AUSTRALIA'S NATIONAL INTEGRITY SYSTEM: THE BLUEPRINT FOR ACTION

National Integrity System Assessment, Australia, November 2020

TRANSPARENCY INTERNATIONAL AUSTRALIA

Griffith UNIVERSITY
Queensland, Australia

CONTENTS

SUMMARY

AUSTRALIA'S NATIONAL INTEGRITY SYSTEM: THE BLUEPRINT FOR ACTION 01

Introduction 02

Australia's National Integrity System: The Blueprint for Action 03

The Blueprint Explained 04

How to use the Report 05

Focus Area A: A Connected National Integrity Plan 06

Focus Area B: A Strong Federal Integrity Commission 10

Focus Area C: Open, Trustworthy Decision-Making 12

Focus Area D: Fair, Honest Democracy 14

Focus Area E: Public Interest Whistleblowing 16

Methodology 18

Assessing Australia's National Integrity System 18

DETAIL

FOCUS AREA A: A CONNECTED NATIONAL INTEGRITY PLAN A-01

Introduction A-02

What Should Be Done A-02

Actions Needed A-03

Why We Must Act A-04

Action 1 A-07

Action 2 A-08

Context A-14

Leader, Laggard or Liability in World Anti-Corruption? Choices For Australia A-14

DETAIL

FOCUS AREA B: A STRONG FEDERAL INTEGRITY COMMISSION B-01

Introduction B-02

What Should Be Done B-02

Actions Needed B-03

Why We Must Act B-04

Action 3 B-06

Action 4 B-11

Action 5 B-12

Context A-14

Oversighting The Big Guns: Dual Standards and Duplication? A-07

Public Anticorruption Hearings: A Double-Edged Sword? A-16

A Lesser Integrity Standard for 'Political' Decision-making? A-19

Making History: Bipartisan Integrity Reform A-21

DETAIL

FOCUS AREA C: OPEN, TRUSTWORTHY DECISION-MAKING C-01

Introduction C-02

What Should Be Done C-02

Actions Needed C-03

Why We Must Act C-04

Action 6 C-07

Action 7 C-09

Context C-12

Parliamentary Codes of Conduct: The Missing Federal Link C-12

Just a Convenient Skill Set? How 'Revolving Doors' Squash Public Trust C-15

"Due" and "Undue" Influence in the Covid Era: Time for a Wider Approach C-17

CONTENTS CONT.

DETAIL

FOCUS AREA D: FAIR, HONEST DEMOCRACY D-01

Introduction D-02

What Should Be Done D-02

Actions Needed D-03

Why We Must Act D-04

Action 8 D-06

Context D-09

Capping the Political Arms Race… and Making Victory Fair D-09

Fake Claims, Deliberate Deceit and No Legal Recourse: the Democracy We Want? D-14

DETAIL

FOCUS AREA E: PUBLIC INTEREST WHISTLEBLOWING E-01

Introduction E-02

What Should Be Done E-02

Actions Needed E-03

Why We Must Act E-04

Action 9 E-06

Action 10 E-11

Context E-08

The Most Important Integrity Trigger: In Good Times and Bad E-08

'Discouraged, Intimidated and Discredited': War Crimes, Whistleblowers and the Media E-14

DETAIL

THE BLUEPRINT FOR ACTION: ASSESSMENT BACKGROUND i

Introduction ii

Access to Findings ii

Why an 'Integrity System'? iii

What we Assessed iv

Scoping and Diagnostics: The National Integrity Survey v

What Australians Think: Global Corruption Barometer (Australia) 2018 & 2020 viii

Events and Discussion Papers: The National Integrity Commission viii

Interviews and Expert Feedback ix

Conclusion xi

Acknowledgements xi

INTRODUCTION

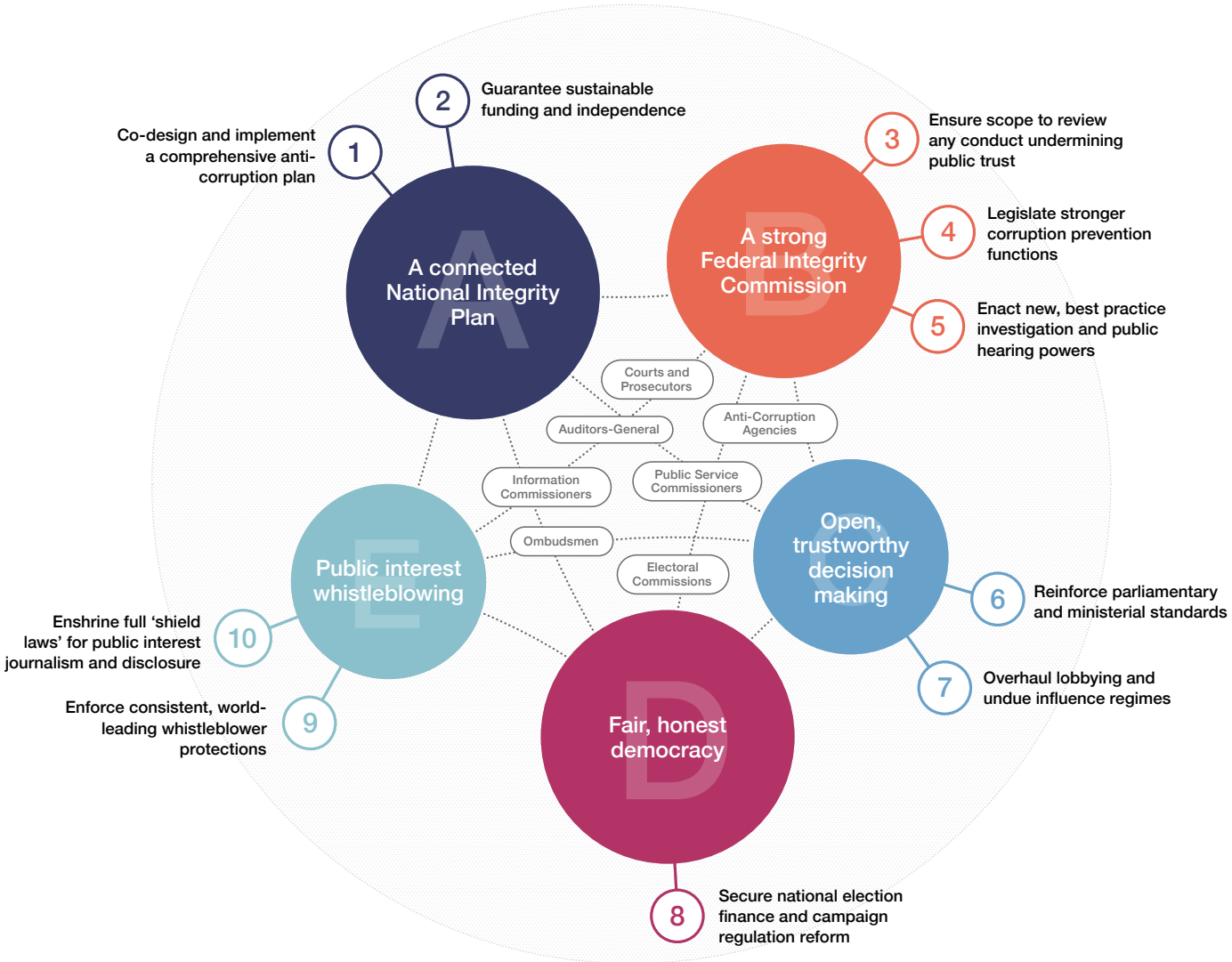
In every country, a strong system of public integrity and accountability is essential to meet the public's expectations of trustworthy, ethical and effective governance.

Once an international leader, Australia's efforts to fight corruption, undue influence and protect the integrity of democracy have been slipping. Nationally – even when individual states or territories are showing the way - Australia is now failing to keep pace.

A new federal integrity commission is a crucial step in creating a better and world leading system. Australia now has the opportunity to co-design a holistic, fit for purpose, interconnected system - one that the public and our multiple levels of government deserve, need, and expect.

Australia's National Integrity System: The Blueprint for Action is the roadmap to this system.

AUSTRALIA'S NATIONAL INTEGRITY SYSTEM: THE BLUEPRINT FOR ACTION



KEY

A — Focus Area of the National Integrity System, A–E

1 — Actions needed, 1–10

Name — Core integrity agencies

THE BLUEPRINT EXPLAINED

This blueprint for action outlines what can and should be done over the next 3-to-5 years to secure a high integrity future. Outlined in this summary and the full report are five focus areas and ten actions:

A A connected national integrity plan

1. Co-design and implement a comprehensive anti-corruption plan
2. Guarantee sustainable funding and independence

B A strong federal integrity commission

3. Ensure scope to review any conduct undermining public trust
4. Legislate stronger corruption prevention functions
5. Enact new, best practice investigation and public hearing powers

C Open, trustworthy decision-making

6. Reinforce parliamentary and ministerial standards
7. Overhaul lobbying and undue influence regimes

D Fair, honest democracy

8. Secure national election finance and campaign regulation reform

E Public interest whistleblowing

9. Enforce consistent, world-leading whistleblower protections
10. Enshrine full 'shield laws' for public interest journalism and disclosure

HOW TO USE THE REPORT

There is a lot to be done. The actions set out are not a step-by-step guide – they are interrelated priorities intended to be pursued concurrently. In some cases, different states and territories are already progressing aspects, which is all the more reason to work together, to achieve a holistic system.

Each focus area and action in the report identifies and details the essential elements that need to be addressed.

Often these are at state, territory or local government level, but especially show where Australia's national institutions have the opportunity to provide new leadership and support coordination across all levels, or need to catch up.

The wider community and civil society also have a role to play in being a part of designing these efforts to ensure Australia's national integrity system is more than simply a sum of uncoordinated, disconnected or conflicting parts.

The full report, details and context can be found at:

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

FOCUS AREA A: A CONNECTED NATIONAL INTEGRITY PLAN

Australia has a strong track record for integrity in public decision-making, democratic innovation and multi-agency frameworks for controlling corruption – defined by Transparency International as the abuse of entrusted power for private or political gain.

However, that track record has been slipping. Anti-corruption frameworks have been slow to respond to global pressures, suffering gaps, fragmentation and lack of coordination.

Even before COVID-19 provided new reasons for ensuring public resources are not lost to corruption, investment in integrity assurance has declined, especially at the federal level. Nationally, many core integrity agencies remain unsupported by the legal and financial independence they need to guarantee their roles.

By creating a dedicated federal anti-corruption agency, Australia is poised to fill its largest institutional gap.

However, this important new body cannot provide a 'silver bullet' solution to all the challenges of maintaining and strengthening integrity in Australia. All agencies with major integrity functions need to be given the correct scope and mandate to operate as part of a coherent national approach, and unified, effective "system" – from auditors-general and ombudsmen to information commissioners and the courts.

Parliament House Canberra. *Credit:Yicai.*

A coordinated national framework is needed, in which federal, state and territory agencies work better together – and with civil society, business and international partners – to achieve a more connected approach to corruption control.

Following open government principles, the co-design of Australia's approach requires new and ongoing flexibility to adapt to changing needs and public concerns, with participation channels for the public, civil society and the private sector.

ACTIONS AND ELEMENTS

ACTION 1

CO-DESIGN AND IMPLEMENT A COMPREHENSIVE ANTI-CORRUPTION PLAN

- A holistic plan for protecting public integrity, ensuring business integrity and meeting Australia's international anti-corruption commitments, based in Commonwealth legislation
- Clear roles for a federal integrity commission and all public integrity bodies, including legislative requirements for participation, consultation, cooperation and monitoring involving the states, territories, civil society and business
- Ongoing, legislated mechanisms for improved coordination and information-sharing within and across public integrity systems

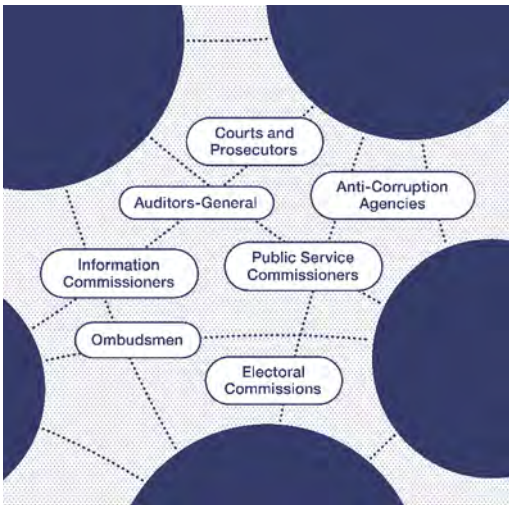
ACTION 2

GUARANTEE SUSTAINABLE FUNDING AND INDEPENDENCE

- Sustainable budgets for all core public integrity agencies at federal, state and territory level (combined, not less than 0.15 per cent of public expenditure)
- New federal funding of at least $100 million p/a for a federal integrity commission, corruption prevention and whistleblower protection
- Greater financial independence for all core integrity agencies and Australia's judiciaries based on 4-year, direct budget allocations by parliament
- Strengthened independence and accountability of all core integrity agencies as constitutional and/or parliamentary officers

To read this section of the report, visit: https://transparency.org.au/a-connected-national-integrity-plan

Blueprint detail: core integrity agencies.



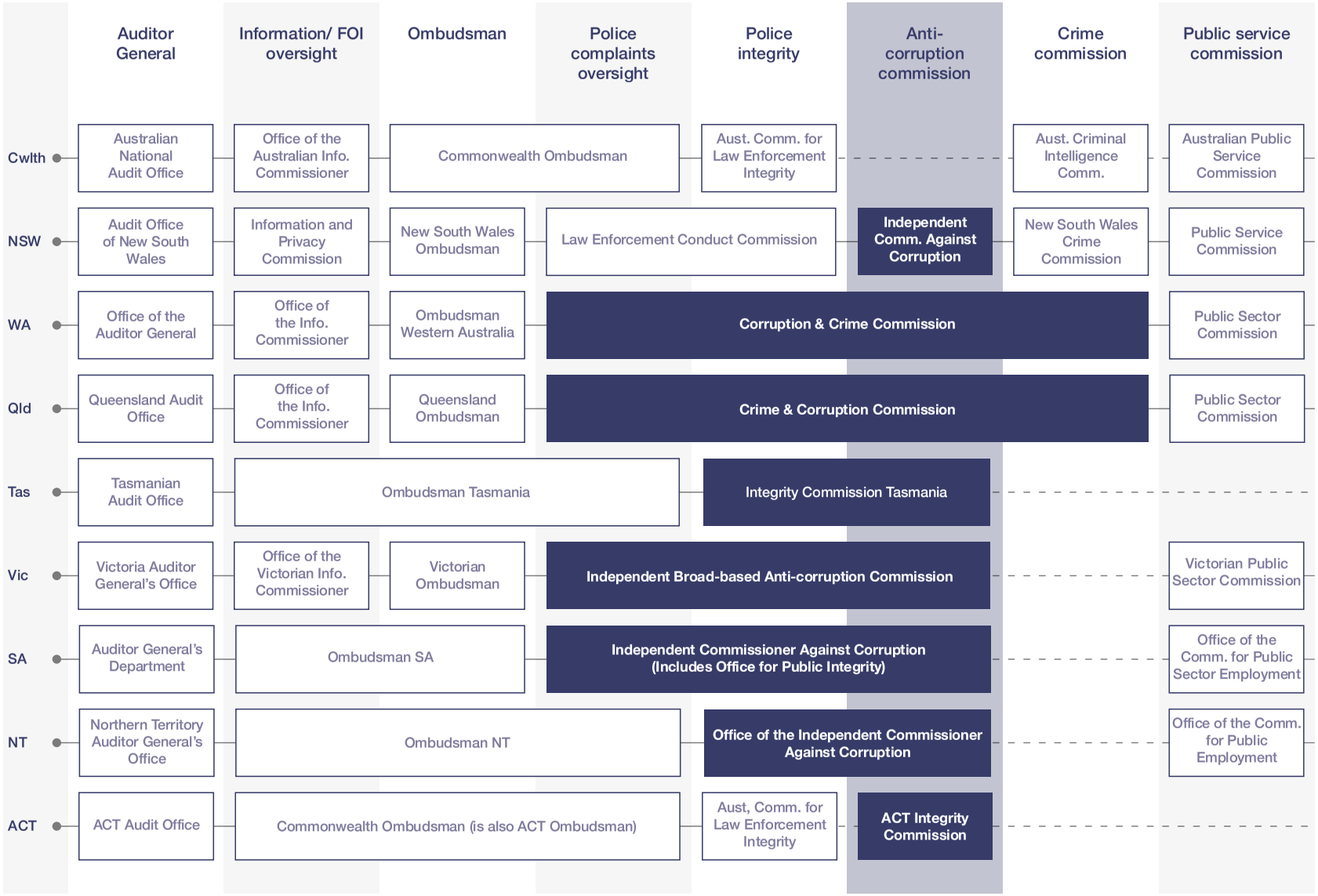
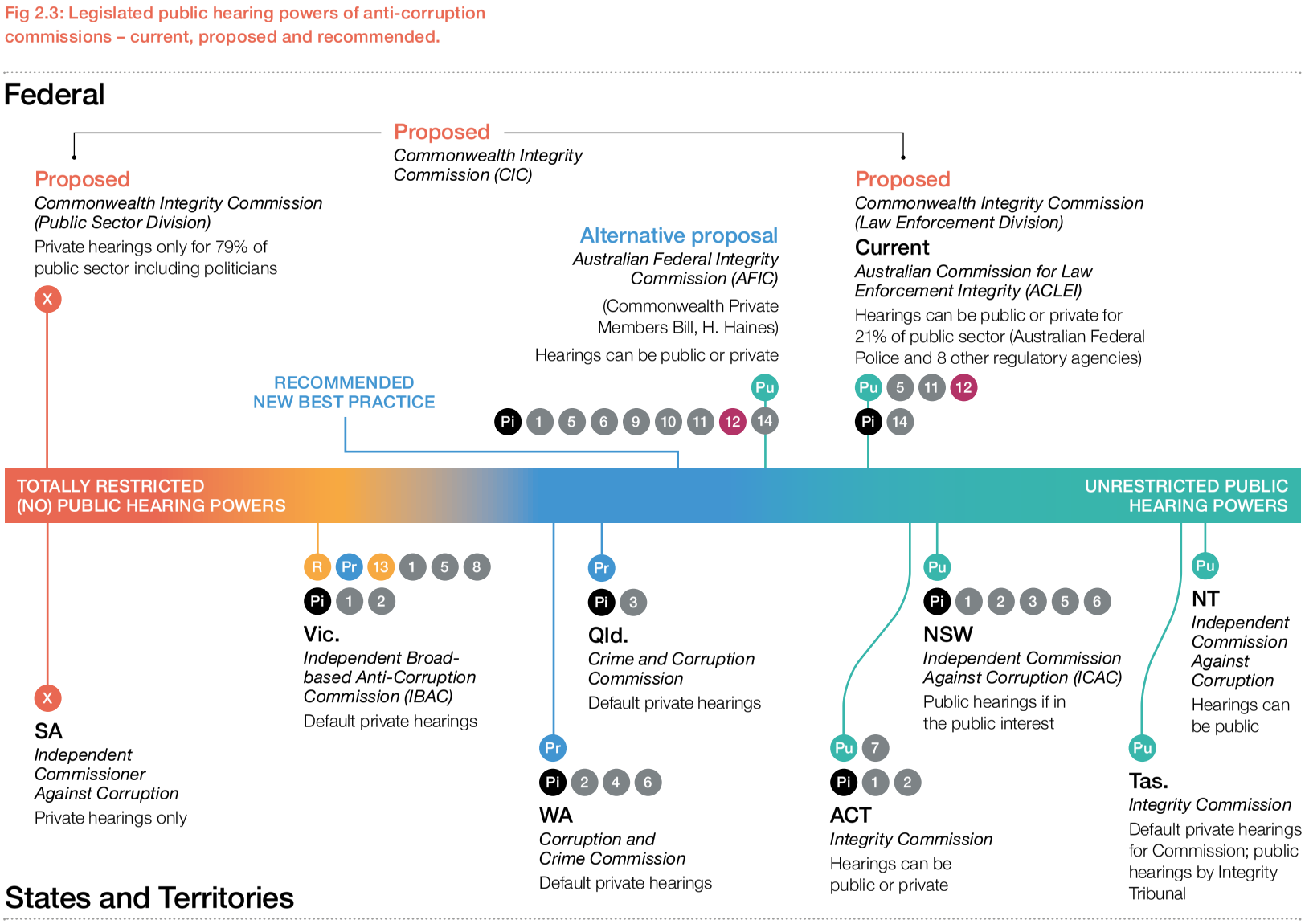


Figure 1.2: Core public integrity institutions in Australia (as at 2020)
Source: Catherine Cochrane, "Towards a national ICAC: A policy analysis of standing anti-corruption commissions in Australia", PhD Thesis, University of Adelaide (2020).

Fig 2.3: Legislated public hearing powers of anti-corruption commissions – current, proposed and recommended.



KEY TO PUBLIC HEARING POWERS

- X — No public hearings
- R — Public hearings only in restricted circumstances
- Pr — Default is private hearings, public hearings possible
- Pu — Public or private hearings
- Pi — Public interest test for public hearings

Specific circumstances or criteria for public hearings:

1. Serious and/or systemic conduct
2. Benefit of public exposure and awareness
3. Unfairness of not holding in public
4. Prejudice (general)
5. Unfair risk to reputation
6. Unfair risk to privacy
7. Unfair risk to human rights
8. Unfair risk to safety or wellbeing
9. Vulnerability
10. Under another's instruction or control
11. Confidentiality of evidence
12. Alleged or suspected criminal offence
13. Exceptional circumstances
14. Any other relevant matter

FOCUS AREA B: A STRONG FEDERAL INTEGRITY COMMISSION

After two decades of debate, Australia is close to introducing a new agency for combatting federal government corruption – filling the single biggest institutional gap in the nation's integrity system.

However, there is intense debate over whether the new commission will deliver the system that the community needs and expects.

These questions reinforce Australia's opportunity to ensure the new agency makes a substantial and positive impact, nationally and globally. They also show that design of the federal integrity commission is striving to overcome difficulties in anti-corruption enforcement which have become very clear, not only locally but internationally. This includes the need for:

- Scope to adapt to address changing forms of corruption, integrity risk and public concern about abuse of entrusted power
- Strong, systematic and enforced prevention measures for promoting integrity; and
- Best practice investigation and enforcement powers, aimed at securing remedies.

The way these issues are addressed will impact the effectiveness and credibility of the national integrity commission with the wider public.

As Commonwealth parliament prepares to legislate, there is opportunity to move beyond simply copying state anti-corruption bodies or existing law enforcement agencies, and instead establish a best-practice model for all jurisdictions.

With the right actions, this approach can help end controversy and confusion over how corruption is best stamped out and prevented across all levels of government.

77

Australia's score on the 2019 Corruption Perceptions Index, (down 8 points since 2012).

ACTIONS AND ELEMENTS

ACTION 3

ENSURE SCOPE TO REVIEW ANY CONDUCT UNDERMINING PUBLIC TRUST

- Comprehensive scope for the Commission to investigate any conduct – criminal or non-criminal – which undermines confidence in the integrity of public decision-making
- Priority on serious or systemic matters but extending to any misconduct involving real or perceived conflicts of interest or undue influence
- Common minimum standards for all federal public officials irrespective of status or role, and private individuals and entities involved in federally funded services and projects
- Full capacity to receive and act on corruption information from any person.

ACTION 4

LEGISLATE STRONGER CORRUPTION PREVENTION FUNCTIONS

- A federal integrity commission with a new, model corruption prevention mandate for Australia – targeted on situational and systemic corruption risks
- Legislated requirements for all public and contracted entities to implement prevention frameworks, with active central monitoring and compliance
- Comprehensive mandatory reporting requirements, for all public officials and agency heads to centrally report suspected integrity failures
- Adequate funding with public reporting on the average proportion of integrity commission expenditure spent directly on corruption prevention.

ACTION 5

ENACT NEW, BEST PRACTICE INVESTIGATION AND PUBLIC HEARING POWERS

- Full powers to hold compulsory hearings (public and private), conduct public inquiries and make public reports wherever in the public interest
- More consistent safeguards for exercise of discretion to hold compulsory hearings – including clearer, best practice criteria for public hearings, requiring ongoing assessment of the feasibility and merit of prosecution, and implications for potential proceedings, wherever there is apparent (prima facie) evidence of a criminal offence
- Legislated requirements for Directors of Public Prosecutions and disciplinary bodies to prioritise corruption enforcement responses in the public interest.

To read this section of the report, visit: https://transparency.org.au/a-strong-federal-integrity-commission

FOCUS AREA C: OPEN, TRUSTWORTHY DECISION-MAKING

The single biggest problem for integrity in Australia is diminishing public trust that decision-making is fair, honest and free of undue influence.

In politics and bureaucracies alike, some of Australia's ways of ensuring trustworthy decision-making remain world leading – but many are failing to keep pace with public concern and demographic and economic change.

Even as overall citizen confidence in competence of government rose with Australia's COVID-19 response, so too public concern continued to grow over the size of corruption as a problem in government (from 61 percent of citizens in 2018 to 66 percent in October 2020).

Again, while there are improvements to be made in many states and territories, the federal government provides the greatest need and opportunity to catch up.

Australia's federal parliamentarians, and WA's upper house, are currently the only types of public officials without any code of conduct. Mechanisms for transparency and fairness in dealings with decision-makers – especially through professional lobbying – remain weak, cumbersome and unenforced.

Success relies on simpler, more consistent rules for all; independent advice; openness; and enforced regulations that provide clarity and certainty to decision-making. Supported by greater trust and reduced "gaming" of ethical systems by those seeking to influence government, public decision-making can be more "scandal-free", confident and responsive in challenging times.

Surveyed Australians who think corruption in government is a quite big or very big problem, October 2020:

66%

(up from 61% in 2018).

ACTIONS AND ELEMENTS

ACTION 6

REINFORCE PARLIAMENTARY AND MINISTERIAL STANDARDS

- Legislated codes of conduct for each house of parliament, ministers and staff, continuously improved and renewed by each parliament and government, covering integrity in all decision-making, including:
  - continuous disclosure and avoidance of potential conflicting interests
  - banning secondary employment by parliamentarians
  - universal appointment on merit for all public positions
- Confidential independent advice for parliamentarians and staff on compliance
- Independent enforcement by a parliamentary integrity commissioner, reporting to parliamentary committees, supported by investigation and reporting by the integrity commission when needed
- In ministerial codes, requirements for recording and proactive publishing of diary events, reasons for decisions and decision-making processes
- Enforceable minimum 3 year 'cooling off' (anti-revolving door) periods for ministers before accepting any relevant position or benefit.

ACTION 7

OVERHAUL LOBBYING AND UNDUE INFLUENCE REGIMES

- Legislated codes of conduct for all officials and persons seeking to influence public decisions involving financial, personal or political benefit (including but not limited to 'lobbyists'), based on respect for positive principles of integrity:
  - transparency
  - inclusivity
  - honesty
  - diligence
  - fairness
  - legality
- Registration of all professional lobbyists (including third-party, services firms and in-house) to boost transparency, awareness and compliance
- Confidential, independent advice for all senior office holders on compliance
- Administrative, disciplinary and criminal sanctions with independent oversight and enforcement.

To read this section of the report, visit: https://transparency.org.au/open-trustworthy-decision-making

FOCUS AREA D: FAIR, HONEST DEMOCRACY

The quality of Australia's democracy is the largest asset supporting the nation's public integrity. Fair, accurate and robust electoral and voting systems lie at the heart of public participation in selecting the nation's decision-makers and confidence in the decisions they make.

Nevertheless, despite Australia being one of the world's great democratic innovators, most governments have failed to keep up with best practice against corruption stemming from the nature of the electoral process.

Systems for controlling the "arms race" of political campaign expenditure have improved in several states, but not nationally. Drivers of undue influence continue through ever-increasing pressure for funds, regulated through a fragmented, leaky system where the weakest donation rules set the standard.

Boundaries between party campaigning, supporter interests and good public policy have collapsed.

In the fake news era, falling standards of honesty and accuracy mean more overtly deceptive political campaigning – eroding the bedrock of trust in government.

Australia's democratic traditions need rejuvenating. By following democratic partners like Canada, United Kingdom and New Zealand – and domestically, advances made by over half of Australia's own states and territories – the nation can take immediate strides to strengthen the integrity, honesty and fairness of elections.

Through his companies and United Australia Party, billionaire Clive Palmer took political donations, election spending and negative campaigning to record levels since 2013. *Credit: AAP / Dan Peled.*

ACTIONS AND ELEMENTS

ACTION 8

SECURE NATIONAL ELECTION FINANCE AND CAMPAIGN REGULATION REFORM

● Nationally-consistent, best practice electoral legislation, led by the Commonwealth, including:

- universal, workable caps on political campaign expenditure (by parties, candidates and associated entities),
- common political donation limits and public election funding rules,
- reasonable, consistent, real-time public disclosure requirements for donations,
- enhanced sanctions and enforcement by the Australian Electoral Commission and state electoral bodies

● Extension of parliamentary and lobbying codes of conduct to all political candidates and those seeking to influence them, from point of nomination / registration

● Legislated sanctions (administrative and criminal) against misleading or deceptive campaign conduct intended to influence a person's vote – enforced by the relevant electoral body and failing that, the integrity commission.

To read this section of the report, visit: https://transparency.org.au/fair-honest-democracy

Football salary caps show why election campaign expenditure caps are key to protecting political integrity: Melbourne Storm win the 2020 National Rugby League fair and square, 10 years after its infamous salary cap breaches.
Credit: AAP / Dan Himbrechts

FOCUS AREA E: PUBLIC INTEREST WHISTLEBLOWING

Integrity and accountability rely on the ability of citizens to speak up when they suspect or witness wrongdoing – especially the officials and employees who actually know what's going on within institutions.

Together with freedom of the media to report what society needs to know, public interest whistleblowing remains the most important trigger, in practice, for the integrity mechanisms that keep institutions healthy, thriving and ethical.

Aspects of Australia's private sector whistleblower protections already lead the world. However, public sector protections lag behind. Across both sectors, loopholes, inconsistencies and lack of enforcement undermine effectiveness, often leaving them as paper tigers.

As government secrecy legislation grows, Australia's strong traditions of independent journalism have been compromised. Indeed the rights of all citizens to receive and share official information, in the public interest, have been steadily disappearing.

Overhaul of whistleblower protection laws, internal and external to government, has been promised from all sides of politics. Fulfilling these promises, to a high level, is central to effective regimes for public interest disclosure and media freedom.

Internal and public whistleblowing over shocking alleged war crimes by Australian special forces in Afghanistan, as revealed in the ABC's 'Afghan Files' stories, has been met with intimidation, criminal investigations and prosecutions of journalists and whistleblowers alike. *Source: ABC News.*

16

ACTIONS AND ELEMENTS

ACTION 9

ENFORCE CONSISTENT, WORLD-LEADING WHISTLEBLOWER PROTECTIONS

- Law reform to ensure public interest whistleblowers (private and public) have effective access to remedies for any detriment suffered for reporting, whether through acts or omissions

- Consistent best practice thresholds across sectors for onuses of proof, public interest costs indemnities, exemplary damages and civil penalties

- A reward and legal support scheme based on returning a proportion of the financial benefits of disclosures directly to whistleblower welfare

- A whistleblower protection authority to assist reporters, investigative agencies and regulators with advice, case support, enforcement action and remedies for detrimental conduct.

