

A National Integrity Commission – *Options for Australia*

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OPTIONS PAPER

Strengthening Australia's National Integrity
System: Priorities for Reform

*Australian Research Council
Linkage Project*

August 2018

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About the project

This paper has been prepared to assist public debate on key issues and options for the strengthening of Australia's systems of integrity, accountability and anti-corruption, as part of the Australian Research Council-funded Linkage Project, *Strengthening Australia's National Integrity System: Priorities for Reform* – a partnership between Griffith University, Flinders University, University of the Sunshine Coast, Transparency International Australia, New South Wales Ombudsman, Integrity Commissioner (Queensland), Crime & Corruption Commission, Queensland, and the Integrity Commission, Tasmania.

www.griffith.edu.au/anti-corruption

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The views expressed are those of the authors and do not necessarily represent the views of the Australian Research Council, participating universities or partner organisations.

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A separate summary version of this paper is also available

Executive summary

1. Background

Since the 1990s, it has become clear that Australia's federal public integrity system requires institutional strengthening to better deal with growing corruption risks.

This paper presents three options for more coherent strengthening of Australia's federal public integrity system, through extension, replacement and rationalisation of previous reforms:

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

These options range from minimalist to comprehensive and are not mutually exclusive. They are intended to stimulate a more concrete discussion on the direction, purpose, scope and shape of reform needed for Australia to regain its position 'ahead of the curve' in public integrity and anti-corruption.

Since 2012, Australia has slipped 8 points on Transparency International's annual Corruption Perceptions Index (CPI). Transparency International Australia has assessed the trend as including falling confidence in the national approach to anti-corruption. Support for a new federal anti-corruption agency is also strong (67%), and spread across the community including all education levels.

The Senate Select Committee on a National Integrity Commission (2017) received evidence from relevant agencies that the current Commonwealth framework was a 'robust, multi-faceted' approach which addressed integrity and anti-corruption 'appropriately and effectively', but unanimously rejected suggestions that there was no case for significant change. It found:

- The national integrity framework required 'strengthening... to make it more coherent, comprehensive and accessible' (4.140, Recommendation 1)
- 'Careful consideration' should be given to establishing a new or enlarged Commonwealth agency with 'broad scope and jurisdiction to address integrity and corruption matters' drawing on best State practice (4.142, 4.143, Recommendation 2)

The Committee also recommended that this National Integrity System assessment be used to help reach a 'conclusive' view on the options (4.147, Recommendation 3).

In developing options for more detailed discussion, this paper builds on:

- Australia's first national integrity system assessment (2001-05);
- 'Principles for designing a National Integrity Commission' (November 2017), developed by The Australia Institute's National Integrity Committee.

2. Enhancing the Commonwealth integrity system

Taking a pro-integrity approach

An important issue is how institutional strengthening can revive a sufficiently strong focus, in practice, on achieving pro-integrity outcomes traditionally supported by the Commonwealth. Historically, most anti-corruption commissions have some pro-integrity functions, but these differ widely in approach and usually come a distant second behind corruption investigation in resource allocation.

Building on the Australian Commission for Law Enforcement Integrity

The principal option for institutional strengthening involves expanding or replacing the existing Australian Commission for Law Enforcement Integrity (ACLEI). To the extent institutional strengthening requires an anti-corruption agency, this need not be as politically contentious as often assumed.

Definitions and investigatory powers: key advantages

On most key issues, the existing legal powers of ACLEI already meet “best practice” criteria for the legal thresholds and powers of anti-corruption, including:

Definition of corruption

Independence

Powers to make public reports and findings

Strong investigative powers, including public hearings

ACLEI has power to compel witnesses, override the privilege against self-incrimination, and absolute discretion to conduct a hearing in such a manner as it sees fit, including in public, if it deems it appropriate and in the public interest.

3. Weaknesses in the integrity system

Australia faces a general need to ensure its federal public integrity system regains a reputation for being ‘ahead of the curve’, and address specific criticisms of the system. Logical questions identify seven major weaknesses:

3.1. No coordinated oversight of high-risk misconduct

Interrelated gaps in the Commonwealth integrity system include:

- lack of clear, reliable and comprehensive sector-wide measures of the incidence of confirmed or likely high-risk misconduct;
- lack of any comprehensive sector-wide system for ensuring suspected high-risk misconduct is reported to any central or independent agency; and
- lack of any system for ensuring high-risk misconduct is investigated to a consistent and acceptable standard, with appropriate outcomes and lessons learned.

Of Australia’s 1.9 million federal and state public servants, only the Commonwealth has major sections of its workforce *not* subject to a sector-wide system of independent oversight for corrupt and high-risk misconduct cases. There are no logistical justifications for the Commonwealth to settle for a fragmented and inadequate system, as Australia’s fourth largest employer – well capable of adjusting to a system of mandatory reporting and oversight.

3.2. Most strategic areas of corruption risk unsupervised

Some of the most strategic areas of corruption risk are without independent anti-corruption supervision. For example **law enforcement** – the focus at ACLEI’s creation. Of the 11 agencies engaged in the AFP Fraud & Anti-Corruption Centre, 7 are not subject to oversight by ACLEI. In **procurement**, the total value of Commonwealth contracts over \$10,000 over the past five years was \$251.9 billion. Only one of the top 10 procurement agencies (Home Affairs / Border Protection) lies in ACLEI’s jurisdiction. Defence, which alone spent \$32.7 billion in 2016-17, is not.

