



Governing for integrity

A blueprint for reform



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DRAFT REPORT

**Australia's Second National Integrity
System Assessment**

April 2019



About this report

This report presents draft recommendations from Australia's second National Integrity System Assessment, conducted under the **Australian Research Council Linkage Project, *Strengthening Australia's National Integrity System: Priorities for Reform***, led by Griffith University with project partners Transparency International Australia, New South Wales Ombudsman, Integrity Commissioner (Queensland), Crime & Corruption Commission (Queensland), Integrity Commission (Tasmania), Flinders University, University of the Sunshine Coast and our co-authors. See:

www.transparency.org.au/national-integrity-systems-assessment.

Views expressed are those of the authors and do not necessarily represent the views of the Australian Research Council or partner organisations.

This is a summary version of the research and recommendations.

Figure and Table numbers refer to the full text of the draft report.

For the full text, go to:

www.griffith.edu.au/anti-corruption.

Public comments and submissions

We welcome your comments and submissions on these recommendations by **10 May 2019**. Email us: nationalintegrity@griffith.edu.au

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Governing for integrity: *a blueprint for reform*

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1. Introducing the Assessment

A strong system of public integrity and accountability is vital to Australia's future.

As a nation, we have a relatively strong reputation for the integrity of public decision making, institutions and our system of democracy – by international standards. But are we keeping pace with challenges and trends? Are we investing sufficiently in the development of our integrity systems to deserve that reputation? Do our citizens agree we have our challenges under control, and that our institutions are delivering quality of democracy and government?

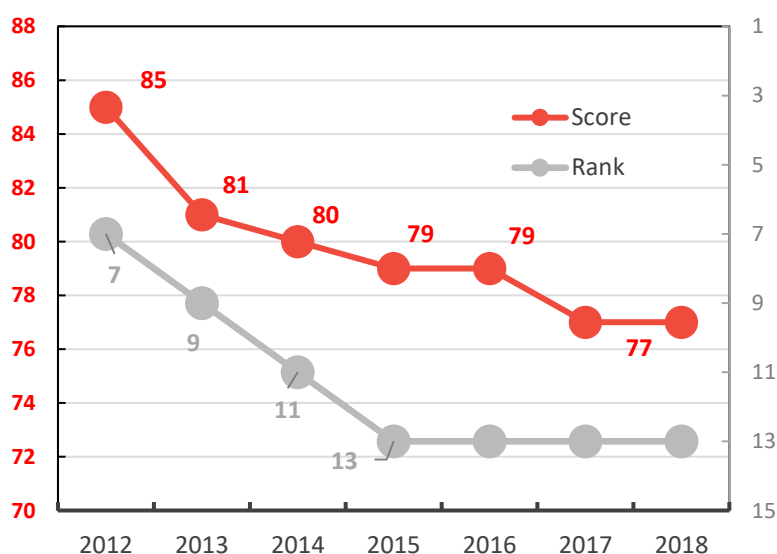
This report presents key results and draft recommendations from Australia's second **national integrity system assessment** – a collaborative, multi-stakeholder approach developed by Transparency International for evaluating the institutions and processes for upholding public integrity and controlling corruption.

An **integrity system** does not just fight corruption – it prevents corruption by going well beyond, to ensure high quality and responsive institutions, by ensuring officials and institutions act honestly, fairly, transparently, accountably and diligently in the discharge of the legitimate missions for which they have been entrusted with public power.

Corruption is the evidence that an integrity system is not in place or is failing – or that new challenges require attention. Transparency International defines corruption as 'the abuse of entrusted power for private gain', be it 'grand', 'petty' or political corruption.

For Australia, the need to act is clear. Contrary to the impression given by many international measures, we have our own history of official corruption, some of it serious, systemic, and recent or current. Internationally, since 2012, Australia's performance in perceived corruption control has fallen substantially on a range of the measures combined in Transparency International's **Corruption Perceptions Index** (Figure 1.1).

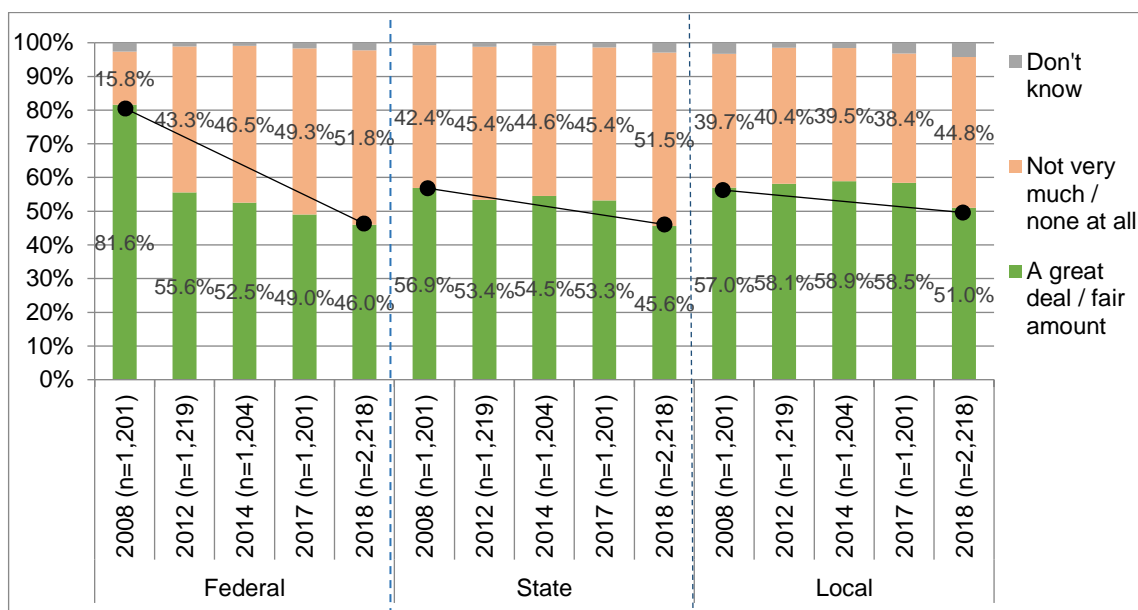
Figure 1.1. Australia's score on the Corruption Perceptions Index (2012-2018)



Source: Transparency International, Corruptions Perception Index 2018 (January 2019)

Figure 1.2. Trust and confidence in government in Australia (2008-2018)

How would you rate the **performance** of each of the following levels of government? (2008); Overall, how much **trust and confidence** do you have in each of the following levels of government to do a **good job in carrying out its responsibilities**? (2012-2018)



Source: Australian Constitutional Values Survey 2008-2017; Global Corruption Barometer Australia 2018: Griffith University (see Appendix 2).

Our research, using Transparency International's **Global Corruption Barometer** (Figure 1.2), confirmed that trust in public institutions is under unprecedented pressure – much of it driven by concern about corruption. Between a quarter and a third of all variation in Australian citizens' trust and confidence is owed to the level of corruption they perceive among elected officials, federal and state. Fortunately, we also know trust in government rises when citizens assess government to be doing a good job in fighting corruption.

This assessment responds to these challenges with a holistic appraisal of strengths and weaknesses in the integrity system, set out in the chapters that follow. **Appendix 2** provides more detail on the research undertaken.

Australia's first national integrity system assessment – ***Chaos or Coherence? Strengths, Opportunities and Challenges for Australia's Integrity Systems*** – was conducted in 2005 under a similar collaboration, led by Professor Charles Sampford. Several recommendations came to pass, including:

- Australia's first schemes of real-time disclosure of political donations
- Initial overhauls of Australia's whistleblower protection regimes
- Reform of 'freedom of information' laws to become 'rights to information' laws.

Calls for a second assessment, taking advantage of updates in TI's NIS methodologies, were supported by a workshop of Australian integrity agency thought leaders in 2014, and in 2016, by the **Senate Select Committee on a National Integrity Commission**.

In 2017, a second Senate Select Committee on a National Integrity Commission recommended that the assessment be used to help reach a 'conclusive' view on the options for strengthening the federal integrity system. The Australian Government has committed to consider the assessment in reforms to the National Integrity Framework under Australia's second **Open Government Partnership National Action Plan**.

The first recommendation of the original assessment was a “**national integrity commission**” or “**federal ICAC**”. Fourteen years later, current debates show that the time appears to have finally come:

‘That the Commonwealth Government’s proposed new independent anti-corruption agency [ACLEI] be a comprehensive lead agency operating across the Commonwealth, not just a few agencies’ (2005).

As seen below, this assessment strongly supports such a reform. A major purpose of many recommendations is to identify what a national integrity or anti-corruption commission should look like and how it should proceed – taking into account the different proposals made by all political parties, including the Australian Greens since 2010, the Labor Opposition in January 2018, and the Commonwealth Government’s Commonwealth Integrity Commission proposal of December 2018.

In August 2018, we published the Options Paper: [*A National Integrity Commission: Options for Australia*](#) to help inform this debate. In November, the Options Paper directly informed the design of the *National Integrity Commission* and *National Integrity (Parliamentary Standards) Bills 2018*, introduced by Independent MP Cathy McGowan AO, which provide useful examples throughout this report.

Appendix 1 sets out and updates an evaluation of the present options for this new body, including the Labor and Government positions to date.

This report echoes our main view in the Options Paper: that a comprehensive reform blueprint, informed by best practice, is the best way to ensure “a federal ICAC” is designed to achieve its purpose along with other priority reforms. Even if important, as Table 1.1. shows, corruption investigation and exposure is just one of the 15 functions that form pillars of the national integrity system. The advantage of a National Integrity System Assessment is not to presume that one single institution can fix everything, like a ‘silver bullet’, but rather to view and strengthen the system as a whole.

What is needed is a comprehensive plan for how Australians can best govern themselves, and be governed with, integrity. This report sets out that plan.

Table 1.1. The public integrity functions (and key institutions) covered by National Integrity System Assessment

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 & exposure	Anti-corruption agencies, police services
10	Judicial oversight & rule of law	Judiciary/Courts & DPPs
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

2. The state of Australia's integrity system

Australia has a complex integrity system – but no more complex than in other societies for whom well-functioning, accountable public institutions is an overriding goal.

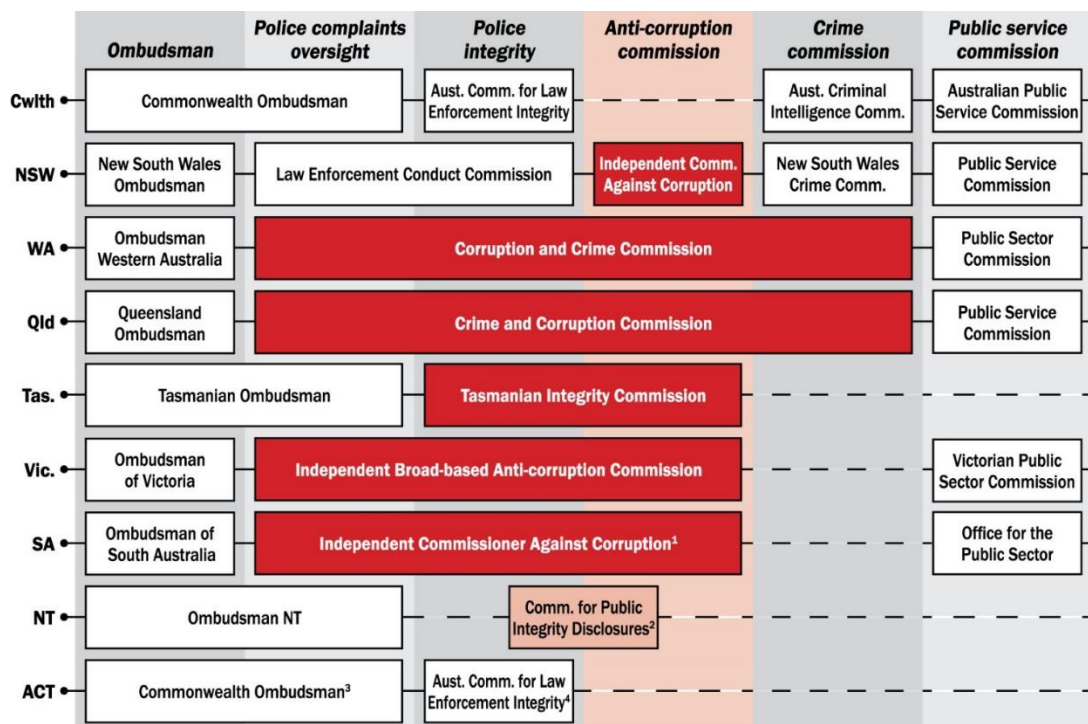
As a federal nation, Australia has not one but 10 public integrity systems – each of its State and federal systems together with how these operate as a national whole.

