

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

### 3.1. The issues

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

Australia's fall in its score and ranking on **Transparency International's Corruption Perceptions Index** since 2012, points to two conclusions. First, Australia is lucky in that, in international terms, it is still generally not a 'high corruption' country. Second, Australia is nevertheless going in the wrong direction, and can and should do better, if it is to avoid this fate, rebuild public trust and regain a reputation for dealing well with integrity risks.

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

This problem continues in current political debate, including both Government and Opposition proposals for reform to establish a **Commonwealth / National Integrity Commission** as discussed in chapter 2. So far, this debate is confined to updating anti-corruption mechanisms *within* the federal public sector, much as if it was simply a State government.

This chapter shows this approach to be insufficient and flawed. Australia is a federal system in which national priorities must take account of national and international issues, cross-sectoral issues, and federal/state issues including the need for proactive leadership, standard-setting, greater national coordination and cooperation. The Commonwealth also has different, broader anti-corruption roles than State governments, due to its economy-wide regulatory roles, and heavier responsibility for identifying and responding to corruption risks across the entire public and business sectors. Determining reform priorities thus begins with a proper understanding of context, including:

- Our patchy track record in controlling the export of corruption, from Australia;
- Our unmet challenges in controlling the import of corruption, into Australia;
- The intersection of corruption issues between the business and public sectors; and
- The ad hoc, unsupported nature of cooperation and coordination across and between Australia's federal and State integrity systems.

### 3.2. The state of the debate

#### Understanding the context

Australia is in the lucky position that in international terms, it is still not a ‘high corruption’ country. The *relative* strength of its underlying governance systems is confirmed not only by the Transparency International Corruption Perceptions Index, but a range of international rankings related to integrity, trust and governance processes, as set out in Table 3.1.

**Table 3.1. Australia’s position in international rankings**

	Australian Rankings Rank/ (out of)
Corruption Perceptions Index (CPI) – Transparency International 2017	13 (180)
Global Corruption Barometer – Transparency International 2017	4 (119)
Governance Indicators (World Bank) 2017	93rd percentile / (200+)
Bribery Risk Matrix – TRACE International 2017	19 (200)
Rule of Law Index –World Justice Project 2017–18	12 (113)
Global Competitiveness Index (World Economic Forum) 2018 Favouritism in decisions of government officials	21 (137)
Global Competitiveness Index (World Economic Forum) 2018 Control of corruption	14 (137)
Financial Secrecy Index (Tax Justice Network) 2018	9 (112)
Democracy Index (Economist Intelligence Unit) 2017	8 (167)
Edelman Trust Barometer (Edelman) 2018 – trust in government measure	19 (28)

Source: ICAC NSW (2018), *Corruption and Integrity in the NSW Public Sector*, pp.16-18.

At the same time, not only the TI CPI, but specific indicators point to Australia heading in the wrong direction. Australia’s rating for ‘Control of Corruption’ slipped on the World Bank’s Worldwide Governance Indicators from 96% in 2012 to 93% in 2017.<sup>1</sup> While the 2017-2018 World Justice Project Rule of Law Index ranked Australia 12<sup>th</sup> out of 113 countries on ‘absence of corruption’, with a score of 0.83/1, the score was 0.65 for absence of corruption ‘in the legislature’ and 0.79 ‘in the executive branch’.<sup>2</sup> Further, Australia is not performing well in terms of relative trust in government – with this trust related strongly to concerns about corruption and how it is being dealt with, as shown in Chapter 1.

<sup>1</sup> <http://info.worldbank.org/governance/wgi/index.aspx#reports>

<sup>2</sup> [https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition\\_0.pdf](https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf), p. 51.

Even when Australia ranks highly, on no measure is it currently in the very top handful of countries. That is something to which we should aspire, and our strategies should be set in place to get there.

Moreover, we live in a world where international anti-corruption awareness and standards are lifting *while at the same time* many real corruption pressures, risks and opportunities are getting worse.

Australia cannot be compared to countries where the political system allows (or cannot prevent) kleptocratic leaders to systematically use the Treasury as their personal bank account, accumulate wealth by stealing from the state or take commissions on major capital and developmental works and distribute this largesse to family, friends and cronies. However, in all countries, there remains an ever-present risk of **'particularism' triumphing over ethical universalism**, so that officials and citizens get opportunities and benefits because of who they are, or who their friends are, rather than what is theirs by right as citizens.<sup>3</sup> It goes a step further when those without powerful friends are denied access or services and have to pay again for their entitlements and rights.