ACTION 10

ENSHRINE FULL 'SHIELD LAWS' FOR PUBLIC INTEREST JOURNALISM AND DISCLOSURE

- Stronger journalism shield laws to ensure full confidentiality of public interest sources, ensure media freedom and protect journalists from prosecution for receiving and using whistleblower disclosures

- Clearer rules for when public whistleblowing is protected, including:

  - Simple, realistic principles for justified disclosure of wrongdoing to journalists by public or private employees

  - Removal of blanket carve-outs for 'intelligence information' and 'inherently harmful information' from federal whistleblowing and journalism protection laws

- Clear, legislated public interest defences for any citizen for unauthorised receipt or disclosure of official information, where revealing wrongdoing.

To read this section of the report, visit: https://transparency.org.au/public-interest-whistleblowing

ASSESSING AUSTRALIA'S NATIONAL INTEGRITY SYSTEM

This three year national integrity system assessment of Australia, using Transparency International's established approach, was led by Griffith University's Centre for Governance and Public Policy, and supported by the Australian Research Council, Transparency International Australia, Queensland Crime and Corruption Commission, Queensland Integrity Commissioner, NSW Ombudsman and Tasmanian Integrity Commission.

Identified by the 2017 Senate Select Committee on a National Integrity Commission and Australia's second Open Government National Action Plan as a key input for reform, the assessment has included:

- contributing researchers and authors from across Australia
- desktop research
- two national attitude and experience surveys
- five stakeholder workshops
- 50 face-to-face interviews
- 107 National Integrity Survey responses and
- 40 comments received on the assessment's 2019 draft report.

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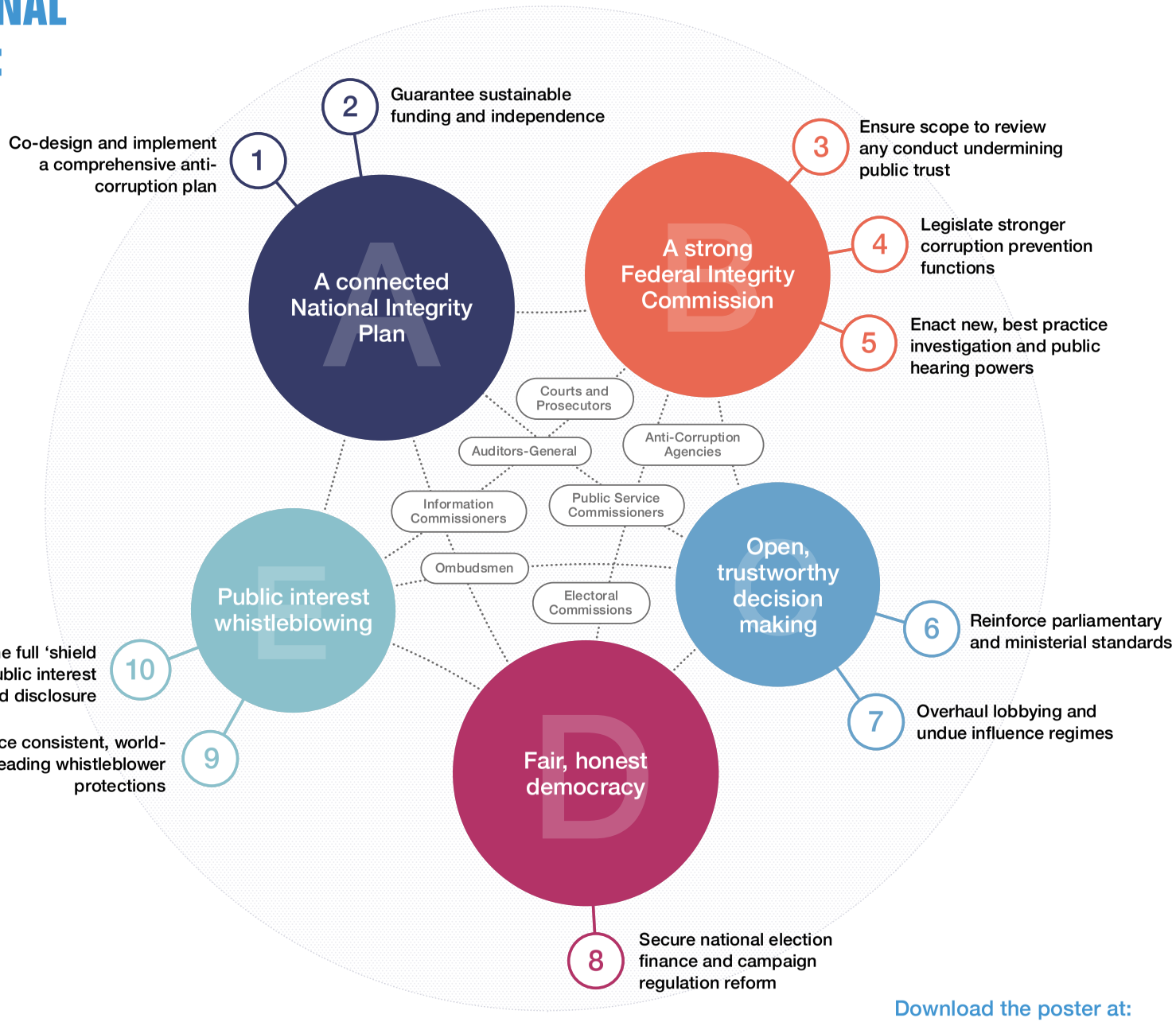
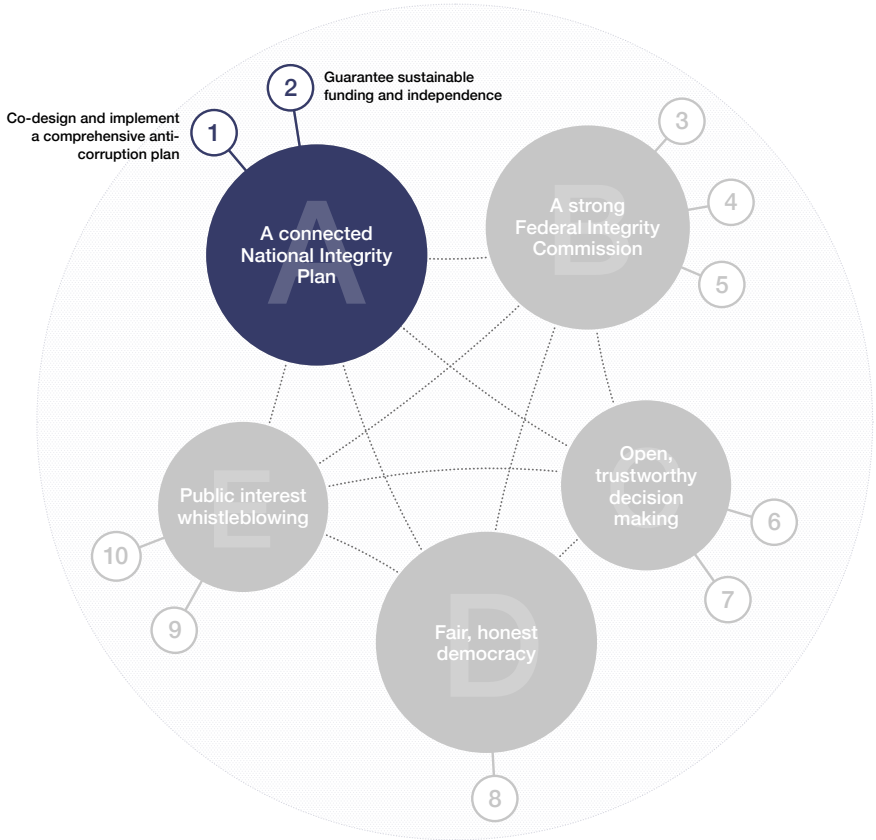


KEY

- A — Focus Area of the National Integrity System, A–E
- 1 — Actions needed, 1–10
- Name — Core integrity agencies

Download the poster at:
www.transparency.org.au/

FOCUS AREA A: A CONNECTED NATIONAL INTEGRITY PLAN



Overview

INTRODUCTION

Australia has a strong track record for integrity in public decision-making, democratic innovation and multi-agency frameworks for controlling corruption. However, that track record has been slipping.

Anti-corruption frameworks have been slow to respond to global pressures, suffering gaps, fragmentation and lack of coordination. Even before COVID-19 provided new reasons for ensuring public resources are not lost to corruption, investment in integrity assurance has declined, especially at the federal level. Nationally, many core integrity agencies remain unsupported by the legal and financial independence they need to guarantee their roles.

By creating a dedicated federal anti-corruption agency, Australia is poised to fill its largest institutional gap.

However, this important new body cannot provide a 'silver bullet' solution to all the challenges of maintaining and strengthening integrity in Australia. All agencies with major integrity functions need to be given the correct scope and mandate to operate as part of a coherent national approach, and unified, effective "system" – from auditors-general and ombudsmen to information commissioners and the courts.

In particular, a coordinated national framework is needed, in which federal, state and territory agencies work better together – and with civil society, business and international partners – to achieve a more connected approach to corruption control.

WHAT SHOULD BE DONE

To ensure the nation's system of "checks and balances" works as a connected framework, with better coordination of agencies and roles, Australia should follow other countries by developing a comprehensive national plan to give direction and purpose to shared efforts.

All core integrity agencies need to play their full role in a wider system, rather than separate institutional silos. The new federal integrity commission has especially important roles, not only for fighting corruption in federal government, but helping foster this coordination and cooperation across borders and sectors, in line with international obligations.

Affirming the mission of each integrity agency also requires a new, more systematic approach to their budgets, accountability and constitutional "fit" in Australia's system of government. This offers clearer resolution of longstanding debates over these agencies' position and role – helping deliver a stronger, more sustainable system for the long term.

ACTIONS NEEDED

ACTION 1

CO-DESIGN AND IMPLEMENT A COMPREHENSIVE ANTI-CORRUPTION PLAN

- A holistic plan for protecting public integrity, ensuring business integrity and meeting Australia's international anti-corruption commitments, based in Commonwealth legislation
- Clear roles for a federal integrity commission and all public integrity bodies, including legislative requirements for participation, consultation, cooperation and monitoring involving the states, territories, civil society and business
- Ongoing, legislated mechanisms for improved coordination and information-sharing within and across public integrity systems

ACTION 2

GUARANTEE SUSTAINABLE FUNDING AND INDEPENDENCE

- Sustainable budgets for all core public integrity agencies at federal, state and territory level (combined, not less than 0.15 per cent of public expenditure)
- New federal funding of at least $100 million p/a for a federal integrity commission, corruption prevention and whistleblower protection
- Greater financial independence for all core integrity agencies and Australia's judiciaries based on 4-year, direct budget allocations by parliament
- Strengthened independence and accountability of all core integrity agencies as constitutional and/or parliamentary officers.

Background

WHY WE MUST ACT

Australia faces an uncertain future, with opportunities but also many risks in the fight against corruption through the next decade.

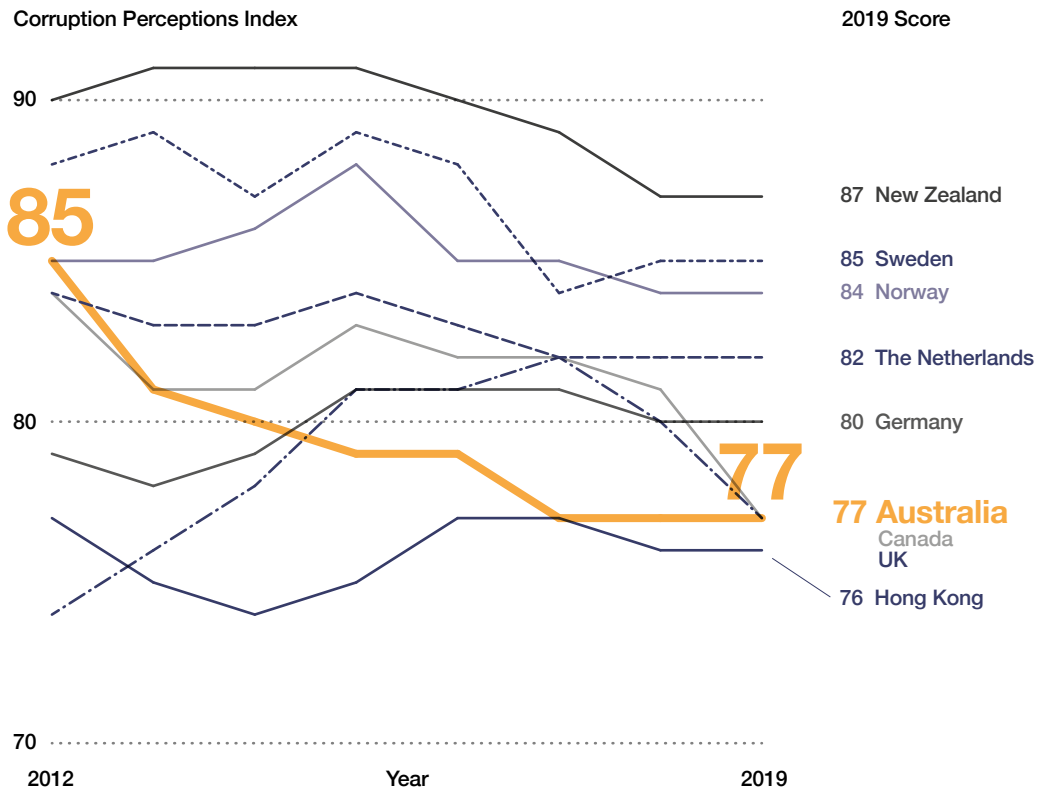
Transparency International has scoped many of the challenges confronting every country, from now to 2030, for seeing public power held to account and used for the common good. Intensified by the COVID-19 pandemic, these trends frame clear choices for how Australia's federal, state and territory governments go about strengthening the integrity system (*see context: Leader, laggard or liability in world anti-corruption?*).

77

Australia's score on the 2019 Corruption Perceptions Index, (down 8 points since 2012).

Since 2012, Australia's anti-corruption efforts have slipped on multiple world measures, reflected in Transparency International's Corruption Perceptions Index (Figure 1.1). Within Australia itself, public trust in the nation's system of "checks and balances" rests on building confidence that this system is adapting to challenges, at a time when internationally and domestically, accountability institutions are often seen as under attack.

Figure 1.1: Transparency International 2019 Corruption Perceptions Index.



Research on citizen attitudes, through the TI Global Corruption Barometer, confirms that among Australians, corruption concerns continue to rise (*see Focus Area C: Open, Trustworthy Decision-making*).

The challenge is not whether Australia's integrity system needs strengthening, but how.

Australian policymakers have a choice between limiting reform to one or two initiatives in the hope these may fix all relevant issues, or taking a strategic approach over time.

The choice is also between being piecemeal – treating public sector corruption as separate from business integrity, or federal corruption issues as separate from state or international ones – and an approach where different integrity and regulatory bodies can play their part more clearly under a coherent national strategy or plan.

Crucial to all integrity systems are the official bodies that lie at its "core". Together, these provide the checks and balances on which all citizens rely – especially Australia's independent judiciary, integrity inelection administration and strong financial accountability.

Evidence from the assessment indicates that often these and other integrity mechanisms continue to work well, providing daily assistance to citizens, business and the public sector. Rather than a system of unnecessary "red tape", they ensure the elements of public integrity that underpin good governance: honesty, fairness, transparency, diligence and legality.

As seen in Figure 1.2, across Australia, multiple integrity agencies are core to this process. The system is also evolving. Since Australia's first national integrity system assessment in 2005, several new anti-corruption agencies have been created, and independent Information Commissioners are now standard for all governments.

The single slowest development has been creation of a dedicated, independent federal agency to expose and prevent national-level corruption. How this gap is filled is a crucial issue (*see Focus Area B: A Strong Federal Integrity Commission*).

After leading reforms in rights to information, administrative review and financial accountability in the 1970s-1990s, Australia's federal level has since become more of a follower. This is true not only in anti-corruption, but other focus areas, including parliamentary standards, lobbying, political campaign regulation and whistleblower protection.

How the role of Australia's new federal agency is defined is critically important – and not only to the federal level. The federal government's international responsibilities and potential role in leading a more coordinated approach point to larger questions about the mandate for this body, and the federal government generally, to help Australia's integrity systems work more coherently. How integrity agencies are organised is vital at each level of government – but to meet our challenges, the even more vital question is how to strengthen their collective contributions across the nation as a whole.

Australian policymakers have a choice between limiting reform to one or two initiatives in the hope these may fix all relevant issues, or taking a strategic approach over time.

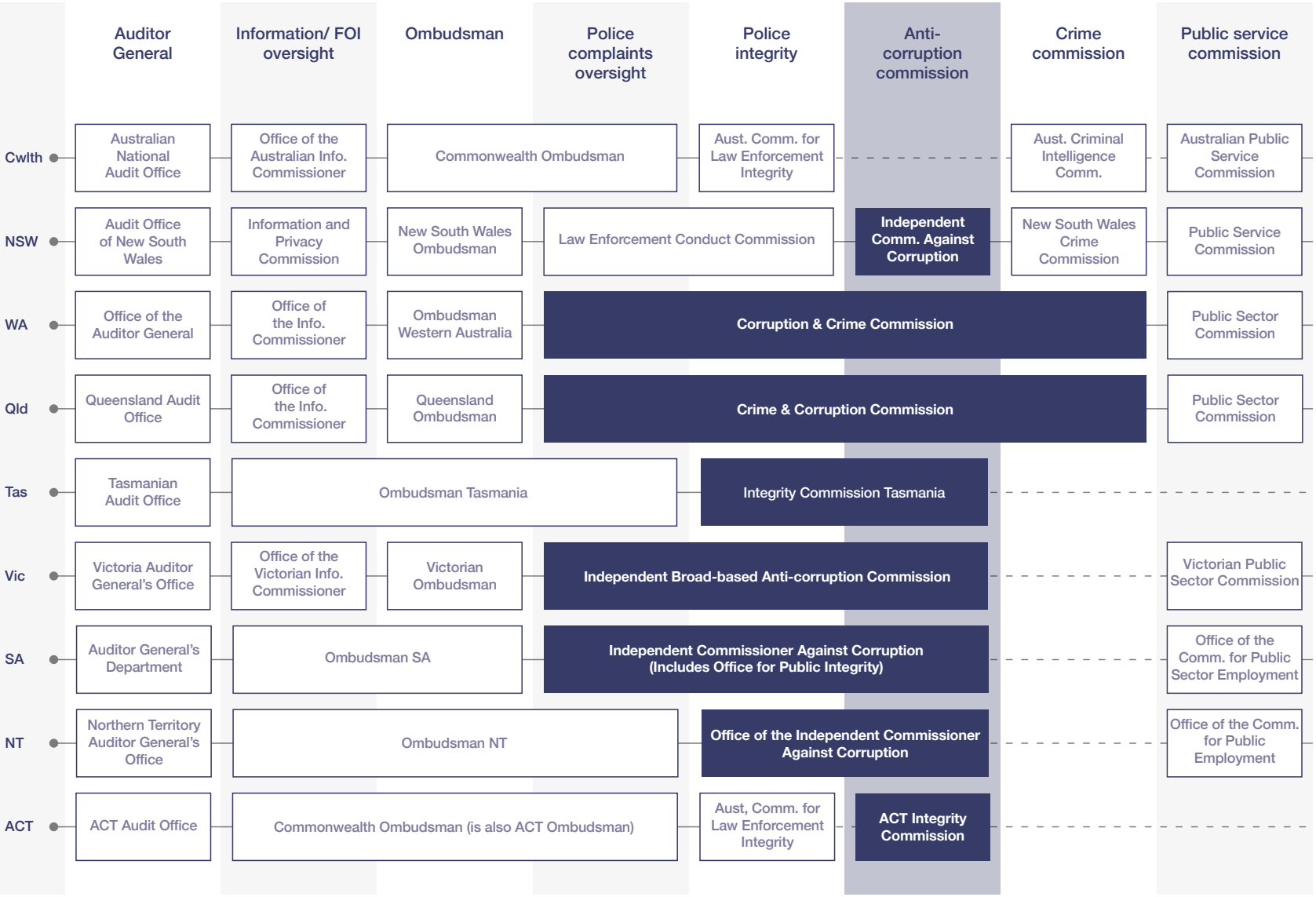


Figure 1.2: Core public integrity institutions in Australia (as at 2020)
Source: Catherine Cochrane, "Towards a national ICAC: A policy analysis of standing anti-corruption commissions in Australia", PhD Thesis, University of Adelaide (2020).

ACTION 1

CO-DESIGN AND IMPLEMENT A COMPREHENSIVE ANTI-CORRUPTION PLAN

For national-level reform to be effective, Australia needs a holistic plan for protecting public integrity, ensuring business integrity and meeting international anti-corruption commitments, based in Commonwealth legislation.

One option for the Commonwealth parliament is to simply create a federal copy of a state anti-corruption body, or new federal law enforcement body. However, the challenges confronting Australia show that this is not enough.

While corruption detection, exposure and prevention does need strengthening at federal level, that in itself will not meet the need for more coordinated responses to all the corruption risks facing Australia. Nor, by itself, will it improve the scale and pace at which Australia meets its important international obligations, such as under the United Nations Convention Against Corruption.

To achieve faster, less fragmented responses than under the current federal "multi-agency" approach, a stronger, enduring framework is needed, in which the relevant agencies – especially the new federal commission – have clear obligations to support and lead a wider strategy.

The closest Australia came to such a strategy was an official process conducted in 2011-13 to develop a National Anti-Corruption Plan. However, this was never finalised.

Internationally, national anti-corruption plans and strategies are becoming standard, led by a range of countries including the United Kingdom. In October 2020, the G20 Ministerial Meeting on integrity and anti-corruption issued new high level principles for national strategies.

For Australia's federal system, a comprehensive strategic approach relies on greater coordination between and within the public integrity systems of the different levels of government. Consistently also with the principles of the Open Government Partnership (OGP), a more coordinated approach hinges on the structured participation of all stakeholders, beyond the level of action and operational cooperation possible under Australia's OGP approach itself.

The federal legislative approach therefore needs to set out clear roles for the federal integrity commission and all public integrity bodies, including legislative requirements for participation, consultation, cooperation and monitoring involving the states, territories, civil society and business. In this way, Australia has the opportunity for a new framework of national anti-corruption cooperation similar to other models, including related fields like Australia's Organised Crime Strategic Framework and National Organised Crime Response Plans.

An example of suitable legislative mechanisms for national coordination include provisions in the National Integrity Commission Bill and Australian Federal Integrity Commission Bill (Part 3, Division 7), introduced to Commonwealth Parliament in 2018 and 2020. Incorporating a national integrity and anti-corruption

plan, this example was welcomed by state agencies such as the NSW Ombudsman and Queensland Crime and Corruption Commission as 'a sound scheme for planning and collaboration at the Commonwealth level, promoting integrity and preventing corruption'.

Within and across Australia's public integrity systems, there is also need for ongoing, legislated mechanisms for improved coordination and information-sharing, beginning with the federal integrity system.

The limits of the present federal multi-agency approach have been noted since at least 2010. In 2016-2017, the Senate Select Committee on a National Integrity Commission received evidence from federal agencies that the approach was 'robust, multi-faceted', operating 'appropriately and effectively' and 'seamlessly'. However, the committee – including government members – ultimately rejected this evidence, concluding it was 'a complex and poorly understood system that can be opaque, difficult to access and challenging to navigate'.

According to the Senate Select Committee, existing agencies also 'struggled to explain… how their individual roles and responsibilities inter-connect' to form the 'seamless' approach claimed.

At federal, state and territory levels, more effective coordination rests on legislated bases for information-sharing between core integrity agencies, and across government, including real-time access to all relevant databases and data sharing across line agencies and regulated entities. New statutory mechanisms can take their lead from successful informal coordination measures among some states, such as:

- Queensland's Integrity Committee, incorporating the Integrity Commissioner, Crime and Corruption Commission, Queensland Ombudsman, Public Service Commissioner, Information Commissioner, Auditor-General, Electoral Commissioner, Independent Assessor (Local Government) and Racing Integrity Commissioner; or
- Western Australia's Integrity Coordinating Group, comprising the Information Commissioner, Corruption and Crime Commissioner, Auditor General, Public Sector Commissioner and Western Australian Ombudsman.

ACTION 2

GUARANTEE SUSTAINABLE FUNDING AND INDEPENDENCE

Australians rely on their core integrity agencies (Figure 1.2) to operate with a high level of political and functional independence. Tasked with holding other powerful institutions to account, up to the most senior office-holders, they require guaranteed ability to pursue their duties in the public interest, free of undue influence, whatever the challenges.

While core integrity agencies are usually established as statutory authorities with strong legal independence, experience shows that this is not enough to sustain their missions. A new, more systematic approach is also needed to support their budgets, accountability and constitutional "fit" in Australia's system of government – comprised of four elements.

First, the adequacy and sustainability of integrity agency funding is a critical issue.

In 2020, the Commonwealth Auditor-General's annual report revealed that stagnation in the budget of the Australian National Audit Office (ANAO) – threatening its invaluable performance audit function – had forced him to write to the Prime Minister, requesting funding be placed on 'a more sustainable basis' in support of 'transparency and accountability in the Australian Government sector'.

While research by the Grattan Institute confirms this stagnation to be real, Figure 1.3 shows it to be a very long-term trend, over many different governments of all political persuasions. Along with other Auditors-General, the ANAO's resources as a share of all government expenditure has been steadily eroding over a 30 year period. As also shown, given the federal level expends by far the most of any Australian government, the very low level of comparative resourcing given to the ANAO makes this erosion a serious national concern.

Figure 1.3: Auditor-general expenditure as % of total expenditure (actual)
Source: updated from A J Brown & M Bruerton (2017), 'Sufficient, stable and secure? An exploratory comparative analysis of integrity agency financial resourcing', Crime Law and Social Change Vol 68 No.5

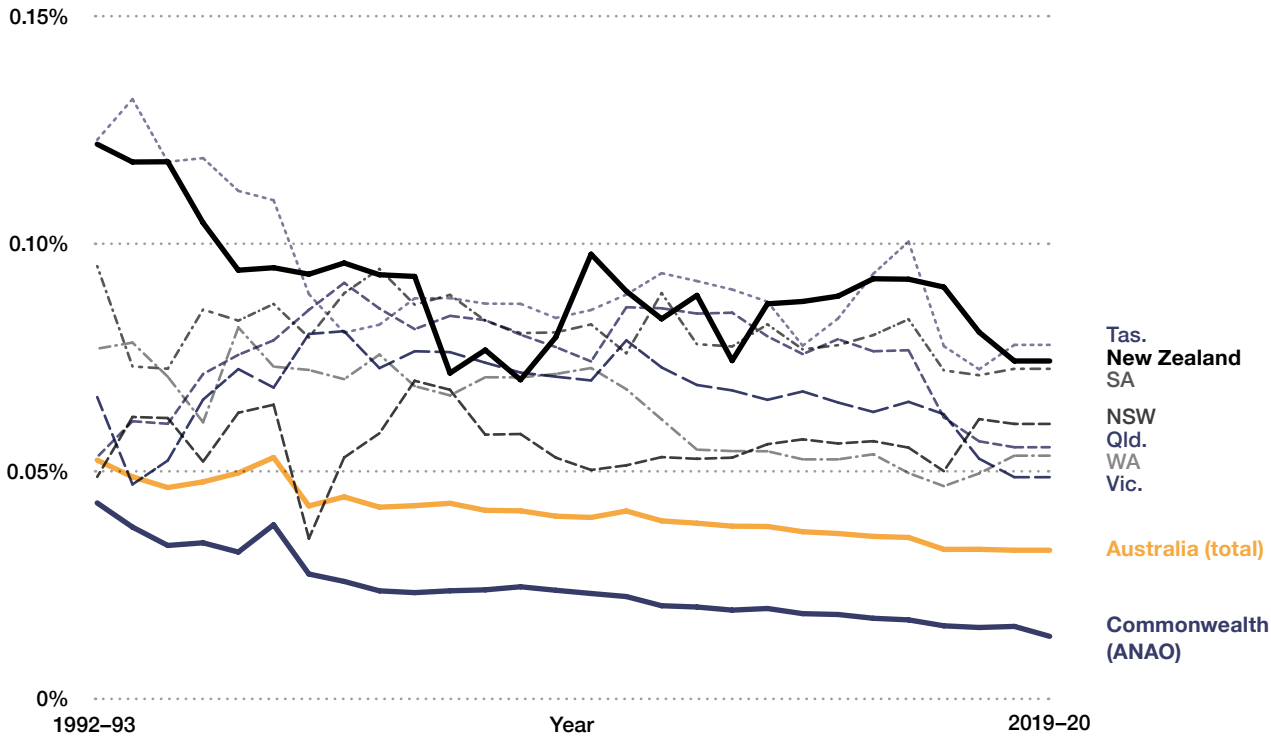
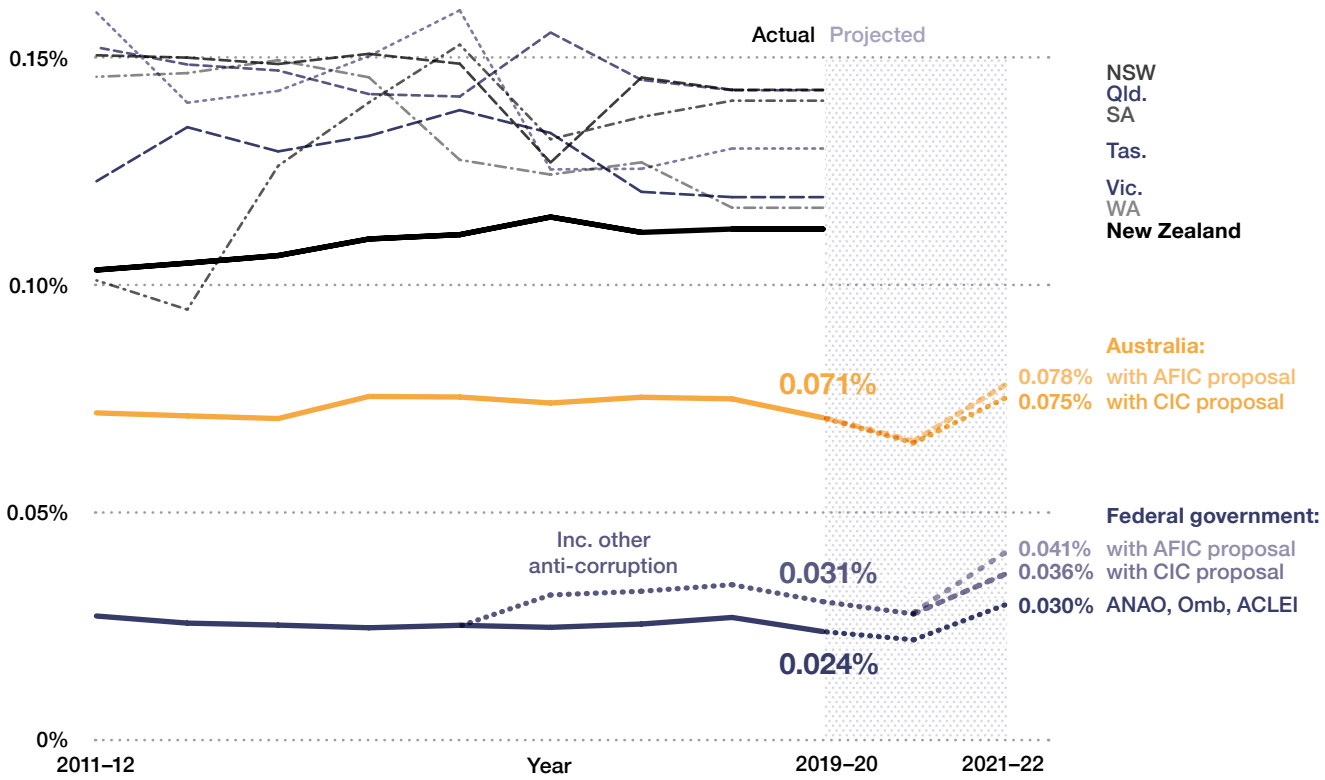


Figure 1.4 shows that, in addition to this problem, the federal level integrity system also remains weakly resourced when other integrity agencies are taken into account. Taking an 'integrity system approach', the figure shows recent and projected levels of funding for all of Australia's federal and state governments, plus New Zealand, for a common group of core integrity agencies: auditors-general, ombudsmen, anti-corruption commissions and police integrity agencies.