3.3. No coherent system-wide corruption prevention framework

The Commonwealth integrity system shares this general weakness with many jurisdictions. But it is all the more pronounced if the Commonwealth is to sustain and strengthen its preferred ‘pro-integrity’ approach.

3.4. Inadequate support for parliamentary and ministerial standards

Strengthening the system as it relates to all public officials and programs is important, but the most crucial area for strengthening is at the parliamentary and political levels, where the public perceive the major – and growing – corruption problems.

Since 2016, the proportion of citizens perceiving that no federal parliamentarians are corrupt has fallen by two-thirds, while the proportion perceiving some or most to be corrupt, has risen from 71% to 80% -- the same or slightly worse than the average for State parliamentarians, and the worst for all three levels of government.

Measures for better dealing with parliamentary and ministerial integrity concerns and undue influence hinge on strengthened independent mechanisms, and other long overdue reforms.

3.5. Low and uncertain levels of resourcing

Combined national expenditure on core independent integrity agencies (anti-corruption, Ombudsman and Auditor-General) by Australia amounts to only 0.069% of total public expenditure. By contrast, New Zealand's expenditure is 0.111%. The Commonwealth's is only 0.025%. The Commonwealth spends, at best, **around a quarter** of what the States typically spend; and in all, Australia's public sector spends **a third less** than New Zealand, pro rata, on the same core public integrity functions.

For Australia to reach the same level as New Zealand and most States, **additional expenditure of approx. \$295 million per annum** would be required.

Also, the specific budget of AFP-led anti-corruption resources does not seem capable of being identified. Australia has committed under the UN Convention Against Corruption to ensuring it has 'a body or bodies' who are specialised and independent to combat corruption. If a country is unable to identify the budget behind this function, and that it is secure and stable, it is questionable whether it is satisfying its obligations.

3.6. Cross-jurisdictional challenges (public and private)

The Commonwealth can claim significant efforts and successes in many areas of inter-jurisdictional and cross-jurisdictional responsibility, but these have also often been less, and slower, and achieved with far less efficiency and agility, than they could and should have been – including with respect to:

Responsible Business Conduct (inc. foreign bribery)

Proceeds of corruption and unexplained wealth

Corruption in real estate

Anonymous shell companies

National cooperation

Leadership and coordination

3.7. Public accessibility & whistleblower support (public and private)

The Commonwealth integrity system lacks a clear overall gateway for stakeholders to access and navigate it, including, in particular, those organizational insiders willing to provide crucial information for integrity and anti-corruption purposes (whistleblowers). This weakness has been identified both by the Senate Select Committee and the Parliamentary Joint Committee on Corporations and Financial Services.

Of six countries compared, only Australia's public sector has no independent or specialist whistleblowing agency that investigates retaliation or is able to assist whistleblowers with accessing remedies.

The Parliamentary Joint Committee recommended a joint public-private whistleblower protection authority as part of a wholesale overhaul of existing law, including a new stand-alone private sector law. The provision of clearer gateway, receipt, advice, referral, and active and effective whistleblower protection functions are critical and interrelated needs.

4. Options for Australia

4.1. *An Integrity & Anti-Corruption Coordination Council*

This option is closest to the existing multi-agency system, and proposes strengthening by providing improved, more formalised coordination. Reporting to the Prime Minister or Attorney-General, this body would be focused on cooperation and bridging the gaps between existing agencies. It would provide stronger policy and operational coordination. It could have a statutory basis but would not necessarily require its own executive agency, but a policy and coordination secretariat in an existing agency.

Indicative **resources** would involve an annual budget of approx **\$6.5 million per annum**. This would marginally lift Commonwealth expenditure on its core public integrity agencies from a notional 0.033% to 0.037%; and Australia's total to 0.076%.

4.2. *An Independent Commission Against Corruption*

This option would involve a best-practice independent, broad-based anti-corruption commission for the Commonwealth, based on lessons from State experience. It would represent a major development to address several main gaps in the existing multi-agency system, handling serious misconduct and corruption allegations from across the Commonwealth public sector (Australian Public Service as well as non-APS).

It would have a prevention program also extending across the sector. To the extent possible under the Constitution, it would provide assurance to the judicial and parliamentary integrity systems by supporting the presiding officers of the federal courts and houses of parliament with the handling and management of corruption allegations.

The Commission would have a statutory basis, be subject to the oversight of the parliament via a multi-party committee supported by a parliamentary counsel and an inspector, and would not be subject to ministerial direction.

Previously, the Commonwealth Parliamentary Budget Office costed a proposal for an ICAC at **\$109 million** over the forward estimate period based on the NSW ICAC. More recently, the Australian Labor Party cited the Parliamentary Budget Office as having costed the concept at **\$58.7 million** over the forward estimates, or only marginally more than the existing budget of ACLEI. A more realistic forward estimates cost would be \$190.4 million over 4 years, or **\$46.7 million per annum** including \$45.6 million for 190 FTEs and \$2 million per annum capital costs. With a saving of \$11.0 million from ACLEI's existing budget, this option would require additional expenditure of \$36.6 million per year.

