Corruption and integrity issues
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Key issue
Establishing a dedicated standing anti-corruption agency in the federal jurisdiction is now supported by both major parties and key cross-benchers, though there is disagreement on the particular model to be adopted. While such an agency would be a significant reform, experts have warned that an ineffective agency could be worse than none at all, and that even an effective agency should be complemented by a range of other reforms to strengthen the overall integrity framework.

Public sector and parliamentary integrity
Unlike the states and territories, each of which has a dedicated standing anti-corruption agency, the Commonwealth has retained a multi-agency approach to combating corruption within or affecting the public sector and the Parliament. Having previously resisted calls for such an agency in the federal jurisdiction, the Government announced in December 2018 that it would establish a Commonwealth Integrity Commission (CIC) and released a consultation paper on its proposed model. Funding for the CIC was included in the 2019–20 Budget.

The CIC would consist of a law enforcement integrity division (LEID) that continues the current structure and remit of the Australian Commission for Law Enforcement Integrity (ACLEI) (with its jurisdiction extended to four additional agencies, including the Australian Taxation Office) and a public sector integrity division (PSID) to cover the remaining public sector. The LEID would investigate conduct (giving priority to serious and systemic corruption) on the basis of the existing definition of corrupt conduct in the Law Enforcement Integrity Commissioner Act 2006. The PSID would only investigate conduct capable of constituting a nominated range of specified new and existing criminal offences, and ‘will not make findings of corruption at large’. The threshold for commencing investigations would be higher for the PSID and while the LEID would have discretion to hold private or public hearings, the PSID would be limited to private hearings. The CIC would also have responsibility for prevention, analysis and outreach activities across government.

The Government’s proposed model is narrower than those proposed in Bills introduced by the Australian Greens and former independent, Cathy McGowan (on behalf of the cross-bench) in 2018 (and earlier Greens Bills) and the model committed to by the Australian Labor Party.

Key stakeholders such as Transparency International Australia, the Accountability Round Table and the National Integrity Committee have criticised several features of the Government’s proposed model. Many of the concerns relate to the more limited powers proposed for the PSID compared to the LEID, including that the PSID:

- could only investigate matters where the commissioner has a reasonable suspicion that the conduct constitutes a criminal offence
- could not receive complaints directly from individual public servants, whistleblowers or members of the public
- appears to only be able to initiate own-motion investigations where it has
uncovered information giving rise to a corruption issue in the course of another investigation

▪ would have no power to hold public hearings and
▪ would not be empowered to make findings of corruption.

These features have also been criticised by Labor, the Greens, Centre Alliance’s Senator Rex Patrick and Rebekha Sharkie (who pledged to re-introduce a private member’s Bill mirroring the 2018 McGowan Bill if re-elected), and independent MP Andrew Wilkie.

Other reforms proposed to improve parliamentary integrity in the draft report on Australia’s second National Integrity System Assessment released in April 2019 include changes to political donations and financing, strengthening controls around lobbying, introduction of a code of conduct covering all parliamentarians, and establishment of a parliamentary standards commissioner to provide guidance and investigate breaches of the code.

The National Integrity (Parliamentary Standards) Bill 2018, introduced by Cathy McGowan in 2018, would have established a Parliamentary Integrity Advisor, Parliamentary Standards Commissioner and a parliamentary code of conduct. Previous Bills introduced by the Greens, including the National Integrity Commission Bill 2013 (which was restored to the notice paper in the 45th Parliament), would have established an Independent Parliamentary Advisor.

Towards the end of the 45th Parliament, 18 crossbenchers endorsed a parliamentary transparency charter proposed by outgoing independent Tim Storer that called for a range of measures including real-time disclosure of political donations above $1,000, expanding and legislating the lobbying code of conduct, and establishing a code of conduct and a Parliamentary Integrity Commissioner.

Under the Government’s current proposal, CIC investigations of parliamentarians would be restricted to conduct suspected of constituting a criminal offence. However, if the agency were permitted to investigate a broader range of conduct, establishing a code of conduct for all parliamentarians may provide a means of defining the scope of such expanded investigatory powers. This approach to defining corrupt conduct by parliamentarians has been adopted in NSW and was proposed in the 2018 Bills.

For information on political donations and financing, see the article ‘Political finance’ elsewhere in this publication.