Despite their importance to the health of government and society, these core oversight roles receive only a low percentage of funding overall, with the federal government again the weakest contributor. The federal level spends, at best, around a quarter of the typical spend of the states on these core functions, resulting in Australia's total public sector spending being a third less than New Zealand's on the same functions. This share of funding is under even greater pressure as the federal government spends extra as part of its COVID-19 response, without matching funding for integrity functions.

Figure 1.4: Select core integrity agency expenditure as percentage of total expenditure (actual).



Notes: 'Core integrity agencies' means Auditors-General, Ombudsmen and anti-corruption agencies, not including organised crime functions but including specialist police integrity agencies (plus for federal and New Zealand, estimated specialist law enforcement agency contributions where no general anti-corruption agency exists). Sources: annual reports and government statistics.

Glossary: ACLEI: Australian Commission for Law Enforcement Integrity; **AFIC:** Australian Federal Integrity Commission (proposed); **ANAO:** Australian National Audit Office/Auditor-General; **CIC:** Commonwealth Integrity Commission (proposed); **Omb:** Commonwealth Ombudsman

A new approach is needed to the base resourcing of all core integrity agencies – especially but not limited to auditors-general – including lifting this investment in integrity assurance to a minimum level across the board.

More detailed analysis such as a Productivity Commission inquiry would shed light on the full return on investment (ROI) and investment needs of Australia's integrity agencies. In the interim, a first step to sustainable budgets for all core public integrity agencies at federal, state and territory level should be a target of not less than 0.15 per cent of public expenditure allocated to the core agencies shown in Figure 1.4.

Secondly, as also shown in Figure 1.4, federal integrity funding is set to improve somewhat through spending on the proposed federal integrity commission. On top of funding for existing agencies, proposed new funding of $104.5 million over four years from 2020-21 would see expenditure on the proposed Commonwealth Integrity Commission rise to $42.3 million per year – close to the current budget of the Commonwealth Ombudsman, and over half the current budget of the ANAO.

However, as shown in the figure, this important step will make only a limited difference in strengthening the overall system. Even the stronger Australian Federal Integrity Commission (AFIC) proposal, also submitted to Parliament and costed by the Parliamentary Budget Office at $68.2 million per year, would represent only a moderate contribution (*see Focus Area B: A Strong Federal Integrity Commission*).

According to earlier analysis as part of the assessment, new federal funding of at least $100 million per year is needed to support the major functions that need strengthening at that level, including a federal integrity commission, corruption prevention and whistleblower protection.

Stronger budget processes are needed to address the sustainability and financial independence of core integrity functions.

The third essential element is stronger budget processes to address the sustainability and financial independence of core integrity functions for the long term.

Currently, despite their legal independence, core integrity agencies are usually treated the same as any other government departments. This means they are subject to budget decisions by executive government, including 'efficiency dividends' and other savings measures despite their workload only growing over time.

In severe cases, this lack of financial independence means integrity agencies may be denied resources as a result of political shocks or direct interference. In the worst Australian case, in 2014, the federal government entirely de-funded the Office of the Australian Information Commissioner (OAIC) notwithstanding that it lacked parliamentary authority to abolish the office itself.

Even after the OAIC's budget was reinstated two years later, the agency continues to lack the resources to clear the huge backlog of freedom-of-information cases, with evidence to Senate Estimates in October 2019 that this task required an additional $1.9 million per year.

This deep problem of insufficient independence extends to Australia's judiciaries. As the apex of oversight for

legality of government decisions, the courts are constitutionally the most independent of all integrity agencies. This makes executive control of their budgets a major cause for concern – leading to proposals by Chief Justice Robert French for separate "appropriations" legislation granting funding directly from parliament, advised but not controlled by executive government.

The solution to greater financial independence lies in direct 4-year budget allocations by parliament to all core integrity agencies, and Australia's judiciaries, following this proposal, oversighted by a parliamentary committee process but placing financial control beyond the executive government or political electoral cycle.

The solution has long been in place in New Zealand, where the Public Finance Act 1989 (NZ), section 26E requires it for Officers of Parliament including the Auditor-General and Ombudsman. In Victoria, where the State Constitution also makes the Auditor-General and Ombudsman declared Officers of Parliament, similar reforms were put in place by the Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019 – placing the budgets of these agencies, the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Inspectorate under direct parliamentary oversight.

In New South Wales, the same path is underway following a NSW Parliamentary inquiry, and advice from the NSW Auditor-General on the budget position of the Independent Commission Against Corruption (ICAC), Electoral Commission, Ombudsman and Law Enforcement Conduct Commission. In October 2020, the Auditor-General agreed the current approach to integrity agency funding presented 'threats to their independent status', did not sufficiently recognise their roles and functions 'are different to other departments and agencies', and involved an 'absence of transparency' and inappropriate application of efficiency dividends and other savings measures.

Finally, the challenge of financial independence reinforces the wider need for strengthened independence and accountability of core integrity agencies as constitutional and/or parliamentary officers.

All of Australia's core integrity agencies – at all levels – should be more connected to be able to respond to national issues.

As seen above, this principle is formally reflected for some agencies in some places, such as Victoria. However, nowhere is it reflected for all core agencies, and in some places, it is reflected for none.

Debate over the constitutional position of integrity agencies can reflects conflict over to what extent they are, or should be, accountable to executive government. The independence of the judiciary is well established, as observed by former High Court Justice William Gummow, including to ensure the accountability of integrity agencies themselves. However, while the need for independence is also recognised for integrity bodies like anti-corruption agencies, through the 2012 Jakarta Principles, it is often controversial in practice.

Strong integrity agency independence is vital as the world experiences continuing erosion in the rule of law. In 2020, even prior to the COVID-19 pandemic, the World Justice Project reported that more countries were declining than improving in rule of law performance for a third year in

a row, including Australia. This 'persistent downward trend' was particularly pronounced in relation to constraints on government powers.

A vivid example was the sacking of several federal watchdog agencies (inspectors-general) by the US Trump administration during the pandemic.

Whether integrity agencies should be recognised as a fourth, integrity branch of government is an ongoing question – advanced by NSW Chief Justice James Spigelman and integrity agency heads at both state and federal level. However, the fact that these agencies are established by parliament to be fully independent of the executive reinforces why they should be formally recognised and constituted as officers of the parliament itself, directly accountable to it.

At federal level, only the Auditor-General is currently constituted this way. As recommended as part of the recent Australian Public Service Review, the same status should apply to the Ombudsman, Information Commissioner, Integrity Commissioner and other independent integrity bodies. Reinforcing this independence is a crucial step in strengthening the sustainability of Australia's core integrity agencies – at all levels – as partners in a more connected national response. ●

In the news

LEADER, LAGGARD OR LIABILITY IN WORLD ANTI-CORRUPTION? CHOICES FOR AUSTRALIA

Australia's slipping anti-corruption record (Figure 1.1) is not explained only by ethics scandals contained within the federal public sector or state governments.

Instead, the reason reinforces the important, wider choices facing how to strengthen the nation's integrity systems. These include public integrity and corruption risks which span state and national boundaries and divides between the public, private and community sectors, all of which need to be addressed by more coherent, connected anti-corruption planning.

Slowness to respond to these wider risks – and lack of a national framework for addressing them – is central to why Australia turned from being an anti-corruption leader to a laggard.

In fact, Australia's diminished reputation also stems from being caught as an active participant in international corruption, but being similarly slow in learning the lessons.

Australia's first major breaches of laws against bribing foreign officials were committed by former and current federal government companies – as revealed by the Cole Royal Commission into the Australian Wheat Board (2006), then the systemic corruption by Securency Ltd and Note Printing Australia, companies owned by the Reserve Bank of Australia, finally revealed in 2018.

Photo 1.1: Myles Curtis, former Chief Executive and General Manager of Reserve Bank-owned banknote company Securency Ltd, pleaded guilty in 2017 to conspiracy to bribe foreign public officials in Indonesia and Malaysia. *Source: The Hume Weekly / ACM*

Despite this legacy, Australia's progress in foreign bribery law reform and enforcement remains limited – notwithstanding important initiatives such as the Bribery Prevention Network.

A similar challenge faces Australia's role as a destination for proceeds of international corruption. While Australia's cooperation against money laundering has been increasing, it is still yet to close many loopholes identified by the worldwide Financial Action Task Force (FATF) in 2015 and 2018.

An example is weakness in efforts to stop corrupt officials and companies – domestic or foreign – from hiding profits in Australian real estate. Despite Australia being an 'attractive destination' for corruption proceeds, FATF found federal and state responsibilities were 'not effectively coordinated'.

Federal responsibility for controlling the flow of criminal proceeds into real estate was recently transferred to the Australian Taxation Office (ATO). However in 2018, the Australian National Audit Office found this effort was still in its infancy. Transparency International research has confirmed the urgency of stronger regulation in Australia, Canada, the United Kingdom and USA.

Foreign revelations about Melbourne property owned by military leaders from South Sudan, and unexplained wealth behind Sydney properties occupied and owned by family members of ousted Papua New Guinea prime minister Peter O'Neill, point to the ongoing problems stemming from Australia's slow pace of action.

BENEFICIAL OWNERSHIP

Across government and private sector, and international and state boundaries, stopping corruption hinges on closing down the use of anonymous 'shell' companies to hide and transfer assets

In 2020, former senior Western Australian state public servant Paul Whyte pleaded guilty to stealing $22 million in public funds over an 11-year period, using a fake invoice scheme through three such shell companies.

As host of the 2014 G20 Summit, Australia showed international leadership to shut down anonymous shell companies by winning support for new High Level Principles on Beneficial Ownership Transparency. However little action followed, with promises to move towards an Australian public register of true company ownership remaining unmet.

Slow progress on these issues shows why Australia's success hinges on a wide, long term approach to issues of integrity and regulatory reform.

Photo 1.2, Photo 1.3: The house at Warrawee on Sydney's Upper North Shore (above), bought for $6 million in August 2020 in the name of Lynda Babao, wife of Papua New Guinea's former prime minister Peter O'Neill (left). *Credit: Domain / AAP (Craig Ruttle)*

This wider approach is especially relevant to the federal government, as leader of Australia's responsibilities under the United Nations Convention Against Corruption, as well as the national contact point for ensuring Australian businesses meet wider integrity obligations under the OECD's Guidelines for Multinational Enterprises on Responsible Business Conduct.

These roles reinforce the federal government's hold over standards of integrity and conduct across all sectors of society. As shown by the Hayne Royal Commission into Misconduct in Banking, Superannuation and Financial Services (2017-2019), the Australian government's regulatory settings are central to whether the domestic economy becomes fertile ground for corruption.

Yet just as the strength of federal business regulation was a major question giving rise to that inquiry, so too that question remains after leadership changes forced by integrity issues at the main regulator itself.

Photo 1.4: Iron ore mine pit in the Pilbara region, Western Australia – where weak regulation and governance led to the May 2020 destruction of some of the world's oldest Indigenous sacred sites.
Credit: STRINGERimage / Getty Images

NATURAL RESOURCE TRANSPARENCY AND GOVERNANCE

The need for the federal government to lead a broad approach to corruption and integrity risks is also reinforced in other industry sectors.

For example, Australia is still yet to fully implement the global Extractive Industry Transparency Initiative, despite the huge importance of the mining sector to the national economy, instead largely deferring to state governments.

In May 2020, Australia received a stark reminder of weaknesses in state and federal mining regulation, after mining giant Rio Tinto destroyed a 46,000-year-old Indigenous heritage site, the Juukan Gorge rock shelters, during an iron ore expansion.

There were ultimately corporate consequences, but the backlash from Traditional Owners and the wider community highlighted the importance of transparency, informed consent, and genuine freedom from coercion and undue influence in ensuring private profits do not drive major abuses of entrusted corporate power.

For Australia, these issues provide a reminder that strong public integrity rests on respect for citizens' rights; from fairness and honesty in decision-making and business, to freedom of expression and political participation, to social justice including recognition of Indigenous rights.

In 2013, compliance with the Treaty of Waitangi was included as a measure of the strength or weakness of New Zealand's national integrity system. For Australia, effective ways of resolving the constitutional position of Aboriginal and Torres Strait Islander peoples remain a priority for ensuring respect for equivalent rights, and important measure of public integrity into the future, through reforms such as those proposed by the Uluru Statement from the Heart.

LOOKING AHEAD

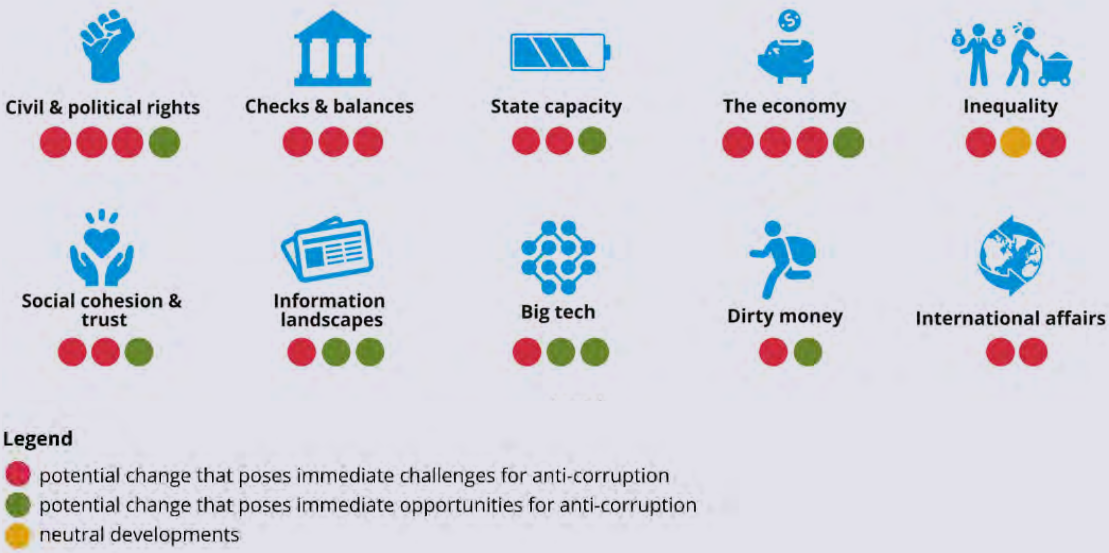
As Australia navigates the COVID-19 pandemic and economic recovery, pressures on integrity and accountability reinforce the need for a wide approach to anti-corruption – bridging values, standards and regulation across borders and sectors.

Across the world, Transparency International researchers have identified the fragility of accountability measures in the face of the health and economic responses to the crisis, married with the risks of speed and reduced social oversight – almost a perfect storm of corruption risk (Figure 1.5).

However, as well as the imperatives of protecting public resources and fighting financial exploitation, the months and years ahead point beyond simply risks of direct financial corruption, and how Australia will defend itself against corruption pressures, to larger questions of how Australia will contribute positively to improved anti-corruption standards in a more coherent way.

For Australia's governments, reform provides the opportunity for a comprehensive national anti-corruption plan that connects all levels, agencies and stakeholders in a positive agenda to bolster and build integrity in the discharge of entrusted power – not simply stemming bad behaviour by public office holders in individual circumstances, but investing in reforms that will help deliver social justice, equity and sustainable prosperity, for the common good. ●

Figure 1.5: Integrity risks and implications in the post-COVID19 era.
Source: Marie Chene & Jon Vrushi (eds), Getting ahead of the curve: Exploring post-COVID-19 trends and their impact on anti-corruption, governance and development, Transparency International, May 2020.



FOCUS AREA B: A STRONG FEDERAL INTEGRITY COMMISSION

Overview

INTRODUCTION

After two decades of debate, Australia is close to introducing a new agency for combatting federal government corruption – filling the single biggest institutional gap in the nation's integrity system.

However, there is intense debate over whether the new commission will deliver the system that the community needs and expects.

These questions reinforce Australia's opportunity to ensure the new agency makes a substantial and positive impact, nationally and globally. They also show that design of the federal integrity commission is striving to overcome difficulties in anti-corruption enforcement which have become very clear, not only locally but internationally. This includes the need for:

- Scope to adapt to address changing forms of corruption, integrity risk and public concern about abuse of entrusted power
- Strong, systematic and enforced prevention measures for promoting integrity; and
- Best practice investigation and enforcement powers, aimed at securing remedies

The way these issues are addressed will impact the effectiveness and credibility of the national integrity commission with the wider public.

As Commonwealth parliament prepares to legislate, there is opportunity to move beyond simply copying state anti-corruption bodies or existing law enforcement agencies, and instead establish a best-practice model for all jurisdictions.

With the right actions, this approach can help end controversy and confusion over how corruption is best stamped out and prevented across all levels of government.

WHAT SHOULD BE DONE

The political consensus behind a new national anti-corruption agency provides the perfect opportunity for better coordination to strengthen the work of integrity agencies across Australia's entire federal system.

It can also mean strong new benchmarks for how all Australian jurisdictions, and other countries, address the challenges of fully exposing, preventing and remedying serious threats to public integrity.

The answers lie in an agency supported by:

- wide scope and jurisdiction, including coverage of non-criminal and "grey area" corruption;
- a strong legislative framework and mandate for preventing corruption than has ever been seen before; and
- best practice investigative powers which resolve current disputes, threatening to limit the effectiveness of the commission, by providing clearer, more consistent safeguards.

ACTIONS NEEDED

ACTION 3

ENSURE SCOPE TO REVIEW ANY CONDUCT UNDERMINING PUBLIC TRUST

- Comprehensive scope for the Commission to investigate any conduct – criminal or non-criminal – which undermines confidence in the integrity of public decision-making
- Priority on serious or systemic matters but extending to any misconduct involving real or perceived conflicts of interest or undue influence
- Common minimum standards for all federal public officials irrespective of status or role, and private individuals and entities involved in federally funded services and projects
- Full capacity to receive and act on corruption information from any person

ACTION 4

LEGISLATE STRONGER CORRUPTION PREVENTION FUNCTIONS

- A federal integrity commission with a new, model corruption prevention mandate for Australia – targeted on situational and systemic corruption risks
- Legislated requirements for all public and contracted entities to implement prevention frameworks, with active central monitoring and compliance
- Comprehensive mandatory reporting requirements, for all public officials and agency heads to centrally report suspected integrity failures
- Adequate funding with public reporting on the average proportion of integrity commission expenditure spent directly on corruption prevention

ACTION 5

ENACT NEW, BEST PRACTICE INVESTIGATION AND PUBLIC HEARING POWERS

- Full powers to hold compulsory hearings (public and private), conduct public inquiries and make public reports wherever in the public interest
- More consistent safeguards for exercise of discretion to hold compulsory hearings – including clearer, best practice criteria for public hearings, requiring ongoing assessment of the feasibility and merit of prosecution, and implications for potential proceedings, wherever there is apparent (prima facie) evidence of a criminal offence
- Legislated requirements for Directors of Public Prosecutions and disciplinary bodies to prioritise corruption enforcement responses in the public interest

Background

WHY WE MUST ACT

Despite its comparatively strong institutions, Australia's integrity system has developed in a semi-coordinated way over the years – with a lack of a federal-level integrity or anti-corruption commission becoming the single most obvious gap.

This slow and piecemeal process is shown by the 16 years it has already taken to create this agency. Australia's federal government first committed to establish an 'independent national anti-corruption body' in 2004, in line with the draft recommendations of Australia's first national integrity system assessment.

However, when actually created in 2006, the Australian Commission for Law Enforcement Integrity (ACLEI) was a narrower body with jurisdiction over only two federal agencies (the Australian Federal Police and Australian Crime Commission). Later this was enlarged to five agencies, despite parliamentary committees recommending an even wider approach.

After several proposals from across the political spectrum, the federal government committed to create a new, larger Commonwealth Integrity Commission in December 2018, releasing draft legislation for comment in November 2020 (*see context: 'Making History: Bipartisan Integrity Reform'*).

This government proposal for the new commission would:

- Expand ACLEI's oversight of federal regulatory agencies from five to nine, using ACLEI's "full" anti-corruption powers under one Division of the new body (covering approximately 50,600 federal public officials, or 21 percent of the whole federal government); and
- Create a second Public Sector Division to investigate corruption across the rest of the federal public sector (79 per cent), including parliamentarians, but with a narrower scope – only conduct giving rise to a criminal offence – as well as narrower powers.

Widespread criticism of this approach has brought debate over the right role, scope and powers of all anti-corruption agencies into sharp relief. These design questions are as important as whether to have such an agency at all.

An anti-corruption commission is not the only current institutional gap in the federal integrity system.

As shown in Figure 2.1, an anti-corruption commission is also not only the current institutional gap in the federal integrity system. It does not replace the need for – but can support – the strengthened integrity regimes also needed within the Commonwealth Parliament itself (*see Focus Area C: Open, Trustworthy Decision-making*) and the type of federal judicial commission recommended by the Law Council of Australia to boost integrity and public confidence in the judiciary.

However by getting the answers to these larger design questions right, the opportunity to establish a new integrity commission will determine not only if it will fulfil its purpose, but demonstrates "best practice" solutions for integrity systems across Australia and beyond.

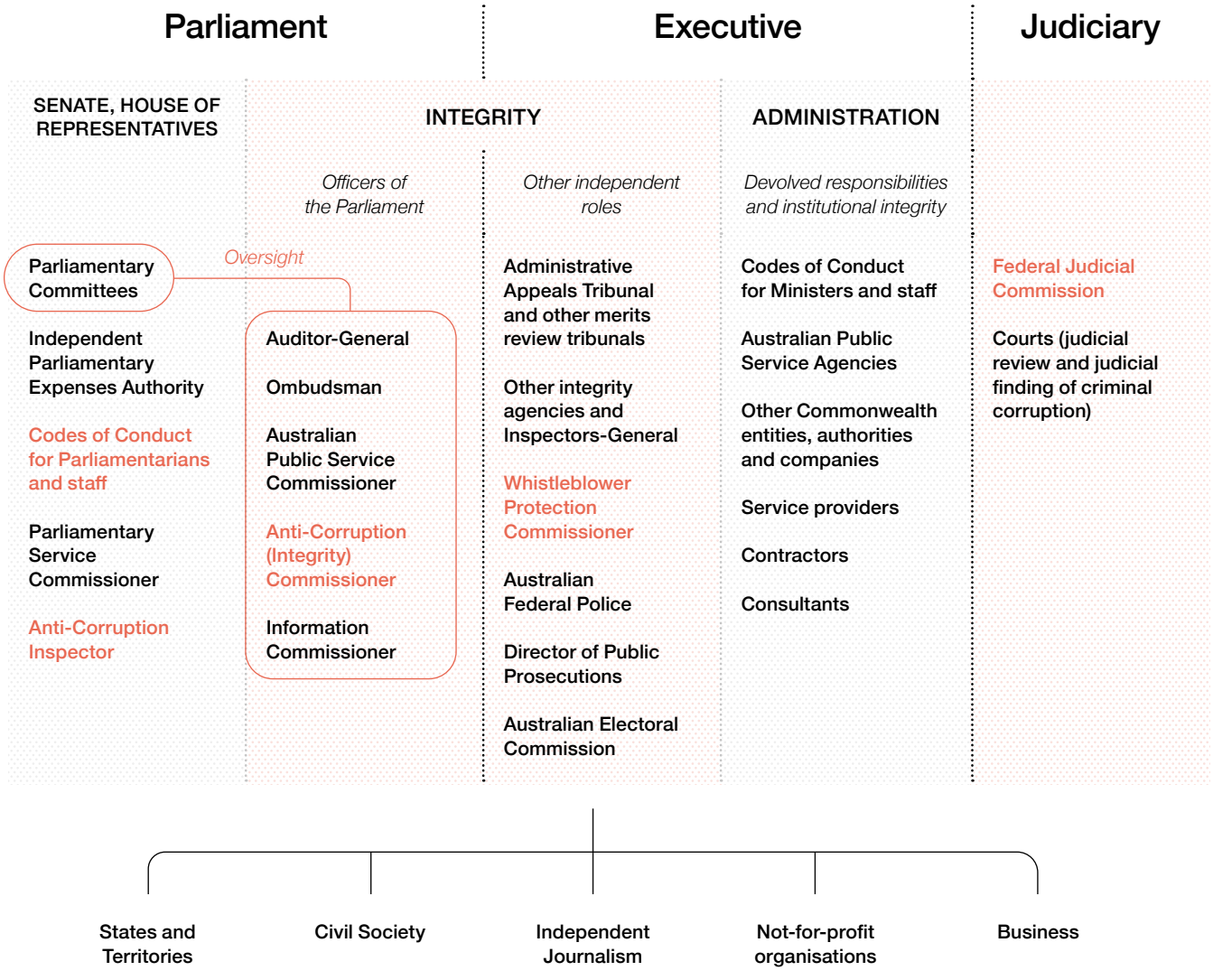


Figure 2.1: A Commonwealth integrity system map for 2030. *Source: Adapted from Nikolas Kirby & Simone Webbe (2019), Being a trusted and respected partner: the APS integrity framework. An ANZSOG research paper for the Australian Public Service Review Panel. March 2019*

ACTION 3

ENSURE SCOPE TO REVIEW ANY CONDUCT UNDERMINING PUBLIC TRUST

To be effective, the new federal integrity commission needs to have comprehensive scope to investigate any conduct – criminal or non-criminal – which undermines confidence in the integrity of public decision-making, along with powers to work with other agencies to prevent and remedy such conduct.

International experience shows a wide scope is central to the ability of anti-corruption agencies to adapt quickly to changing forms of corruption, integrity risk and public concern about abuse of entrusted power.

Transparency International's Global Corruption Barometer research shows that for Australian citizens, corruption does not only include criminal offences like theft and bribery. Rather, most citizens identify corruption as beginning with conflicts of interest, undue influence, favouritism, nepotism, cronyism and delayed forms of quid pro quo that easily go undetected or unsanctioned – if scrutiny is limited to cases that will support criminal charges and convictions beyond reasonable doubt.

Already, most Australian anti-corruption bodies including the Australian Commission for Law Enforcement Integrity (ACLEI) operate with wide definitions of 'corruption issue' – enabling enquiries into any conduct that compromises public integrity or breaches standards before it reaches a criminal scale, or which requires a remedy even if no criminal convictions can be obtained.

Currently, the government proposal for a Commonwealth Integrity Commission with split jurisdictions dates from ACLEI's foundation, when criminal corruption was left to the Australian Federal Police (AFP) and the wider approach was kept for ensuring integrity in only two agencies.

However, with ACLEI's expansion, that is no longer the case. By excluding 79 per cent of the federal public sector from the wider approach, the proposed scope of the Commonwealth Integrity Commission would leave out a vast bulk of substantial non-criminal, "grey area" corruption risks, including Defence purchasing and most other government contracting (for context, see 'Oversighting the Big Guns').

Provided the new agency's powers are subject to effective safeguards, an effective commission will have jurisdiction to investigate any conduct, whether criminal or non-criminal, which undermines confidence in the integrity of public decision-making – defined not only in terms of criminality or legality, but the honesty, fairness and transparency that are also central to integrity.

While priority should be given to serious or systemic matters, this scope should extend to any misconduct involving real or perceived conflicts of interest or undue influence where the commission deems this to be warranted – due to their inherent risk of leading to, and pointing towards, more serious corruption.

In this way, a modern, national scope would ensure attention can be given to any

Continues on page B-10.

In the news

OVERSIGHTING THE BIG GUNS: DUAL STANDARDS AND DUPLICATION?

Any anti-corruption commission should be able to focus on the areas of biggest corruption risk – like the big money government spends on buying equipment, services, goods and facilities, and decisions by senior officials and agency heads which cannot be easily reviewed by other officials.

However the federal government's Commonwealth Integrity Commission proposal would see only nine agencies (or 21 percent of federal public sector officials) subject to a wide definition of 'corruption issue', giving rise to full oversight and investigations by the Commission. For the other 79 percent, scrutiny would only flow if there was already clear evidence to suspect a criminal offence.

This means 92 per cent of all federal government contracting – which totalled more than $295 billion in 2014-19 – would not be subject to full oversight but rather the narrower standard, as shown in Figure 2.2.

Agencies left out of the full scope include the biggest spender by far – the Department of Defence, whose procurement program of $38 billion in 2018-19 was two-thirds of all federal contracting. In June 2020, the Commonwealth committed another massive $270 billion to defence spending in the next 10 years.

Photo 2.1: Submarine contracts worth over $50 billion are just part of the multi-billion dollar federal defence contracting not covered by the full scope and powers of Australia's proposed Commonwealth Integrity Commission. *Credit: AAP / DCNS Group*

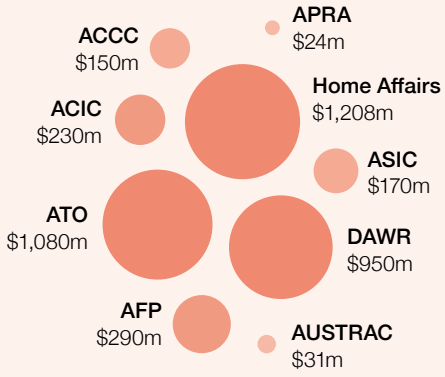
The integrity risks are huge. In 2016, Defence announced a deal with the French company Naval Group (then known as DCNS) to build 12 new submarines at a cost of $50 billion, even though DCNS received a "D" categorisation (limited evidence of ethics and anti-corruption programs) in Transparency International's 2015 Defence Companies Anti-Corruption Index. French prosecutors earlier alleged that DCNS engaged in active bribery of foreign public officials to win a contract to build submarines for Malaysia.