This would lift Commonwealth expenditure from a notional 0.033% of total public expenditure to **0.045%**; and Australia's total expenditure to **0.081%** -- still well short of any of the levels of investment of any Australian State or New Zealand.

4.3. *A custom-built Commonwealth Integrity Commission model*

This option would also involve a best-practice independent, broad-based public sector anti-corruption commission for the Commonwealth, including lessons from State experience, but with a broader range of functions relevant to the Commonwealth's role

and present needs. In addition, it would separately involve direct expansion of the parliamentary integrity system.

The Commission would build on ACLEI's specialist expertise and strengths by taking a more sector-blind approach to corruption risk and prevention. It would include a strategic coordination function for major corruption risks across all sectors and jurisdictions, and lead a stronger and more embedded corruption prevention program.

It would also fill the major gap in Commonwealth whistleblower protection support for the public and private sectors, by acting as the whistleblower protection authority.

The Commission would represent a major development to help address all the main weaknesses of the existing multi-agency system. It would also involve new and amended legislation and mechanisms for parliamentary and ministerial standards, and electoral campaign regulation.

The Commonwealth Integrity Commission would have an estimated cost of **\$104.7 million per annum** including \$97.7 million for 407 FTEs and \$7 million per annum capital costs. With a saving of \$11.0 per million from ACLEI's existing budget, this option would require additional Commonwealth expenditure of \$93.7 million per year.

\$4.1 million per annum is estimated for upgrading the Independent Parliamentary Expenses Authority. **\$13.0 million per annum** is estimated to support the regime for political donations and campaign regulation.

Together these components would require **\$110.8 million per year** in both FTEs and capital costs. This would lift Commonwealth expenditure on core public integrity agencies from a notional 0.033% to **0.07%**; and Australia's total expenditure to **0.096%** (approximately the level of the weakest Australian State, and approaching New Zealand).

5. Evaluation and conclusion

Option 1 (an **Integrity and Anti-corruption Coordination Council**) could be a worthwhile reform as a means of strengthening the existing multi-agency approach – if there were no major gaps in scope, mandate and capacity in the existing system, and if greater coordination and collaboration, alone, would allow the system to operate in a more effective way. Option 1 would also be the least expensive.

Option 2 (an **Independent Commission Against Corruption** based on State experience) would be a more worthwhile reform, assuming that its jurisdiction is broad-based, its resources are sufficient, and that mechanisms are developed for ensuring its role as a partner in the multi-agency system rather than a stand-alone solution.

This option would address most weaknesses to at least some degree, and some to a high level. If properly resourced, it would require a significant investment by the Commonwealth.

Option 3 (a custom-built **Commonwealth Integrity Commission**) would provide a more comprehensive package of reforms. It assumes a strengthened integrity system should involve improved coordination and enhanced anti-corruption capacity, but also that a wider combination of reforms is needed to address the needs, strengths and weaknesses of the Commonwealth integrity system.

This option would also entail creation of a new commission, but with a different and wider configuration of functions than Option 2, taking into account the coordination needs addressed by Option 1 and further gaps at the Commonwealth level, such as

whistleblowing support. It would entail separate reforms to support parliamentary and ministerial integrity.

All options would require investment. However, even the most expensive option would only barely bring the Commonwealth towards parity with the weakest contribution of the States, and of New Zealand. This level of investment is not only feasible but justified, rendering all options cheap compared with demonstrated need.

Conclusion: getting back ahead of the curve

All options highlight that the Commonwealth faces a strategic opportunity. The options show the choice between responses which continue to address challenges in isolation – and a wider view which addresses more problems and better stands the test of time.

Despite the complexity, the time is now for government to chart how it will return from a position in which it is too often forced to look over its own shoulder for fear of unaddressed integrity risks. Instead, government should be able to proceed with confidence in the processes to resolve corruption concerns, and safe in the knowledge that robust systems are in place to minimize them in the first place.

This is not currently the case for the Commonwealth integrity system. A comprehensive approach provides the opportunity for Australia to get back ahead of the curve in the standards and strengths of its integrity system, and regain all the benefits of greater resilience, security, productivity and popular confidence.

A National Integrity Commission – *Options for Australia*

1. Background

Proposals for a federal anti-corruption agency

Since the 1990s, it has become clear that Australia's federal public integrity system requires institutional strengthening to better deal with growing corruption risks and challenges. A long list of corruption problems have confirmed that the institutions of the 1970s are insufficient to manage these challenges, including:

- actively corrupt practices by Commonwealth-owned and licensed entities such as the Australian Wheat Board and Reserve Bank of Australia note printing enterprises
- systemic corruption in the former Australian Customs Service
- systemic overreach in the use of immigration detention powers
- failures in defence procurement risk mitigation
- a continuing slow reaction by federal regulators to business integrity risks
- repeat abuses of parliamentary expenses
- real and perceived ministerial and post-ministerial conflicts of interest
- abuse of federal fundraising entities to circumvent State political donation laws
- confirmed parliamentary exposure to foreign commercial and political interference.