Australia is no exception, and has its own experience of these risks, as seen in chapter 4. Greater democratization, rule of law, national transparency and accountability all affect corruption, but result in different patterns or 'syndromes' of corruption, rather than meaning corruption does not occur.<sup>4</sup> Corruption may be most obvious in weak undemocratic states, whether kleptocracy (rule of thieves), patronage and intimidation prevail, and the result is obvious enrichment of family and friends. Weak transitional states with undeveloped or ineffectual state mechanisms of control, mean the logic of corruption may be widespread and understood by society, but not outsiders.

In **mature democracies like Australia**, such overt corruption is less prevalent or apparent, but making connections for a fee, the use of wealth to gain access, and sharing the spoils (contracts, favourable laws) within the system, are all greased by lawful processes and political campaign financing.

At the same time, Australia has both exposure to, and a responsibility to deal with its own role in, these global forces of corruption. The responsibility for ensuring integrity and anti-corruption responses meet these contextual challenges lies primarily at Commonwealth Government level – but not solely.

### ***International responsibilities: exporting corruption***

The conduct of Australian enterprise working internationally is increasingly inseparable from national conduct, with challenges in anti-corruption, anti-money-laundering and corporate transparency. These issues cut across traditional regulatory divides.

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<sup>3</sup> Mungiu-Pippidi, Alina. 2015. *The quest for good governance: how societies develop control of corruption*: Cambridge University Press.

<sup>4</sup> Johnston, Michael. 2005. *Syndromes of corruption: wealth, power, and democracy*. New York: Cambridge University Press.

As a signatory to the *OECD Guidelines for Multinational Enterprises on **Responsible Business Conduct***, the Australian Government, via the Australian National Contact Point<sup>5</sup> (currently within Treasury) is also meant to promote the Guidelines to Australian enterprises acting abroad, and investigate alleged breaches including bribery, bribe solicitation and extortion.<sup>6</sup> However Australia has a poor track record in fulfilling these responsibilities.<sup>7</sup>

Australian regulatory agencies need to be well-coordinated, and well-equipped not only catch up, but get ahead of the curve on these trends. Resources need to be marshalled to assess and manage corruption risks and responses in a more agile way, across a range of institutions and across the public-private divide.

As described to the Senate Select Committee on a National Integrity Commission, intensive effort to address Australian-based **bribery of foreign officials**, in the last five years, has been welcome. However, as noted in chapter 1, the direct complicity of Commonwealth-controlled and licensed entities in foreign bribery, notably the Australian Wheat Board and the Reserve Bank of Australia's companies (Note Printing Australia and Securrency Ltd), demonstrate Australia's track record of complacency and under-vigilance towards major, well-known risks. Responses came late, slowly, and to date, still without much to show for it.

As discussed in chapter 8, in Australia's most high profile foreign bribery cases, the courts have recently stayed prosecutions due to mishandling of the investigations and evidence by federal law enforcement authorities. Law reform to bring Australia's Criminal Code up to standard has also been slow and remains incomplete.<sup>8</sup> General issues of capacity, prioritization and political will span these related challenges.

### ***International responsibilities: importing corruption***

#### *Proceeds of corruption and unexplained wealth*

Similar questions surround the effort placed on identifying, deterring and returning the proceeds of corruption, within Australia's rapidly changing and improving efforts in anti-money-laundering. The control of corruption is a multi-faceted activity and is complicated by the fact that there is a strong movement, across national borders of money, people, goods, plants, drugs, and much of this is facilitated by corruption. In addition, kleptocratic leaders use offshore bank accounts to hide their illicit gains.

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<sup>5</sup> <https://ausncp.gov.au/>

<sup>6</sup> See OECD (2011), *OECD Guidelines for Multinational Enterprises: Recommendations for responsible business conduct in a global context*, Paris; <http://www.oecd.org/daf/inv/mne/48004323.pdf>; <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

<sup>7</sup> <http://www.oecd.org/daf/anti-bribery/australia-oecdanti-briberyconvention.htm>

<sup>8</sup> Commonwealth discussion papers were released on a [proposed deferred prosecution agreement \(DPA\) scheme](#) (March 2017) and possible [reform of laws applying to bribery of foreign public officials](#) (April 2017), and the [Crimes Legislation Amendment \(Combating Corporate Crime\) Bill 2017](#) was introduced to Parliament on 6 December 2017, but did not progress in 2018, and will lapse prior to the conclusion of the present parliament. The proposed reform also did not meet international best practice standards.