In 2018, Defence contracted US firm Lock N Climb to provide ladders for aircraft maintenance in a limited tender process, despite the company being blacklisted by American agencies due to bribery. In 2019, a senior Defence IT official bypassed competitive tendering to award an almost $400,000 contract to IT firm Sinapse Pty Ltd – where his son worked – without even declaring the interest.

Federal government procurement (2018–19) and anti-corruption oversight.

Federal agency procurement INCLUDED under full scope and powers of the proposed Commonwealth Integrity Commission

(law enforcement division)



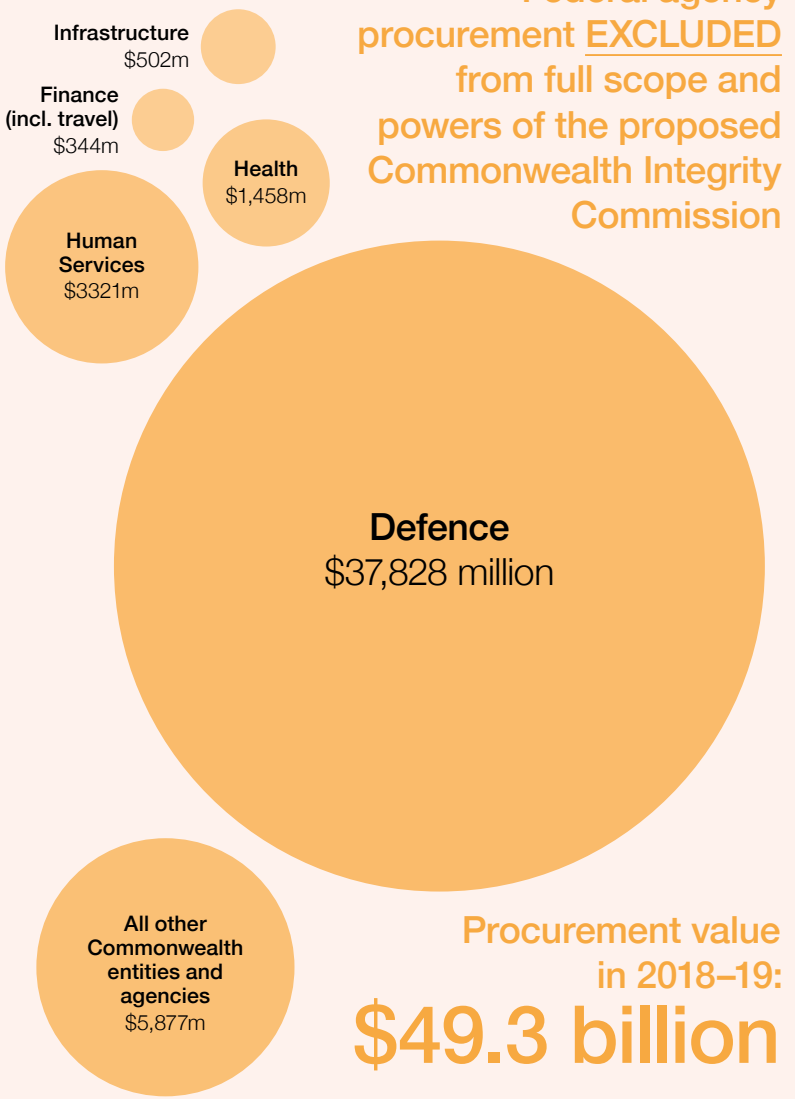
Procurement value in 2018–19:

$4.1 billion

Proportion of total:

8%

Federal agency procurement EXCLUDED from full scope and powers of the proposed Commonwealth Integrity Commission



Procurement value in 2018–19:

$49.3 billion

Proportion of total:

92%

Figure 2.2: Value of Australian federal government procurement contracts over $10,000, financial year 2018-19, by agency.
Source: Austender.

Glossary of Acronyms: ATO: Australian Taxation Office; **AFP:** Australian Federal Police; **ACIC:** Australian Criminal Intelligence Commission; **AUSTRAC:** Australian Transaction Reports and Analysis Centre; **ASIC:** Australian Securities and Investments Commission; **ACCC:** Australian Competition and Consumer Commission; **APRA:** Australian Prudential Regulation Authority; **DAWR:** Department of Agriculture and Water Resources.

Other federal agencies left to the lower level of scrutiny also spend a lot of money. The Department of Finance awards government travel services worth over $2.5 billion per year. Since 2014, this lucrative contract has increasingly been won by one company – Helloworld – despite questions over the influence of its owner as a major donor and Honorary Treasurer of the Liberal Party. Former Liberal minister Joe Hockey is also a major Helloworld shareholder.

In 2018, the Department of Infrastructure paid two Liberal donors $30 million for the Leppington Triangle, land adjacent to Western Sydney Airport later revealed to be worth only $3 million.

Since subject to three different inquiries, including an Auditor-General's report and a consultant hired by the Department to review itself, this scandal could also not be fully investigated by the proposed Commonwealth Integrity Commission unless there was first suspicion of a criminal offence.

To be effective, a federal integrity commission should be free to act on any questions relating to integrity in procurement, with or without evidence of criminal conduct, across all federal entities and purchasing – not a mere 8 per cent.

This reinforces why the commission is best served by a consistent, wide scope and mandate across the entire federal public sector.

A federal integrity commission should be free to act on any questions relating to integrity in procurement – all federal agencies should be included in the scope – not just 8%.

Continues from page B-06.

"corruptive" conduct which undermines integrity in public decision-making – whether intentional or reckless, and irrespective of by whom – so that effective solutions can be found.

The wide approach to 'corruption issues' already used by ACLEI can and should be extended, rather than duplicated with a parallel, narrower scope limited to serious criminal matters, which currently restricts the corresponding agencies in South Australia and Victoria.

Similarly, the approach needs to include common minimum standards for all federal public officials irrespective of their status or role, as well as private individuals and entities involved in federally funded services, projects, contracts or grants, or who are seeking to benefit from public decisions.

As then Commissioner of the Australian Federal Police, Mick Keelty, told a Senate Committee in 2006, variations in standards of oversight regimes are likely to simply see corruption move to the weakest link: 'you need to expect that, if you tighten it up in one area, displacement may create a problem for you in another area.'

Comprehensive scope would also ensure that actions of elected Commonwealth politicians, including government ministers, can be held up to scrutiny and independent assurance, to ensure legitimate concerns about undue influence, favouritism or conflict of interest are resolved, especially where that cannot be achieved within the Parliament itself (*see context: 'A Lesser Integrity Standard for 'Political' Decision-making?'*).

Finally, a comprehensive approach helps ensure that when members of the public or public servants need to raise concerns about wrongdoing, these do not fall between the cracks. A federal integrity commission needs to work with other agencies, such as the Ombudsman and Auditor-General, to ensure each play their role across the spectrum of concerns, and all are addressed.

The commission needs full capacity to directly receive and act on corruption information from any person.

As currently proposed by the government, a narrow focus would not only prevent the public or whistleblowers from raising concerns without reasonable suspicion of a criminal offence – it would mean individuals had to approach the commission through another government agency first, and have the matter referred, before it could investigate.

For an effective system, none of these other agencies need or should act as a gatekeeper – or filter – against corruption concerns reaching the federal integrity commission. The commission needs full capacity to directly receive and act on corruption information from any person, something which is especially important for citizens or businesses who may not trust agencies to refer their complaint, or whistleblowers seeking confidentiality and protection from reprisal.

ACTION 4

LEGISLATE STRONGER CORRUPTION PREVENTION FUNCTIONS

Strong, systematic and enforceable measures are needed for promoting and sustaining integrity, and preventing corruption – in addition to the federal integrity commission's ability to respond to individual scandals after wrongdoing has already taken hold.

Australian anti-corruption agencies, including the new federal agency can only fulfil their mandate as integrity commissions if properly equipped and required to fulfil a clear prevention mandate and coordinate prevention-focused activities.

For Australia, it is an urgent priority to better invest in strengthening existing high levels of integrity, not simply trying to recover them after they have eroded.

As part of this assessment, research involving ten lead agencies for corruption prevention – including ACLEI – suggests current approaches are mostly ad hoc, patchy and inconsistent, with the importance of prevention not reflected in formal structures or resourcing. Internationally, research and policy for prevention are also less advanced than other aspects of anti-corruption.

A federal integrity commission provides the opportunity for a new, model corruption prevention mandate.

Despite limited evidence of effectiveness, prevention usually uses aspects of two approaches:

- a law enforcement model based on the deterrent effects of exposure, or
- a bureaucratic model based on prescribed solutions, including training and awareness.

No lead agency in Australia had a cohesive framework for bureaucratic measures, such as used in responsive regulation, and few paid major attention to situational factors for reducing corruption opportunities.

A federal integrity commission provides the opportunity for a new, model corruption prevention mandate – fully addressing situational and systemic corruption risks, rather than relying simply training, awareness and education.

While there is no one-size-fits-all, essential elements of a more cohesive strategic framework include:

- A range of activities which do not over-emphasise education or law enforcement
- System-wide, agency- and function-specific strategies that address situational contexts
- Graduated responses to breaches to maximise voluntary compliance, and
- Comprehensive performance measurement, data collection and sharing, based on outcomes.

Rather than an "added extra" to anti-corruption, an enforceable prevention approach means stronger requirements for all public and contracted entities to implement prevention frameworks, with active central monitoring and compliance to ensure this occurs.

Currently, only NSW agencies are formally required, since April 2018, to have a 'fraud and corruption control' framework including 'preventive' policies and procedures. By contrast, the Commonwealth Fraud Control Policy does not explicitly reference corruption or integrity, remains focused on measures 'to deter, detect and deal with' criminal acts, and provides no direct obligations on federal agencies to develop corruption prevention plans.

Examples of a framework where the integrity commission would enforce these requirements across all agencies are provided by Part 3 of the National Integrity Commission Bill 2018 and Australian Federal Integrity Commission Bill 2020.

Another element of a structural prevention approach is comprehensive mandatory reporting requirements, under which all public officials and agency heads must centrally report suspected corruption and integrity failures. This includes responsibility on officials to report failures within their own agency or directly to the anti-corruption agency, and for agency heads to report all such matters to the anti-corruption agency Now a feature of all state and territory integrity systems other than Tasmania, these requirements help ensure individual corruption is not played down, mishandled or swept under the carpet, and motivate public sector managers to proactively address corruption risks.

Finally, strong prevention rests on adequate funding for implementation, aided by the commission reporting on the average proportion of expenditure spent on direct corruption prevention.

Transparency International's evaluation methodology for anti-corruption agencies rates five percent or more of an anti-corruption agency's budget spent on corruption prevention as 'high'. Estimates previously released as part of this assessment suggest stronger prevention functions should be supported by at least ten percent of a properly funded integrity commission's budget.

ACTION 5

ENACT NEW, BEST PRACTICE INVESTIGATION AND PUBLIC HEARING POWERS

Appropriate investigation powers which both expose corruption and flow through to timely actions, sanctions and remedies are crucial to the success of the new agency.

In Australia, following major royal commissions into corruption in the 1980s and 1990s, almost all standing anti-corruption bodies (including ACLEI) have strong powers to search and seize evidence, under judicial warrant. They may also compel individuals to give evidence in:

- Private examinations or hearings, and/or
- Public examinations or hearings (usually as part of a public inquiry, resulting in a public report)

These powers, otherwise only possessed by royal commissions or organised crime

agencies, recognise the difficulty of getting answers on corruption issues where:

(a) high levels of deceit and cover-up may be involved

(b) direct "victim" evidence may not exist

(c) evidence can be easily hidden or destroyed

(d) potential wrongdoers are in a powerful position to resist or suppress enquiries, including because they believe they have done no wrong.

This is especially true in changing, "grey areas" of corruption, where conduct might never be criminalised or it is unclear if rules have been broken because no hard rules exist.

To overcome these problems, a strong federal integrity commission requires full powers to hold compulsory hearings (in private or public), conduct public inquiries and make public reports, wherever this is in the public interest.

When it is in the public interest for an integrity or anti-corruption agency to use these powers is a topic of heated debate (*see context: 'Public anti-corruption hearings: a double-edged sword?'*).

Widely accepted practice is for investigations to be conducted privately, as much as possible, before resorting to the use of compulsory powers, especially in public hearings. However, legislative standards range widely around Australia, with no two laws the same, and no current federal, state or territory law providing a full guide to best practice (Figure 2.3).

Legislative standards for public hearings vary widely around Australia and no current laws provide a full guide to best practice.

Compulsory hearing powers – in public or private – mean that a witness loses their right to silence. As a result, if compelled to answer, the evidence they give cannot be used against them in any later legal proceedings, such as if they are charged with a crime.

However, this important safeguard reinforces confusion about when public hearings are in the public interest. On one hand, even if they limit what evidence can be used in court or disciplinary proceedings, public hearings can be more effective than closed investigations for:

(a) exposing wrongdoing and flushing out evidence which can be used

(b) creating higher public awareness of corruption issues, and

(c) maximising the deterrent effect of the risk of being "caught" by the commission.

On the other hand, compulsory public hearings run the risk of:

(a) negative impacts on the reputation of persons of interest or other witnesses – sometimes very serious ones – as well as legal and other costs

(b) further complicating the evidence available in later proceedings, due to claims that the fairness of any criminal trial or disciplinary action has already been prejudiced, and

(c) raising public perceptions of corrupt conduct without necessarily providing public reassurance that anything will be done, due to delays before public reports or any actual action.

One response to this problem is to limit the scope of investigations to criminal offences (see 'Scope' above) and have no public hearing powers, leaving a criminal trial to do that job, if one ever happens.

By prioritising criminal justice and formal processes in order to secure timely sanctions and action...a new test would codify existing best practice in use of public hearings, and strengthen public confidence.

However, this response – which is the Commonwealth Integrity Commission proposal for most of the federal government – simply sidesteps the problem. It means many major integrity issues will only be fully investigated if addressed by other agencies or inquiries, without the same independence; or never investigated at all. Either defeats the purpose of creating the integrity commission.

The better response is to confront the confusion by identifying, and legislating, more consistent safeguards for the exercise of discretion to hold compulsory hearings – especially public ones – so that factors used to decide the public interest are agreed, understood and applied.

A first step is to make clear that hearings should normally be private, as is the case in Queensland and Western Australia, unless there are overriding reasons for a public hearing. The second step is to take Australia's existing 30 years of experience with public anti-corruption hearings, and legislate clearer, best practice criteria for when public hearings are in the public interest (Figure 2.3).

As existing and proposed laws show, this includes weighing likely impacts on reputation, privacy and confidentiality. However, it should also weigh the public interest in justice being done – and seen to be done – by maximising the chances that corrupt conduct will not simply be exposed, but addressed through formal actions, sanctions or remedies, including criminal charges.

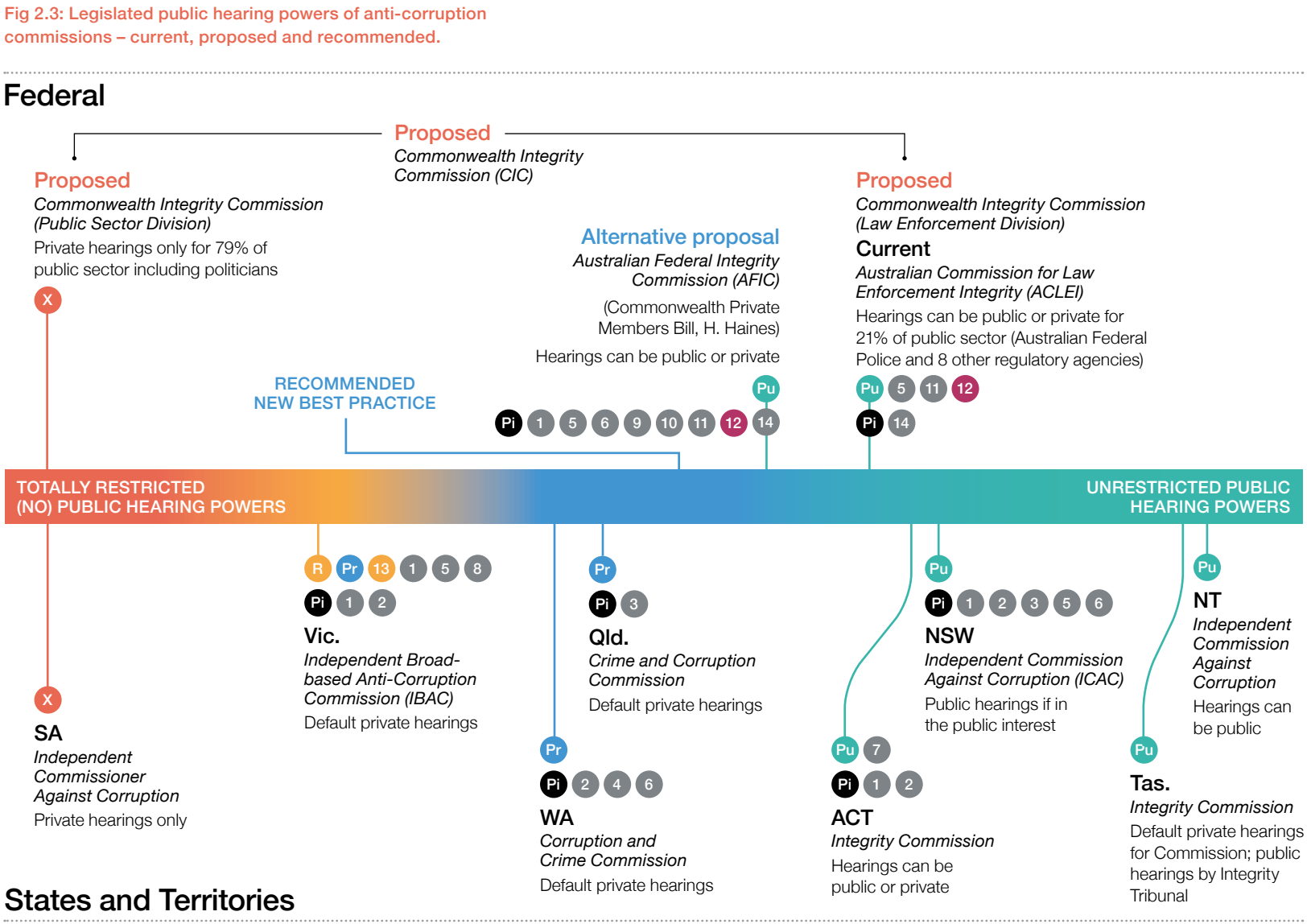
This means criteria which ensure the integrity commission maintains an ongoing assessment of the feasibility and merit of criminal prosecution, wherever an investigation produces apparent (prima facie) evidence of a criminal offence. Wherever possible, by prioritising criminal justice and formal processes in order to secure timely sanctions and action – as well as ensuring that the implications for potential proceedings are considered before compulsory powers are used – a new test would codify existing best practice in use of public hearings, and strengthen public confidence.

Finally, ensuring a formal court process is used rather than a public hearing – where feasible – can be more difficult in some states and territories than in Queensland and Victoria, where the anti-corruption agency itself has power to charge individuals with offences. That power also gives the agency more direct reason to choose the most effective combination of criminal and non-criminal processes.

Elsewhere, timely action relies heavily on closer cooperation from other authorities with the power to initiate formal criminal, disciplinary or administrative proceedings. If this is missing, as experience shows (see Context), the pressure to extract "unofficial" justice by exposing individuals in public hearings is increased.

A last part of the way forward is therefore legislated requirements for Directors of Public Prosecutions and disciplinary bodies to also prioritise corruption enforcement responses, in the public interest. By ensuring these important mechanisms also play their part, and work with the integrity commission to ensure identified wrongdoing is met with timely and appropriate action, the effectiveness of the entire integrity system is increased. ●

Fig 2.3: Legislated public hearing powers of anti-corruption commissions – current, proposed and recommended.



KEY TO PUBLIC HEARING POWERS

- X — **No public hearings**
- R — **Public hearings only in restricted circumstances**
- Pr — **Default is private hearings, public hearings possible**
- Pu — **Public or private hearings**
- Pi — **Public interest test for public hearings**

Specific circumstances or criteria for public hearings:

1. Serious and/or systemic conduct
2. Benefit of public exposure and awareness
3. Unfairness of not holding in public
4. Prejudice (general)
5. Unfair risk to reputation
6. Unfair risk to privacy
7. Unfair risk to human rights
8. Unfair risk to safety or wellbeing
9. Vulnerability
10. Under another's instruction or control
11. Confidentiality of evidence
12. Alleged or suspected criminal offence
13. Exceptional circumstances
14. Any other relevant matter

In the news

PUBLIC ANTI-CORRUPTION HEARINGS: A DOUBLE-EDGED SWORD?

Since the 1980s, royal commissions into official corruption, foreign bribery and organised crime have shown the importance of compulsory hearing powers – especially public hearings – for breaking open corrupt networks and stimulating debate about how best to maintain integrity in the public sector.

While eight out of Australia's nine anti-corruption agencies have public hearing powers – including the Australian Commission for Law Enforcement Integrity (ACLEI) (see Figure 2.3) – confusion and controversy have reigned over when and how they have been used.

In NSW, frequent use of public hearings has seen exposure of serious corruption over many years. Studies by the Australia Institute in 2017 and 2018 showed that the NSW Independent Commission Against Corruption (ICAC) used public hearings over six times more than any other anti-corruption body in 2012-16, and made 1.6 times the number of referrals to the Director of Public Prosecutions.

Prominent among the ICAC's successful use of public hearings were ICAC Operations Jasper, Acacia, Cyrus, Meeka and Cabot into corrupt land, property, licensing and mining dealings by senior Labor State politician Eddie Obeid. As well as other penalties, loss of superannuation and being stripped of his titles, Obeid was convicted and sentenced in 2016 to five years' imprisonment for misconduct in public office, and continues to face further conspiracy charges.

Photo 2.2: Former senior NSW Labor politician Eddie Obeid leaving court prior to his conviction and imprisonment in 2016 for misconduct in public office – revealed through major ICAC public inquiries. *Credit: AAP / Dan Himbrechts*

However the ICAC's use of public hearings has also proved controversial – by seeking to deter corruption through the risk of public shaming, and using its power to make administrative findings of 'corrupt conduct' irrespective of criminal charges or convictions.

In 2019, former ICAC Commissioner, the late David Ipp QC defended this approach on the basis that even when there was clear evidence of criminality, prosecutors lacked either capacity or will to take on these complex cases – an ongoing challenge recognised by NSW authorities.

In April 2015, controversy increased when NSW ICAC used a public hearing to ambush Premier Barry O'Farrell with evidence he failed to disclose the gift of a $3,000 bottle of wine, prompting his resignation despite the Commission's conclusion he had 'no intention… to mislead'.

The same month, the High Court ruled in favour of NSW prosecutor Margaret Cunneen SC, against the ICAC's attempt to investigate her actions in allegedly advising her son's girlfriend to fake chest pains to escape being breathalysed after a traffic accident. Triggered by a proposed public hearing, Cunneen's campaign drew support from the ICAC's Inspector, retired judge David Levine, who described ICAC's approach as 'unreasonable' and 'unjust', and recommended ICAC be restricted to private examinations only.

At a federal level, the risk of compulsory hearing powers being over-used, in breach of civil rights, was made real in 2018.

Foreign bribery prosecutions had to be abandoned against four executives of the Reserve Bank of Australia's banknote printing companies, after the Australian Crime Commission used a compulsory (private) hearing to question suspects in the presence of Australian Federal Police officers, in denial of their right to silence. Other prosecutions succeeded but the High Court threw out these charges due to the unfair advantage gained through abuse of the commission's coercive powers.

Compulsory hearing powers can also be used effectively without controversy, however. In Victoria, the Independent Broad-based Anti-corruption Commission's public examination powers are highly restrictive – and were made even narrower by Victoria's Labor Government in 2019 despite the Coalition Opposition agreeing there was 'no evidence' IBAC had abused its powers.

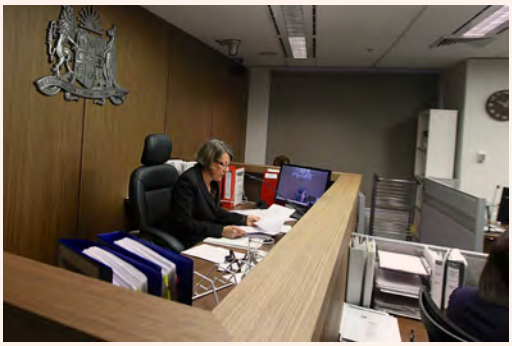


Photo 2.3: The Hon Megan Latham presides at a public hearing of the NSW Independent Commission Against Commission during her term as commissioner (2014-2016). Source: AAP/ Ben Rushton

Despite these restrictions, IBAC has used its powers to positive effect – using public examinations as an extension of larger investigations aimed at securing formal outcomes, not just exposure for its own sake. In Operation Dunham, public examinations flushed out critical evidence of wrongdoing in the Department of Education and Training's massive Ultranet IT project, but with details of criminal conduct withheld until charges were placed before the courts.

In Queensland, like Western Australia, the Crime & Corruption Commission is required to investigate privately as a default, but still has the option of public hearing powers to flush out more evidence and investigate the

Photo 2.4: Senior Sydney barrister and former Deputy Senior NSW Prosecutor, Margaret Cunneen SC. *Credit: AAP/Peter Rae*

Photo 2.5: 'I am not a bad person but I made some very bad decisions': Paul Pisale, Labor Mayor of Ipswich City Council (Queensland) from 2004 to 2016, was imprisoned after convictions in 2019 and 2020 for extortion, fraud, corruption, perjury, impersonation and sexual assault. *Credit: AAP/David Hunt*

wider context of corruption, including to support recommendations for change.

Examples include Operations Belcarra, Impala and Windage involving corruption in Queensland local governments; and Taskforce Flaxton in Queensland Corrections. Public hearings exposed systemic issues, raised awareness and flushed out evidence, but were not used in place of court action against individuals for whom there was prima facie evidence of criminal offences. Instead, these were directly charged and convicted in a normal trial, including the Labor Mayor of Ipswich, Paul Pisasale.

These different approaches show the balances that must be struck, in how public hearings are used. They point the way to an agreed, best practice approach which guarantees strong powers are available when needed, supported by due process safeguards to ensure trust in their use. ●

Convictions resulting from CCC Operation Windage.

Name	Position at Ipswich City Council	Date of Sentence
Paul Pisasale	Mayor	30 September 2020, for 7.5 years
Andrew Antoniolli	Mayor	9 August 2019, for six months
Carl Wulff	CEO	15 February 2019, for 5 years
Sharon Oxenbridge	Wife to Carl Wulff	15 February 2019, for 3 years
Claude Walker	Council contractor	15 February 2019, 3 years
Wayne Myers	Businessman	15 February 2019, for 2.5 years
Wayne Innes	Council contractor	3 May 2019, for 4 years

In the news

A LESSER INTEGRITY STANDARD FOR 'POLITICAL' DECISION-MAKING?

When members of parliament, including ministers have personal control over the allocation of government money to the community, including not-for-profit groups, important integrity issues arise.

Corruption includes abuse of entrusted power to preserve political status or wealth. Programs where individual politicians decide who gets local community grants are a source of corruption, because they easily slide into "vote buying" which perverts the democratic process and distorts decision-making away from only serving the common good.

In Australia, allegations of "sports rorts" through grants to community sporting clubs have dogged all sides of politics.

In 2020, Queensland's Labor Minister for Sport, Michael de Brenni was accused of 'intervening' in sports grants processes to favour electorates who returned Labor members. Federally, in 1994, Labor Sports Minister Ros Kelly was forced to resign after taking personal control over $30 million in funds for community, cultural, recreational and sporting grants – which the Auditor-General found were then allocated to marginal Labor seats at twice the level of marginal Coalition seats.

A quarter century later, Coalition Minister Bridget McKenzie was forced to resign after the Auditor-General found she and her staff ran a 'parallel assessment process' for awarding $100 million in community sports grants prior to the 2019 election. The process overrode the official assessment process conducted by the administering agency, Sport Australia.

Photo 2.6: Victorian Senator Bridget McKenzie resigned as federal minister for sport and deputy leader of the National Party in February 2020 after inquiries into the Community Sport Infrastructure Grant Program. *Credit: AAP / Mark Tewksbury*

$100 million

Value of community sports grants awarded by Liberal Minister Bridget McKenzie prior to the 2019 election, which forced her resignation in 2020.

Photo 2.7: South Australian Liberal candidate Georgina Downer (left) presented a novelty cheque for a federal sports grant in 2019, despite not being the elected local member - triggering the Auditor-General's 'sports rorts' inquiry. *Source: Facebook*

Senator McKenzie rejected the Auditor-General's conclusion that her office used voting results in electorates to interfere in the process for electoral advantage, claiming her process resulted in fairer and wider funding. She was ultimately forced to resign for failing to declare a gifted membership from one group awarded money, the Wangaratta Clay Target (Shooting) Club.

However the government never contested that it used the taxpayer-funded grants as a partisan strategy in the election, as if they were Coalition party money. The scandal came to light after government candidates – not yet elected to parliament – were invited to present the grants to local groups as part of their election campaign, rather than the actual (non-Coalition) members for those electorates.

Former Liberal leader John Hewson said the events 'corrupted the established government process in an attempt to gain political advantage', and called for a federal integrity watchdog with power to ensure such issues were 'dealt with fairly and expeditiously'.

In this case, the breach of Ministerial Standards was investigated only by the Prime Minister's department, without independent scrutiny nor even a full public report.

But if limited to too narrow a scope, Australia's new anti-corruption body would also not be able to provide this scrutiny. As federal Attorney-General, Christian Porter told Parliament, the government's proposed Commonwealth Integrity Commission would investigate only if 'an offence of any type' was apparent, which it wasn't in this case.

$30 million

Value of community, cultural, recreational and sporting grants allocated by Labor Sports Minister Ros Kelly, which forced her resignation in 1994.

In the news

MAKING HISTORY: BIPARTISAN INTEGRITY REFORM

Transparency International Australia first recommended a national anti-corruption commission in 2004 – but independent anti-corruption bodies have a long history, spanning all political parties.

In the 1980s, Coalition (Liberal/National Party) governments led the way. The NSW Greiner Government established the Independent Commission Against Corruption (ICAC) in 1988. Queensland's National Party government established the Fitzgerald Inquiry in 1987 and committed to its recommendations in 1989, which included the Criminal Justice Commission (now Crime & Corruption Commission) established by its Labor successor.

Victoria's Coalition government established the Independent Broad-based Anti-corruption Commission (IBAC) in 2012. Labor Governments established Western Australia's Anti-Corruption Commission (1988) and replacement Corruption & Crime Commission (2003), Tasmania's Integrity Commission (2010), South Australia's ICAC (2012) and then Northern Territory ICAC (2017) and ACT Integrity Commission (2018).

The Australian Greens have also played crucial roles in these reforms. Federally, where progress has been slowest, the Greens introduced National Integrity Commission Bills in every Senate from 2010. In 2018-2019, after federal Labor shifted to support a national integrity commission, followed by the Coalition Government in December 2018, a Greens-led Bill finally passed the Senate.