In that time, Australia's federal public integrity system has not stood still. However, its history has been one of well-intentioned but minimum responses to individual problems, leaving institutional strengthening incremental, lacking in coherence and incomplete. Since 1997, responses include:

- Establishment of ad hoc royal commissions and inquiries, sometimes with partial and contested terms of reference
- Establishment of an Australian Public Service ethics advisory service
- Extension of the Commonwealth Ombudsman's roles in immigration oversight and public interest disclosures (whistleblowing) at public service level
- Establishment of the Australian Commission for Law Enforcement Integrity (ACLEI), tripling in size and business in under 10 years
- Creation of an Australian Federal Police-led Fraud & Anti-corruption Centre
- Relocation of parliamentary expense oversight from Department of Finance to an Independent Parliamentary Expenses Authority
- Extensions to federal regulatory agencies in response to business and financial integrity challenges, including the current Royal Commission into Misconduct in Banking, Superannuation and Financial Services
- The most recent scheme seeking to regulate foreign interference.

This paper presents three options for more coherent strengthening of Australia's federal public integrity system, through extension, replacement and rationalisation of these reforms:

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

These options range from minimalist to comprehensive, and are not mutually exclusive. They are intended to stimulate a more concrete discussion on the direction, purpose, scope and shape of reform needed for Australia to regain its position 'ahead of the curve' in public integrity and anti-corruption.

Proposals for a new or broader federal anti-corruption agency, as part of this reform process, are not new.

In 1996, the **Australian Law Reform Commission** recommended establishment of a National Integrity & Investigations Commission, similar to the Australian Commission for Law Enforcement Integrity (ACLEI) established one decade later.¹

In 2005, Australia's first **national integrity system assessment** also recommended that ACLEI should not be created as an agency limited simply to law enforcement oversight in two agencies (Australian Federal Police and Australian Crime Commission), but as a major general anti-corruption agency.²

Since that time, **Transparency International Australia** has advocated for a broad-based federal anti-corruption agency, as part of an enhanced Commonwealth multi-agency strategy, particularly to achieve a comprehensive approach beyond criminal corruption risks and support stronger parliamentary integrity.³

Also, ever since, **federal parliamentary committees** overseeing the establishment and operations of ACLEI have repeatedly recommended the examination of 'a Commonwealth integrity commission of general jurisdiction' (2006) with oversight of all Commonwealth agencies and programs (2011).⁴

In every Commonwealth Parliament since 2010, the Greens have introduced a *National Integrity Commission Bill*⁵ proposing a federal agency based on the type of **public sector anti-corruption agency** operating in three Australian States (NSW Independent Commission Against Corruption (ICAC), 1988; Queensland Crime & Corruption Commission, 1991; WA Corruption & Crime Commission, 1992).

Since then, the move towards a 'model public sector integrity commission' has been widely accepted.⁶ Variations on such bodies are now found in all States and Territories.⁷

The imperative to strengthen the federal integrity system has also been boosted by expert and public recognition that Australia's responses are not keeping pace with challenges.

¹ ALRC (1996), *Integrity: But Not By Trust Alone — Australian Federal Police & National Crime Authority complaints and disciplinary systems*, Australian Law Reform Commission Report No. 82, Commonwealth of Australia, Sydney.

² Griffith University & Transparency International Australia (2005), *Chaos or Coherence? Strengths, Challenges and Opportunities for Australia's Integrity Systems*, National Integrity Systems Assessment (NISA) Final Report, Melbourne (ISBN 1-920952-53-5), Recommendation 1. See also A J Brown (2005), 'Federal anti-corruption policy takes a new turn... but which way? Issues and options for a Commonwealth integrity agency', *Public Law Review* 16 (2): 93-98; A J Brown (2008), 'Towards a Federal Integrity Commission: The Challenge of Institutional Capacity-Building in Australia' in Head, Brown & Connors (eds), *Promoting Integrity: Evaluating and Improving Public Institutions*, Ashgate, pp.169-196.

³ See Transparency International (2015), Position Paper 3: *Anti-Corruption Agencies in Australia*; Submissions to the Senate Select Committee on a National Integrity Commission, 2016 and 2017.

⁴ See Senate Legal and Constitutional Legislation Committee (2006), *Provisions of Law Enforcement Integrity Commissioner Bill 2006* [and related measures], Report, Parliament House, Canberra, May 2006, p.28; Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (2011), *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, Recommendation 10.

⁵ See most recently *National Integrity Commission Bill 2017* (Cth): <https://www.legislation.gov.au/Details/C2017B00237/Explanatory%20Memorandum/Text>.

⁶ Prenzler, T & Faulkner, N (2010). 'Towards a model public sector integrity commission', *Australian Journal of Public Administration* 69 (3): 251.

⁷ Tasmanian Integrity Commission, 2010; Victorian Independent Broad-based Anti-corruption Commission (IBAC), 2012; SA ICAC, 2012; NT ICAC, 2018; ACT 2018.