Despite world-leading technical capacity and systems, Australia's enforcement response on AML/CTF has also, until recent years, been slow and partial, and criticized in international evaluations as a consequence.<sup>9</sup> Australia is now showing increasing levels of cooperation with other countries in identifying corruption proceeds among illicit financial flows, in and out of Australia.<sup>10</sup> While some legislative reform is also beginning to catch up,<sup>11</sup> this is also set to lapse with current parliament, and reforms to include further key professions and industries in the AML regime remain overdue. While the regime continues to strengthen, its role in the identification and return of *corruption* proceeds – both nationally and internationally – remains somewhat embryonic.<sup>12</sup>

### *Corruption in real estate*

Australia has also woken up slowly to the specific risks and negative effects of offshore property investment into Australia.<sup>13</sup> Regulatory responsibility for controlling the flow of proceeds of corruption and crime into Australian real estate, along with unwanted investment generally, has been transferred from the Foreign Investment Review Board to the Australian Taxation Office (ATO).

However, as recently reviewed by the Australian National Audit Office, most key elements of this effort are also in their relative infancy.<sup>14</sup> The fact that the ATO has long had key responsibilities in the Commonwealth's anti-corruption response, and has been subject to parliamentary recommendations for inclusion in the jurisdiction of the Commonwealth's only anti-corruption body (ACLEI) since 2011, but is only now proposed to be included (see chapter 2), all provides further evidence of the slowness of Australia's response.

### *Anonymous shell companies*

Despite Australia's success in helping achieve the G20 High Level Principles on Beneficial Ownership Transparency (2014), it remains slow in itself implementing the principles needed

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9 See Financial Action Task Force (FATF) (2015), *Anti-money laundering and counter-terrorist financing measures in Australia: Mutual Evaluation Report*, Paris.

10 For example, in 2016-17, AUSTRAC “conducted 3,255 exchanges of financial intelligence with international FIUs (Financial Intelligence Units)—a significant increase from 1,723 in 2015-16. Exchanges were with 87 FIUs—seven more than the year before”, and “facilitated 115 outgoing requests for information on behalf of ... domestic partner agencies”, p.36, AUSTRAC (2017). 2016-17 Annual Report, <http://www.austrac.gov.au/sites/default/files/austrac-ar-2016-17-WEB.pdf>.

11 See for example, the Anti-Money Laundering and Counter –Terrorism Financing Amendment Act, 2017; Crimes Legislation Amendment (International Crime Cooperation and other measures) Act 2018.

12 For critical analysis of Australia's performance, see J. C. Sharman, *The Despot's Guide to Wealth Management: On the International Campaign against Grand Corruption*, Cornell University Press, 2017. For a real life case prompted by the international NGO, The Sentry, see <http://www.abc.net.au/news/2018-05-14/court-document-shed-new-light-on-alleged-money-laundering-case/9738920>.

13 See Transparency International, *Doors Wide Open: Corruption and Real Estate in Four Key Markets*, March 2017 <<http://transparency.org.au/30-march-2017-doors-wide-open-corruption-and-real-estate-in-four-key-markets/>.

14 See <https://www.anao.gov.au/work/performance-audit/compliance-foreign-investment-obligations-residential-real-estate>.

to limit or end the use of anonymous shell companies in the facilitation of corruption and other misconduct.<sup>15</sup> Action to ensure beneficial ownership transparency was included in Australia's first Open Government Partnership National Action Plan (2016-2018), but again, at time of writing, remains incomplete.<sup>16</sup>

### ***National responsibilities – cross-sectoral***

Corruption risk is an issue for business nationally as well as internationally.<sup>17</sup> Strict and wide-reaching laws not only criminalise the conduct of corrupt actors, but also the companies they work for, and company directors, for failing to prevent bribery, corruption, improper collusion, anti-competitive behaviour, and fraudulent abuse of client and customer interests. Business conduct aimed at gaining improper advantage for the business or individuals, through dealings with government relating to licensing, approvals, funding or favourable decisions, are also generally prohibited – although the adequacy of Australian public sector laws for ensuring this is the case is often questionable, as discussed in chapters 4 and 8.

Having effective systems in place to detect, prevent and manage corruption risks is a business imperative. Aside from legal sanctions, allegations of corrupt activity can severely damage a company's reputation and bottom line. Reputational damage can affect share value and public confidence in companies, as well as reflecting and entrenching declining public trust in our most important commercial and economic institutions.