Independents have also played a key role in many states and territories, but especially in the federal House of Representatives. In 2018, the National Integrity Commission Bill introduced by Independent Member for Indi, Cathy McGowan AO and Centre Alliance's Rebekah Sharkie, provided the first model in the federal lower house, based on early analysis from this assessment.

In October 2020, the Australian Federal Integrity Commission Bill was introduced by McGowan's successor Dr Helen Haines and Independent for Warringah, Zali Steggall – followed in November 2020 by the Coalition Government's release of its own Commonwealth Integrity Commission Bill.

Photo 2.8: Independent Member for Indi, Cathy McGowan AO (centre), first member of the House of Representatives to introduce legislation for a national integrity commission, 26 November 2018. Others from left: Dr Kerryn Phelps MP, Professor A J Brown, Fiona McLeod SC (Transparency International Australia), Andrew Wilkie MP, Rebekha Sharkie MP (obscured), Serena Lillywhite (TIA) and Adam Bandt MP (Greens), the first political party to introduce (2010) and secure Senate passage (2019) of a national integrity commission bill. *Credit AAP / Mick Tsikas*

Along the way, federal parliamentary committees have made bipartisan recommendations to move towards an integrity commission since at least 2006 – including the 2017 Senate Select Committee on a National Integrity Commission.

This broad political support for the principle of a federal integrity commission shows the unique opportunity confronting Australia. It augers well for design solutions which achieve the shared purposes of such a commission – to strengthen public trust in government through independent assurance that whatever their politics, governments and public office holders are acting honestly and accountably, and fulfilling their public duties with integrity. ●

Photo 2.9, Photo 2.10: Hon Mark Dreyfus QC MP (Labor, left) and Hon Christian Porter MP (Liberal, right). First Opposition justice spokesperson and first federal Attorney-General, respectively, to propose legislation for a dedicated federal integrity commission. *Credit: AAP / Mick Tsikas*

Photo 2.11: Dr Helen Haines MP (centre), Independent for Indi, with (from left) Senator Jacqui Lambie, Senator Rex Patrick, Independent Member for Warringah Zali Steggall MP and Andrew Wilkie MP at introduction of the Australian Federal Integrity Commission Bill, October 2020. *Credit: Lukas Coch*

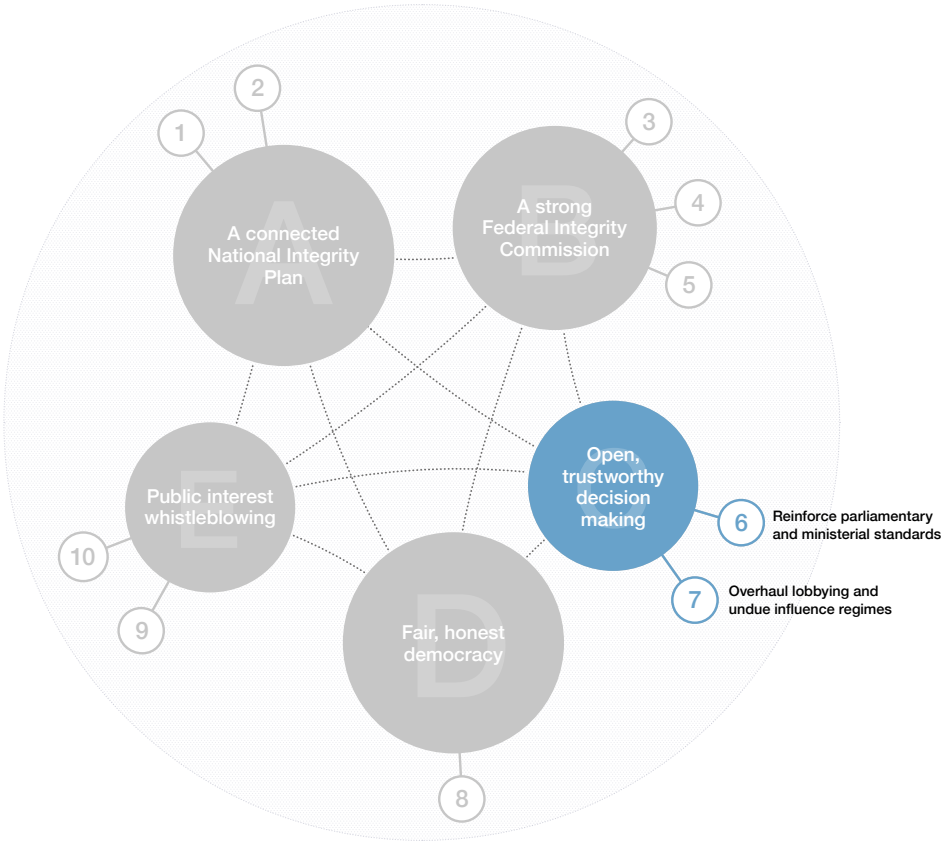
Towards A Federal Integrity Commission: The Beechworth Principles

Recalling the 1853 miners' petition that sparked a generation of democratic reform, Helen Haines' Beechworth Principles (2020) suggest five key tests for achieving this outcome:

1. Broad Jurisdiction:
   Everyone involved in Federal public service must be subject to independent scrutiny.
2. Common Rules:
   All persons must be held to a single standard of behaviour.
3. Appropriate Powers:
   The Commission must be empowered to fulfil its purpose.
4. Fair Hearings:
   Investigations should be conducted openly when in the public interest.
5. Accountability to the People:
   The Commission must remain accountable to public, not political interests.

For full text and more detail:
www.helenhaines.org/issues/integrity

FOCUS AREA C: OPEN, TRUSTWORTHY DECISION-MAKING



Overview

INTRODUCTION

The single biggest problem for integrity in Australia is diminishing public trust that decision-making is fair, honest and free of undue influence.

In politics and bureaucracies alike, some of Australia's ways of ensuring trustworthy decision-making remain world leading – but many are failing to keep pace with public concern and demographic and economic change.

Even as overall citizen confidence in competence of government rose with Australia's COVID-19 response, so too public concern continued to grow over the size of corruption as a problem in government (from 61 percent of citizens in 2018 to 66 percent in October 2020).

Again, while there are improvements to be made in many states and territories, the federal government provides the greatest need and opportunity to catch up.

Australia's federal parliamentarians, and WA's upper house, are currently the only types of public officials without any code of conduct. Mechanisms for transparency and fairness in dealings with decision-makers – especially through professional lobbying – remain weak, cumbersome and unenforced.

Success relies on simpler, more consistent rules for all; independent advice; openness; and enforced regulations that provide clarity and certainty to decision-making. Public decisio- making can be made more "scandal-free", confident and responsive in challenging times.

WHAT SHOULD BE DONE

Public office is a public trust, to be exercised for the common good. Not a way for elected officials to support their own past or future business interests, nor to favour "mates", or lay the ground for their next job outside government through an industry "revolving door".

This fundamental principle lies at the heart of opportunities to strengthen and streamline the way undue influence is prevented and controlled in public decision-making.

For politicians, strengthened standards can reinforce their ability to fulfil their challenging roles with confidence. For public servants, citizens, businesses or industries interacting with government every day, a new approach to 'lobbying' is needed, where principles of good public decision-making are recognised by and assured for all. More efficient, fully enforced regulation of professional lobbying is needed to help ensure those principles are met.

ACTIONS NEEDED

ACTION 6

REINFORCE PARLIAMENTARY AND MINISTERIAL STANDARDS

- Legislated codes of conduct for each house of parliament, ministers and staff, continuously improved and renewed by each parliament and government, covering integrity in all decision-making, including:
  - continuous disclosure and avoidance of potential conflicting interests
  - banning secondary employment by parliamentarians
  - universal appointment on merit for all public positions
- Confidential independent advice for parliamentarians and staff on compliance
- Independent enforcement by a parliamentary integrity commissioner, reporting to parliamentary committees, supported by investigation and reporting by the integrity commission when needed
- In ministerial codes, requirements for recording and proactive publishing of diary events, reasons for decisions and decision-making processes
- Enforceable minimum 3 year 'cooling off' (anti-revolving door) periods for ministers before accepting any relevant position or benefit

ACTION 7

OVERHAUL LOBBYING AND UNDUE INFLUENCE REGIMES

- Legislated codes of conduct for all officials and persons seeking to influence public decisions involving financial, personal or political benefit (including but not limited to 'lobbyists'), based on respect for positive principles of integrity:
  - transparency
  - inclusivity
  - honesty
  - diligence
  - fairness
  - legality
- Registration of all professional lobbyists (including third-party, services firms and in-house) to boost transparency, awareness and compliance
- Confidential, independent advice for all senior office holders on compliance
- Administrative, disciplinary and criminal sanctions with independent oversight and enforcement

Background

WHY WE MUST ACT

Trust in decision-making lies at the heart of overall trust and confidence in government.

As population and global competitiveness increase, so too have citizens' expectations of government. Concerns that decision-making is easily diverted away from the common good, to instead serve private or vested interests or public officials themselves is a global problem.

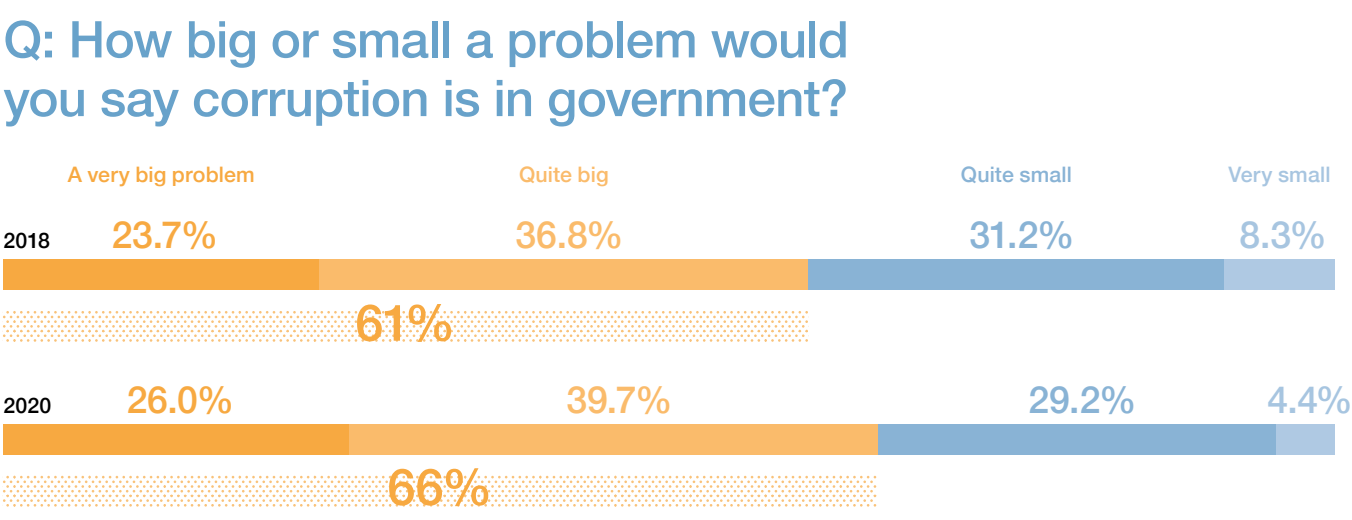
Over recent decades, declining trust in politicians and officials, recorded in many democracies, has undermined national stability and hence, security and prosperity. Australia is no exception.

In 2020, overall public confidence in federal, state and territory governments rebounded due to decision-makers' transparency and performance in response to the COVID-19 pandemic. However, as shown by Transparency International's Global Corruption Barometer survey, this does not mean citizens have become less concerned about the risk and impacts of corruption.

From May 2018 to October 2020, Australians' overall trust and confidence in government to do a good job rose, from 46 percent of citizens to 61 per cent for federal government, and 60 percent for the states and territories. However, there was also:

- no significant improvement in beliefs that governments are doing a good job of fighting corruption, notwithstanding the increased overall trust;
- no change or a continued slight increase in the proportion of citizens believing elected officials are involved in corruption; and

Figure 3.1: How big a problem is corruption in government in Australia? *Source: Griffith University and TI Australia, Global Corruption Barometer Australia, May-June 2018 (n=2,218) and October 2020 (n=1204).*



Note: Excludes don't knows; 5.9% in 2018; 9% in 2020.

- a rise (from 61 percent to 66 percent) in citizens believing corruption in government is a problem.

Concerns about corruption continue to play a strong role in citizens' confidence in government, with 41 percent of the variation in trust in federal government explained by the perceived level of corruption among federal parliamentarians (up from 37 percent in 2018).

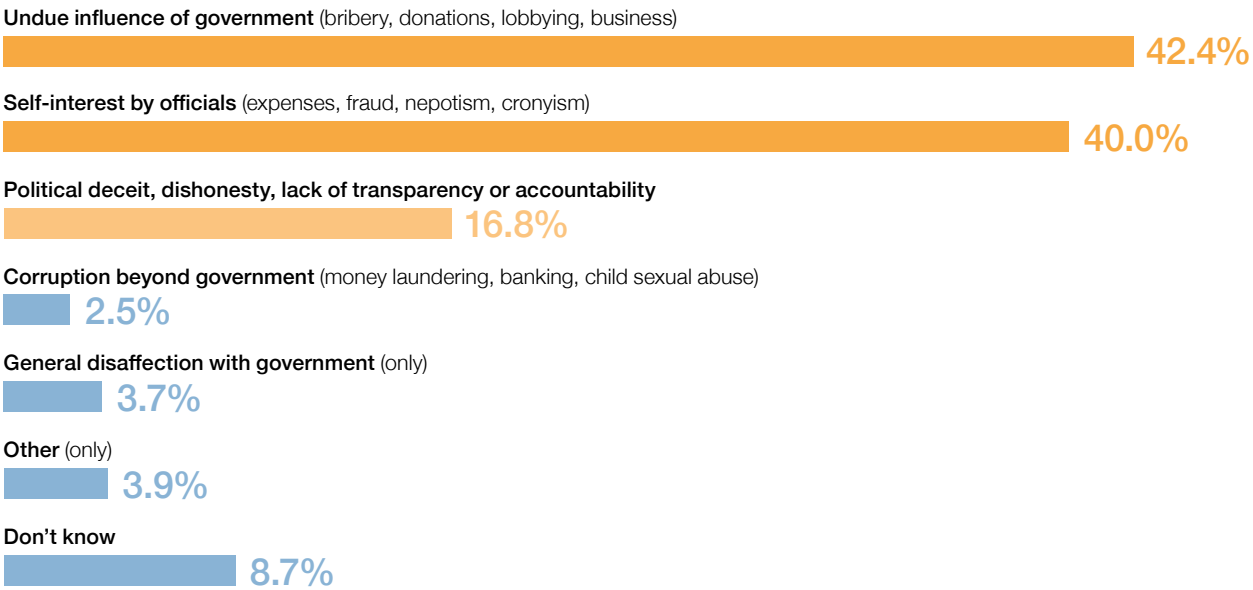
Even more important are the insights provided by public attitudes about the types of corruption that impact on trust in government decision-making. For the first time worldwide, our assessment asked citizens to explain what they meant when they saw corruption as a problem. Only four percent nominated simply issues of disaffection or dissatisfaction with government, and only three percent purely nominated issues of non-government corruption, such as banking misconduct. Otherwise themain types of corruption fell into three main groups:

- Accountability failures, political dishonesty, deceit or non-disclosure (17 percent)

- Self-enrichment by politicians or officials, including theft, embezzlement, abuse of expenses, nepotism or cronyism (40 percent)

Figure 3.2: Types of corruption that worry Australians.
Source: Griffith University and TI Australia, Global Corruption Barometer Australia, May-June 2018 (n=1,932; all respondents (86%) who identified corruption as more than a very small problem).

Q: What kind of corruption do you think is the main problem in government?



Note: Open-ended responses, grouped in analysis. Columns add to more than 100 per cent, as respondents could volunteer more than one kind.

- Undue influence, unfair access and perversion of decision-making by particular interests, whether for cash or direct gain or other reasons (42 percent)

This reinforces why anti-corruption and integrity measures must be aimed not only at "hard" corruption like bribery (purchased decisions), but "soft" and "grey area" corruption marked by failures in due process, conflicts of interest and possible undue influence. If only "hard" corruption crimes are the focus, many of the most crucial problems are simply ignored.

These growing concerns reinforce why Australia has been slipping in the Corruption Perceptions Index. In the 2017 World Economic Forum Global Competitiveness Index, even when Australia ranked relatively well for combatting 'irregular payments and bribes' (12th out of 137 countries), it ranked less well for 'favouritism in decisions of government officials' (21st) or for 'public trust in politicians' (22nd).

Strong integrity assurance is supported by the fundamental principle, reflected in Australian public law, that all public office carries with it a public duty and a public trust.

As High Court justice Stephen Gageler wrote in 2016, every holder of public office 'has a duty to exercise public power only by reference to some version of the public interest'. In 2018, NSW Chief Justice Tom Bathurst found it was a 'breach of the trust imposed' for elected officials to use power and authority to advance interests other than those of the 'constituents who they are elected to serve.'

In 2015, Australia's High Court recognised that corruption takes many forms. Direct '"quid pro quo" corruption', such as illegal bribes involving explicit promises in exchange for money, represent just one end of the spectrum. Other 'more subtle' kinds of corruption include "clientelism", where officeholders 'decide issues not on the merits or the desires of their constituencies', but according to the wishes of others from whom they have gained, or want to gain, support:

42%

Australian respondents who think undue influence (bribery, donations, lobbying, business) is the main corruption problem in government.

Unlike straight cash-for-votes transactions, such corruption is neither easily detected nor practical to criminalise. The best means of prevention is to identify and to remove the temptation.

To ensure integrity and trust in democracy, these principles mean serious strengthening of electoral and political processes (*see Focus Area D: Fair, Honest Democracy*). But they apply even more strongly once officials win or are appointed to the office they hold, and begin exercising power.

Anti-corruption and integrity bodies must operate with a wide enough definition of corruption, not limited to hard crimes, to allow them to fully address potential breaches of trust. However trust in decision-making also relies on positive assurance that officials are doing the right thing, exercising their powers for the common good – not simply enforcement when they fail.

Responses are needed which will help make decision-making stronger, especially in the post-COVID-19 era. The focus needs to be at both the political (parliamentarians) and bureaucratic levels (public servants) of decision-making.

ACTION 6

REINFORCE PARLIAMENTARY AND MINISTERIAL STANDARDS

At the political level, the key to putting decision-making above reproach is to strengthen assurance that parliamentarians and ministers are going about their vital work, with strong understanding and adherence to these fundamental principles.

Codes of conduct are the first step to this result for almost every organisation in Australia – normal for workers and leaders in business, and mandatory throughout public sector agencies and enterprises.

For elected leaders, endorsing an enforceable code of conduct is central to public confidence that no one is beyond accountability, and all are committed to lead by example, as well as providing transparency as to when and how accountability works. Benchmarks developed by the Commonwealth Parliamentary Association (2015) show how.

As of 2019, legislated codes of conduct now apply to the members in most or all houses of parliament, ministers and staff, continuously improved and renewed by each parliament and government. Only the Western Australian Legislative Council, the federal House of Representatives and the Senate remain gaps (*see context: 'Parliamentary codes of conduct: the missing federal link'*).

Filling these gaps is fundamental to ensuring trust in federal legislators and ministers, identified as the weakest area in their integrity system. For parliamentarians and the public alike, the advantage of strong codes lies in lifting standards beyond simply criminal compliance, or what will risk public scandal, to cover integrity in all decision-making, including principles and processes for:

- continuous disclosure and minimisation of potential conflicting interests
- preclusion of secondary employment by full-time parliamentarians and
- ensuring universal appointment on merit for all public positions

Banning secondary employment does not mean parliamentarians cannot preserve existing assets, investments or business interests, for example through a blind trust. However it does mean that as public officers paid to work full-time for the community, they are expected to do so, without conflict.

Concerns over nepotism and cronyism... infect even advanced democracies, long presumed to have strong institutional protections for appointment on merit.

Universal appointment on merit is central to public trust. Concerns over nepotism and cronyism, including use of public resources for partisan political entrenchment, infect even advanced democracies, long presumed to have strong institutional protections for appointment on merit.

The alternative is even stronger reform, such as in the United Kingdom, where a Commissioner for Public Appointments was established in 2019 purely to ensure all appointments, especially those made by ministers, are made in accordance with accepted principles.

Rather than creating additional regulatory regimes every time a new issue arises, best practice in Australia already points to the advantage of single, holistic integrity codes, supported by two elements which give confidence to politicians and the public that the principles are real:

- Availability of independent, confidential advice to all parliamentarians and staff on compliance with codes, such as in Queensland, Tasmania, Victoria, NSW and ACT;

- Independent enforcement by a parliamentary integrity commissioner, reporting to appropriate parliamentary committees, supported by investigation and reporting by the jurisdiction's wider integrity or anti-corruption commission when needed.

Without a mechanism for independent investigation of alleged breaches, public confidence in the results will remain elusive.

The choice for parliamentarians is whether they prefer a mechanism embedded in the parliament, overseen by the presiding officers and relevant committees, with closer understanding of political life – or no mechanism, leaving resolution of complaints entirely to partisan politics, media scrutiny, and the heavier involvement of external integrity agencies. Final crucial elements of any ministerial code of conduct – especially at federal level – are:

- minimum requirements for recording and proactive publishing of all diary events, reasons and processes relating to ministerial decisions, and

Without a mechanism for independent investigation of alleged breaches, public confidence in the results will remain elusive.

- an enforceable minimum three-year 'cooling off' (anti-revolving door) period before a former minister may accept any relevant appointment or benefit from any entity with a commercial interest in their former portfolio.

These requirements are crucial to any government-wide approach to regulating lobbying and undue influence. Ministers sit at the apex of government, access the most official information, exercise most power over decisions throughout the public sector, and are the most intensive targets of all lobbying.

In many Australian parliaments, including federally, the 'revolving door' in which ministers and their staff step smoothly between public office and lucrative private positions has become a chronic problem (*see context: 'Just a convenient skill set? How 'revolving doors' squash public trust'*).

While ministers are as entitled as anyone to seek meaningful employment after their retirement from parliament, research and experience shows that post-separation appointments are only rarely or partly owed to the general skills and talents of the individual alone.

Instead, their prime attractiveness often remains the 'inside' official information they have gained in public office, and the strategic value of their personal connections and influence with decision-makers still in government.

The speed with which ministers have taken up new and related roles, or even accepted them while still in office, confirms

the structural conflicts of interest when they are still exercising their ministerial role while negotiating with interested parties for fees and employment.

Under current requirements, ministers are theoretically banned from engaging in related lobbying or employment for at least 18 months. Elsewhere, jurisdictional rules for this cooling off period vary, extending up to five years in Canada.

Arguably, in return for their high public salary and superannuation, ex-ministers should prioritise the public interest by never accepting such roles. However a compromise is a restriction against taking on related roles within a period in which the ex-minister's confidential information and direct government influence are less likely to remain current. For Australia, three years—or essentially one cycle of elected government – would more effectively support the principle.

ACTION 7

OVERHAUL LOBBYING AND UNDUE INFLUENCE REGIMES

Public decision-making extends far beyond parliamentarians and ministers – it is the daily business of millions of Australian public servants. Responsibility for integrity in decision-making also relies on all parties to decisions, including business and the public.

Every element of the integrity system plays a role in trustworthy day-to-day decision-making. This includes fair and effective public administration, public service ethics and standards, and good public policy and performance. Where most concern arises, alongside the political process, is in response to undue influence through unfair or opaque access -- especially 'purchased', secret or exclusive access – by powerful lobby groups or individuals with vested, commercial interests.

Where most concern arises...is in response to undue influence through unfair or opaque access by powerful lobby groups or individuals with vested, commercial interests.

As defined by the Integrity Act 2009 (Qld), lobbying is 'contact with a government representative in an effort to influence… government decision-making'. Lobbying is intrinsic to relations between government and the community. Under the Australian Government's Lobbying Code of Conduct and Register of Lobbyists, established in 2008, lobbying is recognised as a legitimate and important part of democracy and public policy.

Currently such regimes focus on transparency in professional lobbying, in a bid to address risks of unfair access arising from the privileged connections of former insiders, including cash for access. Professional lobbying raises 'public expectation that lobbying activities will be carried out ethically and transparently', including the ability to establish whose interests lobbyists represent.

Whether current lobbying regimes are sufficient has rightly been questioned

– especially at a federal level, where the regime has been criticised for being confined to narrow categories of professional "third party" lobbyists, for its reliance on transparency alone, and for being purely administrative in nature, with no visible enforcement.

In NSW, concerns about the effectiveness of the Lobbying of Government Officials Act 2011 (NSW) have led to a far-reaching review by the NSW Independent Commission Against Corruption. In Queensland, a recent ten-fold increase in advice requests and complaints in relation to lobbying, as well as the Queensland Integrity Commissioner's increased referrals of apparent unlawful lobbying to the Crime and Corruption Commission and Queensland Police, suggests the public is right to be concerned that current regimes are not sufficient.

As a mechanism for bringing third-party professional lobbying "out of the shadows", current regimes need to be strengthened. However, more is needed than simple transparency. In and of themselves, such regimes have not answered wider problems that transparent or not, undue influence and unfair access is impacting on decision-making, to the benefit of some interests and to the detriment of the wider community (*see context: "Due" and "Undue" influence in the COVID era*).

Current lobbying regimes also do little to reinforce the responsibility and authority of decision-makers to resist undue influence, as opposed to place administrative requirements on lobbyists to record and publish their activity.

The key to a stronger system is to recognise and reinforce the positive obligations on all parties to participate in decision-making in a way that upholds its integrity and trustworthiness. This should include respect for due process; and the need to better regulate specific forms of lobbying where not only transparency but fairness of influence are critical issues.

The first essential element is legislated codes of conduct for all officials and persons seeking to influence public decisions involving financial, personal, or political benefit (including but not limited to 'lobbyists'), based on respect for positive principles of integrity:

- transparency
- inclusivity
- honesty
- diligence
- fairness
- legality

For most public officials, these principles should already be reflected in standard, enforceable codes of conduct. Lobbying legislation should also have broad application, extending these principles to all parties, leaving no doubt that undue influence or access can be independently examined, and where necessary, sanctions applied.

Codes and legislation need to reflect the process, with penalties appropriate for conduct that does not meet a standard acceptable to the public. Those responsible for regulating lobbying must have capacity to deal with any issues in an effective and timely manner.

The first essential element is legislated codes of conduct... based on respect for positive principles of integrity: transparency; inclusivity; honesty; diligence; fairness; legality.

A second necessary element is extension of registration requirements to all classes of professional lobbyist where there is need for routine transparency, disclosure of activity and awareness of ethical obligations. This includes not only "third-party" specialist firms but lobbying conducted by professional services firms (e.g. lawyers, accountants and management consultants) and in-house lobbyists employed by industry bodies (including for "strategic advice" behind the scenes, not simply face-to-face lobbying).

For public officials, access to confidential, independent advice for all senior office holders on compliance with lobbying and access principles is another critical requirement.

Finally, every lobbying regime needs to be backed up with administrative, disciplinary and criminal sanctions, independently enforced and oversighted by the relevant specialist commissioner and/or the jurisdiction's wider anti-corruption commission.

While administrative sanctions such as suspension or termination of registration are important, so too are stronger sanctions for breach of substantive duties of transparency and respect for due process. Also needed is effective capacity for investigation and compliance activity in respect of professional lobbying, an element missing from several regimes – even Queensland's, otherwise often recognised as the strongest of Australia's current lobbying regimes.

In the news

PARLIAMENTARY CODES OF CONDUCT: THE MISSING FEDERAL LINK

Over the last 30 years, the politicians of almost all Australian houses of parliament have seen the benefits of adopting their own codes of conduct – providing agreed statements of principles to guide their own individual and collective behaviour, and clarity on the processes to be followed to avoid and resolve suspected breaches of standards, in the public interest.

The most obvious exceptions are each house of Australia's national parliament: the House of Representatives and Senate (Table 3.1).

In response to developments over the years, federal parliamentary committees like the Senate Standing Committee of Senators' Interests (2012) have routinely affirmed the value of strengthening ethical support and advice for parliamentarians. But in a continuation of the 'puzzling regulation of the Commonwealth Parliament' described by Professor John Uhr, no action has followed.

Instead repeat scandals see alleged integrity breaches fought out messily in the public domain – often never satisfactorily resolved, or resulting in ad hoc reforms rather than enduring strengthening of the parliamentary integrity regime.

From 2015, scandals over misuse of public 'entitlements' for political and personal purposes led, in 2017, to creation of the Independent Parliamentary Expenses Authority (IPEA). However this effectively added a new accounting body, with an 'extremely limited mandate' of advice, monitoring, reporting and auditing of expenses; and as an executive agency, was not embedded in the parliament's other, limited ethics regimes.

At the same time, repeat scandals over ministerial conduct have sometimes been addressed under the Statement of Ministerial Standards published by each Prime Minister since 2007. However with no guarantee the Prime Minister will act on alleged breaches, and no mechanism for independent enforcement outside his or her own Department, public confidence in the results are often lacking – even when partial action is taken, as in the 2020 'sports rorts' affair (*see Focus Area B: A Strong Federal Integrity Commission*).

Several bipartisan committees, including the 2012 Senate Committee and 2017 Senate Select Committee on a National Integrity Commission have agreed on the need for an independent enforcement system.

Even when exposures to routine ethical challenges have become national security issues, the federal response has been to regulate – but not strengthen parliamentary integrity.

Table 3.1: Australian parliamentary codes of conduct.

Parliament	Chamber / House	Notes
ACT	Legislative Assembly	Code of Conduct 2005
New South Wales	Legislative Assembly	1988 Code of Conduct for Members (most recent 2020), Constitution (Disclosures by Members) Regulation 1983
	Legislative Council	1988 Code of Conduct for Members (most recent 2020), Constitution (Disclosures by Members) Regulation 1983
Northern Territory	Legislative Assembly	Legislative Assembly (Members' Code of Conduct and Ethical Standards) Act 2008
Queensland	Legislative Assembly	Code of Ethical Standards 2004
South Australia	Legislative Assembly	2002 Code of Conduct; 2004 Statement of Principles for MPs; May 2016 Statement of Principles
	Legislative Council	2002 Code of Conduct; 2004 Statement of Principles for MPs; May 2016 Statement of Principles
Tasmania	Legislative Assembly	2018; applies to MHAs & MLCs
	Legislative Council	2018; applies to MHAs & MLCs
Victoria	Legislative Assembly	Code of Conduct for MLAs & MLCs; Improving Parliamentary Standards Act 2019
	Legislative Council	Code of Conduct for MLAs & MLCs; Improving Parliamentary Standards Act 2019
Western Australia	Legislative Assembly	Members of Parliament (Financial Interests) Act 1992 (WA), Code Of Conduct For MLAs, 28 August 2003
	Legislative Council	NIL
Commonwealth (federal)	House of Representatives	NIL (Declarations of interests in standing orders only)
	Senate	NIL (Declarations of interests in standing orders only)

Photo 3.1: NSW Labor Senator Sam Dastyari resigned from federal parliament in December 2017 after accepting irregular payments and support from Chinese-linked entities and individuals. *Credit: AAP / Ben Rushton*

In December 2017, ALP Senator Sam Dastyari was forced to resign from Parliament after his pro-China statements were linked to a $1,671 travel bill paid by a Chinese-backed institute, and a $40,000 legal bill paid by Australian Chinese billionaire property developer Huang Xiangmo.