These systems have also been evolving rapidly. Four of the seven anti-corruption and police integrity commissions in Figure 2.3 did not exist at the time of the first NIS assessment, another has been transformed, and two new anti-corruption bodies have commenced in both Territories since the Figure was drawn.

As well as the Auditors-General and Electoral Commissioners of every jurisdiction, other core integrity agencies include Information Commissioners or equivalents – several of them also newly created since the first NIS assessment.

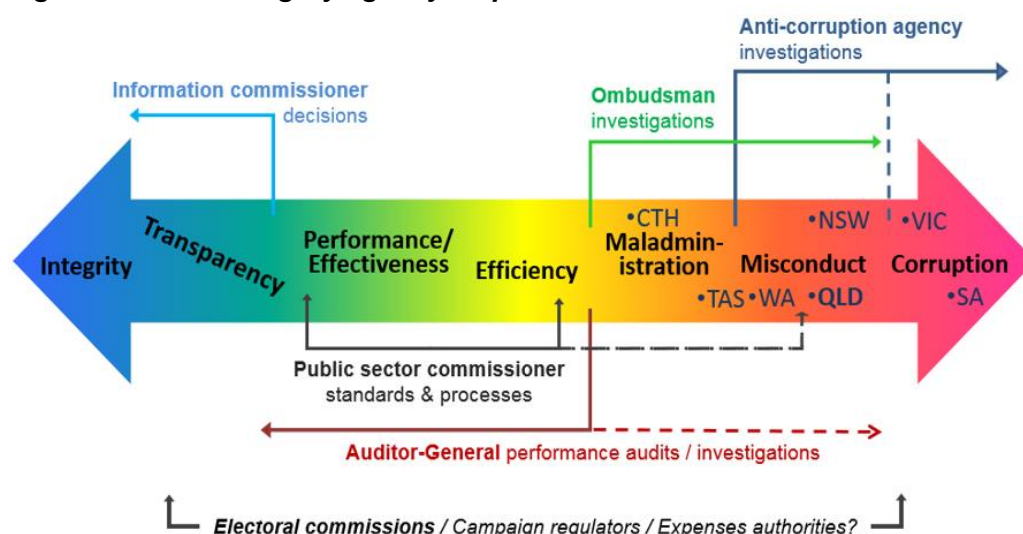
However, the key questions for an integrity system assessment are not how many actors are involved, nor simply whether they are efficient and accountable. The issue is whether the functions identified as important for maintaining integrity are being fulfilled to the highest achievable level, individually and collectively. And where they are not, what can be done to strengthen these processes or develop new ones.

Figure 2.3. Coverage of select integrity institutions in Australia



Source: Catherine Cochrane (2018), 'Boundary making in anti-corruption policy: behaviour, responses and institutions', *Australian Journal of Political Science* Vol 3, No. 4, pp.508-528. Note: Both the NT and ACT have also now established their own anti-corruption bodies.

Figure 2.5. Core integrity agency responsibilities



Source: A J Brown (2018), 'The Fourth, Integrity Branch of Government: Resolving a Contested Idea', Australian Political Studies Association 2018 Presidential Address, Brisbane, 24 July.

Integrity institutions also do not exist as silos, but have overlapping roles and jurisdictions, and constant interactions. These are at a policy level, operationally and, most importantly, in the ways they impact on culture, behaviour and performance across the public sectors and the community. Hence the need for a holistic approach.

The assessment approach involved a mixture of methods, focusing on five dimensions across all functions: (1) Scope and mandate, (2) Capacity, (3) Governance, (4) Relationships, and (5) Performance (see **Appendix 2** for more detail). This was a new framework, extended from the previous TI methodology and trialled here for the first time. The results provide a new overview of the integrity system as a whole.

Table 2.3. What contributes to integrity system performance? Strength of relationship between all dimensions (all functions) (National Integrity Survey)

	Scope & Mandate	Governance	Independence	Policy coherence	Social accountability	Operational coordination	Legal capacity	Resources	Performance
Scope & mandate	1	.824**	.807**	.820**	.758**	.805**	.759**	.736**	.863**
Governance		1	.838**	.808**	.752**	.777**	.733**	.691**	.812**
Independence			1	.782**	.734**	.762**	.774**	.714**	.805**
Policy / jurisdictional coherence				1	.782**	.877**	.680**	.720**	.794**
Social accountability mechanisms					1	.770**	.662**	.695**	.791**
Operational coordination						1	.660**	.645**	.789**
Legal capacity							1	.751**	.723**
Resources								1	.705**
Performance									1

Source: National Integrity Survey (all respondents, n=107) – See Appendix 2.

Using the new National Integrity Survey, we more clearly identify the importance of relationships and interactions between integrity actors – their powers and duties for ensuring issues do not **fall through cracks in jurisdiction**; how well they **coordinate, cooperate and exchange information**; and their mechanisms for **informing and engaging with public stakeholders**. Table 2.3 shows all factors to have a strong link to the perceived performance of integrity functions. However, the three relationship factors proved highly important – more important, even, than agencies' legal capacity or financial resources. This provides new evidence of the crucial roles of coordination, cooperation and engagement in the integrity system.

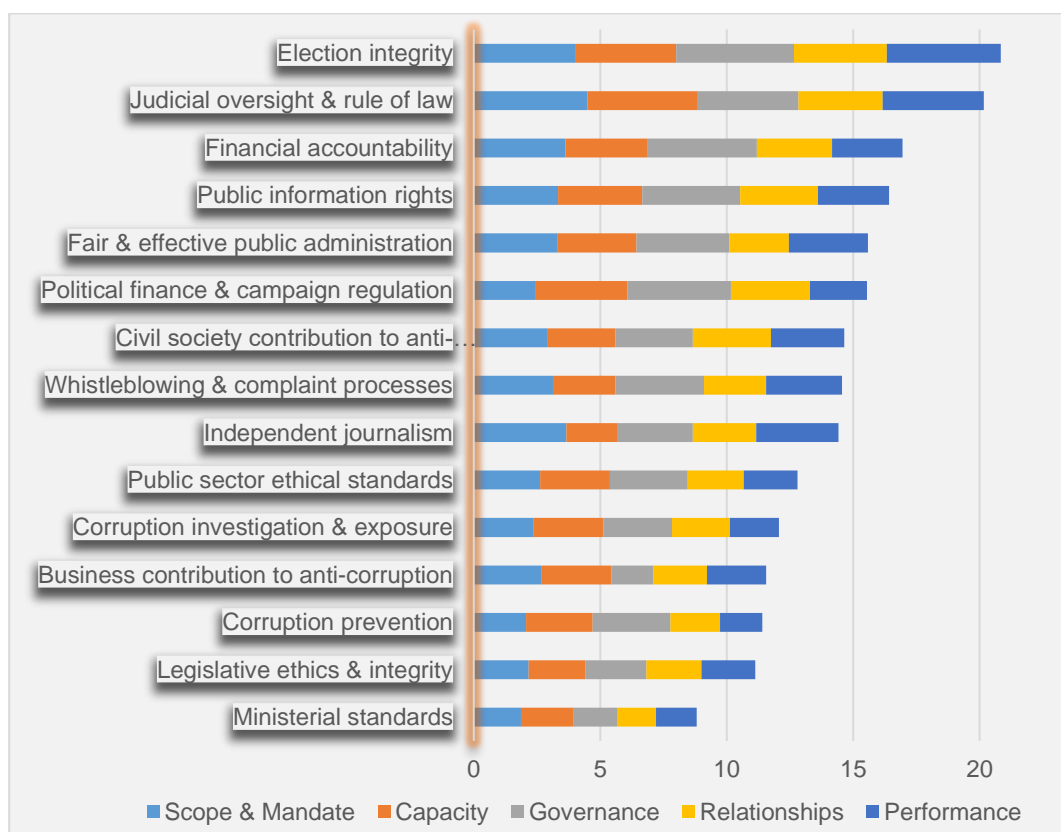
What is strong, and what is weak? The report deals with the system nationally, not just the Commonwealth level. But as a key example, Figure 2.10 sets out preliminary National Integrity Survey results from our expert and government respondents for all functions in the **Commonwealth integrity system**. It shows the variation in strength and performance between the different integrity functions or 'pillars' across the system – from *election integrity* and *judicial oversight* as the strongest, to *anti-corruption mechanisms*, *legislative ethics* and *ministerial standards* as the weakest.

These overall pictures help explain many of the recommendations that follow.

As our conclusions show, Australia's integrity systems have many strengths, but also many 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 weaker 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 – but currently we are not.

These recommendations can turn that around.

Figure 2.10. State of the Commonwealth integrity system, by integrity function -- strongest to weakest (National Integrity Survey, experts & government, n=66)



3. Australia's anti-corruption priorities in context

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 score and ranking on **Transparency International's Corruption Perceptions Index** since 2012 tells us: first, Australia is lucky in that, in international terms, it is generally still not a 'high corruption' country; second, Australia is going in the wrong direction, and can and should do better, if it is to avoid that fate, rebuild public trust and regain a reputation for dealing well with integrity risks.

Successive Australian federal governments have acknowledged our greatest danger is to become complacent and shrug off risks of corruption. However, 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 debate, including both Government and Opposition proposals for reform to establish a **Commonwealth / National Integrity Commission**. 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 approach is insufficient. Australia is a federal system in which national priorities must take account of national and international issues, cross-sectoral issues, federal/state issues, the need for greater national coordination and cooperation, and the Commonwealth's different, broader anti-corruption roles.

The first step is to ensure reform includes provision for a strong national plan – something that government has not previously managed to achieve. Determining reform priorities requires a proper understanding of context, including:

- Our patchy track record in controlling the export of corruption, from Australia;
- Unmet challenges in controlling the import of corruption, into Australia;
- The intersection of corruption issues between business and public sectors; and
- The need for cooperation and coordination across Australia.

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.

Box 3.1. National Coordination and Cooperation Provisions

National Integrity Commission Bill 2018 – Part 3, Division 7, ss. 36-41

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; ...

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.

The way forward requires a more coordinated and agile response to the nation's needs than previously considered – among Commonwealth agencies, but also nationally and internationally, and across the public-private divide. This means a national approach to coordination and planning of anti-corruption policies.

A national integrity or anti-corruption commission is certainly needed. As outlined in chapter 2, our assessment has already informed design of the *National Integrity Commission Bill 2018*, providing tangible examples of what is needed. This is a national integrity or anti-corruption commission with a scope and mandate which is indeed truly “national”, and includes the necessary coordination and leadership mechanisms. This requires a shift in focus, away from designing an agency based only on existing state or law enforcement precedents, towards these larger goals.