Experience shows that these risks are not uniform but vary between sectors. Internationally, the natural resources sector is well known for its concentration of such risks – and Transparency International's Australian mining risk assessment confirms the presence of irregularity and under-managed risks in the awarding of licences, undue influence, and 'revolving doors' in this industry in Australia.<sup>18</sup> However, serious misconduct risks going to the heart of the integrity of Australian business can also be found in sectors that previously, have been the most trusted -- as demonstrated by the Royal Commission into Misconduct in Banking, Superannuation and Financial Services (2017-2018).<sup>19</sup>

The Commonwealth has primary responsibility for regulating the conduct of corporations and business, nationally, to contain and address these risks – even when the targets of and opportunities for corrupt conduct may lie in areas of state or local regulation. Combined with the evidence of regulators being too close to those who they regulate, as alleged in the recent Banking Royal Commission, and examples of systems being rorted by canny

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<sup>15</sup> For an early review, see Transparency International (2015), *Just for Show? Reviewing G20 Promises on Beneficial Ownership*:  
[https://www.transparency.org/whatwedo/publication/just\\_for\\_show\\_g20\\_promises](https://www.transparency.org/whatwedo/publication/just_for_show_g20_promises).

<sup>16</sup> See <https://ogpau.pmc.gov.au/commitment/12-beneficial-ownership-transparency> (August 2018).

<sup>17</sup> [http://transparency.org.au/tia/wp-content/uploads/2019/03/Business-Integrity-Factsheet\\_web.pdf](http://transparency.org.au/tia/wp-content/uploads/2019/03/Business-Integrity-Factsheet_web.pdf)

<sup>18</sup> <http://transparency.org.au/our-work/mining-for-sustainable-development/mining-in-australia/>

<sup>19</sup> Final Report, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, 1 February 2019  
<https://financialservices.royalcommission.gov.au/Pages/reports.aspx#final>

operators, the case for greater Commonwealth oversight, co-ordination and integrity building – beyond simply the Commonwealth public sector itself – becomes critical.

### ***National responsibilities – federal-state coordination***

In 2017, as noted in chapter 2, the Senate Select Committee on a National Integrity Commission failed to be convinced that the Commonwealth public integrity system was operating ‘seamlessly’. However, this is also Australia’s international reputation, and it relates to more than simply the internal operations of the Commonwealth system.

In 2015, the Financial Action Task Force (2015) identified Australian federal and State action against money-laundering as ‘not effectively coordinated’, despite Australia being an ‘attractive destination’ for corruption proceeds.<sup>20</sup> Complacency at a Commonwealth level has left Australia in a weak position to play a meaningful coordinating role in a more coherent national response to domestic and international corruption.

It also means that the Commonwealth has played little role in fostering or supporting coordination, cooperation and consistency in the response of Australia’s governments to internal, public sector risks, despite the interwoven nature of federal and state funding, policy making and service delivery, and the high level of staff movement and interaction between Commonwealth, State and local public officials in Australia.

The consequence has been a loose and inconsistent framework with little national cooperation between anti-corruption authorities, and in some cases other integrity agencies, by comparison with other law enforcement and accountability frameworks. The lack of federal leadership has left the States to their own devices in terms of frameworks, common benchmarks and practices, without a shared national picture of integrity and corruption risks.

This situation compares poorly with most other comparable national cooperation models -- for example, counter-terrorism, domestic violence response, or Australia’s Organised Crime Strategic Framework and National Organised Crime Response Plan. This is despite the fact that the Australian Criminal Intelligence Commission identifies public sector corruption as one of the six key enablers for the growth of serious and organised crime.<sup>21</sup>

The need for action by the Commonwealth Government to show greater leadership, and provide more support for a coordinated national approach, is now underscored by its own reputational difficulties. As shown in chapter 1, public trust and confidence in the federal level of government has fallen sharply from its traditional high level since 2010, to beneath that of either the state or local levels of government. This relates strongly to concerns about corruption, which have increased for the federal level more rapidly than for other levels, with a focus on corruption concerns at the political level.

Figure 3.1 sets out the results from the Global Corruption Barometer for 2016 and 2018, showing a rise from 75 to 83 per cent of citizens perceiving some, most or all federal

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<sup>20</sup> FATF 2015. *Anti-money laundering and counter-terrorist financing measures in Australia: Mutual Evaluation Report*, Financial Action Task Force, Paris.

