, bribery, and fraud can flourish in any emergency, and the Covid-19 crisis is no different.

Around the world Covid-19 is disrupting the role and function of oversight committees, internal controls, and national audit functions. This is exacerbated when governments suspend parliaments and grant themselves extraordinary executive powers.

This is when corruption, including bribery and violations of our standards of political integrity, can undermine our democratic processes because the usual safeguards and oversight mechanisms are not in force.

The Australian government needs to allocate specific resources to independently monitor corruption, fraud, bribery, and integrity risks during Covid-19. Of course, getting the virus under control is paramount, but now is not the time to put fighting corruption and promoting integrity on the back burner. The two can and must go hand in hand.



We need to ensure that our governments consult with parliamentary oversight committees, integrity experts, audit and control institutions, and that the decisions of our political leaders at this time, more than ever, are transparent and driven by public interest.

With the health crisis being managed, three principles should guide our Covid-19 response: transparency, accountability, and integrity.

RECOMMENDATIONS

To mitigate the risk of corruption, bribery, fraud and integrity violations in Australia's Covid-19 response, Transparency International Australia recommends the Senate Select Committee on Covid-19 consider:

1. Establishing an effective, well-resourced national integrity commission with broad scope and powers, including the authority to hold public hearings when in the national interest.
2. Introducing a parliamentary code of conduct for parliamentarians and their staff to help guard against integrity violations, undue influence, conflicts of interest and decisions that are not in the public interest.
3. Allocating specific resources to monitor corruption and integrity violation risks associated with the Covid-19 response, including establishing a Covid-19 fiscal stimulus/ expenditure transparency index.
4. Introducing time and scope bound executive and emergency powers and develop guidance for the use of delegated legislation exemption powers.
5. Ensuring full disclosure of procurement of medical supplies and prices paid, and that all procurement aligns with clean contracting principles, including the Open Contract Data Standard.
6. Establishing mechanisms to ensure any Covid-19 economic bailout of companies is in the public interest. This includes disclosure of due diligence processes and a commitment to not bail out companies that cannot disclose their ultimate beneficiaries and if they are associated with tax evasion and corporate crime. An independent oversight committee of economic bailouts for companies is needed.
7. Introducing legislation for the NCCC that provides integrity and transparency safeguards like other commissions. The use of interim reports should be considered in order for the NCCC to provide timely and transparent advice.
8. Establishing a fair and open system for the appointment of Commissioners via legislation, including public advertising of positions, selection based on qualifications and bipartisan appointment. The NCCC must have broader representation of groups, given its remit of the non-health related aspects of the pandemic, including representatives of groups most impacted and at risk during the economic recovery.
9. Establishing a parliamentary oversight committee, to review the role and operations of the NCC after the first year of operation, with regular reporting and publication of the Government response to recommendations.
10. Establishing a NCCC conflict of interest disclosure register, as a matter of urgency, which applies to all members of the Commission, working groups and advisory bodies associated with it. The register should be published on the PM&C website, along with processes for managing conflicts of interest.
11. Engaging with the Open Government Partnership (OGP) Forum to help develop specific Covid-19 commitments for the third OGP National Action Plan.



POSITION

Covid-19 and Corruption Risks

The Covid-19 crisis creates environments that enhance risks for corruption, undue influence and bribery. These factors can, put lives at risk, distort markets, divert vital healthcare resources, and further deteriorate trust in government and businesses at a time when it is needed more than ever.

Around the world, government responses to the coronavirus (COVID-19) emergency have been mixed, but some corruption risks are common¹:

- **Procurement and compliance risks**, as contracts are awarded without open tender processes and risk assessment, and compliance regimes of existing contracts let slide;
- **Lack of transparency and accountability** control and oversight of economic stimulus packages;
- **Executive powers** are used beyond the time, scope and purpose for which they were intended;
- **Press freedom and whistleblower protection** under threat, as governments seek to control messaging and information;
- **Rule of law compromised** when governments grant and take advantage of new executive and emergency powers;
- **Business Integrity at risk**, as companies seek to cut costs, wind back due diligence and risk-assessment practices and pursue opportunistic bail outs.