Recommendation 2: A truly ‘national’ integrity commission

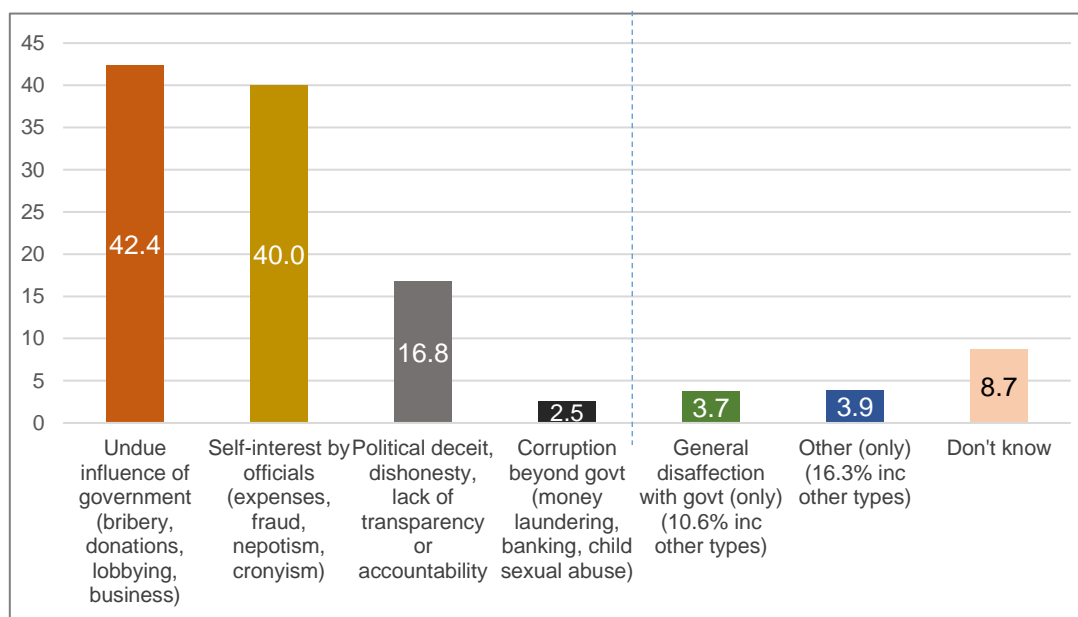
That Australia's proposed **Commonwealth / National Integrity Commission** be charged with responsibility for corruption prevention, detection and response **not only within federal public administration**, but also for:

- 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**.

Figure 4.1. Types of corruption perceived by Australian citizens

B4. ‘What kind of corruption do you think is the main problem in government – please tell me the kind of actions or behaviour you have in mind?’ (n=1,932)



Griffith University & TI Australia, Global Corruption Barometer Australia, May-June 2018 (n=2,218).
Note: Columns add to more than 100 per cent, as respondents could nominate more than one kind.

4. Our main official corruption challenges

Reduced trust and elevated scandals in Australian government in recent years have focused attention on the scale of our official corruption problems – and the issue of how corruption itself is understood and defined. Achieving a clearer picture of these challenges, and the adequacy of operating definitions of corruption is pivotal to identifying whether and how integrity systems may need to be strengthened.

For Australia there are four main issues:

- The changing profile of the *types* of misconduct and integrity violations classified by the community as ‘corruption’ – especially increasing concern about ‘grey corruption’ and ‘undue influence’;
- The extent of corruption risks going under-addressed, or unaddressed, in particular industry *sectors* – especially at Commonwealth level;
- Wildly varying *legal definitions* of official corruption across Australia, creating problems of inconsistency, confusion and uncertainty about the right systems and processes for responding to corruption; and
- *Disjunctions* between the amount of official misconduct that is known or perceived to occur, and the amount and effectiveness of official action to deal with that misconduct – given that only some of these definitions cover, or propose to cover, the spectrum of corruption risks in modern-day Australia.

These definitions are not only central to whether justice is achieved and accountability and trust maintained. They also define what preventive strategies are triggered to reduce reliance on a retrospective ‘damage control’ model of integrity; whether corrupt conduct is properly measured; and whether high-risk misconduct is detected before taking hold, through comprehensive reporting frameworks.

Recommendation 3: A modern, national definition of corrupt conduct

That the Commonwealth lead the States in developing a **modernized, broad definition for triggering anti-corruption processes, aimed at any ‘corruptive’ conduct which undermines public trust** – including:

- all violations with significant potential to corrupt, or impair public confidence in the integrity of, public decision-making (whether intentionally or recklessly; and whether by public officials or private businesses and citizens);
- any breach of, or failure to have, enforceable codes of conduct covering high-risk activities including gifts and benefits, lobbying, conflicts of interest including political party and electoral interests, and principles for transparency, competition, fairness and value for money in procurement;
- not only criminal, but disciplinary or administrative misconduct of those kinds;
- equal application across all government agencies and functions.

This recommendation relates to: the **Commonwealth** government and to all States and Territories, especially **South Australia** and **Victoria**.

Meeting the challenge starts with a modernised definition of corrupt conduct which does not revolve around response type or seriousness (e.g. criminal or non-criminal), as currently mostly the case; nor, as in NSW, growing lists of types of behaviour (including crimes) which can be corrupt without reference to *why*. The central focus should be the risk posed by any type of conduct that could have a “corruptive” effect on public decision-making, or on public confidence in its integrity.

The place to start is the Commonwealth, where the need has long been recognised, but where the current proposals are fragmented and inconsistent.

However, it is also time for a consistent national approach – a first objective for the National Integrity and Anti-Corruption Advisory Committee, described in chapter 3.

Recommendation 4: ‘Undue influence’ as a new corruption marker

That the Commonwealth and States include, in their revised statutory definitions of corrupt conduct, clear principles affirming **why the pursuit or granting of ‘undue influence’ constitutes potential corruption on its own right**, for application in all systems protecting the integrity of decision-making including:

- Transparency and regulation of access to decision-makers
- Lobbying
- Political donations, support and endorsements
- Pre-appointment and post-separation employment
- Personal and professional relationships.

*This recommendation relates to: the **Commonwealth** and **all States and Territories**.*

Corruption challenges cannot be addressed if they are not identified, if the level of corruption or high-risk conduct is not measured properly, or if there are no requirements to report it. Reporting requirements must enable independent authorities to ensure corruption issues are not played down, mishandled or swept under the carpet.

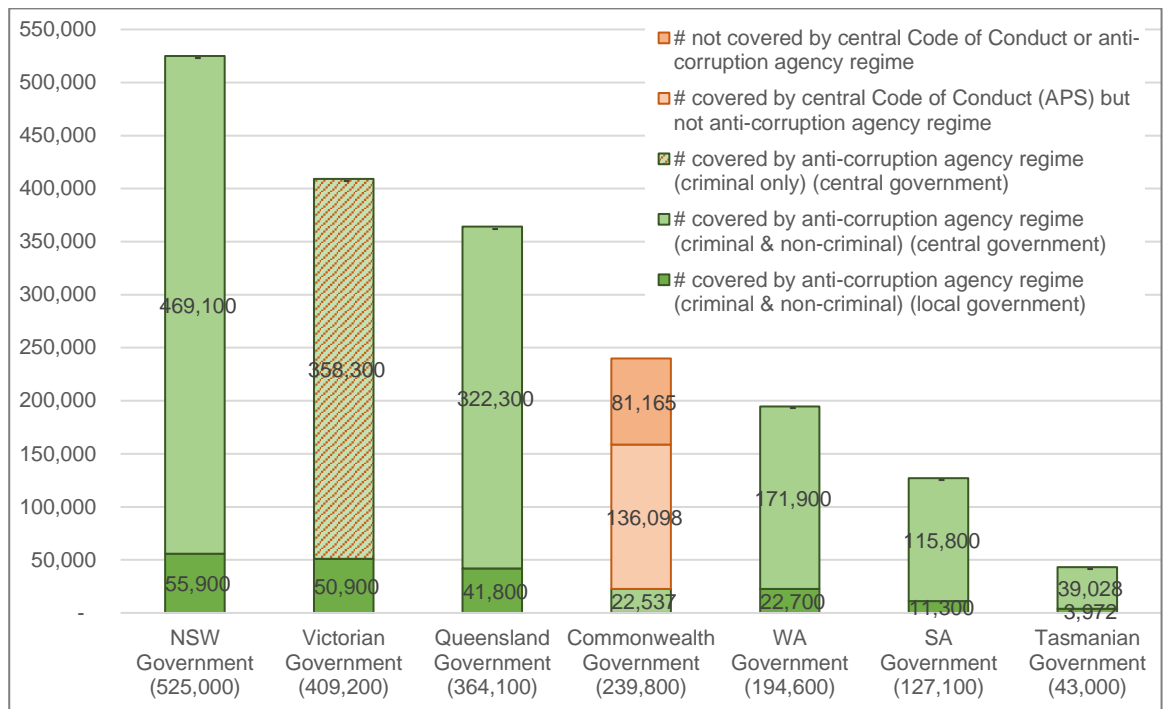
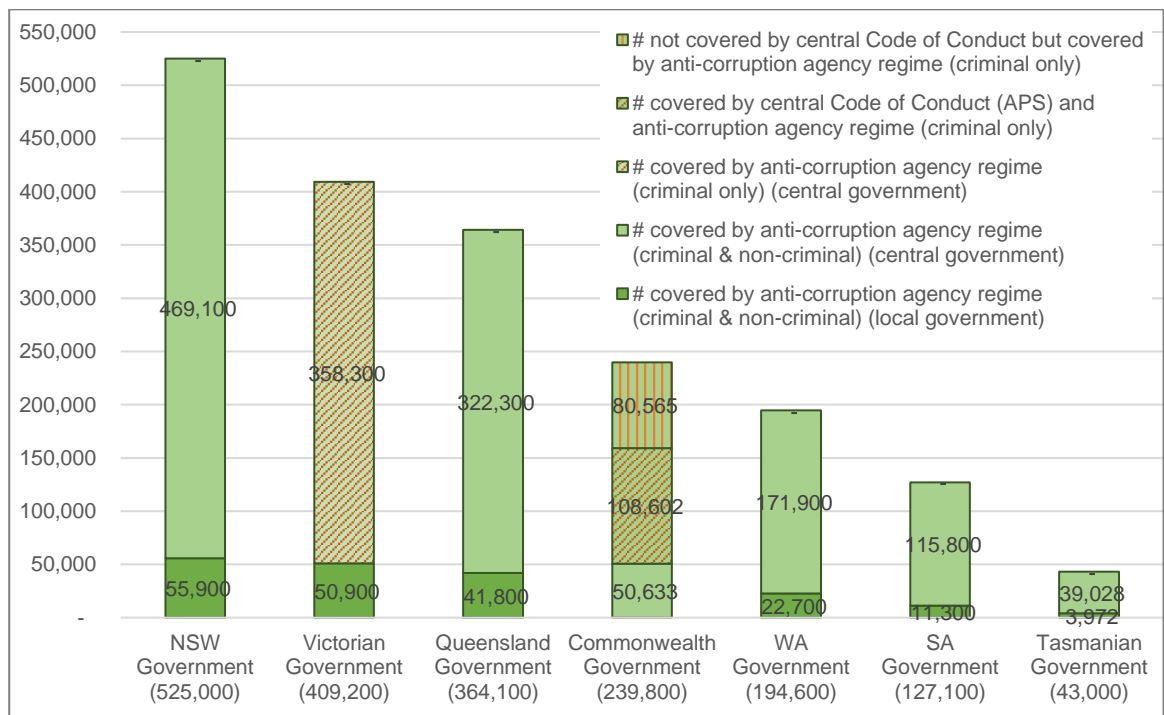
Dealing with our corruption challenges begins with comprehensive mandatory reporting frameworks which recognise the full spectrum of high-risk conduct described above and apply equally to all agencies and officials. As shown by Figures 4.4 and 4.5 this is not the case now, especially for the Commonwealth – and would still not be the case under the Government’s Commonwealth Integrity Commission proposal.

Recommendation 5: Comprehensive mandatory reporting

That the Commonwealth, and all States not already doing so, ensure a statutory system under which **all public agency heads and individual public officials must report any suspected/potential corrupt conduct**, in real time, to:

- Their own agency, or directly to the anti-corruption agency, in the case of all public officials; and
- Directly to the anti-corruption agency, in the case of all agency heads.