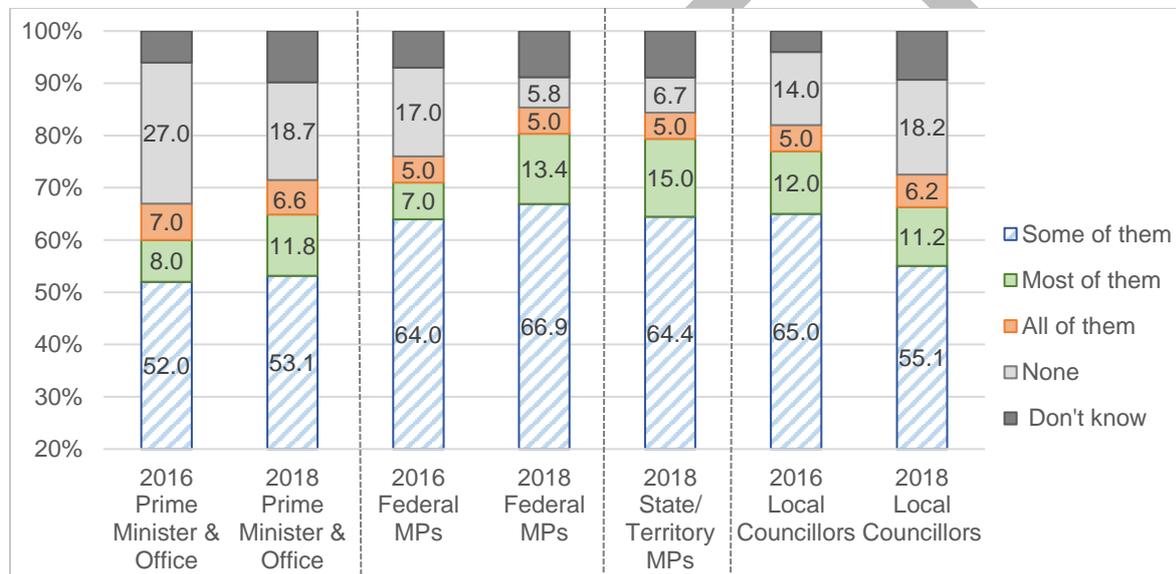
<sup>21</sup> Australian Criminal Intelligence Commission (2017), *Organised Crime in Australia 2017* [https://www.acic.gov.au/sites/g/files/net1491/f/2017/08/oca\\_2017\\_230817\\_1830.pdf](https://www.acic.gov.au/sites/g/files/net1491/f/2017/08/oca_2017_230817_1830.pdf)

politicians as involved in corruption, with the proportion of citizens perceiving no federal politicians to be corrupt, falling by two-thirds (from 17 to 5.8 per cent). The evidence as to what types of corruption are being perceived by citizens, follows in chapter 4.

The critical issue is that the need for the Commonwealth to show leadership in its anti-corruption strategy is acute and has impacts beyond simply the Commonwealth. The perception of poor anti-corruption performance is consistent with, and exacerbates, the Commonwealth's historical lack of interest and investment in greater national coordination of integrity policies and systems, over successive governments of all political persuasions in at least the last three decades. This must be turned around.

**Figure 3.1. Extent of corruption perceived among Australian elected officials (2016-2018)**

'B5. How many of the following government officials do you think are **involved in corruption?**' (Global Corruption Barometer 2016 and 2018; details Appendix 2)



### 3.2. The way forward

As seen above, the Commonwealth has a different, broader anti-corruption role than State governments. Due to larger, economy-wide regulatory roles, the Commonwealth carries heavier responsibility for identifying and responding to corruption risks across the entire public and business sectors – not just the public sector and those dealing with it.

Moreover, the Commonwealth has the bulk of responsibility for defending Australia from transnational corruption risks, contributing to international anti-corruption cooperation, and extra-territorial enforcement of Australia's integrity and anti-corruption standards (again, spanning both public and private sectors). Finally, it must not only lift its own game, but play a central role in any more coordinated and coherent national public integrity system.

The way forward must involve a comprehensive strategic approach and co-ordination, both international and domestic. Commonwealth leadership is essential.

This fact was recognised briefly in 2011-2013, when the Commonwealth commenced a process for developing a **National Anti-Corruption Plan** – but this was not finalised before a change of government in 2013.<sup>22</sup> Australia lacks a strategic plan to fight corruption, confirming the history of the system as one effectively cobbled together as each facet of corruption or integrity challenge is exposed, resulting in a fragmented, piecemeal approach.