The OECD recognises that both short- and long-term corruption and integrity risks can arise in emergency procurement, economic recovery measures, and international business transactions.

The OECD has highlighted the need to value **transparency and accountability in political decisions and recovery initiatives**. This is particularly important for economic stimulus packages, procurement, and economic bailouts for companies.

Global supply constraints of medical equipment have highlighted procurement and corruption risks. The ongoing global health crisis exposes vulnerabilities in public procurement, including loose requirements that contribute to unequal competition and bidding wars and rushed measures that result in low quality or faulty goods, price gouging, undue influence, and limited access to information.

Further, while economic bailouts for companies may be needed, robust due diligence must be done to check who is the ultimate beneficiary and their integrity track record, including tax evasion, involvement in crime and corruption and political links. The Australian government needs to make clear which companies will receive an economic bailout and the justification for that. An independent oversight committee must be established to scrutinise bailouts to companies.

In times of crisis, integrity risks within the public sector are heightened. With the usual checks and balances on hold, and attention diverted to the crisis, there is an added risk that decisions are made that could benefit family and friends. A spike in conflict of interest and undue influence by special interest groups is likely. Australia's lack of a national integrity commission, no parliamentary code of conduct, and already weak oversight of lobbyists contributes to this risk. Now is the time to release the Commonwealth Integrity Commission Exposure legislation, introduce a code of conduct for all parliamentarians and their senior staff, and tackle undue influence.

¹ The OECD Global Anti-Corruption and Integrity Forum, 2020. <http://www.oecd.org/corruption-integrity/forum/agenda/>



Decision making without Scrutiny

Disruption, uncertainty, and distraction contribute to an environment in which decisions are made that are not necessarily in the public interest. At best this is because decisions are made in haste, or at worst decisions are made in response to undue influence and to favour political and individual gain.

Without adequate scrutiny and oversight, decisions can be made that undermine our integrity framework and the health of our democracy. Risks include:

- Politicians awarding themselves extraordinary powers without a clearly defined scope and timeframes.
- People with unfair levels of access and influence sway political opinion towards their own agenda, leading to poor decisions and poor outcomes for the greater public and the natural environment;
- Public funds are misspent or misappropriated for activities that are not in the public's best interest;
- Large projects, such as mining and infrastructure, are fast-tracked and approved without the necessary checks and balances, and meaningful community consultation;
- Risk based due diligence into the integrity, character and track record of project proponents, and their beneficial owner connections is hastily or not conducted, allowing for opportunistic business conduct in the guise of economic recovery by organisations and individuals that may not be fit for business or have political connections;
- Environmental and social impact assessments, and other approval processes are fast tracked or sidestepped with potentially devastating impacts;
- Foreign investment review systems lack rigour and due diligence checks which can result in 'asset raids' in times of crisis, and money laundering (particularly in real estate), including by people with political connections;
- Punitive measures to control the crisis might too severely impact on people's rights, and these might not expire after the crisis is over;
- Those that come forward and expose integrity violations, including the media and whistleblowers, risk breaches of national security laws, defamation, or being demonised for their actions; and
- The use of citizen's data to track and control the pandemic might be used for other reasons beyond health and in breach of privacy and human rights.

Corruption risks in public procurement

Under normal circumstances, governments routinely spend huge sums of money on public procurement. Procurement budgets often fluctuate between 13 and 20 percent of a country's GDP. With such vast sums of money at stake, it's not surprising that around the world procurement is prone to corruption, even when not in the grips of a global crisis. That is why the OECD has highlighted procurement and compliance as a key Covid corruption risk. The OECD has recognised the corruption risks in procurement in Covid times as contracts are increasingly awarded through 'direct negotiation' rather than through a tender process. This exacerbates risks of price gouging and contracts awarded without adequate risk based due diligence.