*This recommendation relates to: the **Commonwealth** and **Tasmanian** governments.*

Figure 4.4. Anti-corruption coverage: public sector employees (Australia) 2017**Figure 4.5. Proposed coverage (Commonwealth Integrity Commission proposal)**

Sources: Australian Bureau of Statistics Series 6248.0.55.002 - Employment and Earnings, Public Sector, Australia, 2016-17; APS Statistical Bulletin 2017; *A Commonwealth Integrity Commission—proposed reforms*, Attorney-General's Department, Canberra, 13 December 2018.

5. Preventing corruption

Public sector integrity systems are designed to identify and respond to corruption, misconduct and undue influence, and promote ethical behavior, high integrity public decision-making, accountability and performance. An important part of this role is preventive – that is, not just fixing problems and ensuring accountability and justice after they arise but preventing them from occurring in the first place.

Integrity is supported institutionally in a wide variety of ways, including through leadership and culture, and the mutually reinforcing work of all integrity agencies. However, as corruption risks grow and change, there is increasing recognition that preventing corruption does not happen by accident or good intentions alone. It requires systematic attention and a program of activity, both by lead integrity agencies and within every institution, to support the desired culture.

Surprisingly, research, policy and practice in the prevention of corruption are much less advanced than other aspects of integrity. This is confirmed by new, national research undertaken as part of this assessment into:

- What international research and experience says about the best approach to preventing corruption, including lessons learned from other domains that could be applied to help develop effective corruption prevention strategies?
- What kinds of prevention activities are currently employed across Australian governments jurisdictions – how do they compare, and what may be missing?
- Is a more strategic framework needed for corruption prevention – and if so, what should be its elements?
- Is resourcing for prevention adequate, and if not what should it be?
- How should prevention responsibilities and activities be formally embedded in public integrity frameworks, in support of Australia's historical commitment to a 'pro-integrity' culture in public institutions, now and in the future?

There is need for a clear prevention mandate and defined role for the coordination of prevention focused activities, in each jurisdiction. Current approaches are at best ad hoc, patchy and inconsistent. While anti-corruption agencies (ACAs) see this as their responsibility, this is often not reflected in formal structures.

Each jurisdiction needs a lead agency, usually the relevant ACA, with a role and responsibility to coordinate prevention efforts. This mandate needs to be embedded in legislative and policy frameworks. Developments in NSW and the framework proposed by the *National Integrity Commission Bill 2018* provide a way forward.

While these conclusions relate primarily to ACAs, it is clear effective prevention involves integration of a wide range of integrity issues within any organisation, as well as alignment of objectives, information and outreach between integrity agencies. Strengthened institutional arrangements also need to reflect these needs.

Recommendation 6: Strengthened corruption prevention mandates

That the Commonwealth and each State government **strengthen the legislative and policy mandate of their lead agency for corruption prevention**, to include:

- Responsibility to implement and monitor a proactive program of corruption prevention and resistance-building
- Clear statutory requirements for all public sector entities to develop their own corruption prevention frameworks, which are publicly available and reported, and regularly monitored by the lead integrity agency, and
- Formal coordination and information sharing mechanisms across other integrity agencies within the jurisdiction and across jurisdictions.

*This recommendation relates to: the **Commonwealth** and **all States and Territories**.*

Resourcing is a key constraint limiting the range of prevention activities undertaken across the jurisdictions. This is an international problem; Transparency International's evaluation methodology for anti-corruption agencies rates 5 per cent or more of an ACA's budget spent on corruption prevention as being 'high'.

While resources will always be limited and contested, budget allocations to ACAs, and within ACAs or other relevant integrity agencies, need to reflect the true needs as well as true value – in cost-benefit or return-on-investment terms – of corruption prevention activities.

Recommendation 7: Resources for prevention

That as part of the proposed national benchmarking review of integrity expenditure (Recommendation 25), the Commonwealth and States identify **minimum thresholds for investment in a full program of corruption prevention activities**, incorporating reactive and proactive strategies, as a proportion of:

- Total public expenditure
- Total core integrity agency expenditure, and
- Lead anti-corruption agency expenditure.

Further, that ACAs and/or other integrity agencies responsible for prevention allocate a significant portion of their budget (greater than 5 per cent) to their prevention program, and publicly report on how the budget allocation is apportioned between prevention, investigations and other responsibilities.

*This recommendation relates to: the **Commonwealth** and **all States and Territories**.*

Within the prevention function, lead agencies also need to develop a cohesive strategic framework for prevention activities, based on research evidence. For most agencies, prevention is currently practiced in accordance with aspects of two models identified from research – a law enforcement model and a bureaucratic model – both of which lack an evidence base to support their main underlying assumptions.

No ACA currently adopts a cohesive framework around its bureaucratic measures, such as used in responsive regulation. Most agencies pay less attention to identifying situational factors that could be manipulated to reduce opportunities.

There is no one-size-fits-all, but essential elements of a more strategic framework are known. With this framework, the real work and value of prevention can be achieved.

Recommendation 8: A comprehensive corruption prevention framework

That the lead integrity agency of each jurisdiction develop and publicly articulate **an agreed framework for best practice in corruption prevention and resistance-building programs**, based on:

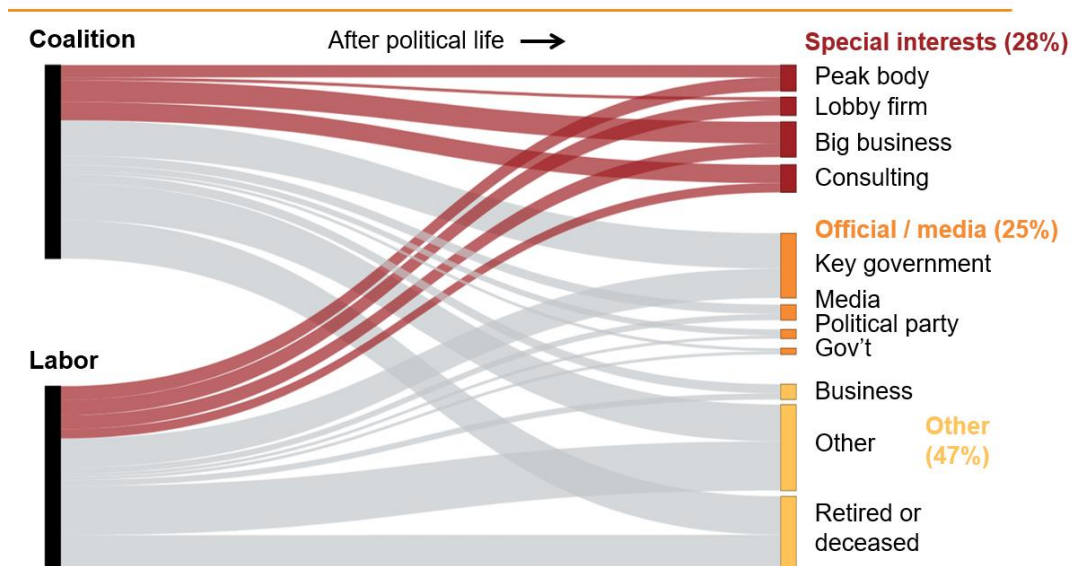
- A broad range of activities that does not over-emphasise education or law enforcement at the expense of other activities
- System-wide, agency specific and function specific strategies that specifically address situational contexts
- Graduated responses to detected breaches to maximise voluntary compliance (see also Recommendation 16)
- Targeted use of law enforcement

A comprehensive approach to performance measurement and data collection, focused on prevention outcomes rather than input activities.

This recommendation relates to: the Commonwealth and all States and Territories.

Figure 6.2. Federal ministerial employment after politics

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Institute



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.

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.

6. Political integrity

Elected legislatures, executive government and political parties are core pillars of Australia's public integrity systems. However, political integrity regimes in Australia are in disarray, with occasional islands of best practice and innovation, but many languishing areas, especially at a Commonwealth level. The result is a fragmented, incomplete and often ineffective system.

Five key problems are eroding public confidence in parliamentarians and ministers, and weakening the fundamentals of democracy:

- Incoherent, inconsistent and ineffective political donation and finance regimes;
- Undue influence through unregulated or inappropriate lobbying and access;
- 'Revolving doors' or post-separation employment of ministers and senior staff;
- Risks of political cronyism in appointments, including the judiciary and tribunals;
- Regulation of parliamentary expenses.

Fortunately, solutions are apparent, through extensive work by parliaments and others on standards and features of the parliamentary system that can help bring confidence back to Australian politics. These include:

- A focus on principles of public trust;
- Robust parliamentary and ministerial code of conduct regimes;
- Systematic review of existing rules in each of these five areas, especially with a view to establishing greater national coherence and consistency; and
- Practical mechanisms for supporting compliance and enforcement with these principles, including prevention and advisory mechanisms, enforcement by parliaments and, when necessary, stronger integrity agencies.

The Grattan Institute's 2018 analysis of access and influence in Australian politics succinctly summarises why it is time for a comprehensive suite of practical reforms:

Publishing ministerial diaries and lists of lobbyists with passes to Parliament House could encourage politicians to seek more diverse input.

More timely and comprehensive data would improve visibility of the major donors to political parties. Accountability should be strengthened through clear standards for MPs' conduct, enforced by an independent body.

A cap on political advertising expenditure would reduce the donations 'arms race' between parties and their reliance on major donors.

These reforms won't cure every ill, but they are likely to help. They would improve the incentives to act in the public interest and have done no obvious harm in jurisdictions where they have been implemented.

Recommendation 9: National political donations and finance reform

That the Commonwealth, States and Territory governments establish a high level, national inquiry (royal commission) to **engage with the community to develop and recommend consistent principles for public funding of elections, expenditure regulation, political donation regulation and disclosure**, with a commitment to legislate accordingly -- including:

- The lowest realistic caps on both political donations and campaign expenditure, as well as low, consistent and universal disclosure thresholds
- Real-time disclosure
- Consistent and fair regulation of third parties, and
- Clear statements of objectives to ensure new regulations are interpreted with reference to the fundamental goals of political integrity, public trust and prevention of 'undue influence' as described in Recommendation 4; and apply equally to all persons, including not-yet-elected political candidates.

This recommendation relates to: the **Commonwealth** government and to all States and Territories, especially **Tasmania**

Seven out of Australian's nine jurisdictions still have no system of prompt or real-time disclosure of political donations. Rules and thresholds for donations, expenditure and disclosure vary wildly, inviting 'laundering' of donations through backdoor routes. One Australian State (Tasmania) still has no political finance disclosure regime at all. In the State (NSW) where most attempts have been made to limit or ban unwanted political finance, these have been inconsistent and politically partisan, in some cases struck down by the High Court of Australia for being too piecemeal.

It's time for a national inquiry to engage citizens in the process of setting consistent, evidence-based rules that the community and High Court alike can support – and to generate the political commitment for parliaments to legislate accordingly.

Recommendation 10: Lobbying and access

That the Commonwealth, States and Territory parliaments each legislate to **eliminate undue influence by vested interests in parliamentary and ministerial decision-making**, through provisions including:

- Stronger, more enforceable, independently administered registration and code of conduct requirements for lobbying activities (including in-house personnel)
- Real-time publication of records of lobbying activities, including diaries of ministers, ministerial staff and designated officials
- Information, training and support for community organisations with limited skills or resources necessary to lobby in the public interest
- Prohibition on the purchase of ministerial access or use of government resources as part of political party fundraising or electoral campaigns
- Express requirements for compliance with lobbying rules in parliamentary and ministerial codes of conduct, including published records and statements of reasons for all significant ministerial decisions
- A quarantine period of 3-5 years after serving in executive office, during which a former minister may not accept any substantial benefit from any entity or related entity with which they dealt in their portfolio.

This recommendation relates to: the **Commonwealth** and **all States and Territories**.