Corruption Perceptions Index and community support

Since 2012, Australia has slipped 8 points on Transparency International's annual **Corruption Perceptions Index (CPI)** (Figure 1). While this result is also influenced by State-level issues, Transparency International Australia has assessed the trend as including falling confidence in the national approach to anti-corruption.⁸

Figure 1. Australia's Corruption Perceptions Index score (2012-2017)⁹

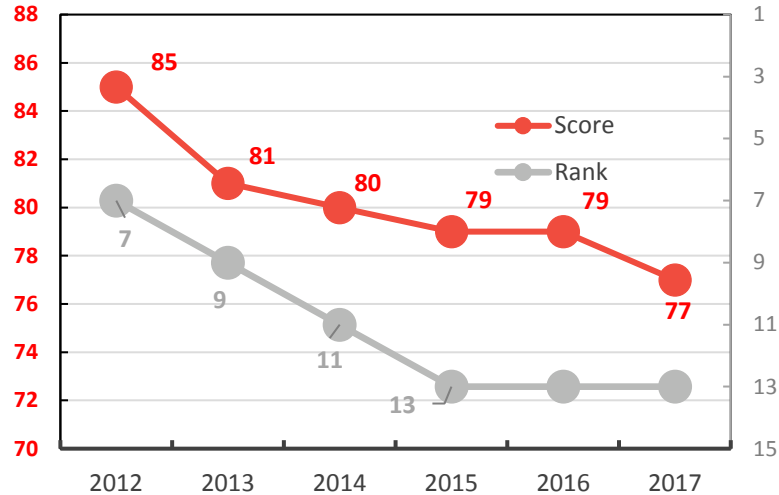
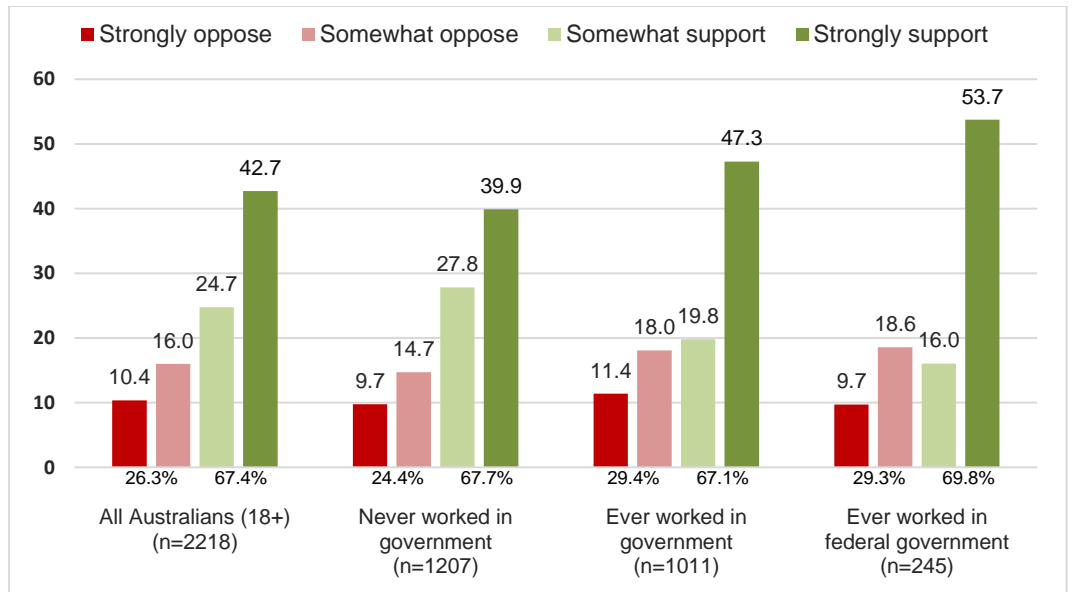


Figure 2. Australian support for a federal anti-corruption body (2018)¹⁰

'D9. Some people say the federal government should establish a **new, national anti-corruption agency**, similar to the states, to deal with corruption in federal government agencies and parliament. Other people say a new agency isn't needed because **existing bodies like the Australian Federal Police** are already adequate to deal with federal corruption. Would you personally support or oppose the creation of a new, national anti-corruption agency?'