On the Coalition side, Liberal backbench MP Gladys Liu was accused of having compromised her huge political fundraising from the Chinese community through her 'direct or indirect links' with the Chinese Communist Party Government.

The events contributed to urgent passage of Australia's foreign interference regime, including the banning of most foreign political donations. However neither case was fully, independently investigated, and the *parliamentary* integrity regime remained unchanged.

Parliamentary codes of conduct are only as good as the quality of the principles they contain, and the strength of the system for enforcing them.

In October 2020, the NSW Independent Commission Against Corruption held hearings into whether the former State Liberal member for Wagga, Daryl Maguire, breached the NSW Parliament's Code of Conduct – or worse – by accepting private payments for services linked to his or his staff's roles as public officials, while supposedly employed full-time as a member of parliament.

However as ABC journalist Annabel Crabb noted, the 'stunning truth' was that the NSW regime permitted parliamentarians to run 'side hustles' as an MP, provided they disclosed them. The guidelines went so far as to insist that "engagement to provide a service involving use of a member's position" be declared, alongside other private interests – again, despite the position already being supposedly full-time, with a minimum $165,000 salary.

Public expectations would suggest any code of conduct should clearly forbid any "side hustle" involving a full-time MP accepting significant outside or secondary employment – let alone private fees for using their official time and roles in service of private clients.

However, the first step is to have any parliamentary code of conduct at all, with an effective regime of advice, support and independent enforcement.

As one senior Commonwealth integrity official (#7) told the assessment, the federal integrity system suffers a 'gap around adequate oversight of parliamentarians and ministers and their staff', which existing integrity entities simply 'don't have coverage of'. A federal anti-corruption agency alone cannot fill this gap, even if parliamentarians fall within its jurisdiction – the positive system of parliamentary integrity itself needs to be strengthened.

In the news

JUST A CONVENIENT SKILL SET? HOW 'REVOLVING DOORS' SQUASH PUBLIC TRUST

When senior government officials, especially parliamentarians walk out of their jobs and into a high-paying private role, integrity questions immediately arise.

Alarm bells sound louder as soon as the private role has any relationship to the public job the parliamentarian was just doing. They get louder again if the appointment happens smoothly and quickly – the "revolving door". Were they already making decisions while in office, because they had a relationship with the outside firm, or were thinking or hoping for the job?

Was the job already offered? Are they now using the official public information they gained – at taxpayer expense – for private purposes? Are they being employed so they can use their connections within government to get unfair access?

If the answers are 'no', then well and good. But the risks show why there are bans on post-separation employment or lobbying – such as 12 months for federal public servants and ministerial staff, and 18 months for ministers. Research by the Grattan Institute shows these bans to be full of loopholes, unsupported by sanctions and not currently enforced. Based on the career paths of 191 former federal ministers or assistant ministers since 1993, the problem affects both sides of politics.

For example, the former ALP Resources Minister, Martin Ferguson, left parliament in 2013 and took up a role with the peak oil and gas industry body (APPEA), the very sam e year. As head of natural resources with Seven Group Holdings, he was instrumental in Seven Group's attempt to buy Nexus Energy – a firm that received a lucrative lease while Mr Ferguson was in government.

In a major show of the weakness of the current regime, federal Liberal MP Bruce Billson, a former Small Business Minister, accepted a paid role with the Franchise Council of Australia in March 2016, while still a member of parliament. While he was censured by a parliamentary privileges committee for ignoring the 'primacy of the public interest' by failing to disclose the paid engagement, there was only limited recognition that he should never have held it in the first place.

Perhaps the most spectacular demonstration of the weakness of current regimes was the decision of long serving Liberal MP, Christopher Pyne, to move directly from retirement as Minister for

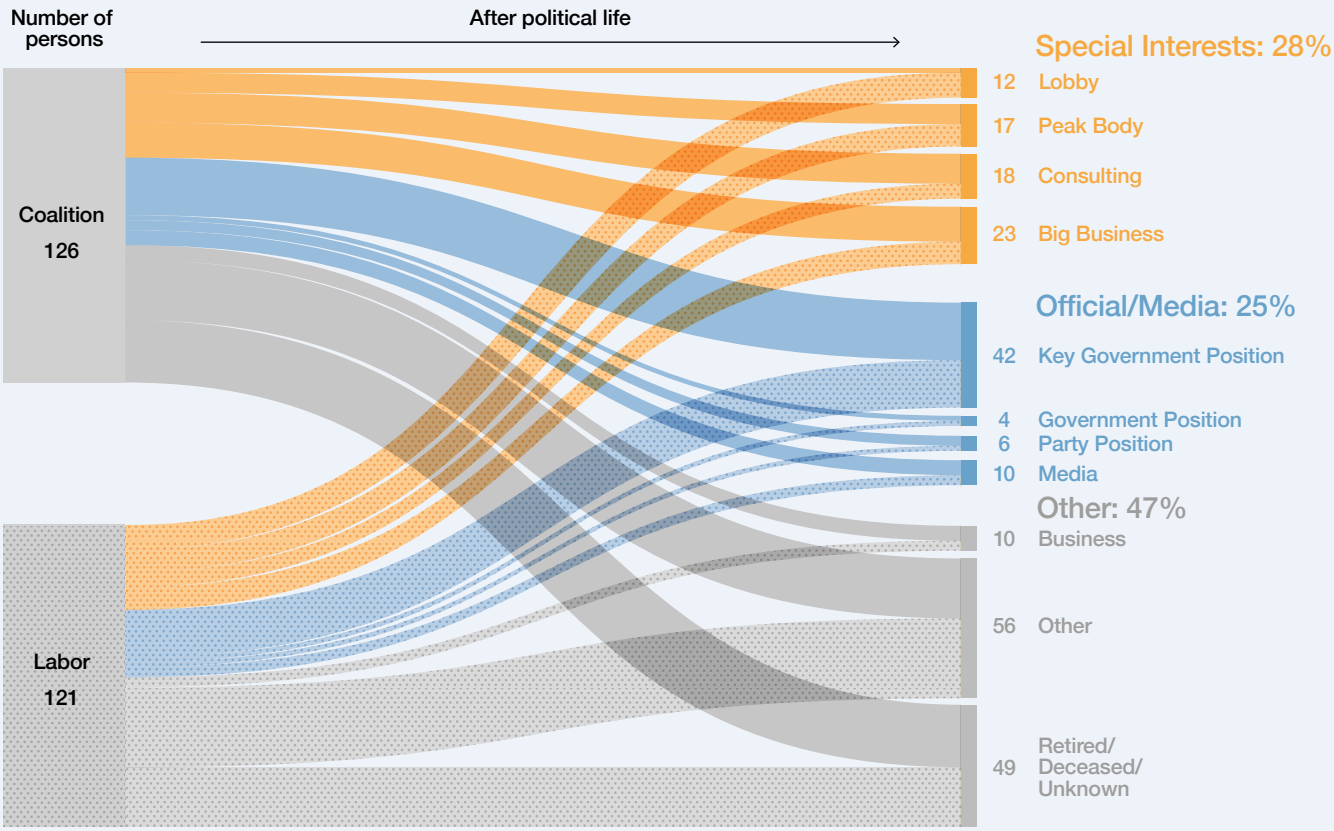
Photo 3.2: Hon. Christopher Pyne, long-serving Liberal member for Sturt (1993-2019), Leader of the Government (2013-2019) and minister for defence (2018-19) finished his career in controversy after stepping straight into a defence consultancy deal. *Credit: AAP / Lukas Coch*

Defence and Defence Industry for the three years to May 2019, to a job as defence consultant with consulting firm EY. Simultaneously, Foreign Minister Julie Bishop retired to join the board of Palladium, a private overseas aid consultancy firm, less than a year later.

A Senate inquiry confirmed that Mr Pyne negotiated his new job two months before leaving office, took it up within two weeks, and always intended to lobby on defence matters. Against the dissent of Coalition members, the inquiry was highly critical of the investigation by the outgoing head of the Prime Minister's Department – who accepted there was no breach of ministerial standards, because as an in-house advisor, Mr Pyne promised not to lobby directly, in person.

Subsequently, Mr Pyne was formally warned by the Attorney-General's Department he was banned from lobbying for one client, Saber Astronautics. The firm nevertheless went on to win two federal government grants worth almost $7 million. ●

Figure 3.3: Federal ministerial employment after politics. Research by Grattan Institute show the numbers of senior government officials who walk into high paying private roles on leaving government.
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.



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.

In the news

"DUE" AND "UNDUE" INFLUENCE IN THE COVID ERA: TIME FOR A WIDER APPROACH

In times of crisis and recovery, public decision-making has to be stronger than ever. It also needs to be agile, look for new solutions, and bring together advice from government, industry and the community in faster and better ways than may ever have been done before.

However in times of new and more streamlined decision-making – especially when government is outlaying large amounts of stimulus and support business investment – questions of due process, access and influence become even more important.

According to the OECD, the COVID-19 crisis 'creates environments that enhance risks for corruption, undue influence and bribery… and further deteriorate trust in government and businesses at a time when it's needed more than ever.'

KPMG warned corruption risks rise as governments strive to identify alternative sourcing channels for goods and investment, increasing the risk of collusion between vendors, suppliers, investors and government.

The Australian Government is focused sharply on job creation by promoting ease of doing business. It is expected to spend $507 billion as part of its COVID-19 recovery response to 2024, including more than $11 billion on infrastructure development alone.

Photo 3.3: Businessman Neville Power, former CEO of Fortescue Metals and boardmember of Strike Energy, was forced to 'step back' from board roles after appointment as Chair of Australia's National COVID19 Coordination Commission (later 'Advisory' Council). *Credit: AAP / Lukas Coch*

What governments allow by way of access to decision-making, due process, transparency and lobbying can become a critical concern.

In April 2020, recognising the lessons from previous rapid implementation of government programs – including in the 2007 global financial crisis – the Australian National Audit Office issued advice to help ensure appropriate and accountable risk management in the COVID environment.

In this environment, what governments allow by way of access to decision-making, due process, transparency and lobbying can become a critical concern.

In March 2020, the Prime Minister announced a National Covid-19 Coordination Commission (NCCC) to plan and drive Australia's post-pandemic recovery – led by Australian businesspeople, along with other government and non-government members. But as the new commission started to identify particular industries and businesses as priorities for investment, controversy began to surround its role, powers and the interests of those involved.

A leaked interim report by the NCCC proposed special support for the gas industry as part of Australia's energy strategy – despite some members having roles in that industry, including the NCCC Chair, the respected mining executive, Neville Power. Faced with allegations of undue influence, Mr Power addressed the apparent conflict of interest by stepping back from board meetings in the businesses he led, 'while he is chairing the NCCC'. Nevertheless, months later, the Prime Minister announced plans for a 'gas-led recovery' despite this conflicting with official advice on the role of gas in long-term energy plans.

Nevertheless, months later, the Prime Minister announced plans for a 'gas-led recovery' despite this conflicting with official advice on the role of gas in long-term energy plans.

The role of Mr Power and other NCCC members became even more confusing when the Prime Minister's Department could not give clear answers on how much they were being paid – initially telling a Senate committee Mr Power was receiving $500,000 per six months for the full-time role, only to clarify later that he was only expected to receive $267,000 to cover travel costs and incidentals. Some members received nothing, while others were paid $2,000 per day.

In May, a broad coalition of community groups called for due process around the roles and advice of the Commission. Independent MP Zali Steggall called for 'transparency, proper governance, and independent reporting so the Australian people know what [the NCCC] is considering, and why it's considering it, and what it is recommending to government'.

In a bid to restore trust, the Prime Minister renamed the NCCC to the National COVID-19 Commission Advisory Board in July 2020, clarifying it only had a 'strategic advisory role in providing a business perspective to Government on Australia's economic recovery.'

Nevertheless, analysis by the University of Melbourne identified it as 'a case study' of the risks that executive power 'allied with vested interests poses during times of crisis', including lack of clarity around undue influence, and absence of a duty to publicly disclose conflicts of interest.

The controversy highlights the ways legitimate policy voices interact with government, especially at times of urgency – but how the presence of vested interests, shortcuts and absence of oversight undermine trust in the integrity of decision-making, even at the highest levels of government.

FOCUS AREA D: FAIR, HONEST DEMOCRACY

Overview

INTRODUCTION

The quality of Australia's democracy is the largest asset supporting the nation's public integrity. Fair, accurate and robust electoral and voting systems lie at the heart of public participation in selecting the nation's decision-makers and confidence in the decisions the make.

Nevertheless, despite Australia being one of the world's great democratic innovators, most governments have failed to keep up with best practice against corruption stemming from the nature of the electoral process.

Systems for controlling the "arms race" of political campaign expenditure have improved in several states, but not nationally. Drivers of undue influence continue through ever-increasing pressure for funds, regulated through a fragmented, leaky system where the weakest donation rules set the standard.

Boundaries between party campaigning, supporter interests and good public policy have collapsed. In the fake news era, falling standards of honesty and accuracy mean more overtly deceptive political campaigning – eroding the bedrock of trust in government.

WHAT SHOULD BE DONE

Australia's democratic traditions need rejuvenating. As well as election administration, electoral campaign regulation needs to rapidly evolve to tackle the root causes of undue influence.

By following democratic partners like Canada, United Kingdom and New Zealand – and domestically, advances made by over half of Australia's own states and territories – the nation can take immediate strides to strengthen the integrity, honesty and fairness of elections.

Reducing the demand for cash in politics relies not simply on public funding of elections, but direct, actively enforced caps on donations and expenditure. Effective, timely disclosure of donor influence requires greater national consistency, through logical and systematic rather than ad hoc controls.

The principle of public office as a public trust should be extended beyond those who win office, to the candidates and campaigners vying for it. Their duties not to "pre-sell" future decisions in order to remain competitive in elections, and to refrain from deceitful, dishonest and manipulative electoral behaviour, are central to re-securing the integrity of Australian democracy.

ACTIONS NEEDED

ACTION 8

SECURE NATIONAL ELECTION FINANCE AND CAMPAIGN REGULATION REFORM

● Nationally-consistent, best practice electoral legislation, led by the Commonwealth, including:

- universal, workable caps on political campaign expenditure (by parties, candidates and associated entities),
- common political donation limits and public election funding rules,
- reasonable, consistent, real-time public disclosure requirements for donations,
- enhanced sanctions and enforcement by the Australian Electoral Commission and state electoral bodies

● Extension of parliamentary and lobbying codes of conduct to all political candidates and those seeking to influence them, from point of nomination / registration

● Legislated sanctions (administrative and criminal) against misleading or deceptive campaign conduct intended to influence a person's vote – enforced by the relevant electoral body and failing that, the integrity commission

Background

WHY WE MUST ACT

Australia has been at the forefront of democratic innovation since at least 1865, when the secret ballot was invented in Victoria. The Australian Electoral Commission and state bodies are acknowledged worldwide as leaders in free and fair election administration – with election integrity processes ranking as the strongest functional pillar in the national integrity system.

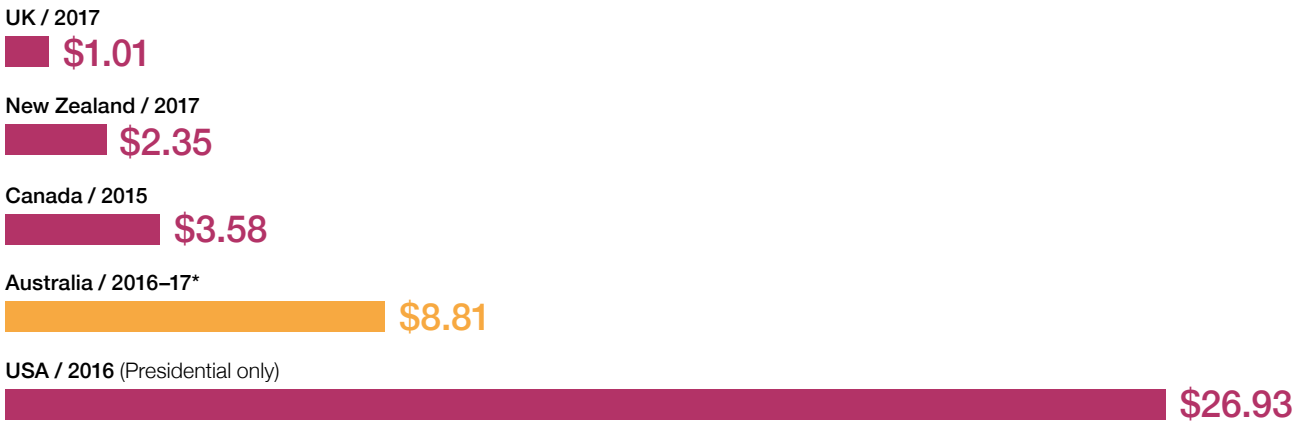
However, the same is not true of another dimension of democratic integrity – political finance and campaign regulation. Internationally, this is an established pattern. Even when integrity of election administration is strong, control of corruption through campaign regulation is weak.

Trust in the process by which leaders come to occupy the office they hold is central to ensuring integrity in their lawmaking and decisions, when they do.

In Australia, trust in parliamentarians is especially eroded by the "arms race" they must engage in to attract funding to secure election – funding which is often non-transparent, with the true sources of political donations only revealed to voters months after they cast their vote, if at all.

This battle for funds, and its destructive impacts, have been predicted since the 1980s due to trends in other countries, especially the USA. In 2016-2017, the donation arms race was clearly pushing Australian election campaign expenditure well beyond the level of democracies like Canada, New Zealand and the UK, and in the US direction (Figure 4.1). Since then, for the 2019 federal election, the Accountability Round Table estimates the level of campaign expenditure per Australian voter was outstripping Canada, New Zealand and the UK by between five and ten times.

Figure 4.1: The campaign expenditure arms race. Political party expenditure, per citizen (annual) in AUD.
Source: Grattan Institute, Who's In The Room: Access and influence in Australian politics (2018), p.33



Notes: *Does not include $155 million in 2015–2016 (Federal election 2 July 2016).

This growing demand for campaign funds is being met by large private donors and other entities associated with political parties, from business and unions.

Corruption begins, even when the sources are disclosed, as this uncontrolled quest for funding turns into "democracy for sale" – dictating what policies candidates should have, irrespective of values, objectives or the common good, based simply on what specific vested interests are prepared to pay for.

Campaign regulation is now the single biggest area of "catch up" for Australia's integrity systems.

The myth that private donors support parties just to support democracy disappeared with evidence to a 2017 Senate Select Committee showing the link between corporate donations, campaign expenditure, policies and the donor's direct financial interests.

As shown by the Grattan Institute, corporations in the 'crosshairs of a policy debate' frequently make large donations but stop donating after the policy battle is won, confirming they are trying to influence specific outcomes.

The integrity threat is not new. Real and perceived links between political donations and specific government decisions, especially the granting of contracts and business, development and mining approvals, have been documented as corruption risks for years. So too, ever more bitter election battles are having a deeply negative effect on the level of truth, honesty and fair debate in elections, especially in the age of social media and "fake news".

Now, however, Australia's slow introduction of partial rules for addressing the threats has brought a clear choice: between a messy, complicated "free for all"

Campaign regulation is now the single biggest area of "catch up" for Australia's integrity systems.

with growing systemic risks, as in the United States; or a return to first principles of democracy by asserting consistent controls over the structural drivers of corruption and deception, following leads from the UK, Canada and New Zealand.

NSW, Queensland, South Australia and the ACT are already trying to steer Australia down the second path, with leadership from both major sides of politics. Many state and territory reforms already have widespread acceptance. However, as with other areas, the federal government has lagged behind, holding back national progress as a whole.

ACTION 8

SECURE NATIONWIDE ELECTION FINANCE AND POLITICAL CAMPAIGN REFORM

A coordinated overhaul is needed across three areas, backed with effective enforcement:

- a nationally consistent campaign expenditure regime
- extension of public conduct rules to candidates, and
- the outlawing of misleading or deceptive campaigning.

NATIONALLY CONSISTENT, BEST-PRACTICE ELECTORAL LEGISLATION

CAPS ON CAMPAIGN EXPENDITURE

An effective national approach to campaign regulation begins with capping the level of campaign expenditure that is allow – defined by the Electoral Act 1918 (Cth, s.287AB) as any 'spending for the dominant purpose of influencing how electors vote in an election.'

Australia's leading experts, including Professor Joo-Cheong Tham and the Grattan Institute have described the elements needed for national best practice. Universal, workable caps on political campaign expenditure would include all expenditure by political parties, candidates and any associated entities, such as fundraising forums, companies owned by party officials or unions.

NSW, Queensland and the ACT are already leading the way with spending caps, calculated by the number of candidates and seats. Under the Electoral Funding Act 2018 (NSW, the most a political party can spend if contesting all lower house seats is under $12 million. In the ACT, with only 25 legislative assembly seats, the maximum amounts to $1 million. In June 2020, Queensland imposed caps of $57,000 per endorsed candidate and $92,000 per seat, or $87,000 for independents.

Just as rising expenditure is the driving problem, capping expenditure can drive the solution – as demonstrated overseas and in other walks of Australian life (*see context: 'Capping the political arms race'*).

DONATION LIMITS AND PUBLIC FUNDING

In a first attempt to prevent fundraising from dominating elections, public funding for election campaigns has been around since 1983. However, providing parties and candidates with public funds has never stopped them also pursuing and accepting donations.

In addition to capping expenditure, a coherent system means capping the amount any specific donor can give, so a party's income is not dominated by a few large donors. Ideally, private donation caps could be set at 50 percent of maximum spending, with the other 50 percent covered by public funding, capped at current levels (federally, $2.74 per first preference vote).

Currently, however, not only are expenditure caps different in those states or territories that are leading the way – so too

are donation caps. In NSW the maximum is $6,600 per donor to a political party, $3,000 to an individual candidates and $3,000 to a third party campaigner, in any financial year. Victoria has a much lower limit: a blanket $4,160 per donor in any election period. However, Queensland has a proposed a cap of $10,000 per donor.

Some states, including NSW and Queensland have legislated to ban a particular class of donors altogether – property developers – due to concern these were often simply bribes for profitable planning and licensing decisions. However, variations like these raise other problems, including confusion and costs to donors and parties of complying with different laws in different states, and direct pressure to subvert more restrictive rules by "legally" donating in another state.

In June 2014, ABC Four Corners showed how Liberal Party fundraisers got round the NSW ban, by using federal laws with no such restrictions. Donors were encouraged to make their donation to the Free Enterprise Foundation – a Canberra-based federal Liberal fund – which in 2010-11 accepted $1.2 million in donations but paid $700,000 back to the NSW Liberal Party. The NSW Independent Commission Against Corruption described it as 'effectively… a money laundering operation'.

After Queensland banned some donors in 2018, the federal government initially sought to legislate to override this, providing that any donations which might be used for federal election purposes were free of the ban. In April 2019, the High Court ruled this invalid, with Chief Justice Susan Kiefel noting the apparent money-laundering purpose of 'freeing up the flow of funds' from prohibited donors.

A second federal law, in September 2020, limited the immunity to donations explicitly made to state branches for a 'federal electoral purpose', and kept in a separate bank account. However, concerns remained that this left a backdoor for banned donors to donate to state parties, freeing up other funds for state campaigns. The Human Rights Law Centre pointed out that 'branding a donation as being for 'federal purposes' doesn't deprive that funding of its potential to corrupt state politics.'

Other inconsistencies also cause problems. Some donation caps apply to all third parties, including not only entities associated with candidates, but others like charities who depend on donations for many purposes apart from campaigns. Other regimes avoid this problem.

These differences show why a more universal approach is needed, capping all sources of donations and applying common exemptions so as to be fairer, simpler and more effective. Even more, a coordinated national approach is needed to avoid an increasingly patchy and piecemeal system.

REAL-TIME DISCLOSURE OF DONATIONS

Similar challenges affect the need for consistent thresholds for public disclosure of donations – starting with the need for them to be in real-time.

Transparency and easy access to information about the source of donations has always been the most crucial way to ensure they are not given secretly, as bribes. However, only Queensland requires donations to be disclosed within seven days, and Victoria and NSW within 21 days. All other jurisdictions still have no system of prompt or real-time disclosure, meaning donations are often only disclosed long after the election, with voters having no information on who funded the campaign.

Yet another problem is huge variation in the thresholds for disclosure – from any

donation of $1,000 or more in the ACT, NSW, Queensland and Victoria, to only donations of $14,300 or more for donations to federal parties (and in Tasmania). Analysis by the Grattan Institute, and a recent Private Senator's Bill propose the federal disclosure threshold be lowered to donations totalling $2,500 or more in any six month period or $5,000 per year.

Disclosure is also needed for income beyond clearly identified "donations", such as expensive tickets to fundraising events. Currently there are no federal requirements to disclose the source of around two-thirds of the income of the major parties, including more than $100 million in income from hidden sources in the 2019 election. Not only does the federal threshold need to be lowered, and greater consistency across Australia achieved, but these loopholes against disclosure need to be closed.

SANCTIONS AND ENFORCEMENT

The final link in achieving stronger, more consistent electoral finance rules is enforcement.

Current enforcement institutions – the Australian Electoral Commission (AEC) and equivalent state electoral bodies – have a strong reputation for the robustness of election administration itself. However their responsibilities and powers for regulating campaign finance and candidate behaviour often lag far behind.

At federal level, there are doubts about how well even the current, weak donation disclosure requirements are enforced. In September 2020, the Australian National Audit Office reported that the AEC's management of financial disclosures, compliance and enforcement were only 'partially effective' – leaving the AEC 'not well placed to provide assurance that disclosure returns are accurate and complete'. The AEC rejected the findings (*see context: 'Fake claims, deliberate deceit and no legal recourse'*).

Fortunately, there are no constitutional barriers to implementing a stronger, national system of expenditure and donation caps, and disclosure requirements.

In the United States, the Supreme Court ruled against limits on private electoral spending in Citizens United (2010), making it 'far easier for wealthy individuals and corporations to translate their economic power into political power'. However, Australia's High Court has ruled to uphold limits on political donations in both NSW (McCloy, 2015) and Queensland (Spence, 2019), when satisfied the reforms were rational and proportionate to the goal of controlling the 'distorting influence of money' in politics.

The High Court did strike down a reduction in third party campaign expenditure in NSW (Unions NSW, 2019), aimed at restricting union spending to half the previous level. In that case, according to the court, the NSW government had made 'no inquiry as to what in fact is necessary to enable third-party campaigners reasonably to communicate their messages'.

These outcomes reinforce why a consistent, cooperative national approach is needed. Setting the right levels for caps and thresholds must not only be more consistent across Australia, but based on a nationwide inquiry to establish the common principles and thresholds of a more uniform system, as well as updated sanctions and more coordinated enforcement.

For many jurisdictions, especially federally, this requires a quantum shift in approach. But with both sides of politics having already championed reform at state and territory level, the time for change – and federal leadership – is now.

Continues on page D-12.

In the news

CAPPING THE POLITICAL ARMS RACE... AND MAKING VICTORY FAIR

Our national professional sports have learned the lesson – so why not politicians?

Since 1987 and 1990, the Australian Football League (AFL) and National Rugby League (NRL) have each used a sophisticated system for capping team expenditure – notably player salaries – to keep their game sustainable and fair for all.

Salary caps work because they prevent teams from descending into an unwinnable arms race of spending, bankrupting themselves to outbid each other for top players, with the result of reduced numbers of clubs, only the richest clubs ever winning, and the competition dying.

Australia's political parties are engaged in the same arms race, diverting resources and compromising themselves to earn political donations that will help them beat the opposition through ever more expensive election campaigns.

Donations are becoming more concentrated while they also grow larger, out-stripping the donation power of ordinary individual citizens and funding entire party campaigns. Five percent of donors contributed over 50 per cent of the record level of donations in the 2016 federal election.

In Tasmania in 2018, the hotel and gambling lobby's support for the Coalition's pro-gaming policies saw it effectively fund its entire election campaign, going well beyond fair and open debate and dominating communication to a level not immediately apparent to voters.

According to the Grattan Institute, the 2019 federal election proved 'big money matters in Australian elections more than ever'. Journalist David Crowe described it as an election that turned, in part, on 'an avalanche of private money that surprised many with its speed and scale'.

In 2019, billionaire Clive Palmer twisted the entire election by donating a record $84 million to his own United Australian Party (UAP) campaign, via his mining company Mineralogy – the biggest donation in Australian political history, and 70 percent of all political donations that election. The previous record, also held by Palmer, was 'only' $15 million in 2013.

Photo 4.1: Showing the power of expenditure caps: The Melbourne Storm celebrates its fair-and-square premiership win in the 2020 National Rugby League, 10 years after its disgrace for breaches of Australia's football salary cap regime (below). *Credit: AAP / Dan Himbrechts*

Photo 4.2: In true Trump style, Clive Palmer, United Australia Party founder, one-term federal politician and billionaire businessman took Australian political donations, election spending and baseless negative campaigning to record levels between 2013 and 2020. *Credit: AAP / Dan Peled*

The toxic effects of the competition for resources are being felt by elected leaders, at all levels and across all sides of politics, as never before. Fundraising is so central to the work of candidates that other skills, like abilities to serve their electorate or national policymaking, come second and third.

Candidates are often required to donate or loan money to their party to be able to stand – effectively asked to buy their own seats. Federal Energy Minister Angus Taylor's entry donation to the Liberal Party for the 2013 election made him one of its major donors. The fact that his former company Eastern Australia Agriculture was also a donor, then went on to profit $80 million in taxpayer funds in a controversial water sale, only adds to falling trust.

Federal Finance Minister Mathias Cormann will long be remembered for failing to notice that Helloworld Travel had gifted him $2,780 in flights for a family holiday, after winning repeat contracts for government travel. While the Prime Minister insisted there was no foul play, Helloworld was also a crucial donor to the Liberal Party, with CEO Andrew Burnes also the Liberal Party treasurer.

The arms race also pressures on politicians to divert public resources meant to be spent serving their constituents, into the campaign and organisational activities of political parties themselves.

In Victoria, the infamous "red shirts" affair saw 21 State Labor MPs caught by the Ombudsman for paying election campaign workers out of their electorate office budgets, misappropriating at least $388,000 of taxpayer funds.

Photo 4.3: Federal minister for energy, Angus Taylor, and his former company were major private donors to the Liberal Party in 2013, sparking controversy after the company profited $80 million in taxpayer funds from a controversial water purchase in 2017. *Credit: AAP / Mick Tsikas*

A police investigation resulted in no further sanctions, but the ALP repaid the money

In June 2020, senior Victorian ALP member Adem Somyurek was sacked when it was uncovered he had engaged in industrial scale 'branch stacking' within the party, including extensive misuse of public electorate office resources for party purposes. Premier Daniel Andrews referred the allegations to Victorian Police and the Independent Broad-based Anti-corruption Commission for investigation.

