

## Corruption<sup>1</sup>

The present Commonwealth government integrity system<sup>2</sup> includes Parliament (especially its committees), Courts, administrative review tribunals, Director of Public Prosecutions, oversight bodies such as the Ombudsman and the Auditor-General, FOI and an independent anti-corruption body, the Australian Commission for Law Enforcement Integrity (ACLEI). During the 1970s, Australia introduced important reforms in administrative law and the last Parliament saw some important developments. However, the Australian government integrity system is no longer up to international best practice (or even that of some Australian states). In particular, the jurisdiction of the ACLEI is seriously limited. It is confined to preventing, detecting, and investigating serious and systemic corruption issues in two Commonwealth law enforcement agencies: the Australian Federal Police and Australian Crime Commission. The NISA Report of 2005<sup>3</sup> which comprehensively reviewed government integrity systems in Australia, commented,

“Even if ‘law enforcement’ were the only area of Commonwealth activity in which more anti-corruption capacity is needed, there would be little logic in excluding many *other* Commonwealth agencies with major compliance and law enforcement powers — including the Australian Customs Office<sup>4</sup>, Australian Taxation Office, Australian Security & Investments Commission, and Department of Immigration. In fact, there is a larger argument that to represent a serious injection of capacity and meet national best practice, a more comprehensive approach and general jurisdiction are needed to ensure that capacity for independent anti-corruption investigation is boosted across the whole Commonwealth sector rather than in select fragments.”<sup>5</sup>

In reviewing the Commonwealth situation<sup>6</sup> the Report identified a number of gaps and weaknesses. They were recently summarised as follows:<sup>7</sup>

“ministerial standards and the roles of ministerial advisers; the inability to enforce ministerial and other parliamentary standards; and increased political pressure on senior civil servants. While accountability systems appeared to function with the Senate at their peak, the role of the Senate had been repeatedly attacked, over a long period, by executive governments of all persuasions. Inadequacies were found in the whistleblower protection and management scheme, as well as an under-reporting and potential concealment of the incidence of corruption; because, for the purposes of classification, ‘bribery, corruption and abuse of office’ are subsumed within ‘fraud’.<sup>8</sup> The absence of an anti-corruption body, and fragmented leadership of integrity systems, resulted in a lack of clear leadership and co-ordination. The report comments: ‘There is now a clear case for a general purpose Commonwealth anti-corruption agency, which includes educative, research and policy functions.’”<sup>9</sup>

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<sup>1</sup> The nature and extent of the risks of government corruption in Australia, their causes and the action to be taken, were recently discussed in T.H.Smith, "*Corruption: The abuse of entrusted power in Australia*," Australian Collaboration, 2010 (Corruption). It includes examples of corruption at the Commonwealth level. More recently, issues have been raised about the propriety of the conduct of the public servants in issuing contracts for public works.

<sup>2</sup> Various definitions are used for integrity systems but one of the simplest is drawn from the overview paper for the 2008 International Anti-Corruption Conference commissioned by Transparency International which defined national integrity systems as “the interconnecting institutions, laws, procedures, practices and attitudes that promote integrity and reduce the likelihood of corruption in public life” (Sampford, C.J.G. From National Integrity Systems to Global Integrity Systems [http://www.13iacc.org/en/IACC/Conference\\_Papers#Discussion](http://www.13iacc.org/en/IACC/Conference_Papers#Discussion) Paper p.11). [See also Sampford, “From From Deep North to Global Governance Exemplar: Fitzgerald’s Impact on the International Anti-corruption Movement” Griffith Law Review 2009]

<sup>3</sup> Key Centre for Ethics, Law, Justice and Governance (Griffith University) and Transparency International, *National Integrity Systems Assessment* (NISA) Final Report, 2005, p65.

<sup>4</sup> Also recommended by the Parliamentary Joint Committee convened to review the operation of the Act in 2006

<sup>5</sup> Brown A.J., ‘*Federal anti-corruption policy takes a new turn... but which way? Issues and options for a Commonwealth integrity agency*’, Public Law Review Vol 16, No 2 (June 2005).

<sup>6</sup> *NISA Report*, above, p 31-6.

<sup>7</sup> *Corruption*, above, p 33.

<sup>8</sup> *NISA Report*, above., p. 35.

<sup>9</sup> *Ibid*.

During the current parliamentary term steps have been taken to address some of those concerns but many remain and the risks have been increased by: the on-going increase in government control of information;<sup>10</sup> the ever-increasing need for funding of political campaigns; the methods employed to obtain it and the failure to enact legislation to impose controls;<sup>11</sup> the commercialisation of government services and projects;<sup>12</sup> the development of lobbying and the inadequacies of the attempt to control the activity and make it transparent in a timely manner; and failure to either stop or control the flow of Ministers and their staff to the lobbying industry on retirement from their positions.<sup>13</sup> Combined with those factors, there is also the increased risk of corruption resulting from the impact on major vested commercial interests of the significant changes that will be needed to address the problems posed by climate change and the exhaustion of natural resources, including energy, water and phosphate.<sup>14</sup>

Any system must also provide a place for people to take their concerns about the activities of statutory corporations, companies in which government agencies hold an interest and other companies which may be breaching laws put in place to give effect, for example, to international treaty obligations or engaged in other misconduct. Examples are the activities of the AWB and Securrency. Both corporations seriously damaged the international reputation and credibility of Australia and its government. In the example of the AWB payments allegedly for transport, DFAT employees received information of the allegations but there was no independent overarching crime and misconduct body to which such allegations could be referred. In such situations there will be people who have the integrity to be concerned about what is occurring and courage to act. There must be an independent standing anti-corruption and misconduct body to which such people can take their concerns knowing that they will be investigated.

As was said in the essay “Corruption”

“...there will always be a government corruption problem (in all countries) unless a miracle occurs to remove greed and the desire for power and hubris from the psyche of *homo sapiens*. There is also the fact that some of the species do not believe that the rules apply to them, and others believe that the end will always justify the means.”<sup>15</sup>

Plainly the Commonwealth integrity system is inadequate. It is time that the Commonwealth joined Queensland, New South Wales, Western Australia, Tasmania (and soon Victoria) in establishing a comprehensive independent integrity system. The recommendations for the Commonwealth in the NISA Report should be regarded as best practice and setting the standard by which any proposals should be judged.

The Accountability Round Table calls upon those standing for election to the Federal Parliament to commit to the establishment of a comprehensive independent integrity system for the Commonwealth incorporating a general purpose Commonwealth anti-corruption agency, which includes educative, research and policy functions and which is provided with all necessary powers and is subject to parliamentary oversight.

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<sup>10</sup> *Corruption, above, p 47 - 49*

<sup>11</sup> *op.cit. p 45-7*

<sup>12</sup> *op.cit.50-51*

<sup>13</sup> *op. cit, 51-54.*

<sup>14</sup> *op.cit, p.55*

<sup>15</sup> *Corruption, above, 22.*