Public interest disclosure (whistleblowing) schemes

Public sector framework

The public interest disclosure scheme that applies to the Commonwealth public sector was updated and considerably expanded by the Public Interest Disclosure Act 2013 (PID Act), with the changes taking effect from January 2014. The former head of ACLEI, Philip Moss, completed a statutory review of the scheme’s operation and provided a report to the Government in July 2016. The Government tabled the report in October 2016, but did not release a response to the report or introduce amendments to implement its recommendations during the 45th Parliament. The Moss Review found that the PID Act had only been partially successful, with few individuals who had made disclosures feeling supported, and agencies finding the scheme difficult to apply. The Review made 33 recommendations, including:

▪ strengthening the ability of the Commonwealth Ombudsman and the Inspector-General of Intelligence and Security to scrutinise and monitor agency decisions about disclosures
▪ better targeting the scheme to focus on
significant wrongdoing such as fraud, serious misconduct and corrupt conduct
▪ redrafting the PID Act using a principles-based approach (as compared to the prescriptive procedural requirements currently in place) and
▪ providing better protections for whistleblowers and witnesses.

The Parliamentary Joint Committee on Corporations and Financial Services also recommended changes to the PID Act in its September 2017 report, Whistleblower Protections, to which the Government responded in April 2019.

Private sector framework
Legislative protections for private sector whistleblowers in Australia lagged behind those for the public sector for several years, with several inquiries concluding they were ‘piecemeal, inadequate, out-of-date and in urgent need of reform’. The Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (which will commence on 1 July 2019) consolidated and broadened the whistleblower protection regime for the corporate and financial sector and created a whistleblower protection regime for disclosures of breaches of tax laws and tax avoidance. While the Act made significant amendments, incorporating features that are considered essential in best practice whistleblowing legislation, stakeholders were disappointed that it did not take up some of the key recommendations of the 2017 committee report, Whistleblower Protections (in particular creating a single comprehensive private sector scheme, creating a Whistleblower Protection Authority and establishing a reward or bounty system).

Foreign bribery
Australia moved relatively quickly to ratify the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and implement it domestically through legislation, but for several years lagged behind some other countries in its enforcement of the Convention. The first Australian prosecutions for foreign bribery commenced in 2011, and since then, eight convictions for the offence have been obtained across two prosecutions (one involving banknote contracts in Asia; the other a construction contract in Iraq).

Australia underwent its fourth formal evaluation against the Convention in 2017. The evaluation noted significant improvements in Australia’s enforcement of the Convention since the previous evaluation, completed in 2012. Developments in the intervening period included the establishment of a Fraud and Anti-Corruption business area in the Australian Federal Police and the re-opening of several matters in 2013, funding for three dedicated investigation teams in 2016 and legislative amendments that commenced in 2015 and 2016 to clarify the scope of foreign bribery offences and create new false accounting offences, respectively.

While the 2017 evaluation recognised positive developments, it also recommended several additional measures, as did a report of the Senate Economics References Committee tabled in March 2018. The recommendations in the two reports provide a useful starting point for consideration of measures to further improve Australia’s compliance with the Convention and its broader response to foreign bribery.

Several of the Economics Committee’s recommendations would have been implemented by the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2017, which lapsed when Parliament was prorogued for the election. The Bill would expand the scope of the foreign bribery offence, introduce a new corporate offence of failing to prevent foreign bribery and introduce a deferred prosecution agreement scheme for serious corporate crime.
Open Government Partnership

Australia finalised its membership of the Open Government Partnership (OGP) with the release of its first National Action Plan (NAP) in 2016. The OGP is an initiative launched in 2011 that brings governments and civil society together to ‘make governments more inclusive, responsive and accountable’.

Australia’s first NAP, covering the period 2016–18, contained 15 commitments grouped across five themes: transparency and accountability in business; open data and digital transformation; access to government information; integrity in the public sector; and public participation and engagement. In its final self-assessment against that NAP, the Government indicated that its work on six commitments was complete, and that its progress on seven had been substantial and on the remaining two (extractive industries transparency and strengthening the national integrity framework) had been limited. The report states that Australia will continue to monitor the progress of commitments not yet completed.

Australia’s second NAP, covering the period 2018–20, contains eight commitments, including strengthening the national anti-corruption framework, enhancing the transparency of political donations and funding and expanding open contracting and due diligence in procurement.

Australia’s second National Integrity System Assessment

The draft report of Australia’s second National Integrity System Assessment, led by Griffith University, was released in April 2019. The report examined Australia’s integrity system as a whole, not just at the Commonwealth level. However, all 25 of its recommendations are relevant to the Australian Government and/or the Commonwealth Parliament. The Government has committed under the OGP to consider the assessment when developing reforms to the national anti-corruption framework.

Key recommendations in the draft report relate to the development of a five-year national integrity and anti-corruption plan; establishment of a Commonwealth/National Integrity Commission with responsibility for corruption prevention, detection and response in the federal jurisdiction and also national coordination and leadership on integrity matters; measures to improve political and parliamentary integrity; strengthening the focus and resources for corruption prevention; improving protections for whistleblowers; establishment in each jurisdiction of a statutory integrity coordinating committee; and ensuring that sufficient, secure and stable resources are available to integrity agencies.

Further reading