Federal Liberal Assistant Treasurer Michael Sukkar was also accused of using the state electorate resources of a Liberal MP as part of his 2016 federal election campaign. He was cleared of any federal-level misappropriation by the Department of Finance, but the issue continued to considered by the Victorian IBAC.

Pressure on the Labor Party to accept donations was writ large in 2019, when the NSW Labor Party headquarters has found to have accepted $100,000 in cash, in an Aldi shopping bag, from a banned political donor, Chinese billionaire Huang Xiangmo. While the NSW ICAC was told that the Labor Party handed the 2015 payment to the Electoral Commission, it was originally covered up using falsified donation records from 12 straw donors who claimed to have given the money at a dinner. The NSW Labor general secretary, Kaila Murnain was forced to resign.

Fortunately, it doesn't have to be this way.

Just as salary caps in the NRL and AFL helped save their games from ruin, political campaign expenditure caps can save the integrity of democratic elections. Indeed, New South Wales, Queensland and the ACT have already introduced them.

The NSW Liberal Party led the way in 2010, supporting expenditure limits for candidates, parties and third parties 'at appropriate levels', calling for 'a 'level playing field' for the principal players... Elections should be a battle of ideas, policies and principles, not a battle of war-chests.'

Photo 4.4: Victorian ALP state member of parliament Adem Somyurek was expelled from the Labor Party in June 2020 over alleged misuse of taxpayer resources for party branch-stacking purposes. *Credit: AAP / James Ross*

As David Crowe wrote, 'not only do spending limits address unfairness and perceived corruption, they also promote informed voting'.

In 2011, ACT Liberal MLA Vicki Dunne explained it clearly – the system could be exactly the same as salary caps in football, with enforcement and penalties varying according to the scale of the breach:

'If there's an accounting error and someone overshoots the salary cap by a small amount, almost inadvertently, in the NRL there's a fine, it's usually not a very big fine. But if you go out and deliberately attempt to circumvent the cap, then you lose the premiership.'

Australia's electoral integrity system has already embarked on the salary cap solution in three jurisdictions. It simply needs to be a nationally-coordinated solution to make it work. ●

Continues from page D-08.

CODES OF CONDUCT, THE PUBLIC DUTY OF CANDIDATES

Until they are elected, political candidates are private citizens – but this should not mean they can promise whatever they want to earn political donations, votes and support. As a potential decision-maker, what is promised must be based on integrity principles, including transparency, honesty, fairness and due process.

To ensure this, parliamentary and lobbying codes of conduct need to extend to all political candidates and those seeking to influence them, from the point at which candidates are nominated or registered.

This simple reform closes the loophole that as candidates, individuals making potentially corrupt election promises are not yet public officials – potentially removing their actions from the reach of later investigation or enforcement.

The duties to withstand undue influence fall on all citizens, not only applying after they win public office. This recognition provides incentives to particular parties to prioritise the preselection and training of candidates willing to uphold the standards later expected of them.

MISLEADING OR DECEPTIVE POLITICAL CAMPAIGNING

It is time for Australian electoral laws to provide credible sanctions, both administrative and criminal, against misleading or deceptive campaign conduct by any person, intended to influence a person's vote.

Already laws such as the Commonwealth Electoral Act 1918 (329(1)) ban anyone from publishing or distributing 'any matter or thing that is likely to mislead or deceive an elector in relation to the casting' of their vote. However, in 1981 the High Court found that the words 'in relation to the casting of his vote' were limited to 'the act of recording or expressing' of a person's vote rather than 'the formation of that judgment' – giving the section minimal value for controlling misleading election statements.

Previously the federal law included a wider ban on any electoral conduct that is 'untrue' and 'likely to be misleading or deceptive', but this had a short life, introduced in 1983 and removed in 1984. The problem was the difficulty of determining what is 'untrue', given the nature of political interpretation and argument, and impossibility of proving the truth or otherwise of electoral promises.

Some like ABC election analyst Antony Green are 'not convinced truth in advertising laws really work.' However, while truth may be difficult to prove or disprove, misleading or deceptive conduct is more feasible to identify, both from intent and effect.

Parliamentary and lobbying codes of conduct need to extend to all political candidates and those seeking to influence them, from the point at which candidates are nominated or registered.

It's time to legislate against misleading or deceptive campaign conduct by any person, intended to influence a persons vote.

The need for action was demonstrated by the new low points in political honesty achieved during the 2019 federal election (*see context: 'Fake claims, deliberate deceit and no legal recourse'*). Following the election, Liberal MP Jason Falinski and Independent Zali Steggall joined in a call for reform, describing it as 'unacceptable that misleading customers is against the law but misleading voters is at best a legal grey-space: at worst not provided for at all'.

With the explosion of deceptive conduct through social media, regulators such as the Australian Communications Media Authority have proposed that responsibility should lie on media providers to remove misleading claims under proposed voluntary codes of conduct. However, Facebook vice-president, Simon Milner, called on government to regulate electoral misinformation, saying that industryself-regulation meant 'media companies… effectively interfering in a democratic process.'

It should fall to the relevant electoral body or failing that, the integrity commission, to enforce such standards, pursuing civil remedies and penalties aimed at stopping misleading behaviour, and criminal prosecution where this fails or is especially egregious.

Only two Australian jurisdictions currently have laws against misleading or deceptive political advertising. South Australia's law has been in place since the 1980s, administered by the Electoral Commission. However as noted by Professor Graeme Orr, it does not cover all forms of misleading conduct – only paid and authorised political advertising or similar material, and only statements that purport to be factual but are materially misleading.

More recently, following a campaign by The Australia Institute in August 2019, the ACT parliament unanimously passed a similar provision in August 2020, with potential fines of up to $8,000 for individuals and $40,500 for corporations for false political advertising.

An even better step would be reinstatement of a broader offence against any misleading or deceptive conduct, applying to any behaviour which is intentionally or recklessly misleading and aimed at influencing a person to vote in a particular way.

Even if proving offences may be difficult, the ABC's editorial director, Craig McMurtrie, has accurately pointed out that, following South Australian experience, it is nevertheless possible to at least identify and address 'outrageous falsehoods' – a problem affecting elections on an unprecedented scale. ●

In the news

FAKE CLAIMS, DELIBERATE DECEIT AND NO LEGAL RECOURSE: THE DEMOCRACY WE WANT?

While manipulation and 'spin' have always been part of politics, Australian political actors' willingness to win votes based on direct lies or deception, using manufactured information, has reached new heights in the era of social media and online campaigning.

A race to the bottom was triggered during the 2016 federal election, when the Labor Opposition seized on plans to privatise parts of the health insurance system to run a wider campaign that the Government wished to entirely scrap Medicare. The infamous 'Mediscare' campaign included mass distribution of a false SMS message, created in Labor's Queensland headquarters, which purported to come from Medicare itself, claiming the Coalition planned to cancel Medicare services.

'Mediscare' set the scene for worse conduct in the 2019 federal election, when the Australian Electoral Commission (AEC) received almost 500 complaints about election advertising and found 87 cases of election advertisements breaching the law. However, these breaches related only to failures of proper authorisation or party disclosure – nothing relating to content.

Examples include real estate agents writing to tenants with baseless notifications that their rents would go up if Labor's negative gearing policy was introduced. Property finance entrepreneur Mark Bouris placed 200,000 robocalls warning Labor's policies would make house values fall, again without justification. However, Mr Bouris' calls only fell foul of electoral law because they failed to state the city or town from where he calling. The Australian Electoral Commission identified this as a technical breach of the Electoral Act, and warned Bouris to stop the calls until they were authorised.

Photo 4.5: Federal Opposition Leader Bill Shorten electioneering with Deputy Leader Tanya Plibersek in 2016, shortly before Labor's "Mediscare" tactics descended into a directly false text message campaign. *Credit: AAP / Mick Tsikas*

Coalition supporters also distributed fake Greens how-to-vote cards directing preferences to senior Coalition MP Peter Dutton, but these were not deemed offensive by the AEC – on the basis that the flyer did not purport to be an official card.

Stretching the truth further were paid Liberal Party advertisements claiming Labor's climate policies meant they were planning a "car tax", despite them having no such policy.

Worse again was a campaign launched by fringe Facebook groups, using 200 videos and 600 posts, that Labor was planning a "death tax" -- a lie fanned by Coalition figures. Although Facebook confirmed the message was false, they could not implement Labor's request to delete the messages but rather notified Facebook users of the falsehood and left them to make the decision.

The baseless claim was credited as so successful in reducing Labor's vote, that billionaire Clive Palmer decided to deploy it again against Labor in the 2020 Queensland election campaign, his Mineralogy company bombarding voters with unsolicited SMS messages: 'The Cats Out of the Bag – Stop Labor's 20% Death Tax'.

Despite claiming he had an anonymous source, Palmer had previously made clear that truth was largely irrelevant to his campaigns – having set out in 2019 'to polarise the electorate' by running a purely negative campaign which later saw him claim credit for the Coalition's victory.

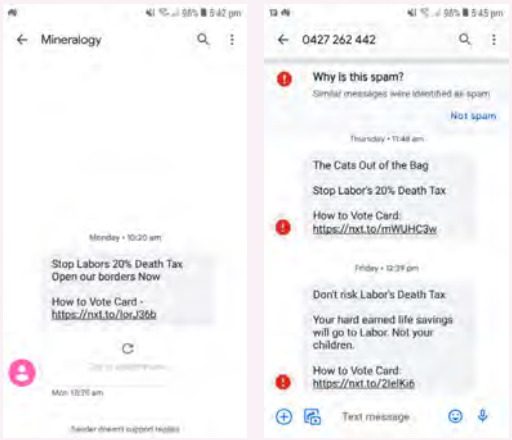
The most dangerous deception also highlighted the greatest weaknesses in current approaches. At 42 polling booths across the two Melbourne seats of Chisholm and Kooyong, the Liberal Party stationed signage in Mandarin which imitated the AEC's own poster designs and purple colour scheme, reading "the correct way to vote is to put 1 next to the Liberal box".

The attempt to suggest this advice was official AEC advice was deliberate. The Liberal Party's acting director, Simon Frost, admitted in the Court of Disputed Returns that the signs were designed to appear like electoral commission material.

However, the AEC took no action on this and other complaints, saying that despite the impersonation, the signs did not fall foul of electoral law – because once translated, they were found to also contain the proper Liberal Party authorisation.

The case highlights that even if the law is improved, its impact depends on enforcement.

After the AEC declined to take further action, unsuccessful Independent



Photos 4.6-4.8: During the 2019 federal election, baseless claims about a secret Labor plan to introduce a death tax were circulated widely on social media (top), shared by Coalition members and mimicked in Coalition campaigning – before being recycled in a text message campaign by Clive Palmer's United Australia Party in the 2020 Queensland election (middle and bottom), again without substantiation. *Source: Facebook / United Australia Party / A J Brown.*

candidate Oliver Yates raised the misleading sign in the Court of Disputed Returns. In the hearing, the AEC again argued that impersonating the AEC could not have had any deceptive effect, pointing to lack of evidence that any Chinese-speaking voters had changed their minds after encountering the signs.

Indeed the commission's lawyer James Renwick SC called it 'an outlandish proposition' that any Chinese constituent would be so 'gullible and naïve' as to believe that the sign was an official direction.

The Court of Disputed Returns did not agree. In December 2019, the three judges found it 'plainly misleading or deceptive' for Liberal officials to create a message purporting to be from an independent election agency, which in fact was from the Liberal Party; and 'palpably misleading or deceptive' to say that voting for the Liberal Party was the only 'correct', 'right' or valid way to vote:

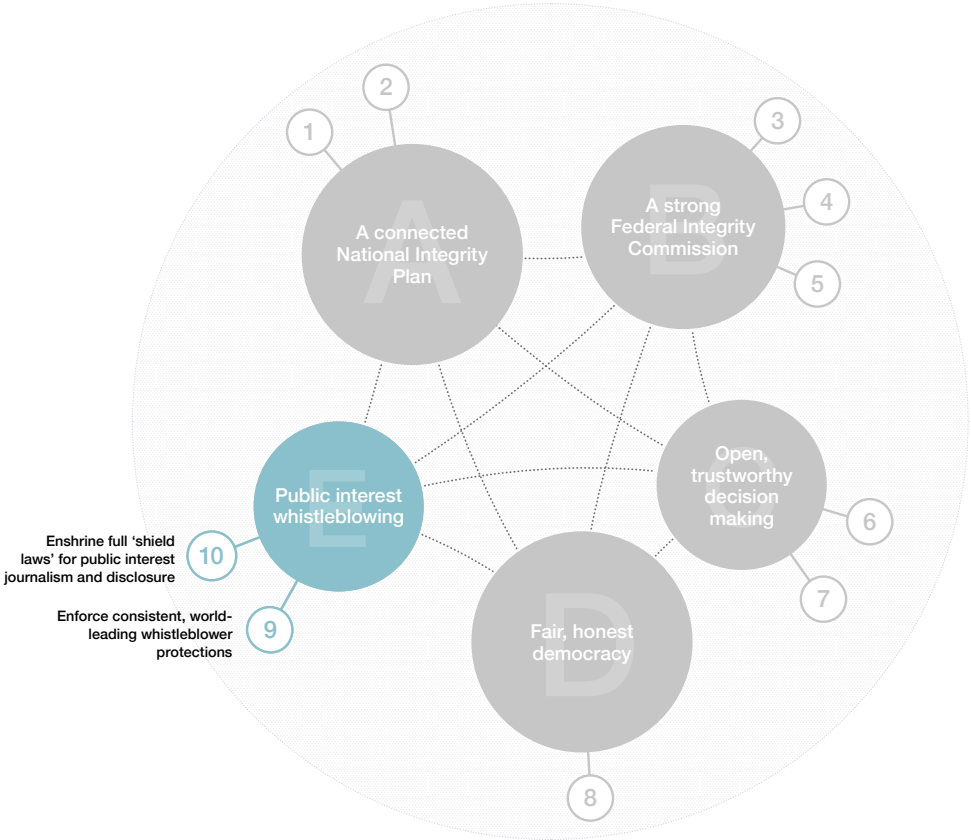
> 'The AEC occupies an independent place and role…. Its independence should not be appropriated or undermined by trickery or misleading or deceptive material whereby the AEC is, in effect, impersonated, in order to alter (or on one view, influence) how electors vote.'

As Professor Graeme Orr argued, it was critical that action was taken on the case – and concerning that the Australian Electoral Commission itself was unwilling to 'protect its own integrity against material… that imitates its style and colours.'

For successful integrity reform, new electoral campaign rules are one thing; but equally vital is the empowerment and direction of a willing and able regulator, geared to enforce them. ●

Photo 4.9: 'Plainly misleading or deceptive': the Federal Court's verdict on Liberal Party how-to-vote signs produced and placed to look like official Australian Electoral Commission instructions, 2019.
Credit: Luke Hilakari

FOCUS AREA E: PUBLIC INTEREST WHISTLEBLOWING



Overview

INTRODUCTION

Integrity and accountability rely on the ability of citizens to speak up when they suspect or witness wrongdoing – especially the officials and employees who actually know what's going on within institutions.

Together with freedom of the media to report what society needs to know, public interest whistleblowing remains the single most important trigger, in practice, for the integrity mechanisms that keep institutions healthy, thriving and ethical.

Aspects of Australia's private sector whistleblower protections already lead the world. However, public sector protections lag behind. Across both sectors, loopholes, inconsistencies and lack of enforcement undermine effectiveness, often leaving them as paper tigers.

As government secrecy legislation grows, Australia's strong traditions of independent journalism have been compromised. Indeed the rights of all citizens to receive and share official information, in the public interest, have been steadily disappearing.

WHAT SHOULD BE DONE

Australia stands at a crossroads. Its track record in developing strong legal rules for whistleblowing show the way. Recent innovations provide opportunity to restore effective protections, if extended across all sectors and fully supported by proper implementation.

National controversy over legal threats to journalists, acting on whistleblower information, have also brought choices for respecting the public interest roles of the media into sharp relief.

Simple, overdue law reforms can restore public confidence, by recognising the public interest as a defence to disclosure or publication of confidential information, wherever this serves the purpose of ensuring wrongdoing is identified and dealt with.

Overhaul of whistleblower protection laws, internal and external to government, has been promised from all sides of politics. Fulfilling these promises, to a high level, is central to effective regimes for public interest disclosure and media freedom.

ACTIONS NEEDED

ACTION 9

ENFORCE CONSISTENT, WORLD-LEADING WHISTLEBLOWER PROTECTIONS

- Law reform to ensure public interest whistleblowers (private and public) have effective access to remedies for any detriment suffered for reporting, whether through acts or omissions

- Consistent best practice thresholds across sectors for onuses of proof, public interest costs indemnities, exemplary damages and civil penalties

- A reward and legal support scheme based on returning a proportion of the financial benefits of disclosures directly to whistleblower welfare

- A whistleblower protection authority to assist reporters, investigative agencies and regulators with advice, case support, enforcement action and remedies for detrimental conduct.

ACTION 10

ENSHRINE FULL 'SHIELD LAWS' FOR PUBLIC INTEREST JOURNALISM AND DISCLOSURE

- Stronger journalism shield laws to ensure full confidentiality of publicinterest sources, ensure media freedom and protect journalists from prosecution for receiving and using whistleblower disclosures

- Clearer rules for when public whistleblowing is protected, including:

  - Simple, realistic principles for justified disclosure of wrongdoing to journalists by public or private employees

  - Removal of blanket carve-outs for 'intelligence information' and 'inherently harmful information' from federal whistleblowing and journalism protection laws

- Clear, legislated public interest defences for any citizen for unauthorised receipt or disclosure of official information, where revealing wrongdoing.

Background

WHY WE MUST ACT

Australia has long recognised, encouraged and sought to protect public officials who speak up about wrongdoing – at least in theory. Queensland and South Australia first legislated whistleblower protections in 1991 and 1993, followed by all states and territories, and finally the federal government in 2013.

In 2019, the federal government also leapfrogged these public sector laws, with long overdue protections for private sector whistleblowers under the Corporations Act 2001. Internationally, with other countries such as the European Union also making large advances, some aspects of Australia's laws set a new benchmark for whistleblower protection.

Whistleblowing is crucial because recent research confirms it is the single most important trigger for bringing integrity concerns to light – and often the first (see Figure 5.1).

In one of the world's largest studies, surveying over 14,000 employees across 46 public and private bodies in Australia and New Zealand, 'reporting by employees' was identified as the single most important trigger – not just by ordinary workers and governance professionals, but by managers themselves.

Q: How important is each of the following for bringing to light wrongdoing in or by your organisation?

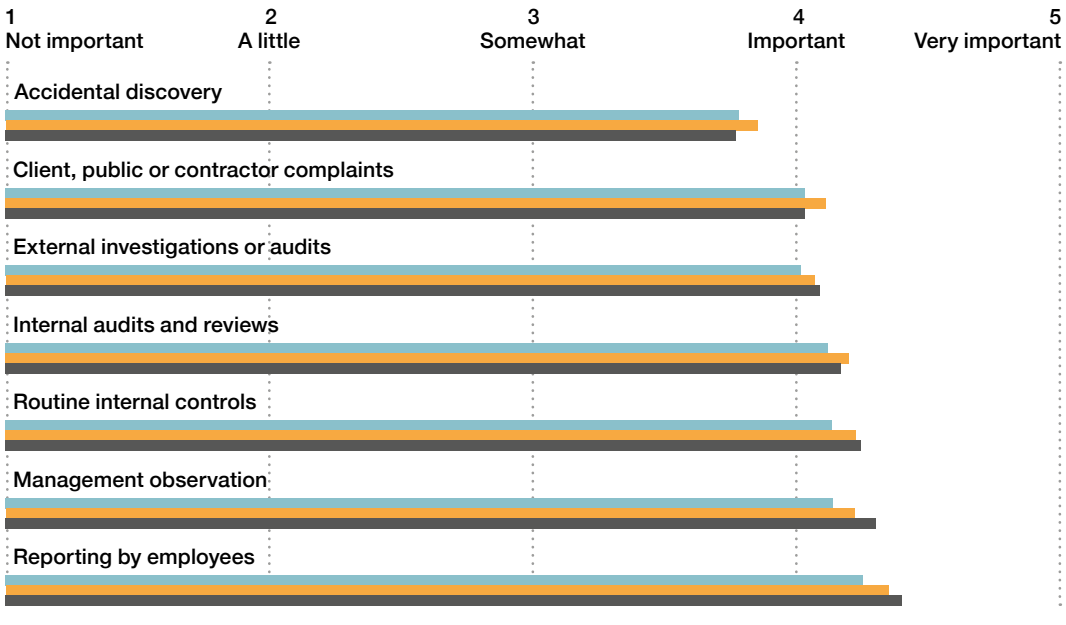


Figure 5.1: The importance of whistleblowing. *Source: Brown, A J et al, Clean As A Whistle: Whistling While They Work 2, Key findings and actions, Brisbane: Griffith University, August 2019, Fig.3 (p.8)*

Protecting public interest whistleblowing and journalism provides public confidence and ensures accountability.

Most whistleblowing is also internal. Of over 4,200 whistleblowers surveyed, 72 percent only ever reported their concerns internally.

Very often this means wrongdoing is dealt with, in the fastest way. But even if not, only 26 percent of whistleblowers then went outside – usually next to regulators or professional bodies. Only two percent did not report internally first, and only one percent went directly to a journalist or social media.

When whistleblowers do go public, the community knows that Australia's strong traditions of public interest journalism are vital. A free and independent media ensures integrity issues are acted on, triggering inquiries, accountability and reforms that would otherwise never occur.

However, just as most whistleblowers continue to suffer detrimental outcomes even when found to be correct, even the journalists telling their stories, as a last resort, have come to be targeted by Australian Federal Police investigations *(see context: 'Discouraged, intimidated and discredited'*: war crimes, whistleblowers and the media).

In April 2020, Australia dropped five points on the World Press Freedom Index. Formerly described as the 'regional model' for media freedom in the Asia-Pacific, it was 'now characterised by its threats to the confidentiality of sources and to investigative journalism.'

In principle, everyone agrees Australia's integrity systems need strengthening to fix these problems.

In September 2017, a major inquiry by the Parliamentary Joint Committee on Corporations and Financial Services made wide-ranging recommendations for whistleblower protection reforms, only half of which have been implemented.

In June 2019, the federal Attorney-General confirmed that public sector laws needed rewriting, endorsing judicial criticisms that they were 'technical, obtuse… intractable' and simply not working.

In August 2020, the Parliamentary Joint Committee on Intelligence and Security repeated this call, and recommended reforms to criminal procedure to limit unwarranted investigations of journalists. A further Senate inquiry is ongoing, with many calling for stronger reform.

The question is not whether to act, but how. Making the protection of public interest whistleblowing and journalism more than just a theoretical principle requires more than simple tweaking of laws. It requires a practical vision for restoring confidence that protections are both appropriate and real.

Already, Australia has a long history of laws that mean little in practice. Defects in legislation even affect the new private sector laws. Lack of legal support and enforcement explain the high proportion of whistleblowers, both public and private, left without remedies when theoretically protected. Whistleblowers, journalists and citizens can still be charged with dealing in official secrets, in circumstances where the public interest should prevail, without access to any public interest defence.

Until reform is broad and effective, supported by strengthened and enforcement, these major weaknesses in Australia's national integrity system will remain. As ABC journalist David Speers has written, 'it feels like we've regressed when it comes to transparency… We are more in the dark than ever before.'

ACTION 9

ENFORCE CONSISTENT, WORLD-LEADING WHISTLEBLOWER PROTECTIONS

Every Australian jurisdiction has legislated whistleblower protections, covering all public sectors and most of the private sector. However, despite advances, including world-leading aspects under the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019, the regimes remain patchy, inconsistent and often fail to translate into protection in practice, particularly when most needed.

At federal level, basic reforms to the Public Interest Disclosure Act 2013 (Cth) were recommended in 2016 by a statutory review by Philip Moss AM, followed by the even more comprehensive 2017 plan of the Parliamentary Joint Committee on Corporations and Financial Services.

Among the half of its recommendations still not addressed, the private sector lacks a single, comprehensive Act to bring coherence to the different schemes in the Corporations Act, Taxation Act, National Disability Insurance Act and other legislation. Reform of public sector laws should similarly be aimed at a consistent, coherent and workable approach across all Australian institutions.

At the heart of reform is the need, across both public and private sector laws, to ensure public interest whistleblowers have effective access to remedies for any type of detriment suffered for reporting, whether through acts or omissions.

The new Corporations Act protections provided whistleblowers with the world's first rights to seek compensation and other remedies not only where they experience direct, knowing reprisals, but also where organisations fail in their duty to prevent detrimental acts, as well as omissions causing harm.

This was a breakthrough – in principle – because most of the damage experienced by whistleblowers starts with failures in support, turning many into 'collateral damage' as a result of the process, even when proved correct. Often, organisations' failures to support and deal properly with whistleblowing are not because they intend harm to their employees but simply through negligence.

However, federal laws covering both sectors undermine this breakthrough. They still require, in effect, a deliberate, knowing intention to cause harm before civil remedies can be accessed. A mental element ('belief or suspicion' that a protected disclosure was made) must still be shown to be a 'reason' for the detrimental act or failure (PID Act, ss 13-19; Corporations Act, ss 1317AC(1), AD(1)).

This is out of kilter with best practice, not only under the spirit of Australian laws, but OECD guidance that courts should be free to grant remedies where whistleblowing leads in fact to wrongful harm, even if evidence of a direct intention to damage the whistleblower is weak.

Similarly, the Parliamentary Joint Committee recommended clear separation between the broad basis needed for civil and employment remedies, and narrower grounds for proving criminal responsibility for reprisals – where showing that harm stemmed from the specific 'reason' that someone believed the victim to be a whistleblower, makes more sense.

In other areas, the latest Corporations Act protections provide a good basis for more consistent, best practice legal thresholds across the different sectors. By updating other laws to match these standards, steps will be taken towards world-leading regimes, including:

- expanding definitions of unlawful detriment to cover all relevant types of damage;
- reversing the onus of proof for remedies, recognising that whether deliberate or negligent, acts and omissions resulting in harm can be very hard to prove;
- exemplary damages and civil penalties where organisations fail to implement their own whistleblowing policies;
- public interest costs indemnities so whistleblowers are not intimidated from bringing claims.

The 2017 Parliamentary Committee also recommended in favour of a reward and legal support scheme, returning a proportion of the financial benefits of disclosures directly to whistleblower welfare.

Following established precedents in the United States, Canada and elsewhere, such a scheme enables eligible whistleblowers, and their lawyers, to claim a percentage of the financial benefits that their disclosures bring – whether through fines for corruption or other wrongdoing, or recovery of fraud or other public sector or corporate losses, identified through whistleblowing.

Including the types of safeguards recommended by the Committee, this approach provides a means of funding better legal support for whistleblowers, in addition to another path for individuals to claim compensation and recognition for their public interest role.

Finally, the poor results from current regimes demonstrates that even the best legal protections are paper tigers, without legal resources for whistleblowers to activate their rights, and institutional support to assist and enforce more effective responses to whistleblowing in the first place, by public sector bodies, employers and other regulators.

Poor results from current regimes demonstrates that even the best legal protections are paper tigers.

As also recommended by the 2017 inquiry, a whistleblower protection authority is needed to assist reporters, investigative agencies and regulators with advice, case support, enforcement action and remedies for detrimental conduct.

For the federal government, the need was reinforced by official evidence from the existing lead agency, the Commonwealth Ombudsman, that despite the legal protections, it had no power or role for taking action or seeking remedies for whistleblowers – not even to 'investigate whether or not reprisal action has occurred'.

As well as ensuring organisations fulfil their obligations to protect whistleblowers under their own policies, a fully resourced whistleblower protection authority is needed to ensure workers can access their rights, especially the most vulnerable and least powerful. Internationally, the need for effective institutional arrangements is clear. The potential roles and powers of a national whistleblower protection commissioner have been suggested in draft laws including the Australian Federal Integrity Commission Bill. All it takes is political will.

In the news

THE MOST IMPORTANT INTEGRITY TRIGGER: IN GOOD TIMES AND BAD

The vital role of whistleblowing in Australia's integrity systems has long been evident – but rarely as clearly as during the COVID-19 pandemic.

Across the world, in fact, a wide international coalition of organisations have pointed to the 'early warning role' whistleblowers play in ensuring the effectiveness of crisis responses:

'When decisions are taken in emergency conditions, often away from democratic scrutiny, whistleblowers… are the corrective fail-safe mechanism in any society, especially in an international health crisis when the public's right to know can have life-or-death implications.'

The OECD agreed that the pandemic 'highlighted—in many ways—that the world needs whistleblowers', reinforcing their role as 'one of the only ways that misconduct will be able to be detected early and addressed.'

Among many other events, the failure of effective whistleblowing regimes was confirmed in June 2020, when Australia's most serious coronavirus outbreak unfolded in Melbourne.

As breaches of hotel quarantine were identified as the cause, it became clear that medical and hotel staff who tried to raise the alarm were simply not listened to. Elsewhere, as parts of the aged care system broke down, other health workers spoke up, helping limit the deaths.

Elsewhere, Australian governments learned the lessons. When whistleblowers in Perth spoke up about problems in their own quarantine hotels, warning 'little action was being taken to address issues when they emerged', the government acted within 48 hours. Defence Force personnel were deployed to assist with security, so far successfully preventing the problems from repeating.

Long before COVID-19, the importance of whistleblowing was clear – along with the inadequacies of Australia's laws in response.

For Australian Taxation Office (ATO) official Richard Boyle, the system began to break down when he raised concerns, as a tax debt recovery specialist, about 'controversial and aggressive' recovery practices which he feared were devastating businesses and destroying livelihoods.

Failed attempts to have the problems addressed internally, and with the Inspector-General of Taxation, led to Mr Boyle going public in 2018 soon after being

Photo 5.1: 'Nurse Jen', one of several Melbourne COVID-19 whistleblowers, gives evidence in August 2020 to the Commission of Inquiry into Victoria's hotel quarantine failures. *Source: Victorian Inquiry live hearing*

terminated by the ATO. The revelations by ABC's Four Corners and Fairfax media led to systemic and operational flaws in ATO debt recovery being identified by two separate reviews, sparking a raft of reforms. A Senate inquiry described the ATO's handling of Mr Boyle's original disclosure as, at best, 'superficial'.

Nevertheless, Richard Boyle continues to face 24 criminal charges relating to his disclosures, fighting them with crowd-sourced funds. Whether the prosecution remains in the public interest, how the whistleblowing regime failed, and whether the legal protections should apply to overrule these charges are set to be important questions at trial.

Some of Australia's most important whistleblowers have helped pave the way for the laws now in place. When sales executive James Shelton blew the whistle to the Australian Federal Police, then the media on systemic bribery of foreign officials by Securency Ltd – owned by the Reserve Bank of Australia – there were no meaningful national level whistleblowing laws in place.

Together with Brian Hood, company secretary of Note Printing Australia, Shelton's evidence was crucial in what became Australia's biggest bribery prosecutions (*see Focus Area A: A Connected National Plan*). Both men were pushed out of their companies, but served as federal witnesses until the cases were finalised with several executives and both companies convicted, resulting in more than $21 million in fines.