Figure 6.3. A ten-point plan for democratic regulation of election campaign funding



Ten-point plan for democratic regulation of funding of federal election campaigns

- 1. Effective transparency of political funding**
 - Comprehensive:
 - low disclosure threshold with amounts under threshold aggregated;
 - covers key political actors (including third parties)
 - Timeliness: e.g. UK system of quarterly report + weekly reports during election campaign
 - Accessibility: requires analysis of trends etc. (e.g. through reports by electoral commissions)
- 2. Caps on election spending**
 - Comprehensive:
 - cover all 'electoral expenditure';
 - covers key political actors (including third parties)
 - Applies 2 years after previous election – allow limits to apply around 6 months
 - Two types of limits:
 - national;
 - electorate
 - Level set through review and harmonised with levels of caps and public funding
- 3. Caps on political donations**
 - Comprehensive: i) cover all 'political donations'; ii) covers key political actors (including third parties)
- 4. A fair system of public funding of political parties and candidates**
 - Gradually phase in to set cap at \$2000 per annum and private funding around 50% of total party funding
 - Exemption for party membership (including organisational membership fees) with level at \$200 per member (similar to section 26 of Election Funding Act 2018 (NSW))
 - Election funding payments with 2% threshold and calculated according to tapered scheme
 - Annual allowance calculated according to number of votes and party members
 - Party development funds for political parties starting up
 - Level set through review and harmonised with levels of caps and public funding – with public funding around 50% of total funding
 - Increases in public funding to be assessed through a report by Australian Electoral Commission
 - Replace tax deductions for political donations with system of matching credits with credits going to political parties and candidates
- 5. Ban on overseas-sourced donations and donations from foreign governments**
 - No case for banning donations for those who are foreign-born
 - Ban overseas-sourced donations
 - Ban donations from foreign governments
- 6. Stricter limits on government advertising in period leading up to election**
 - Needed to deal with spike in 'soft' advertising in election period
 - Caps on amount spent on government advertising 2 years after previous election
- 7. Stricter regulation of parliamentary entitlements**
 - Needed to deal with incumbency benefits through entitlements that can be for electioneering
 - Ban use of printing and communication allowance 2 years after previous election
- 8. Measures to harmonise federal, State and Territory political finance laws**
 - Minimalist: anti-circumvention offence (like section 144 of Election Funding Act 2018 (NSW))
 - Maximalist: harmonising political finance regulation in terms of concepts, provisions etc
- 9. An effective compliance and enforcement regime**
 - Measures to build a culture of compliance:
 - Governance requirements for registered political parties;
 - Party and Candidate Compliance Policies (tied to public funding);
 - Key: an adequately resourced Australian Electoral Commission which adopts a regulatory approach toward political finance laws
 - Anti-corruption commission able to investigate breaches of these laws that fall within meaning of 'corrupt conduct' or if referral from Australian Electoral Commission (as currently provided NSW ICAC Act).
- 10. A vigilant civil society**
 - A network of media and non-government organisations committed to 'following the money'
 - Public subsidies for such scrutiny
 - Strategic collaborations between scrutiny organisations and statutory agencies

Source: Joo-Cheong Tham, 'Democracy before dollars: The problems with money in Australian politics and how to fix them', *Australian Quarterly* Vol 90, Issue 2 (Apr-June 2019), p.20.

Figure 6.4. A ten-point plan for democratic regulation of political lobbying

Ten-point plan for democratic regulation of funding of political lobbying

1. Register of Lobbyists

- Cover those regularly engaging in political lobbying (repeat players) including commercial lobbyists and in-house lobbyists
- Require disclosure of identities of lobbyists, clients, topics of lobbying and expenditure on lobbying

2. Disclosure of lobbying activity

- Quarterly publication of diaries of ministers and shadow ministers and their chiefs of staff which includes disclosure of who these public officials are meeting together with meaningful detail as to subject-matter of meetings
- Lobbyists on register of lobbyists to make quarterly disclosure of contact with public officials including disclosure of identities of public officials and subject-matter of meetings

3. Improved accessibility and effectiveness of disclosure

- Register of lobbyists and disclosure of lobbying activity to be integrated with disclosure of political contributions and spending
- Annual analysis of trends in such data by an independent statutory agency (e.g. Australian Electoral Commission or federal anti-corruption commission)

4. Code of conduct for lobbyists

- Code of conduct to apply to those on Register of Lobbyists
- Duties under the Code to include duties of legal compliance; duties of truthfulness; duties to avoid conflicts of interest; and duties to avoid unfair access and influence.

5. Stricter regulation of post-separation employment

- Ban on post-separation employment to extend to lobbying-related activities (including providing advice on how to lobby)
- Requirement on the part of former Ministers, parliamentary secretaries and senior public servants to disclose income from lobbying-related activities if they exceed a specified threshold

6. Statement of reasons and processes

- A requirement on the part of government to provide a statement of reasons and processes with significant executive decisions
- This statement should include: a list of meetings that are required to be disclosed under the Register of Lobbyists and Ministerial diaries; a summary of key arguments made by those lobbying; a summary of the recommendations made by the public service; and if these recommendations were not followed, a summary of the reasons for this action.

7. Fair consultation processes

- A commitment on the part of government to fair consultation processes (processes based on inclusion, meaningful participation and adequate responsiveness)
- Guidelines to be developed to give effect to this commitment (like the UK Cabinet Office's Consultation Principles)
- Statement of reasons and processes (above) should include extent to which these guidelines have been met

8. Resourcing disadvantaged groups

- Government support for advocacy on the part of disadvantaged groups including ongoing funding and dedicated services
- Support should be provided in a way that promotes advocacy independent of government and ensures fair access to the political process

9. An effective compliance and enforcement regime

- Education and training for lobbyists and public officials
- Independent statutory agency (e.g. Australian Electoral Commission or federal anti-corruption commission) to be responsible for compliance and enforcement

10. A vigilant civil society

- A network of media and non-government organisations committed to 'following the money' spent on political contributions and political lobbying
- Public subsidies for such scrutiny
- Strategic collaborations between scrutiny organisations and statutory agencies

IMAG © Harrell Wake - Herold's

Source: Joo-Cheong Tham, 'Democracy before dollars: The problems with money in Australian politics and how to fix them', *Australian Quarterly* Vol 90, Issue 2 (Apr-June 2019), p.20.

Recommendation 11: Meritocratic political appointments

That the Commonwealth and each State and Territory parliament legislate to establish an **appointments commission, including civil society, to ensure independence, merit and public confidence** in all appointments to:

- Senior positions in the public service
- Senior diplomatic and trade posts (e.g. head of mission)
- The judiciary and independent tribunals, and
- The heads of core integrity agencies.

This recommendation relates to: the **Commonwealth** and **all State and Territory** governments.

Practical and effective precedents exist for official appointment processes to help remove the risk or appearance of politicization and cronyism in ministerial appointments – a prominent concern at both federal and state levels. They include the Commissioner of Public Appointments approach in the UK, which could be easily followed in Australia.

Already, every Australian house of parliament has or will soon have its own code of conduct – except the Western Australian Legislative Council, and both houses of federal parliament. The Victorian Parliament is the latest to legislate its codes, in 2019, following recommendations of the Commonwealth Parliamentary Association. The *National Integrity (Parliamentary Standards) Bill 2018* demonstrates the feasibility of a best practice regime at federal level – a fundamental step towards restoring trust in legislatures and ministers, currently one of the weakest areas in the integrity system.

Recommendation 12: Parliamentary and ministerial codes of conduct

That every Australian House of Parliament and every Cabinet that has not already done so, adopt a regime for a **code of conduct** which includes:

- The *values and conduct* which each member is obliged to observe, including with respect to disclosure and management of interests – renewed and re-adopted after each general election or appointment of each administration
- Appointment of a parliamentary *ethics or integrity adviser* or commissioner, to provide confidential advice to any member or their staff, and with whom every member is required to meet at least once every year
- *Professional development or training programs* to assist new and continuing members and their staff with ethical decisions and challenges
- A legislatively-based process for ensuring a culture of compliance and rigorous, non-partisan enforcement of the code
- Appointment of a *parliamentary standards commissioner or other independent investigator(s)* to determine the facts of any alleged breach, and report to the House or First Minister where evidence of breach is found
- Mandatory notification of possible *corrupt conduct or criminal breaches* to the jurisdiction's anti-corruption agency or Police, as the case may be.

This recommendation relates to: the **House of Representatives, Senate** and **WA Legislative Council** as the only Houses with no Code at all; and to all parliaments other than **Queensland** in respect of most other elements.

7. Whistleblowing, civil society and the media

Integrity agencies, parliaments and public institutions do not work alone. Far from it – processes of social accountability are now understood internationally to provide crucial triggers and drivers for any functioning integrity system.

Australia's national integrity system would simply not work, without voters to hold parliamentarians to account, citizens to assert their rights if treated unfairly, ethical public servants and private sector employees to speak up or provide evidence about wrongdoing, and media capable of reporting on accountability issues of public interest.

Our assessment nevertheless reveals that to a large extent, the crucial accountability roles of these social actors are taken for granted and continue to go substantially unsupported by the integrity system – even though they are under pressure and in some cases close to crisis.

On the positive side, Australia has advanced its commitment to the Open Government Partnership, with beneficial effects.

However, the integrity system faces five serious challenges:

- Inaccessibility of key integrity agencies to potential complainants, whistleblowers and informants, especially in relation to Commonwealth corruption matters – a problem *not* proposed to be fixed under current Government proposals;
- Insufficient resources and operational independence on the part of integrity agencies to handle citizen and whistleblower complaints directly, instead over-relying on 'devolution' or integrity issue referrals back to the decision-makers concerned;
- Public sector whistleblower protection regimes which are strong on paper but provide little actual protection – a problem for which neither the Commonwealth Government nor Opposition have yet promised a credible solution;
- Continuing barriers to government transparency and access to justice; and
- Critical reduction in the availability and capacity of independent journalism to play its accountability roles; a problem not offset – and indeed often boosted – by the rise of global platforms for unmediated social communication.

The Commonwealth has proposed that individual public servants and the public not be able to directly approach or make complaints to the proposed Commonwealth Integrity Commission (public sector division) Government – and instead would need to be referred there by other agencies. This reform would be in the opposite direction to best practice, with experience showing the need for integrity agencies to be *more* open, responsive and accessible to complainants, not less.

The proposed national integrity commission and bipartisan recommendations for whistleblower protection reforms create an important opportunity for addressing several of these issues, at the federal level. However, on both these potential advances, stronger action is needed than yet promised by any major party.



Recommendation 13: Direct accessibility to the public

That the Commonwealth and each State government ensure that the enabling legislation of each core integrity agency enables **citizens and public employees to gain full and direct access** to its services -- including:

- Freedom to complain directly to the agency about any matters in jurisdiction
- Clear principles for ensuring that matters are only 'devolved' or 'referred back' to the agency where the matter originated where this is the best of all options for investigation and resolution, and with prior consultation with the citizen or public employee;
- The right to have matters referred to other integrity agencies, without the citizen having to make multiple complaints, and
- Sufficient resourcing for integrity agencies to fulfil these rights.

This recommendation relates to: all Australian governments, especially the **Commonwealth** in respect of its Commonwealth Integrity Commission proposal.

Recommendation 14: Whistleblower protection that protects

That the Commonwealth and each State government reform its public interest disclosure (whistleblower protection) legislation to:

- Bring legal protections at least to the standard of Part 9.4AAA of the Corporations Act, as amended, by granting access to compensation where agencies fail to support and protect public interest whistleblowers
- Recognise collateral or 'no fault' damage as a basis for whistleblowers to be compensated for impacts of reporting, not simply direct reprisals
- Establish reward and legal support schemes to ensure the financial benefits to government of whistleblowing disclosures are reflected in support to whistleblowers themselves, individually and collectively, and
- Establish a properly resourced whistleblower protection authority, providing not only advice, support and referrals, but expert monitoring and oversight of responses to disclosures, and active protection including investigations into detriment, compensation and civil penalty actions.