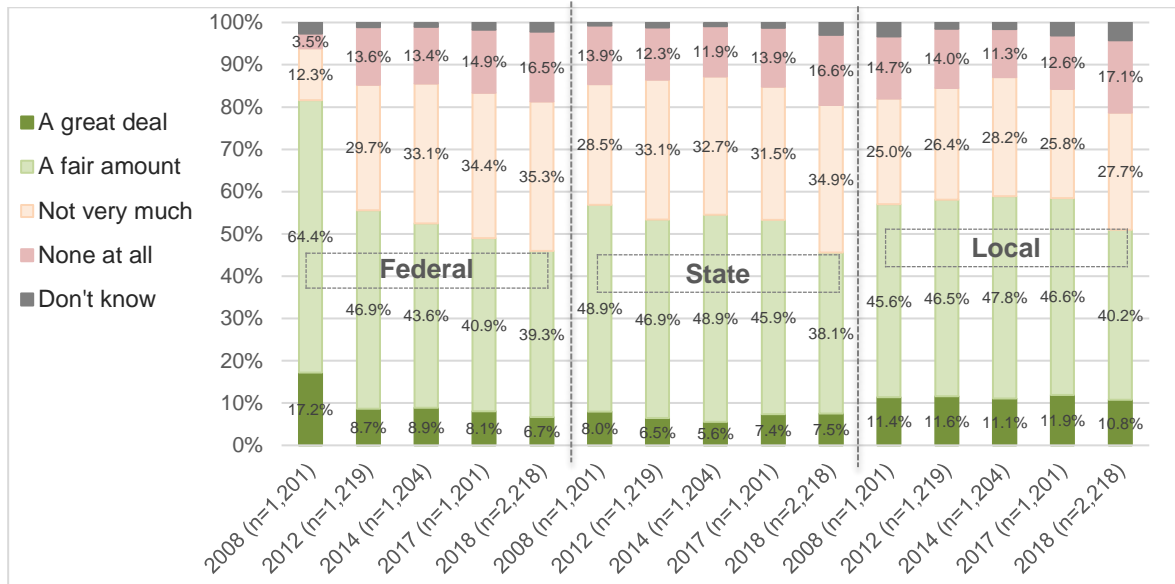
⁸ Transparency International Australia (2014), 'Need for federal anti-corruption agency intensifies as Australia slips from the list of Top 10 clean countries', Media Release, 3 December 2014 <www.transparency.org.au>

⁹ Transparency International, Corruptions Perception Index 2017 (released February 2018).

¹⁰ TI Australia & Griffith University, Global Corruption Barometer, May-June 2018 (see Appendix).

Figure 3. Trust and confidence in government in Australia (2008-2018)

'B2. Overall, how much trust and confidence do you have in each level of government to do a good job in carrying out its responsibilities?' (Australian Constitutional Values Survey 2008, 2012, 2014, 2017; GCB 2018)



In Australia, concern over the federal response to corruption is demonstrated by the latest **Global Corruption Barometer**, conducted by Transparency International Australia and Griffith University in May-June 2018 and first published in this paper. More details are in Appendix 1.

As shown in Figure 3, trust in all levels of government continues to fall in Australia. However, awareness of anti-corruption is increasing; and on average, Australia's State governments are seen as doing a marginally better job 'in the fight against corruption' than the federal government (Figure 4). Further results below (Figure 10) confirm this finding. Most importantly, the results in Figures 3 and 4 correlate more strongly for the federal level than, on average, the States. In other words, peoples' view of whether the federal government is doing a good in fighting corruption has a strong association with their trust and confidence in that level, even more than for the State level.¹¹

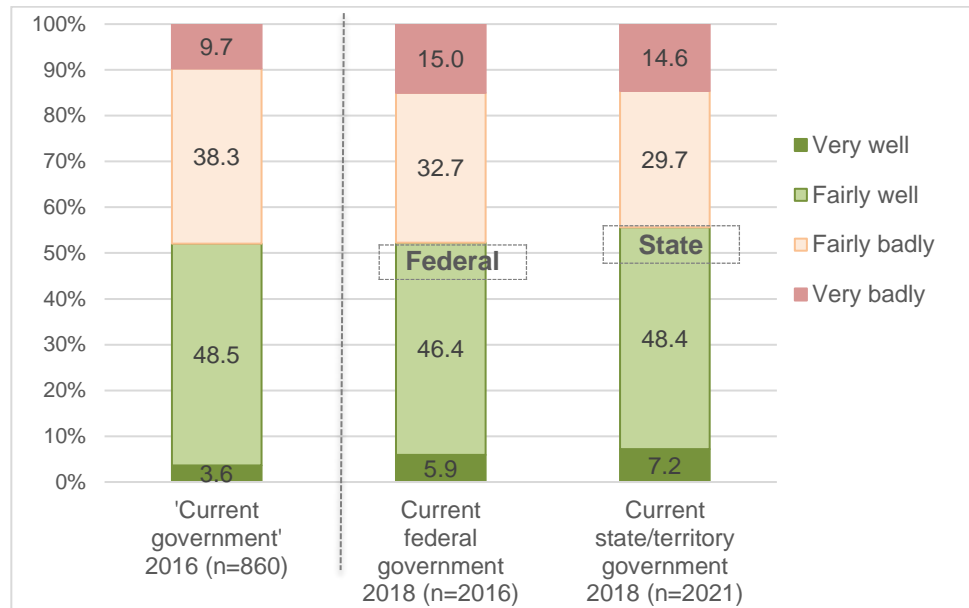
As shown in Figure 2 above, **support for a new federal anti-corruption agency** is also strong. Support is slightly higher among women (70%) than men (65%), citizens of Victoria (73%) and NSW (69%), and those below the age of 65 (60%), but is otherwise spread across the community including all education levels.

Most significantly, the 245 respondents who had ever **worked in federal government** expressed the highest strong support for a new agency (54%), and were the least likely to assess the task of fighting corruption as currently being handled well at the federal level (35% against the national average of 48%).