### ***Meeting international obligations***

Any steps to improve Australia's performance must also take account of the fact that international anti-corruption awareness and standards are lifting, worldwide.

As noted above, in 2016-2018, some key integrity priorities have been included in Australia's first and second national action plans under the **Open Government Partnership**.<sup>23</sup> These priorities confirm the need and value of a more coordinated approach. However, not only are they relatively limited in number, but such progress on them as had been achieved – while welcome – remains relatively slow and partial.

The **United Nations Convention Against Corruption** (UNCAC, 2005) also provides a comprehensive guide to the issues that must be addressed, as well as authority for the Commonwealth Government to undertake a stronger national leadership approach. As a signatory to UNCAC – the first and only binding global mechanism for the control of corruption – Australia has committed to the following objectives:

- To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;
- To promote integrity, accountability and proper management of public affairs and public property.

The UNCAC introduces standards, measures and rules that all countries can apply in order to strengthen their legal and regulatory regimes to fight corruption.<sup>24</sup> It also documents Australia's commitment to undertake action in most of the above key areas, as well as those set out throughout this report, including:

- *Criminalization* of the most prevalent forms of corruption in both public and private sectors – including not only basic forms of corruption such as bribery and the embezzlement of public funds, but trading in influence and the concealment and laundering of the proceeds of corruption (see chapters 4 and 8);
- *Preventive measures* -- Article 5 of the Convention enjoins each state party to establish and promote effective practices aimed at the prevention of corruption including by anti-corruption bodies (see chapter 5), enhanced transparency in the financing of election

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<sup>22</sup> See Senate Select Committee (2017), par 2.45.

<sup>23</sup> <https://ogpau.pmc.gov.au/> (Accessed 25 March 2019)

<sup>24</sup> A range of related technical tools and publications are available on the UNODC website: <http://www.unodc.org/unodc/en/corruption/publications.html>.

campaigns and political parties (see chapter 6), and active promotion of the involvement of non-governmental, community-based organizations and civil society (see chapter 7);

- *International co-operation* -- agreement to co-operate in every aspect of the fight against corruption, including specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders;
- Measures to support *tracing, freezing, seizure and confiscation* of corruption proceeds;
- *Asset recovery* – As fundamental principle of the Convention, Australia has agreed to not only seize but return assets obtained through corruption to the country from which they were stolen; a particularly important issue for many developing countries where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies.

These obligations lay out much of the basis and authority for strategic leadership by the Commonwealth. However, it is conspicuous that at present, neither the Government proposal for a Commonwealth Integrity Commission nor Opposition proposals for reform make any mention of UNCAC or Australia's responsibilities under it – instead remaining restricted to a narrow view of reform as focused on federal public sector misconduct.

### ***Adopting a more integrated national approach***

Australia is well placed to address these issues, by not simply reviving the development of a relatively limited, 'one off' National Anti-Corruption Plan such as pursued in 2011-2013, but an ongoing, enduring approach supported by appropriate implementation arrangements, capable of withstanding changes of government and shifts in priority.

Any such plan can be clear on collective priorities; national government responsibilities; state responsibilities; cooperative arrangements and investments; priority areas for institutional strengthening and cooperative law reform; and implementation arrangements.

Key elements should include clear identification of the roles of the wide variety of disassociated federal and state agencies that make up the national integrity system; and simplification of objectives, legislation and processes across the country, in place of the current trend towards greater complexity as more agencies are created, without clarity as to the cooperative framework in which they sit.

International precedents are available. For example, Australia could:

- incorporate a more strategic approach to Corruption and Economic Crime such as being pursued by the United Kingdom and G20 Anti-Corruption Working Group;<sup>25</sup>
- join other nations which announced their intention to develop such plans at the UK-hosted Anti-Corruption Summit in March 2016;<sup>26</sup>

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<sup>25</sup> See <https://protect-au.mimecast.com/s/JrhHCMwvOEhoMPDOFwW7Sd?domain=unodc.org>. See also the PWC Global report *Pulling Fraud out of the Shadows* <<https://www.pwc.com/gx/en/services/advisory/forensics/economic-crime-survey.html>> and the Centre for Public Impact's report *Fighting Corruption in Botswana* <https://www.centreforpublicimpact.org/case-study/fighting-corruption-botswana/>.

<sup>26</sup> See <https://www.gov.uk/government/publications/anti-corruption-summit-country-statements>.