Australian Government agencies spent \$64.5 billion on procurement in 2018-19 and \$490.8 billion over the last ten years, according to the Australian National Audit Office's Australian Government Procurement Update published in March 2020. The average value of contracts has grown from \$393,000 in 2011 to \$825,000 in 2019².

During a global pandemic, when such large sums of money are earmarked for the public procurement of critical services and supplies, clean contracting becomes even more essential in preventing the misuse of public money.

² <https://www.governmentnews.com.au/govts-490bn-procurement-spend/>



Clean contracting³ is contracting that is transparent, accountable to affected communities and taxpayers, and in line with the public good. The Open Contracting Partnership⁴ suggests the Covid crisis puts public procurement in the spotlight, and procurement need to be “fast, smart and open”.

The Open Contracting Partnership recommends⁵ the following for clean procurement during Covid-19:

1. **Policy:** Make emergency procedures public and open. This includes coordinating and centralising procurement, setting a clear test and a written justification for emergency procedures, publishing open data, targeting price gouging, and requiring timely reporting.
2. **Coordination:** Set clear goals and priorities and consolidate emergency committees for quick decision-making.
3. **Data:** Use open procurement data to analyse and share information to predict and manage critical supply chains. Collecting tagging all contracting processes and budget lines with “COVID-19” to ensure high-quality, open and complete data, disclose technical comments from suppliers, and publishing all contract awards under the emergency framework.
4. **Innovative partnerships:** Build innovative partnerships with business and civil society. Issue a list of essential medicines and devices so markets can react accordingly and encourage start-ups and data-driven civil tech projects.
5. **Civic monitoring:** Trust and support civil society to play an important role in monitoring efficient spending and delivery of goods and services.

In Australia, we do not have visibility of where medical equipment has been sourced and prices paid. Australia could learn from the Ukraine. For example, to meet the emergency, the Ukraine excluded Covid-19 procurement from regular procurement laws but put in place other mechanisms to mitigate corruption risks. This included a requirement for procuring entities to report and publish their orders within one day of the contract being signed. In addition, all data is structured according to the Open Contract Data Standard⁶ and immediately becomes available to the public.

Good governance and internal controls

Transparency International Australia and others have raised concerns⁷ about the National COVID Coordination Committee which, in our opinion, lacks transparency, accountability and independent oversight. Appointments have been handpicked, raising concerns about potential conflicts of interest as some sectors, such as energy and infrastructure, may be prioritised in the Covid recovery, and approvals fast-tracked in the recovery phase.

To address this, there is an urgent need to establish a NCCC conflict of interest register for all NCCC commissioners and associated working groups and advisory committees, that is publicly available. This is of paramount importance to ensure risks of undue influence are mitigated and disclosed.

Similarly, Australia should adopt measures being introduced in other countries and establish a Covid fiscal stimulus/expenditure transparency index which holds in one place, and makes publicly available, information related to Covid-19 funding expenditure, including how much, who it went to, and when. This could be linked to a Covid specific procurement register.

³ <https://www.transparency.org/en/news/ti-launches-clean-contracting-manifesto-calls-for-g20-adoption#>

⁴ <https://www.open-contracting.org/>

⁵ <https://www.open-contracting.org/what-is-open-contracting/covid19/>

⁶ <https://standard.open-contracting.org/latest/en/>

⁷ <https://transparency.org.au/media-release-greater-integrity-measures-required-for-covid-commission-say-former-judge-and-legal-groups/>



The Committee is encouraged to consider the spike in legislation that has seen the introduction of laws that have bypassed parliament, are exempt from parliamentary vote, and amendment of any kind. The use of ‘delegated legislation’, rather than full legislation means that the usual checks and balances have not applied. While this may have been necessary at the height of the pandemic in Australia, the use of delegated legislation is usually limited to disallowing after the fact. However, it has been reported that at least 137 new laws have been made this way since the pandemic was declared, of which 32 are exempt from any disallowances at all. Exempting those laws from any disallowance suggests that no future scrutiny and parliamentary oversight is possible. There appears to be no publicly available guidance as to when the exemption powers should be used. This needs to be addressed.