¹¹ At federal level, 37% of variance in trust and confidence ($M = 2.35$, $SD = 0.88$) is explained by perceptions that the federal government is doing a good job in fighting corruption ($M = 2.28$, $SD = 0.99$) ($r = 0.37$, $p < .001$). At state level, 25% of the variance in trust and confidence ($M = 2.35$, $SD = 0.90$) is explained by perceptions that the state government is doing a good job in fighting corruption ($M = 2.38$, $SD = 1.09$) ($r = 0.25$, $p < .001$). At both levels, this association is also stronger than previously measured suggesting views on corruption are indeed playing a stronger role: see Ian McAllister (2014), 'Corruption and confidence in Australian political institutions', *Australian Journal of Political Science*, 49:2, 174-185, at p.182 (in 2012, only 12-17% of the variance in confidence was explained by perceptions that politicians were corrupt).

Figure 4. How well are governments handling the fight against corruption?

'D1/D8. How well or badly would you say the current [State/Territory / Federal] government is handling the task of fighting corruption?' ('Current government' GCB Sept-Oct 2016; 'Current federal' / 'state/territory' GCB June 2018) (Excluding don't knows: 2016 **14.2%**; 2018 **9.1%** Federal; **8.9%** State)



Comparable results have been recorded in public opinion research conducted for The Australia Institute.¹²

An increasing cross-section of the media and public opinion leaders have now spoken in favour of the establishment of a new federal anti-corruption body.¹³ In December 2017, the Prime Minister indicated a willingness to consider a “watchdog”.¹⁴ A month later, the federal Opposition also joined cross-bench parties in committing to create such a commission, based on best practice from State anti-corruption bodies.¹⁵

Despite this strong momentum towards strengthening the federal integrity system, no concrete options have been developed to guide decisions on exactly what institutions are required, relative to current *specific* strengths and weaknesses in the Commonwealth government’s existing integrity architecture. This paper seeks to help fill this gap.

¹² See ReachTel robopoll (12 January 2017, n=2285) which recorded 82.3% support and 6.6% opposition to the question: ‘All Australian states have an independent corruption watchdog with the power to investigate and expose corruption among politicians and public servants in their state. There is no similar federal watchdog. Do you support or oppose setting up a national independent corruption watchdog?’. A similar question in May 2017 (n=1420) recorded 80% support and 7% opposition: see <http://www.tai.org.au/content/support-federal-icac-poll>. The 2018 Global Corruption Barometer question reported here (Figure 2, 67% support) presented respondents with a contrary proposition, in line with accepted research practice, in order to more accurately test the likely real level of support in the community.

¹³ For someone ahead of the curve, see Richard Mulgan, ‘The forgotten plan for a federal anti-corruption agency’, *Canberra Times*, 5 August 2014.

¹⁴ James Massola & Peter Hartcher (2017), ‘Malcolm Turnbull opens door to national anti-corruption body but dismisses ICAC model as beset by ‘hearsay and rumour’, *Sydney Morning Herald*, 11 December 2017.

¹⁵ See Hon Bill Shorten MP & Hon Mark Dreyfus QC MP, ‘A NATIONAL INTEGRITY COMMISSION – RESTORING TRUST IN POLITICS & THE PUBLIC SECTOR’, Media Release 30 January 2018; <https://www.alp.org.au/national_integrity_commission> (30 January 2018). See also TI Australia, ‘A Federal Integrity and Anti-Corruption Commission on the Horizon’, 30 January 2018, <http://transparency.org.au/icac/>.

Senate Select Committee on a National Integrity Commission

In developing options for more detailed discussion, this paper builds on four important sources of information:

- Australia's first national integrity system assessment (2001-05);
- Responses to a discussion paper, *A Federal Anti-Corruption Agency for Australia?* published by Griffith University as part of the second national integrity system assessment now underway (March 2017);
- The extensive report of the latest Senate Select Committee on a National Integrity Commission (September 2017); and
- 'Principles for designing a National Integrity Commission' (November 2017), developed by The Australia Institute's National Integrity Committee including Transparency International Australia's then Chair, Hon Anthony Whealy QC.¹⁶

A **National Integrity System Assessment** is a unique opportunity to evaluate options for strengthening an integrity system in light of a holistic appraisal of strengths and weaknesses, rather than a 'knee jerk' assumption that a particular type of institution – especially a stand-alone anti-corruption agency – will provide a 'silver bullet' solution. Developed by Transparency International, National Integrity System assessments have been carried out in close to 100 countries over the past 15 years.¹⁷

The present assessment was designed in collaboration with Australian integrity agency thought leaders in 2014, is supported by the Commonwealth Government through the Australian Research Council Linkage Project scheme, and is being carried out as a partnership between independent university researchers, Transparency International Australia, and a consortium of State integrity agencies.

An advantage of the assessment is that it does not focus simply on anti-corruption functions, but locates these within the wider matrix of processes making up the integrity system. Table 1 sets out the 15 functions considered in the assessment.

Table 1. Public integrity functions (and key institutions) – NIS 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

¹⁶ See 'Principles for designing...' (Nov 2017): <http://www.tai.org.au/content/corruption-fighters-and-former-judges-design-national-corruption-watchdog>.

¹⁷ See www.transparency.org/whatwedo/nis.

The assessment pools experience, evidence and expert opinion on five dimensions relating to the *Scope & mandate*, *Capacity*, *Governance*, *Relationships* and *Role performance* of the core and distributed integrity institutions discharging these functions. It also identifies gaps and weaknesses in processes and institutions. These five dimensions also inform the discussion and criteria used in the rest of this paper.