This recommendation relates to: all Australian governments, especially the **Commonwealth** in respect of the *Public Interest Disclosure Act 2013* and other proposed whistleblowing reforms.

The Commonwealth's *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* has lifted the bar for rules to protect whistleblowers on paper, but major recommendations of the Parliamentary Joint Committee on Corporations and Financial Services remain unfulfilled, with no timetable for implementation of a 3-year-old review of the *Public Interest Disclosure Act 2013*.

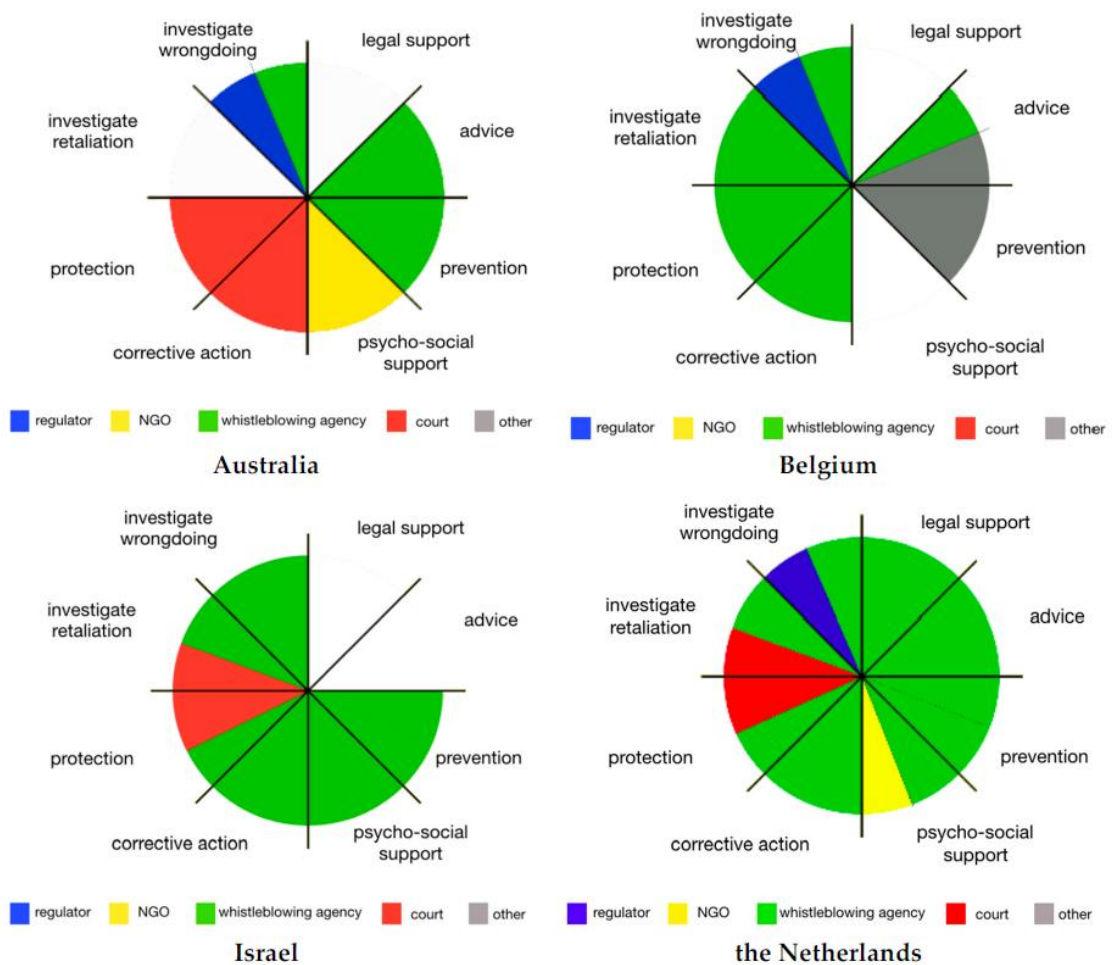
Investment in practical mechanisms to ensure proactive and reactive protection of whistleblowers remains weak – for public and private sectors – due to the lack of any agency with responsibility and specialist skill to police detrimental action.

The Opposition has proposed to implement further reforms, including a reward scheme, but its protection authority for the entire Australian workforce would consist of five (5) staff added to the wrong agency for the purpose (Commonwealth Ombudsman). This is not yet a credible proposal. It risks making whistleblowers worse off, by entrenching a system which encourages reporting but fails to provide meaningful protection or remedies.

Meanwhile, responses to the assessment suggest that **independent journalism** is the single highest performing 'pillar' of the national integrity system, relative to resources. However those resources are shrinking even further, with critical effect on the quantity and quality of public accountability, due to reduced funding and the effects of competition from largely unregulated, unmediated global communications platforms. Indeed, these platforms are creating as many accountability problems as they help solve.

A strategic shift in policy and resources is needed to sustain one of the most fundamental hallmarks of a functioning integrity system.

Figure 7.1: Institutional whistleblowing arrangements (public sector) (4 countries)



Source: Loyens, K.; Vandekerckhove, W. (2018) 'Whistleblowing from an International Perspective: A Comparative Analysis of Institutional Arrangements', *Administrative Science*. 2018, 8, p.30

Recommendation 15: Supporting investigative journalism

That the Commonwealth Government implement a package of reforms to ensure the **future of investigative journalism** in Australia, including:

- Secure funding to public news services for investigative reporting on political accountability and integrity issues
- A special fund for public interest journalism beyond the public broadcasters
- Tax deductions or offsets for independent media outlets that meet public interest criteria
- An independent media integrity regulator with power to investigate and sanction misleading, deceptive and damaging breaches of editorial control by media organisations, especially open-source or "social" media platforms.

This recommendation relates to: the **Commonwealth** government.

8. Enforcing integrity violations

Much of the integrity system focuses on compliance – investigating and resolving complaints or other information about potential integrity breaches, ranging from corruption, misconduct and maladministration to financial accountability breaches, failure to observe electoral rules, and non-compliance with public information rights.

Despite the longstanding nature and well recognised role of integrity agencies, however, recent years have seen significant controversies over the nature and reach of their powers, their collective effectiveness and whether they all have the right tools to do their jobs. The assessment has focused on six specific problems.

First, gaps and disjunctions occur in the remedies integrity agencies may trigger or impose. In part this stems from misaligned legal definitions of corruption discussed earlier, but also from the fragmented or siloed nature of the remedies themselves. A seamless system of responses to integrity violations is needed, not only for effective prevention (Recommendation 8) but to achieve justice.

Recommendation 16: Justice in all integrity violation cases

That the integrity agencies of each Australian government (including law enforcement) develop a joint **framework for ensuring all integrity violations meet with a proportionate and, where appropriate, visible response** – (graduated response framework) covering:

- Criminal, disciplinary, civil and administrative options
- Restorative justice orders in criminal and non-criminal matters
- Anti-corruption agency input into disciplinary and administrative inquiries or proceedings, in referred, non-criminal matters
- Banning, disbarment and exclusion from public office
- Reclaiming of public contributions to superannuation or pensions
- Public cancellation or reversal of tainted decisions
- Public reporting on serious non-criminal ethics violations, and
- Presumptions against suppression orders and confidentiality clauses in all litigation (including criminal) or settlements relating to abuse of office.

This recommendation relates to: **all Australian governments.**

The relationship between anti-corruption agencies and the **criminal justice** system has been a concern, with some arguing these should operate independently, and others that there should be no non-criminal avenues for pursuing corruption. A root cause is delays and uncertainties in bringing criminal prosecutions after corruption investigations, contributing to a sense of impunity. In many jurisdictions, a more effective relationship between non-criminal and criminal paths must be rebuilt.

Recommendation 17: Effective law enforcement support

That each Australian government review its public interest prosecution policies, resourcing for Directors of Public Prosecutions and training to ensure:

- DPPs know what to do with corruption matters when referred to them
- Priority attention is given by a senior (special) prosecutor to all official corruption matters referred to them, including whistleblower protection matters, independently of apparent “gravity” on conventional criteria
- Discretions to prosecute prioritise public interest over success, and
- Alternatives to criminal prosecution can be identified as part of the framework under Recommendation 16, including disciplinary, civil and administrative sanctions stemming simply from charge or prosecution (not conviction).

This recommendation relates to: **all Australian governments**.

This issue is also crucial to resolving controversy over when **public hearing powers** should be available to expose and investigate corruption, without undermining traditional rights and the role of criminal courts. Failed Commonwealth prosecutions in serious bribery cases confirm the consequences when agencies do not understand the limits of their own coercive hearing powers, whether public or private.

The Commonwealth’s Integrity Commission proposal sidesteps rather than resolves this question, by using only criminal avenues and no public hearing powers to address corruption in 80 per cent of the federal public sector (including parliamentarians) – while preserving them for 20 per cent of federal officials. The better answer is to reform the tests for public hearings, making clear the purposes and stages at which they can be used, and ensuring conflict does not arise with criminal proceedings.

Recommendation 18: Reform of public hearing powers

That all legislation providing integrity agencies with **power to conduct compulsory (coercive) public inquiries** be reviewed to ensure:

- all anti-corruption agency heads have such a power
- the discretion to exercise the power is non-delegated, fully independent, and based on agency heads’ assessment of the public interest
- other key criteria are satisfied including the public interest in knowing how corrupt conduct was caused, allowed to occur or go unrectified, or could be prevented, even if individuals cannot or are not proposed to be identified
- protections against the use of self-incriminating compelled evidence in proceedings against a person are real and upheld
- consultation occurs with the Director of Public Prosecutions with respect to the feasibility and merits of criminal prosecution using evidence proposed, intended or likely to be used or gained at a public hearing, *before* the decision is taken to use or call that evidence in a hearing
- guidelines are in place to ensure a public hearing is adjourned or ceased whenever significant evidence arises that means a matter the subject of a hearing could or should be prosecuted as a criminal offence.

*This recommendation relates to: **all Australian governments**, especially NSW.*

The collective experience of investigative agencies can be brought to bear to solve further key problems in different jurisdictions. These include the importance of flexible, independent public reporting powers (lacking or limited for South Australian and Tasmanian corruption investigations), and mechanisms to ensure integrity violations do not fall through the cracks of different jurisdictions (a positive example being South Australia's Office of Public Integrity).

Controversy also surrounds whether official corruption investigations should be entitled to pursue non-government actors. This question should be answered in the affirmative – experience in other integrity areas confirms the importance of agencies must be able to follow the trail where it leads, be it financial, administrative or corruption-related.

Recommendation 19: 'Sunlight' public reporting powers

That the enabling legislation of all core integrity agencies be reviewed to ensure **effective powers of public reporting at any time** on any matter relating to their mandate or responsibilities, not limited to powers to report to parliament, where determined by the agency head to be in the public interest, subject only to requirements for procedural fairness with respect to individuals or private entities.

This recommendation relates to: all Australian governments, especially Tasmania and South Australia.

Recommendation 20: Closing the cracks between agencies

That the enabling legislation of all core integrity agencies be reviewed to include **provisions supporting the mutual referral of integrity issues between agencies**, including information sharing and the following responsibilities:

- to ensure all complaints or information received are reasonably assessed for evidence of integrity violations in the jurisdiction of each other agency; and
- to directly refer significant or serious violations to that agency, if not themselves proposing to action the complaint or information; or
- to notify that agency of any significant or serious violations identified, if themselves proposing to action the complaint or information, unless there are strong public interest reasons for not doing so (e.g. destruction of evidence).