Despite the federal government securing those penalties, Hood received only a small settlement from his former employer, while Shelton received nothing for the impact on his career, nor for the time, legal costs and stresses of almost a decade supporting the prosecutions. Even if too late for them, they expected new corporate whistleblowing laws to help lead to fairer outcomes for others.

However, alongside well known problems with Australia's 2013 public sector whistleblowing laws, corporate whistleblowers are still navigating legal minefields even after recent reforms.

Photo 5.2. Richard Boyle, former Australian Taxation Office debt recovery specialist attends court in Adelaide.
Credit: AP / David Mariuz

Photo 5.3: Reserve Bank company whistleblowers Brian Hood and James Shelton meet for the first time in 2013, after playing parallel roles in bringing Australia's biggest foreign bribery scandal to light.
Credit: Jason South

Photo 5.4. Former Commonwealth Bank of Australia whistleblower Jeff Morris, helped trigger numerous parliamentary inquiries and the Royal Commission into Banking Misconduct. *Credit: AP / Joel Carrett*

Financial planner Jeff Morris was one of a group of whistleblowers to the Australian Securities & Investments Commission (ASIC), who helped trigger new laws by revealing fraudulent and exploitative abuse of customers in 2008 by a subsidiary of the Commonwealth Bank.

Over the following years, with a huge toll on Morris' career and life, the disclosures led to parliamentary inquiries into the financial planning industry and performance of ASIC, and ultimately, the Hayne Royal Commission into Misconduct in Banking, Superannuation and Financial Services (2017-2019). All along the way, it became clear that new whistleblower protections were crucial, as mapped out by the Parliamentary Joint Committee on Corporations and Financial Services.

When half the committee's recommendations were implemented by the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019, Morris welcomed the initiative – but queried when Australia would see the other half. He told the Senate Committee reviewing the legislation that much more was still needed:

'I think the people who have drawn up this bill have perhaps lost sight of the fact that, to a prospective whistleblower, the prospect of having to navigate a legal minefield with the possibility of getting some compensation is only marginally more attractive than the current situation… and the vast majority of people won't come forward.'

ACTION 10

ENSHRINE FULL 'SHIELD LAWS' FOR PUBLIC INTEREST JOURNALISM AND DISCLOSURE

Even if internal and regulatory whistleblowing processes are strengthened, public integrity in Australia will always depend on the ability of whistleblowers to go the media, when necessary – and the ability of independent journalists to report on wrongdoing, in the public interest, without fear or favour.

In June 2019, the weak state of protections for public whistleblowing and journalism was vividly displayed. Not only whistleblowers were targeted with federal criminal charges for revealing serious wrongdoing to the media. Journalists themselves – from News Limited and the ABC – found themselves under criminal investigations for receiving and acting on the information (*see context: 'Discouraged, intimidated and discredited': war crimes, whistleblowers and the media*).

It was already recognised that public interest journalism faced an uncertain future in the face of growing secrecy and national security laws. In May 2019, the Alliance for Journalists' Freedom (AJF) called for a comprehensive Media Freedom Act to address declining protections in Australia.

Since 2011, initial journalism shield laws have been introduced federally and in most parts of Australia. These support the right of journalists not to identify their sources in legal proceedings, protecting whistleblowers from exposure and journalists from conviction for contempt of court.

However the events of 2019-2020 confirmed the need for a much stronger system of "shield laws" to ensure full confidentiality of public interest sources, ensure media freedom and protect journalists from prosecution for receiving and using whistleblower disclosures.

A bare minimum of improvements was recommended by the Parliamentary Joint Committee on Intelligence and Security in August 2020. These would seek to ensure criminal investigation powers such as search and seizure are only exercised against journalists when truly necessary, through mechanisms such as a public interest advocate to contest search warrant applications.

However, these reforms – while useful – would not go far enough. The Law Council of Australia has long supported the need for such special procedures for the issuing of warrants to investigate journalists, but has also called for defences for public interest journalism to extend across federal secrecy legislation. This would mean only truly criminal behaviour by journalists – outside their public interest reporting roles – would ever be worth investigating in the first place.

The Alliance for Journalists' Freedom has maintained, in its evidence to the further Senate inquiry, that reforming specific laws would have value, but 'a far more practical and effective approach' remains a Media Freedom Act to codify the role of the media and its relationship to government.

In addition to protections for journalists, clearer rules are needed for when public whistleblowing itself remains protected, so that public interest whistleblowers are not dependent simply on preservation of media confidentiality in order to escape detrimental outcomes. This includes additional reform of whistleblowing legislation, above, to enact simple, realistic principles for justified disclosure of wrongdoing to journalists by public or private employees.

'Simplifying the public interest test' for federal government whistleblowers was confirmed as a vital objective by the Parliamentary Joint Committee on Intelligence and Security, reinforcing the need for both reform of the Public Interest Disclosure Act 2013, and greater consistency.

This is vital not only because of the differences between public and private sector approaches, but because neither provides a model. In addition to inserting requirements that are unlikely to be met in many deserving cases, they define 'the public interest' from competing directions. The Corporations Act requires only that a whistleblower have a reasonable belief that the public interest is satisfied, whereas the PID Act imposes an objective test that the disclosure must not be contrary to the public interest, with a long list of criteria.

A base test is whether 'it is reasonable in all the circumstances' for the disclosure to be made to an external party 'to ensure that it is effectively investigated'. This is the basic principle underpinning different, incomplete but simpler provisions in NSW, Queensland, Western Australia and the ACT, as well as the United Kingdom and Ireland. A priority action is a simple, all-encompassing set of principles for when and why it is reasonable for a whistleblower to go public.

Similarly, for these automatic public interest exemptions from confidentiality to work, they must extend to disclosures of all information that is genuinely in the public interest to reveal. This requires the removal of blanket carve-outs for certain, wide classes of information from federal whistleblowing and journalism protection laws – especially those relating to 'intelligence information' (PID Act, s. 41) and 'inherently harmful information' (Criminal Code, ss.121, 122).

Protections for journalists as well as clearer rules for public whistleblowers are needed.

Currently any public disclosure of 'intelligence information' will mean that whistleblower protections simply cease to apply – even though this includes any information ever held or generated by an intelligence agency, even if nothing to do with national intelligence or security, and even if there would no risk to national security if it were revealed.

'Inherently harmful information' as defined by the Criminal Code is similar. Its disclosure means that defences against criminal conviction for either whistleblowers or journalists cease to be an option, despite the definition including vast categories of information that involve no 'inherent' risk of harm.

Sensible international principles are available to help restore these "carve-outs" to a narrower, logical form, as well as better mechanisms for ensuring that national security whistleblowers have suitable disclosure channels.

Finally, these principles extend beyond simply whistleblowers revealing wrongdoing, or journalists publishing about it. Clear, legislated public interest defences are needed for any citizen who receives or discloses unauthorised official information, for the purpose of revealing wrongdoing. It is not only worker disclosures or journalism that can attract penalties for dealing with official information without authority, under Australia's ever-expanding secrecy laws.

Whereas the common law once supplied such defences, with relative clarity and simplicity, the growth of decades of secrecy legislation means this is no longer the case. Parliamentary Committees have concluded since at least 1994 that uncertainty over the scope of any remaining common law protection is exactly why general statutory protections are needed. Creeping criminalisation of official information means that anyone could potentially be caught – including a wide range of businesses, community organisations and professionals dealing with government information.

The Australian Law Reform Commission recommended, in 2010, wider reform to give courts the flexibility and discretion to consider when the public interest in disclosure outweighs the merits of secrecy, in any circumstances where a criminal breach is alleged. In September 2020, the UK Law Commission followed suit with recommendations for the Official Secrets Act to make available a statutory public interest defence for civilians – plus a 'residual' public interest defence for public servants for the 'rare and exceptional' cases where internal processes do not work.

Now is the time to re-equip our legal system with these important integrity safety valves. Without them, not only whistleblowers and journalists but any citizen can run the risk of persecution, rather than protection, for playing their role in revealing and acting on wrongdoing within the integrity system.

Whistleblower protections are crucial for ensuring the integrity system can receive and act on wrongdoing.

In the news

'DISCOURAGED, INTIMIDATED AND DISCREDITED': WAR CRIMES, WHISTLEBLOWERS AND THE MEDIA

Photo 5.5: Australian Federal Police officers execute their 'Afghan Files' raid on the ABC's Sydney Ultimo headquarters, 5 June 2019. *Source: ABC News*

On 5th June 2019, the Australian Federal Police shocked the nation by raiding the Ultimo headquarters of the Australian Broadcasting Corporation (ABC), seeking the files of two national reporting team journalists, Dan Oakes andSam Clark.

This unprecedented event was also not isolated. The day before, in Canberra, the AFP had raised the Canberra home of a News Corporation journalist, Annika Smethurst, over an unrelated article about plans by the Australian Signals Directorate to monitor Australian citizens.

Nine months later, the High Court ruled unanimously that the AFP had no legal justification for the search warrant executed on Ms Smethurst's home. Forced to admit that the raid could have been better handled, the AFP dropped the investigation as to whether, by receiving and publishing the leaked information, she had broken the law.

However, it was a full year after the raids before the AFP handed a brief of evidence to the Commonwealth Director of Public Prosecutions (CDPP), recommending charges against the ABC's Dan Oakes for receiving and further disseminating – by publishing – official federal government information 'stolen' by a Defence whistleblower.

In October 2020, 17 months after the raid, the AFP finally dropped the investigation. According to the CDPP, while there was a reasonable chance of securing a conviction against Oakes, the public interest was not served by pursuing a prosecution.

The raids themselves had been described by ABC chair Ita Buttrose as a 'seismic' event, 'clearly designed to intimidate' the media. The Australian Press Council denounced the police approach for its 'chilling effect on journalists'.

Bret Walker SC, former national security legislation monitor, warned the raids were a calculated attempt to 'deter rather than encourage' inquiry into the affairs of government by anyone 'outside officialdom'. Other journalists and commentators noted it would have a chilling effect, not only on journalists and outsiders, but public servants thinking of blowing the whistle.

From across the world, the New York Times stressed the danger of intimidating those who told 'uncomfortable truths'. The BBC described it as a deeply troubling attack: 'when the media is becoming less

free across the world, it is highly worrying if a public broadcaster is being targeted for doing its job of reporting in the public interest'.

However, the drawn out threat of criminal action provided a chilling wake-up call. It showed that when whistleblower disclosures are used as part of journalists' normal public interest role, Australian law leaves them completely exposed to prosecution, conviction, fines and jail.

Law Council of Australia president Pauline Wright said the result 'simply highlights that the capacity for rigorous, public interest journalism in Australia is currently at the mercy of discretionary decisions of a single Commonwealth law official or the Attorney-General. … This is repugnant to the rule of law and diminishes Australia's credibility as a supporter of the right to freedom of expression and the critical role of a free and informed media in liberal democracy.'

The narrowness of Oakes' escape continued to sound warning bells throughout the media.

However, the most chilling side of the story was still playing out. What was the subject of the ABC national reporting teams' coverage? Was it justified? And where did their information come from – who was the whistleblower?

In 2017, Oakes and Clark had published the Afghan Files. Their stories first revealed to Australia that its most highly decorated special forces troops, stationed in Afghanistan, appeared to have engaged in war crimes including murders of unarmed, defenceless Afghan citizens.

The ABC's source was former Army lawyer, David McBride – who even before the Australian Federal Police raids on the ABC, had been charged by federal authorities with stealing secret information and providing it to Oakes, and whose prosecution continues.

According to McBride's legal defence team, he approached the ABC and became a public whistleblower after Defence dismissed concerns he had raised internally from 2014 about conditions in Afghanisation and the culture of impunity among Australia's special forces.

In March 2020, while the AFP were still preparing their request for charges

Photo 5.6, Photo 5.7: Dan Oakes, (top left) the ABC journalist who received and published the 'Afghan Files' (bottom) spent over two years under criminal investigation before prosecutors agreed charges were not in the public interest.
Source: ABC News

Photo 5.8: Former Australian Army lawyer and accused Afghan Files whistleblower, David McBride addresses supporters and media outside the ACT Supreme Court. *Credit: AAP / Rod McGuirk*

against Oakes, and the CDPP continued to prosecute McBride, the truth of the reporting was put beyond doubt.

The ABC obtained and broadcast helmet-cam footage of an Australian solider executing an unarmed Afghan villager in 2012. Previously, an army inquiry had cleared the solder of wrongdoing, recording the incident as an act of self-defence. Now, the soldier was immediately stood down and referred to the Australian Federal Police for investigation for murder.

He was to be the first of many. In November 2020, the Inspector-General of the Australian Defence Force finalised a four-year inquiry into the rumours about Afghanistan. It uncovered at least 23 separate incidents between 2005 and 2016, in which 25 Australian defence personnel were alleged to have killed 39 unarmed and defenceless civilians or prisoners.

Releasing the shocking war crimes report and confirming the referral of the soldiers for criminal investigation, Defence chief General Angus Campbell made no reference to the ABC reporting that first brought the atrocities to public attention.

However, he drew attention to the many Defence Force personnel who had assisted the inquiry, including witnesses who had confirmed what occurred. He also pointed to the environment created by the soldiers responsible for the killings, and its effect on the ability of other special forces soldiers to blow the whistle. According to General Campbell, 'those who wish[ed] to speak up were allegedly discouraged, intimidated and discredited.'

While reinforcing the importance of whistleblowing, apparently General Campbell did not mean Mr McBride, Dan Oakes – or any of the other public servants, personnel or journalists influenced by criminal investigations to keep their heads down or stop reporting.

THE BLUEPRINT FOR ACTION: ASSESSMENT BACKGROUND

Overview

INTRODUCTION

In every country, a strong system of public integrity and accountability is essential to meet the public's expectations of trustworthy, ethical and effective governance.

Australia's National Integrity System: The Blueprint for Action is the report of Australia's second national integrity system assessment.

This assessment follows Transparency International's long established approach for evaluating the strengths and weaknesses in a country's systems for maintaining integrity and controlling corruption, used in close to 100 countries worldwide over the past two decades.

It was supported by the Australian Research Council and partners Transparency International Australia, Queensland Crime and Corruption Commission, Queensland Integrity Commissioner, NSW Ombudsman and Tasmanian Integrity Commission.

Led by Griffith University, the assessment project has included contributing researchers and authors from across Australia. Apart from desktop research, data collection included two national attitude and experience surveys, five stakeholder workshops, 50 face-to-face interviews, 107 National Integrity Survey responses and 40 comments received on the assessment's 2019 draft report.

ACCESS THE FINDINGS

The report's findings are set out in the 5 focus areas and 10 actions as a blueprint for maintaining and strengthening Australia's national integrity system in the next 3-5 years.

This section sets out the background, research activity and contributions to the assessment. To access the findings, go the summary and each focus area.

The focus areas and actions are:

A. A connected national integrity plan
1. Co-design and implement a comprehensive anti-corruption plan
2. Guarantee sustainable funding and independence

B. A strong federal integrity commission
3. Ensure scope to review any conduct undermining public trust
4. Legislate stronger corruption prevention functions
5. Enact new, best practice investigation and public hearing powers

C. Open, trustworthy decision-making
6. Reinforce parliamentary and ministerial standards
7. Overhaul lobbying and undue influence regimes

D. Fair, honest democracy
8. Secure national election finance and campaign regulation reform

E. Public interest whistleblowing
9. Enforce consistent, world-leading whistleblower protections
10. Enshrine full 'shield laws' for public interest journalism and disclosure

Background

WHY AN 'INTEGRITY SYSTEM'?

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

The national integrity system is the sum of institutions and processes used to protect and enhance public integrity and control corruption across society.

Fighting corruption is equally essential to transparent, responsive, and inclusive government. As identified by the Open Government Partnership, corruption harms everyone. It takes tax dollars from needed public services and projects, diverts resources from their public purposes and breeds inequality and injustice. It destroys trust and undermines the ability of governments and people to fulfil their potential to achieve the common good, especially in challenging times.

Corruption shows when an integrity system is not in place, failing or needs to evolve. Transparency International defines corruption as 'the abuse of entrusted power for private or political gain', ranging from grand to petty corruption, illegal to 'legal' corruption, and from individual to systemic and institutionalised abuses of power.

However an integrity system does not just fight corruption. It prevents it, by ensuring quality, responsive institutions and decision-making processes, and maximising how the bodies and officials entrusted with public power, act honestly, fairly, transparently and diligently to deliver their mission.

Since the 1990s, Transparency International's national integrity system approach has reflected theory and experience that, rather than single 'silver bullet' institutions or laws, control of corruption is achieved through numerous elements – institutional and non-institutional. The advantage of a National Integrity System Assessment is to take a holistic approach, viewing and strengthening the system as a whole.

Australia's first national integrity system assessment was completed in 2005. It contributed to several important reforms including:

- Reform of 'freedom of information' laws to 'rights to information' laws
- Initial overhauls of Australia's whistleblower protection regimes
- Australia's first schemes for real-time disclosure of political donations
- Expansion in the jurisdiction of the Australian Commission for Law Enforcement Integrity.

WHAT WE ASSESSED

The assessment began by defining the 15 functions that form the pillars of Australia's integrity systems at federal, state and territory levels:

The assessment focused on evidence and analysis of how well these functions are performed, how they interact, and priorities for developing and maintaining a strong overall system.

Research took in evidence from all states and territories, identifying better and worse practices, but did not seek to assess each state and territory integrity system, as an isolated part. The resulting focus areas and actions reflect issues for all Australian governments, whether leaders or followers in specific aspects, especially where relevant to strength of the system as a whole.

	Public integrity functions	Typical lead institutions
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 and exposure	Anti-corruption agencies, police services
10	Judicial oversight & rule of law	Judiciary/Courts & Directors of Public Prosecution
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

Table 0.1: The fifteen public integrity functions and lead institutions in the National Integrity System Assessment.

SCOPING AND DIAGNOSTICS: THE NATIONAL INTEGRITY SURVEY

Scoping workshops in Brisbane in March 2017, in association with the Transparency International Australia biennial national conference, engaged a wide range of government, business and civil society stakeholders in identifying key issues for the assessment.

Issues included longstanding debate over the need for a dedicated federal anti-corruption agency and how such an agency would best fit and contribute to the national system. Scoping discussions ranged across all functions and a wide cross section of reform issues at all levels of government.

The assessment then set out to gather evidence on the integrity functions at federal and state/territory level against five dimensions developed from Transparency International's 2009 national integrity system toolkit (see Table 0.2).

In an extension on previous research, a new 'Relationships' dimension focused on evidence of the system-wide roles and interactions of integrity actors, including powers and duties for ensuring issues do not fall through cracks in jurisdiction; coordination, cooperation and information exchange; and social accountability mechanisms.

The same dimensions and questions were used to structure further desktop and interview research.

Dimensions	Questions (topics)	
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)?

Table 0.2: Dimensions and questions of the national integrity system assessment.

The National Integrity Survey, an important diagnostic tool, was developed to help confirm the most important areas of strength and weakness. Consolidated and extended toolkit questions were converted into an online research instrument suitable for a wide range of experts and interested parties, with answers in the form of ratings on a 5-point scale plus provision for open-ended commentary and additional evidence.

The National Integrity Survey was open from June 2018 to January 2019 to all federal and state public integrity agencies, relevant parliamentary committees, independent academic experts and business and civil society stakeholders including members of the Australian Open Government Partnership Network and Transparency International Australia. Analysis drew on useable responses from 107 individuals: 37 experts in academia, government and business (including research team members), 29 government agency representatives, and 41 private individuals.

Figure 0.1 sets out the results for all respondents who answered questions about the federal (Commonwealth) integrity

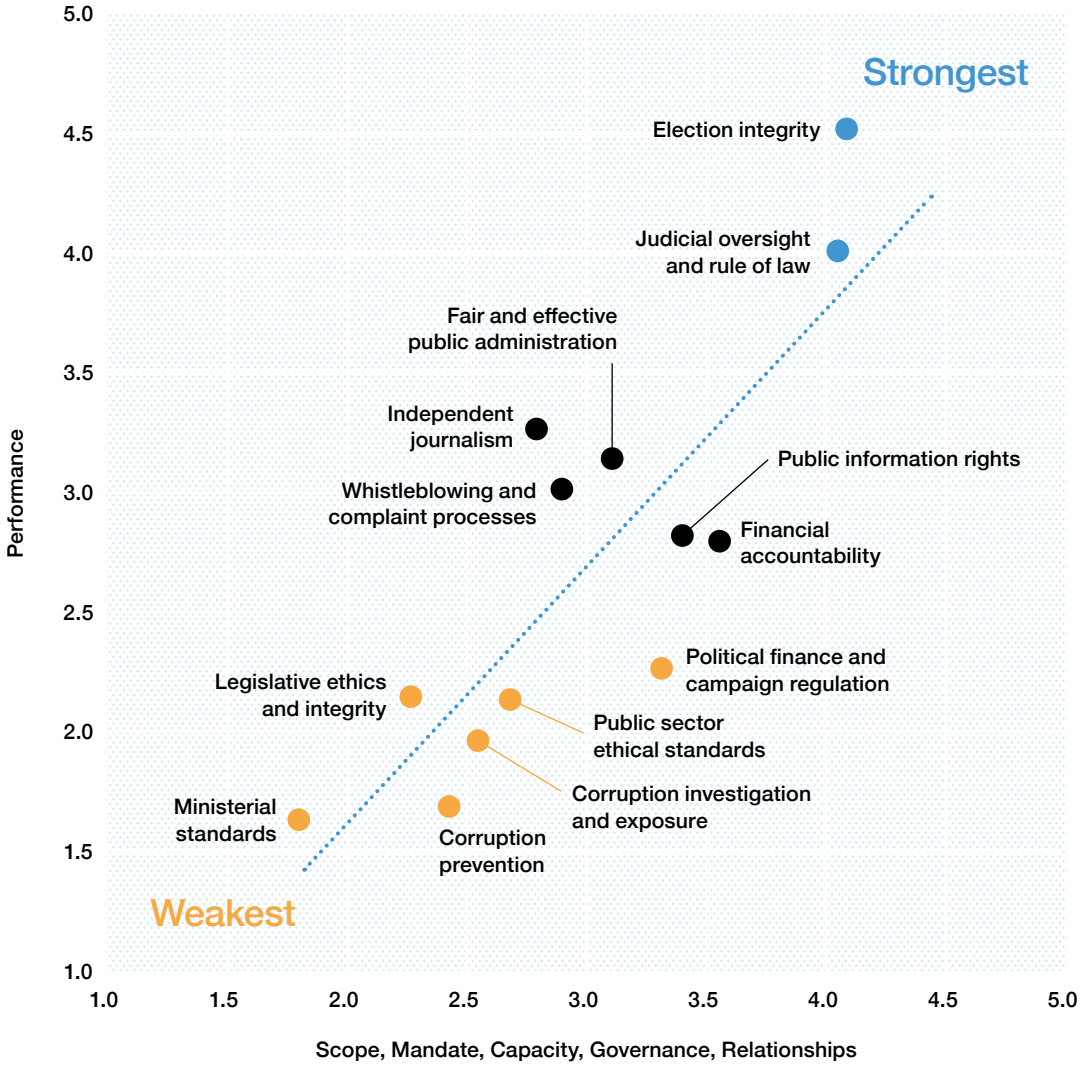


Figure 0.1: Weakest and strongest pillars of the federal (Commonwealth) integrity system
Source: National Integrity Survey 2018-2019 (government and expert respondents, n=66)

Photo 0.1: Brisbane scoping workshop, one of five stakeholder workshops held as part of the assessment.
Credit: A J Brown

system. While only indicative, without moderation or standardization, they reflect the aggregate view of a wide diversity of expert, practitioner and lay views on the strongest and weakest elements of this integrity system.

The functional pillars of the federal integrity system spread from weakest (bottom left) to strongest (top right) – measured in terms of perceived performance (top to bottom) and their strength on all other dimensions combined, including capacity (left to right).

Overall the results confirm a strong relationship between the perceived performance of each function and how well it is institutionalised, resourced, managed and delivered (scope, mandate, capacity etc). For the federal level of government, election integrity and judicial oversight rated as strongest (top right); while ministerial standards, legislative integrity, corruption prevention and corruption investigation rated as weakest on both dimensions (bottom left).

The results also highlight key outliers. Unlike election integrity, political finance and campaign regulation ranked among the lower performing functions, despite ranking highly for scope, mandate, capacity and governance. On the other side of spectrum, independent journalism ranked as a high performing function notwithstanding lower capacity, resources and governance.

This picture helps identify the main areas of strength in the system. It also highlights the main weaknesses and parts of the systems that need strengthening.

The views gathered through the National Integrity Survey informed subsequent research and helped identify the main focus areas for the final assessment.

WHAT AUSTRALIANS THINK: GLOBAL CORRUPTION BAROMETER (AUSTRALIA) 2018 &2020

Citizen attitudes, experience and opinions of corruption and the integrity system also formed foundation evidence for the assessment.

Two national surveys were conducted, using questions from Transparency International's Global Corruption Barometer, the world's largest survey of public opinion and experience on corruption:

- A national telephone survey conducted by OmniPoll (May 21 - June 27, 2018) of a stratified random sample of 2,218 respondents, aged 18 years and over, with sample quotas set by gender, location/region and age, and results post-weighted for representativeness using Australian Bureau of Statistics data on age, region, level of education.
- A national online survey conducted by OmniPoll and their online partner, Lightspeed Research (22 – 27 October 2020) of 1,204, respondents aged 18 years and over, with results post-weighted to ABS data on age, highest level of schooling completed, sex and area.

Results released in August 2018 and November 2020 included comparisons with the last most recent TI Global Corruption Barometer (September-October 2016) and Australian Constitutional Values Surveys conducted nationally by Griffith University from 2008 to 2017.

Results are highlighted under *Focus Area C: Open, Trustworthy Decision-making*.

The evidence confirmed that trust in public institutions remains under pressure – much of it driven by rising concern about corruption. Around 40 per cent of variation in Australian citizens' overall trust and confidence in government is owed to perceived levels of corruption among their public officials.

Fortunately, we also know trust in government rises when citizens assess government to be doing a good job in fighting corruption.

EVENTS AND DISCUSSION PAPERS: THE NATIONAL INTEGRITY COMMISSION

Creation of a dedicated federal anti-corruption agency was a hot topic throughout the assessment – as recommended by Australia's first national integrity system assessment in 2005.

Early evidence from the research team to the Senate Select Committee on a National Integrity Commission, in 2016, led to the recommendation that the assessment should be used to help reach a 'conclusive' view on options for strengthening the federal integrity system.

The Australian Government also welcomed the assessment as part of Australia's second Open Government Partnership National Action Plan.

The assessment released two discussion papers on a federal anti-corruption agency. The second paper: A National Integrity Commission: Options for Australia, was released in August 2018 at a major project workshop in Canberra, opened by the Secretary of the Commonwealth Attorney-General's Department, Chris Moriatis PSM.

The Options Paper was also tabled in the federal House of Representatives as part of a Matter of Public Importance debate on 12 September 2018. It directly informed the design of the National Integrity Commission and National Integrity (Parliamentary Standards) Bills 2018, introduced by Independent MP Cathy McGowan AO in November 2018, and similar bills introduced subsequently in 2019 and 2020 by the Greens and Independent MP Dr Helen Haines.

See *Focus Area B: A Strong Federal Integrity Commission*.

INTERVIEWS AND EXPERT FEEDBACK

The research also included face-to-face interviews with 50 stakeholders from Queensland, NSW, South Australia, Victoria and the Commonwealth, conducted between June 2016 and February 2019.

Interviewees included 29 current or former senior officers of integrity agencies, Departmental staff, eight journalists, five civil society representatives, four whistleblowers and two chairs of relevant parliamentary committees.

Photo 0.2: Release of the draft report, TI Australia national conference, Melbourne, April 2019. *Credit: Alex Lamb/Transparency International Australia*

In April 2019, the assessment published its draft report, Governing for Integrity containing 25 proposed recommendations (Table 0.3). Submissions and feedback were received on the draft report from 40 organisations and individuals, plus in discussion at two National Integrity Workshops held in Melbourne and Canberra, in partnership with the Accountability Round Table and Open Government Partnership Australia Civil Society Network, also in April 2019.

This expert and stakeholder feedback contributed to reduction of the 25 draft recommendations to the 10 actions proposed by the final report (see Table 0.3).

Photo 0.3: Hon Stephen Charles QC, Serena Lillywhite, Andrew Podger AO, Gary Sturgess AM and A J Brown discuss models for a national integrity commission at the National Integrity Workshop, Melbourne, April 2019. *Credit: Alex Lamb / Transparency International Australia*

Draft recommendations Governing for Integrity 2019	Final Focus Areas and Actions
A connected national integrity plan	A
Rec 1: National integrity and anti-corruption plan	1 Co-design and implement a comprehensive anti-corruption plan
Rec 2: A truly 'national' integrity commission	
Rec 20: Closing the cracks between agencies	
Rec 24: Coordination and cooperation	
Rec 22: Independence for core integrity agencies	2 Guarantee sustainable funding and independence
Rec 23: Propriety and performance	
Rec 25: Sufficient, secure and stable resources	
A strong federal integrity commission	B
Rec 3: A modern, national definition of corrupt conduct	3 Ensure scope to review any conduct undermining public trust
Rec 13: Direct accessibility to the public	
Rec 21: Jurisdiction over private actors	
Rec 5: Comprehensive mandatory reporting	4 Legislate stronger corruption prevention functions
Rec 6: Strengthened corruption prevention mandates	
Rec 7: Resources for prevention	
Rec 8: A comprehensive corruption prevention framework	
Rec 16: Justice in all integrity violation cases	5 Enact new, best practice investigation and public hearing powers
Rec 17: Effective law enforcement support	
Rec 18: Reform of public hearing powers	
Rec 19: 'Sunlight' public reporting powers	
Open, trustworthy decision-making	C
Rec 4: 'Undue influence' as a new corruption marker	6 Reinforce parliamentary and ministerial standards
Rec 11: Meritocratic political appointments	
Rec 12: Parliamentary and ministerial codes of conduct	
Rec 10: Lobbying and access	7 Overhaul lobbying and undue influence regimes
Fair, honest democracy	D
Rec 9: National political donations and finance reform	8 Secure national election finance and campaign regulation reform
Public interest whistleblowing	E
Rec 14: Whistleblower protection that protects	9 Enforce consistent, world-leading whistleblower protections
Rec 15: Support for public interest journalism	10 Enshrine full 'shield laws' for public interest journalism and disclosure

Table 0.3: Draft assessment recommendations and final focus areas and actions.

CONCLUSION

Our analysis of Australia's integrity systems showed we have many strengths, but also many current 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 more fragmented, fragile 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 – as we have done before, but currently are not.

The final focus areas and actions provide a basis for a comprehensive plan for how Australians can best govern themselves, and be governed, with integrity. The Blueprint for Action outlines the fundamentals, areas of focus and the actions needed to begin a new narrative about Australia's integrity system, what is needed to renew and strengthen it, and now to make it work.

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Co-designing a new
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