Open Government Partnership

Australia is a member of the Open Government Partnership (OGP). The Australian OGP⁸ Forum (co-chaired by Prime Minister and Cabinet and civil society) has responsibility for developing Australia’s third OGP National Action Plan.

The process of co-creating the third National Action Plan (NAP) has just recommenced after being on pause during the Covid-19 crisis. This creates an opportunity for the Senate Select Committee on Covid-19 to engage with the process and recommend specific Covid-19 crisis commitments to be included in the NAP which address some of the issues raised in this submission, or others of concern to the Committee.

The Open Government Partnership Secretariat has developed a useful guide to Open Government and the coronavirus⁹.

Potential Australian OGP/Covid National Action Plan commitments could include:

- A commitment to establish a fiscal stimulus/ expenditure transparency index which holds in one place information about all Covid related fiscal stimulus expenditure;
- A commitment that when any emergency powers / executive powers are granted they will be timebound in duration and scope;
- A commitment for a cross party oversight committee to be established when executive /emergency powers are granted to ensure integrity in the use of those powers, and scrutinise fiscal support and stimulus;
- A commitment to ensuring Whistleblowers are protected and supported in emergency situations. This could include fast tracking the review and amendments to the Public Interest Disclosure Act to ensure public sector whistleblowers have adequate protection; and
- A commitment to ensure that any stimulus projects, such as infrastructure projects, mining approvals are made public before approvals are granted and tenders sought, and that previous commitments such as roll out of the open contracting data standard are guaranteed for all Covid related projects.

CONCLUSION

Transparency International Australia appreciates the work of the Senate Select Committee on Covid-19.

There is no doubt that the Covid-19 crisis has tested all Australians, the business community and the Federal, State and Territory governments. The response in Australia is commendable.

None-the-less it has raised ‘red flags’ concerning the corruption, bribery and integrity violation risks that can and are likely to occur when scrutiny and oversight mechanisms are sidestepped or fast-tracked.

⁸ <https://ogpau.pmc.gov.au/>

⁹ <https://www.opengovpartnership.org/documents/a-guide-to-open-government-and-the-coronavirus/>



Ultimately, all measures taken by the government to address the spread of Covid-19 must align with its obligations to uphold human rights standards. While exceptional measures being implemented to contain the pandemic, which place restrictions on some rights can be justified when they have a legal basis. All activities implemented under Covid19 must be strictly necessary, based on scientific evidence and neither arbitrary nor discriminatory in application. Any measures must be, of limited duration, respectful of human dignity, subject to independent review, and proportionate to achieve the objective¹⁰.

Australia has an opportunity to 'build back better'. Our history of emerging from the great depression can help us navigate a bright future. Investment in our economy must go hand in hand with investment in our integrity frameworks and tackling the broader social and climate change challenges.

The end of WW2, under Prime Minister John Curtin, saw the establishment of new social contracts between government and the public. Commitments were made to build a better Australia.

The post war reconstruction period embedded new social and democratic contracts. There was investment in new industries, the welfare state was established, and unemployment relief implemented. There was investment in higher education, skills and human capacity.

The Covid-19 crisis creates an opportunity to both strengthen Australia's integrity frameworks and to embark on a new integrity, social and climate contracts.

Policy reform that TI Australia has long called for needs to be implemented now, including:

- Establishing an effective, well-resourced national integrity commission;
- Introducing a parliamentary code of conduct;
- Stronger oversight of lobbying and undue influence; and
- Reforms to the Public Interest Disclosure Act 2013 to provide greater protection to public sector whistleblowers.

The Covid-19 crisis has highlighted the need for additional and specific oversight mechanisms, as outlined in this submission.

The challenge now is for the government to invest, and to make the country work. The government needs to spend, but spend wisely and with oversight and scrutiny, with the national interest always the driver.

I would welcome the opportunity to discuss this further.

Yours sincerely

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¹⁰ Amnesty International Australia submission to the Senate Select Committee on Covid-19