This recommendation relates to: **all Australian governments.**

Recommendation 21: Jurisdiction over private actors

That the enabling legislation of all core integrity agencies be reviewed to ensure any private person or company may be investigated, called on to provide evidence, or be subject to reporting, findings of fact or recommendations on a matter in jurisdiction, as if that person was a public official, including:

- following the money in cases of public financial accountability
- following the decisions in cases of outsourced/contracted public services, and
- following the conduct and its causes in cases of corrupt or official misconduct (broadly defined in Recommendation 3).

This recommendation relates to: **all Australian governments.**

9. Integrity agency accountability

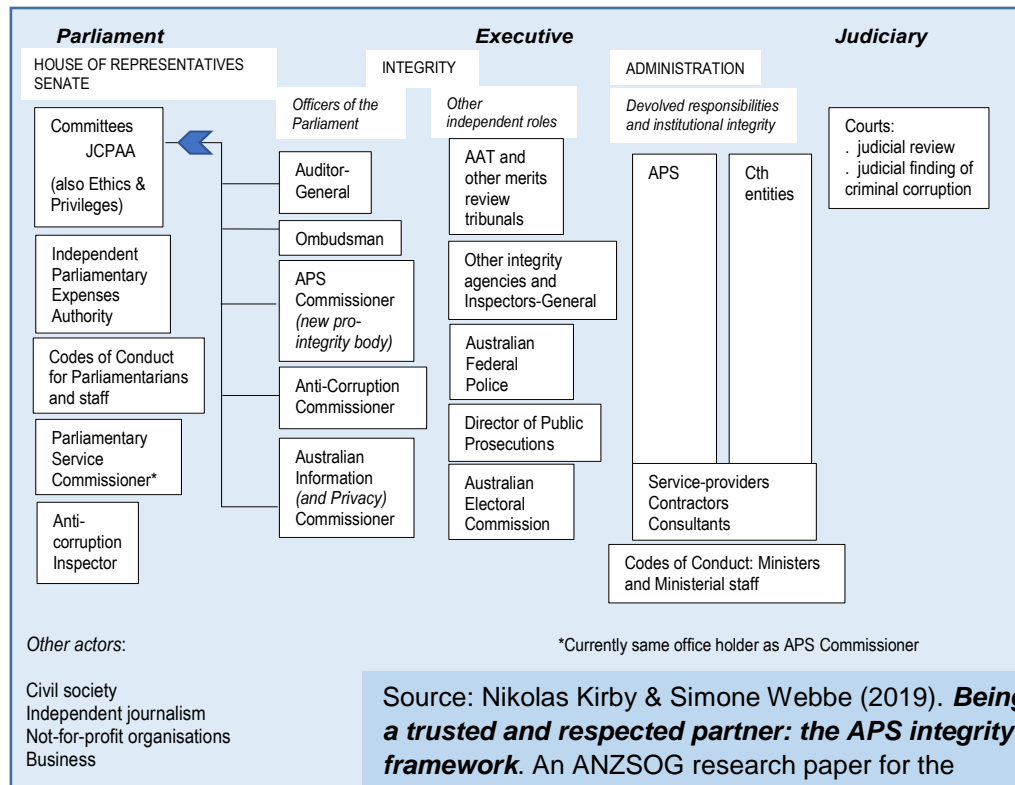
Accountability is not only a key purpose of the integrity system – it underpins it.

Australia has advanced systems of accountability governing its core, independent integrity agencies. Most are subject to oversight by special purpose parliamentary committees, as well as being subject to the rule of law and judicial review by the courts. To differing degrees, they may also oversight one another, in a network of mutual accountability. In most jurisdictions, special independent inspectors monitor the use by anti-corruption agencies and others of coercive or intrusive powers. Most of the guardians themselves have plenty of guards.

Controversies over accountability nevertheless remain. Many can be sourced to uncertainty as to the proper legal and constitutional position of independent integrity agencies. While only the courts exercise judicial power, and the remaining integrity agencies exercise executive and administrative power, they are relied on to be totally independent of the executive. Yet often this remains unclear, undermining their true line of accountability – which should be directly to the Parliament.

In Victoria, three agencies are enshrined in the Constitution as officers of the Parliament. But in other jurisdictions, especially the Commonwealth, they are usually treated as additional executive agencies. This needs to change.

Figure 9.1: A Commonwealth Integrity System Map for 2030



Source: 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

Related controversies have surrounded the appointment processes for integrity agency heads, and security and stability of their budgets (see chapter 10). Australia and New Zealand have strong experience in how to ensure the accountability of integrity agencies to the people, via the Parliament, by strengthening this parliamentary relationship in ways that respect and support political independence. It is time to consolidate this experience into principles followed by all jurisdictions. While judicial officers are not parliamentary officers, they are a bedrock of the integrity system, to whom the remaining principles should apply no less.

Recommendation 22: Independence for core integrity agencies

That the head of each core integrity agency in all jurisdictions be recognised as **an independent officer of the Parliament**, via amendment of their enabling legislation and, where appropriate, the Constitution of the jurisdiction, to ensure:

- Appointment with bi/tripartisan support from their parliamentary committee (and appointments commission, including civil society: Recommendation 11);
- They are removable only upon the address of both houses of parliament on grounds of proven incapacity or misbehaviour;
- Express freedom from government or ministerial direction or intervention;
- Budgetary security including the right to directly address the parliament, via the presiding officer(s) or parliamentary committee, on their annual budget.

This recommendation relates to: **all Australian parliaments.**

Parliamentary committee oversight arrangements vary, are sometimes missing for particular agencies, go unsupported and can lack structure and clarity. Some inspectors are established as themselves independent integrity agencies, with potential to confuse core agency accountability to the Parliament. Consolidated best practice experience from Victoria and Queensland is proposed as a basis for a more coherent model in all jurisdictions.

Recommendation 23: Propriety and performance

That each core integrity agency be subject to oversight by **a bi/tripartisan statutory standing committee of the Parliament, supported by a parliamentary inspector** for agencies making significant use of coercive or intrusive powers – including:

- A statutory cycle of multi-year corporate planning and reporting, matched to multi-year performance review by the committee, using an ongoing, public performance evaluation and monitoring framework;
- Coordination and integration between the performance monitoring and evaluation of separate agencies as needed, with the option of multi-year reviews of the integrity system as a whole;
- A duty on each agency to respond to all committee recommendations;
- An inspector with mandate, powers and resources to continually ensure – on behalf of the committee and parliament – the lawfulness, probity and propriety of agency actions and personnel, especially in *ex parte* proceedings and involving use of any coercive or intrusive powers.

This recommendation relates to: **all Australian parliaments.**

10. Creating a 'system': coherence, coordination and resources

How well does the integrity system function, as 'a system'? What is needed to ensure integrity agencies and processes work as more than simply the sum of their parts, and together have the resources needed to fulfil their critical roles?

Overall, the assessment confirms the performance of policy coherence and coordination, operational cooperation between integrity agencies, and strong relationships with public stakeholders (social accountability actors) as all being crucial to integrity system's performance. On evidence from the National Integrity Survey, these relationships between different parts of the system are even more important than questions of individual agencies' legal powers and financial resources (Table 2.3).

Coordination and cooperation varies widely across Australia. Many previous recommendations identify opportunities for strengthening these relationships. Chapter 3 (Recommendation 2) calls for mechanisms for ensuring national coordination across the federal system, while others stress greater national consistency and coherence in legal standards and approaches, including learning from best practice within Australia.

There is also vital need for greater coordination and cooperation *within* each jurisdiction. Without coordination, there is little prospect of a coherent and efficient integrity system at any level, let alone nationally. With new agencies and responsibilities, as occurring in many areas and recommended in others, the need for coordination only grows.

In most cases, coordination is ad hoc and informal. However, where standing coordination arrangements exist – generally or on specific issues – there appear to have been real benefits including reduced conflict and confusion, and better problem solving. The breadth of issues at Commonwealth level especially mitigates in favour of well-structured coordination, to ensure the National / Commonwealth Integrity Commission plays its role as just one partner, in place of assumptions or fears that it should override or become responsible for all. No mechanisms have yet been proposed by Government, but the *National Integrity Commission Bill 2018* provides for an 'integrity coordinating committee', built on Western Australian experience, as a new general model.

Recommendation 24: Coordination and cooperation

That each jurisdiction establish a **statutory integrity coordinating committee** to support policy coherence and operational coordination between core integrity agencies and their mandates, including:

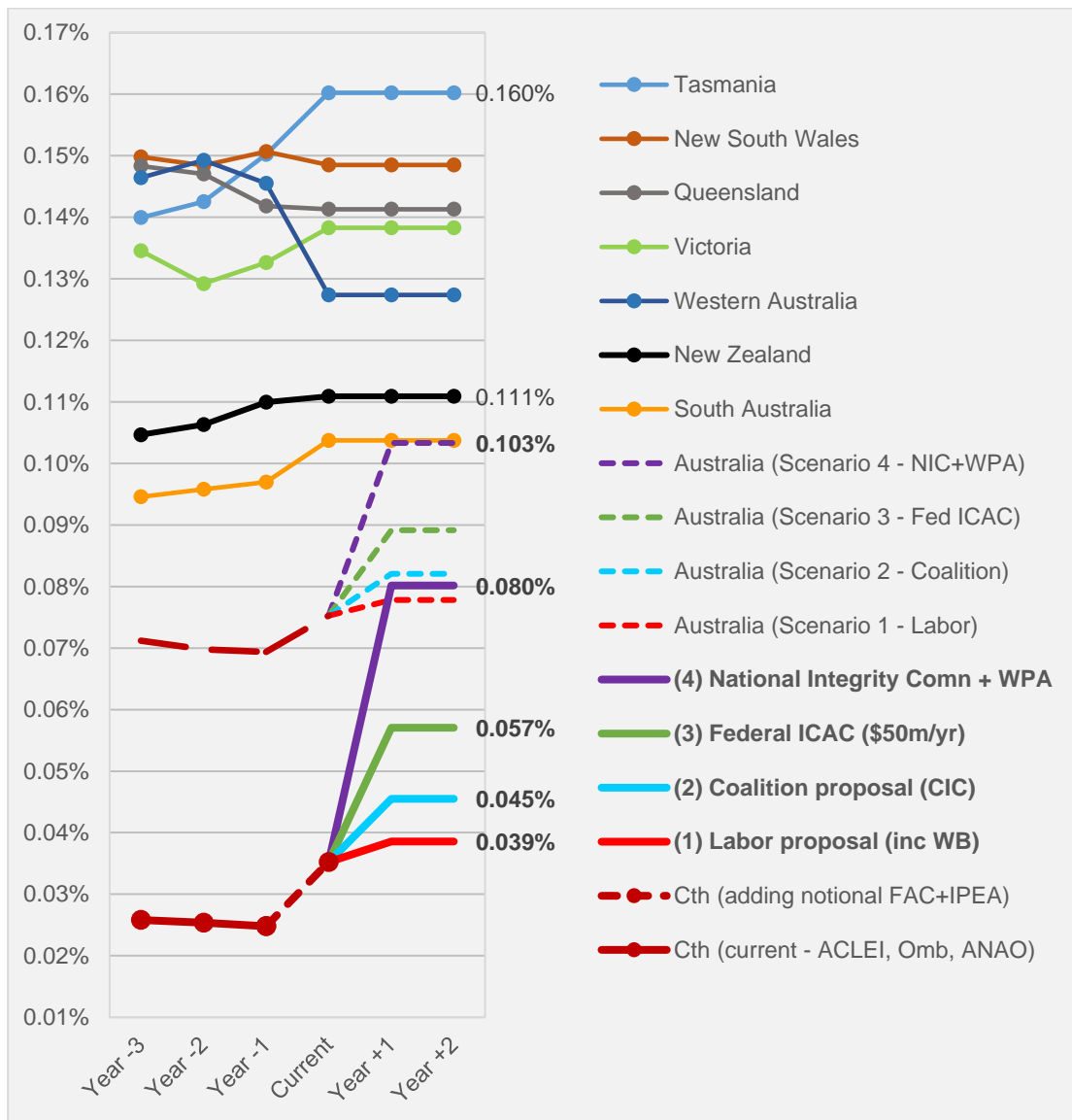
- For the Commonwealth, provisions based on Part 3, Division 6 of the *National Integrity Commission Bill 2018* (Commonwealth Integrity Coordination Committee);
- Mechanisms for information sharing; and joint planning, research, outreach, education, training, and advice to government on integrity policy issues; and
- Participation of civil society, stakeholders and independent experts in planning, policy recommendations and advice to government.