- Follow the lead of the UK's 5-year strategy, announced in December 2017.<sup>27</sup>

Indeed, the benefits of United Kingdom's leadership in this period is instructive. Whereas Australia slipped 8 points on Transparency International's Corruption Perceptions Index between 2012 and 2017, as already noted, the UK rose 8 points over the same period, replacing Australia in the top 10 least corrupt countries.

Chapter 10 deals in more detail with the imperatives and options for greater coordination and coherence within the integrity system – especially within each individual government jurisdiction, as well as nationally.

However, an example already exists within Australia as to how responsibility for such a wider national plan could be enshrined in law and supported by standing statutory coordination arrangements and the UNCAC above. **Box 3.1** sets out several of the key mechanisms for national coordination and leadership proposed in the *National Integrity Commission Bill 2018* introduced by cross-bench parliamentarians in November 2018, including detailed statutory responsibilities for developing and supporting a national integrity and anti-corruption plan.<sup>28</sup>

These proposals have already received the support of State agencies including the NSW Ombudsman and Queensland Crime and Corruption Commission as providing 'a sound scheme for planning and collaboration at the Commonwealth level, promoting integrity and preventing corruption'.<sup>29</sup> They stand in contrast to the Government proposal for a Commonwealth Integrity Commission. This outlines a primary function of 'investigation of serious criminal conduct', and a secondary data collection and prevention function, including assistance on 'anti-corruption legislation and policy'.<sup>30</sup> Nowhere does it mention State public sectors or their agencies, nor wider Commonwealth responsibilities, nor any function or role relating to national or international coordination, communication, information sharing or cooperation – whether by the proposed new agency or anyone else.

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<sup>27</sup> See <https://www.gov.uk/government/publications/uk-anti-corruption-strategy-2017-to-2022>.

<sup>28</sup> *National Integrity Commission Bill 2018*, Part 3 (Table 3.1. Australia's position in international rankings), Division 7 (**Error! Use the Home tab to apply CharDivText to the text that you want to appear here.**), sections 36-41: Ms McGowan (Independent), House of Representatives, 26 November 2018: [www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6217](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6217); Senator Waters (Greens), Senate, 29 November 2018: [www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=s1154](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1154).

<sup>29</sup> Crime and Corruption Commission (Queensland), Submission to Legal and Constitutional Affairs Legislation Committee on the *National Integrity Commission Bill 2018*, Submission 2, 15 January 2019, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/NationalIntegrityComm](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NationalIntegrityComm). See also submission of the NSW Ombudsman on the 'strength' of these provisions: Submission 15, 25 January 2019.

<sup>30</sup> Australian Government (2018). *A Commonwealth Integrity Commission—proposed reforms*, Attorney-General's Department, Canberra, 13 December 2018, pp.3, 7 <https://www.ag.gov.au/Consultations/Pages/commonwealth-integrity-commission.aspx>.

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**Part 3, Division 7, ss. 36-41, *National Integrity Commission Bill 2018* (McGowan)**

**36 Role of the National Integrity Commissioner**

- (1) It is the duty of the National Integrity Commissioner to:
  - (a) promote and assist in a comprehensive, efficient, nationally coordinated approach to the prevention, detection, reduction and remediation of corruption in:
    - (i) Australia generally; and
    - (ii) Australia's relations with other countries; and
  - (b) assist in the cooperative implementation of Australia's international anti-corruption responsibilities, including under the United Nations Convention Against Corruption (2005). ...

**37 National Integrity and Anti-corruption Plan**

- (1) The Minister is to publish a National Integrity and Anti-corruption Plan no less frequently than every 4 years, covering at least the next 4-year period.
- (2) The National Integrity and Anti-corruption Plan must include the following:
  - (a) identification of key corruption threats and related risks to integrity affecting, or likely to affect, Commonwealth public administration;
  - (b) identification of key corruption threats and related risks to integrity affecting, or likely to affect, Australia generally;
  - (c) key mechanisms in place and any additional measures planned to mitigate corruption threats and risks to integrity;
  - (d) the role of business and the wider community in promoting integrity and combatting corruption in Australia;
  - (e) the role of the States and Territories in promoting integrity and combatting corruption in Australia;
  - (f) priority areas for Commonwealth reform or action to promote integrity and combat corruption;
  - (g) key actions to be undertaken or recommended to be undertaken to promote integrity and combat corruption, including a timetable and parties responsible for those actions;
  - (h) any other items specified in the Rules. ...

**38 Preparation of plan**

- (1) In preparing the National Integrity and Anti-Corruption Plan, the Minister is to consult and have regard to the views of the following:
  - (a) the National Integrity Commissioner; ...
  - (c) the members of the National Integrity and Anti-Corruption Advisory Committee established by section 40;
  - (d) such other persons as the Minister sees fit. ...
- (3) The Minister must not publish a plan unless it has been prepared following a period of public consultation.

### **39 Examination of plan**

The Parliamentary Joint Committee is to inquire into each National Integrity and Anti-Corruption Plan, and report to both houses on any matters it sees fit within 18 months of publication of the National Integrity and Anti-Corruption Plan by the Minister.

### **40 National Integrity and Anti-Corruption Advisory Committee**

- (2) The National Integrity and Anti-Corruption Advisory Committee consists of the following:
- (a) the persons who, from time to time, hold the following offices:
    - (i) Secretary of the Department administered by the Attorney-General;
    - (ii) National Integrity Commissioner;
    - (iii) Australian Federal Police Commissioner;
    - (iv) CEO of the Australian Crime Commission;
    - (v) Chairperson of the Australian Securities and Investments Commission;
    - (vi) Chairperson of the Australian Competition and Consumer Commission.
  - (b) at least 3 representatives of State or Territory agencies with significant responsibility for integrity, ethics or the prevention of, or responses to, corruption;
  - (c) at least 2 representatives of civil society organisations concerned with integrity, ethics or the prevention of, or responses to, corruption;
  - (d) at least 2 representatives of business organisations concerned with integrity, ethics or the prevention of, or responses to, corruption;
  - (e) at least 2 persons with independent specialist expertise in integrity, ethics or the prevention of, or responses to, corruption;
  - (f) such other persons that, in the opinion of the Minister, can contribute to the development of the National Integrity and Anti-Corruption Plan.
- (2) The Committee is to be chaired by the Secretary of the Attorney-General's Department.
- (3) The Committee will meet no less than twice in any calendar year.

### **41 Functions of the advisory committee**

The National Integrity and Anti-corruption Advisory Committee has the following functions:

- (a) to foster cooperation and coordination between the members of the Committee and their respective agencies and organisations, and other organisations;
- (b) to facilitate the exchange of information between agencies in performance of their functions;
- (c) to provide a forum for consultation on the research, education, training or advice strategies of the National Integrity Commissioner or any other member agency;
- (d) to identify priority areas of corruption risk for Australia, or priority areas or opportunities for the promotion of integrity and prevention of corruption;
- (e) to identify and support joint activities, projects, initiatives or operations relating to integrity and anti-corruption in Australia;
- (f) to provide a forum for consultation on the development of the National Integrity and Anti-Corruption Plan;
- (g) to do anything incidental to or conducive to the performance of the above functions.

### **3.4. Conclusions and recommendations**

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

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

As this chapter shows, this approach is insufficient. The Commonwealth has different, broader anti-corruption roles than State governments, due to its economy-wide regulatory roles, and heavier responsibility for identifying and responding to corruption risks across the entire public and business sectors. Australia is also a federal system in which national priorities should take into account national and international issues, cross-sectoral issues, and federal/state issues including the need for proactive leadership and standard-setting, greater national coordination and cooperation.

The way forward requires work to achieve an improved, more coordinated and agile response to the nation's integrity and anti-corruption policy needs – among Commonwealth agencies, but also nationally and internationally, and across the public-private divide. As a first objective, a strengthened national integrity system should include processes for developing a robust and enduring national anti-corruption plan which meets these criteria.

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

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

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

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

Understanding Australia's priorities, in context, also demonstrates the undue narrowness of both Government and Opposition proposals for institutional strengthening via a Commonwealth/ National Integrity Commission. For this to be a 'national' commission, even at a very basic level, it must have coordination and cooperation functions which enable it to

fulfil its interjurisdictional roles, as well as standing mechanisms for engaging with key stakeholders across sectors.

Given Australia's slow track record in international cooperation, and the performance to date of existing federal agencies with anti-corruption roles, there is also little purpose in creating a new national anti-corruption body which does not have responsibility to monitor, assess, and drive responses to our major cross-sectoral corruption risks, whether they be criminal, social, economic or cultural in nature. As no other federal agency is fulfilling these responsibilities to the necessary high-level, or at all, a new national anti-corruption agency risks being simply another piecemeal reform, without such functions.

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

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

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

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