This recommendation relates to: **all Australian governments.**

Resources underpin the entire integrity system, but the financial positions of agencies vary wildly, within and across jurisdictions – including for the judiciary. Budgets remain highly dependent on the government of the day, and the imposition of ‘efficiency dividends’ and other requirements threaten to erode the capacity of what should be treated as core institutions of the system of government.

Overall, investment in our integrity institutions appears low. Combined national expenditure on core independent integrity agencies (anti-corruption, ombudsmen and auditors-general) amounts to only 0.069% of total public expenditure. The Commonwealth’s is only 0.025%. By contrast, the states vary between 0.103% and 0.160%, with New Zealand’s expenditure at 0.111% (Figure 10.3). In other words, the Commonwealth spends, at best, **around a quarter** of what most states spend; and in all, Australia’s public sector spends **a third less** than New Zealand, pro rata, on the same core public integrity functions.

Figure 10.3. Core integrity agency expenditure as a proportion of total public expenditure – current versus Government, Opposition & other proposals



Note: Expenditure on/by the Auditor-General, Ombudsman, anti-corruption agency and any specialist police conduct agency in each jurisdiction, plus estimates of specialist law enforcement agency contributions to anti-corruption in jurisdictions with no anti-corruption agency.

Figure 10.3 also shows four future scenarios based on current proposals for a new National or Commonwealth integrity commission, as well as for a federal whistleblower protection authority (see chapter 7).

Comparison with existing State commissions indicates a realistic budget for a State-style anti-corruption commission (ICAC) at federal level would be around **\$50 million** (Scenario 3). Previous estimates for an agency charged with these functions, plus implementation of a strategic approach to corruption prevention across the Commonwealth, plus the whistleblower protection functions recommended by the Parliamentary Joint Committee, indicate a minimum cost of around **\$100 million** per year. Figure 10.3 shows this investment (Scenario 4) would succeed in lifting Australia's national spending ratio on core integrity functions to 0.103% -- the equivalent of the least-spending state.

To date, however, the Labor Opposition has attached an estimate of only \$58.7 million over forward estimates (**\$19.6 million** per year) to its proposed integrity commission, plus **\$1.1 million** for the five (5) public servants proposed for a whistleblower protection authority (Figure 10.3, Scenario 1). Meanwhile the Government has estimated much more than that – **\$30 million** per year – for a Commonwealth Integrity Commission with a narrower, criminal-only jurisdiction and no public hearings (Scenario 2).

Under neither of these scenarios would Commonwealth spending on core integrity functions reach even 0.050% of total public expenditure. As such, neither the Opposition nor the Government proposals as yet entail lifting Commonwealth integrity expenditure to a credible level – especially the Labor proposals.

Australia faces a crucial opportunity to 'walk the talk' of an improved and strengthened national integrity system. Credible answers to these questions of resources will be the final factor in determining whether we take it.

Recommendation 25: Sufficient, secure and stable resources

That the Commonwealth initiate, and all States and Territories support, a **national benchmarking review of integrity agency budget needs and expenditure** – e.g. by the Productivity Commission – in order to establish:

- Clear guidance to parliaments on the best parameters for setting budget allocations for integrity agencies, and the judiciary, including the inapplicability of 'efficiency dividend' criteria (see also Recommendation 22);
- The benefits-to-cost or returns-on-investment ratios of a comprehensive program of corruption prevention, and minimum thresholds for such investment and internal allocations, as proposed by Recommendation 7;
- Thresholds for funding of all core integrity agencies, and the judiciary, as a proportion of total public expenditure – with a target of **not less than 0.2 per cent** in respect of combined core integrity agency budgets.

Further, as an interim step in bringing the Commonwealth up to par, that **the Government and Opposition commit to minimum initial funding for their proposed National / Commonwealth Integrity Commissions** of at least:

- **\$50 million per annum** for a basic ICAC-style commission (as opposed to less than \$20 million proposed to date by Labor, and \$30 million by the Coalition); and
- **\$100 million per annum** if proposing to include a strategic approach to corruption prevention and whistleblower protection as recommended by the Senate Select and Parliamentary Joint Committees (see also Recommendation 14).

This recommendation relates to: all governments but especially the **Commonwealth**.

Appendix 1: *National Integrity Commission options compared*

The options compared

In August 2018, the assessment team set out three options for evaluating possible strengthening of Australia's Commonwealth integrity system, in the paper ***A National Integrity Commission: Options for Australia***. The paper rated these options against three sets of issues:

- an analysis of key existing strengths of the Commonwealth integrity system, detailed in Part 2 of the paper (Table 5)
- the options' contribution to addressing the seven major areas of weakness identified in Part 3 of the paper (Table 6):
 1. No coordinated oversight of high-risk misconduct
 2. Most strategic areas of corruption risk unsupervised
 3. No coherent system-wide corruption prevention framework
 4. Inadequate support for parliamentary and ministerial standards
 5. Low and uncertain levels of resourcing
 6. Cross-jurisdictional challenges (public and private)
 7. Public accessibility & whistleblower support (public and private)
- key priorities identified by the Senate Select Committee on a National Integrity Commission (Table 7).

The options selected were:

1. An integrity and anti-corruption coordination council
2. An independent commission against corruption (ICAC)
3. A custom-built Commonwealth integrity commission model

The options ranged from minimalist to comprehensive and were not mutually exclusive.

As outlined in chapter 2, all federal political parties have now committed to a reform of this kind, going beyond option 1. The federal Labor Opposition published a position on a proposed National Integrity Commission in January 2018. In November 2018, federal Independent MPs Cathy McGowan and Rebekha Sharkie (Centre Alliance) introduced a *National Integrity Commission Bill* and *National Integrity (Parliamentary Standards) Bill*, informed by the options paper, and the Greens introduced an almost identical *National Integrity Commission Bill*. The Commonwealth Government published a 'Commonwealth Integrity Commission' proposal for public consultation in December 2018.

The following tables update the comparison showing all three proposals to date, against the criteria and options originally set out in the paper.

Table A5. Options' contribution to existing strengths & attributes of the integrity system (Options Paper, Part 2)

	Option 1. Coordination Council	Government Commonwealth Integrity Commission proposal	Opposition (ALP) commitments to date	Option 2. An ICAC	National Integrity Commission & Parl. Standards Bills 2018	Option 3. Full Integrity Commission model
(1) support the collaboration necessary to maximise the Commonwealth's cross-jurisdictional roles	Low	Low	Low / Unknown	Medium	High	High
(2) ensure that domestic and international corruption are given sufficient priority within a wide range of risks	Low	Low	Low / Unknown	Low	Medium	Medium
(3) build consensus on the meaning and value of 'integrity' for the purpose of modern service	High	Low	Low / Unknown	Medium	Medium	High
(4) robust strategies for ensuring a culture of public integrity is pursued in practice, not simply in abstract	Low	Medium	Medium	Medium	High	High
(5) ensure the <i>right</i> approaches to corruption-prevention and integrity-building for Cth public sector	Medium	Low	Low / Unknown	Medium	High	High
(6) strengthen additional pro-integrity functions beyond those lying with ACLEI or an anti-corruption agency	Medium	Low	Low / Unknown	Low	High	High
(7) meet "best practice" criteria for anti-corruption investigation legal thresholds and investigative powers	High	Medium	High	High	High	High
(8) support effective, ongoing partnership between core integrity agencies, including mutual accountability	Medium	Low	Low / Unknown	Low	High	High
(9) maintain, clarify and enhance the accountability of agencies to the people, through the Parliament	Low	Medium	Medium	Medium	High	High

Table A6. Options' contribution to addressing key weaknesses (Options Paper, Part 3)

	Option 1. Coordination Council	Government Commonwealth Integrity Commission proposal	Opposition (ALP) commitments to date	Option 2. An ICAC	National Integrity Commission & Parl. Standards Bills 2018	Option 3. Full Integrity Commission model
3.1. No coordinated oversight of high-risk misconduct	Low	Low	Medium / Unknown	High	High	High
3.2. Most strategic areas of corruption risk unsupervised	Low	Medium	Medium / Unknown	High	High	High
3.3. No coherent system-wide corruption prevention framework	Medium	Low	Low / Unknown	Medium	High	High
3.4. Inadequate support for parliamentary and ministerial standards	Low	Low	Medium / Unknown	Medium	Medium	High
3.5. Low and uncertain levels of resourcing	Low	Medium	Low	Medium	Not applicable	High
3.6. Cross-jurisdictional challenges (public and private)	Medium	Low	Low / Unknown	Low	High	High
3.7. Public accessibility & whistleblower support (public and private)	Low	Low	Medium	Medium	High	High

Appendix 2: Research summary and acknowledgements

Research summary

Research for this assessment took the form of desktop research; expert and public responses to two discussion papers on a federal anti-corruption agency, released in March 2017 and August 2018; discussion at expert and stakeholder workshops in Brisbane (March 2017) and Canberra (August 2018); and the following primary research.

National Integrity Survey 2018

The National Integrity Survey was an online survey open between June 2018 and January 2019, asking respondents to rate each of the 15 integrity functions they were familiar with, in any or all Australian jurisdictions. The survey consisted of 14-15 questions per function, on 5 dimensions, developed as an extension of the existing 2009 Transparency International National Integrity System toolkit. Each question asked for a rating on a 5 point scale:

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)?

Participation was invited from all federal and state public integrity agencies including the courts, relevant parliamentary committees, a wide range of independent academic experts, and business and civil society stakeholders including members of the Australian Open Government Partnership Network and Transparency International Australia. The survey resulted in useable responses from **107 individuals**: 37 experts in academia, government and business (including research team members), 29 government agency representatives, and 41 private individuals.

Results reported in this draft report are raw, unmoderated results, based on the mean scores of all respondents, not standardised in any way. Results should be treated as preliminary and indicative only. Further analysis will be provided in the final report.

Interviews

The research also involved 50 face-to-face interviews with a wide cross-section of stakeholders from Queensland, NSW, South Australia, Victoria and the Commonwealth between June 2016 and February 2019, including 29 current or former senior officers of integrity agencies across those jurisdictions, Departmental staff, eight journalists, five civil society representatives, four whistleblowers and two parliamentarians. Agencies and individuals were selected on the basis of their ability to help answer in-depth questions on the same themes above. Interviews were transcribed and analysed using NVivo.

Global Corruption Barometer (Australia) 2018

This survey of citizen opinion and experience was conducted nationally by telephone by OmniPoll on behalf of Griffith University among a stratified random sample of 2,218 respondents aged 18 years and over, in the period May 21 - June 27, 2018. Sample quotes were set by gender, location/region, and age. Results are post-weighted for national representativeness using Australian Bureau of Statistics data on age, region, level of education, as well as voting preference using the most recent previous Newspoll and OmniPoll surveys.

The survey built on previous editions of the Global Corruption Barometer, the world's largest survey of public opinion and experience on corruption, administered by Transparency International (see <http://www.transparency.org/research/gcb>). The most recent previous GCB was conducted nationally by telephone by Action Mark Research (Adelaide) for Transparency International, among 1,002 respondents, in the period 6 September to 12 October 2016.

The research also drew on results from the Australian Constitutional Values Survey (2008-2017), conducted nationally by telephone for Griffith University by Newspoll Limited (2008-2014) and OmniPoll (2016-2017).

Acknowledgements

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Comments and submissions

We welcome public comments and submissions on the recommendations arising from the assessment.

Please send them by **10 May 2019** to:

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