The [National Integrity Survey](https://prodsurvey.rcs.griffith.edu.au/nisurvey), an opportunity for relevant agencies, experts and interested/informed observers to contribute to this process, is presently open: <https://prodsurvey.rcs.griffith.edu.au/nisurvey>. The survey does not seek to assess public integrity itself, but the state of the integrity system.

The assessment is assisted by the work of the **Senate Select Committee on a National Integrity Commission**,¹⁸ with its exhaustive stocktake of the current Commonwealth integrity system. The Senate Select Committee received evidence from relevant agencies that the current framework was a 'robust, multi-faceted' approach which addressed integrity and anti-corruption 'appropriately and effectively', but unanimously rejected suggestions that there was no case for significant change.

Cross-bench senators recommended that a new anti-corruption body should be established. Government and Opposition senators concluded that:

- The current integrity framework was 'a complex and poorly understood system that can be opaque, difficult to access and challenging to navigate' (4.136)
- Existing agencies 'struggled to explain... how their individual roles and responsibilities inter-connect' to form the 'seamless' approach claimed (4.137)
- As a matter of priority, the national integrity framework required 'strengthening... to make it more coherent, comprehensive and accessible' (4.140, Recommendation 1)
- 'Careful consideration' should be given to establishing a new or enlarged Commonwealth agency with 'broad scope and jurisdiction to address integrity and corruption matters' drawing on best State practice (4.142, 4.143, Recommendation 2)
- Any new national agency should be an 'umbrella agency with which all Commonwealth integrity and corruption complaints could be lodged', with powers to refer and oversight their handling by other agencies (4.144)
- Stronger support should be given for parliamentary committees overseeing integrity and law enforcement agencies, through a Parliamentary Counsel or Advisor (4.153, Recommendation 4)
- A Parliamentary Integrity Commissioner should be established to accompany the creation of any national integrity agency (4.155, Recommendation 5)
- 'Stronger procedures for the identification, investigation and punishment of breaches' of the *Commonwealth Statement of Ministerial Standards* were needed (4.164, Recommendation 7).

The Senate Select Committee also recommended that the present National Integrity System assessment be used to help reach a 'conclusive' view on the options (4.147, Recommendation 3) – along with a review of ACLEI and Fraud & Anti-corruption Centre capabilities, which at that time was a commitment within Australia's first Open Government Partnership National Action Plan, but which never occurred.

The Committee's conclusions provide several key criteria for evaluating any particular options for institutional strengthening. Along with other evidence gathered by the inquiry, these help inform parts 3 and 4 of this paper.

¹⁸ See http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/National_Integrity_Commission.

Finally, description and evaluation of options is greatly assisted by the work of **The Australia Institute's** Accountability Project and National Integrity Committee.¹⁹ In addition to the 'Principles for designing a National Integrity Commission' (November 2017),²⁰ the Institute has released five further design papers, covering:

1. Jurisdiction²¹
2. Outcomes and objectives²²
3. Public hearings²³
4. Appointment of Commissioners²⁴
5. Implementation.

Together these papers provide most of the detail needed to understand Option 2 set out below (Part 4.2): a best practice independent commission against corruption for the federal public sector, based on State precedents and experience.

Objectives of this paper

Given these rich information sources, this paper does not attempt an exhaustive comparison of State and federal integrity systems and anti-corruption bodies, or description of the Commonwealth integrity system.

Instead, the paper draws on the above and other evidence as necessary to identify more precisely, what problems institutional strengthening needs to address, and how different options might best achieve this objective. It recognizes the precedential value of State anti-corruption agency experience, but also recognizes that – along with similar corruption risks – the Commonwealth also has significantly different roles and responsibilities to the States.

The next part of the paper discusses some fundamentals of the Commonwealth integrity system which need not, and should not change in the transition to a strengthened system. Part 3 discusses key weaknesses in the system which need to be addressed. Part 4 describes the three options. Part 5 outlines how well each option would address the identified weaknesses and priorities.

Responses to the paper are invited and will contribute to further analysis and recommendations from the National Integrity System Assessment.

¹⁹ See <http://www.tai.org.au/content/national-integrity-commission-papers>.

²⁰ See 'Principles for designing...' (Nov 2017) <http://www.tai.org.au/content/corruption-fighters-and-former-judges-design-national-corruption-watchdog>.

²¹ <http://www.tai.org.au/sites/default/files/National%20Integrity%20Commission%20-%20Design%20Blueprint%20Part%201%20-%20Jurisdiction.pdf>

²² <http://www.tai.org.au/sites/default/files/National%20Integrity%20Commission%20-%20Design%20Blueprint%20Part%202%20-%20outcomes%20and%20objectives.pdf>

²³ <http://www.tai.org.au/sites/default/files/National%20Integrity%20Commission%20-%20Design%20Blueprint%20Part%203%20-%20Public%20hearings.pdf>

²⁴ <http://www.tai.org.au/sites/default/files/National%20Integrity%20Commission%20-%20Design%20Blueprint%20Part%204%20-%20Appointment%20of%20commissioners.pdf>

2. Enhancing the Commonwealth integrity system

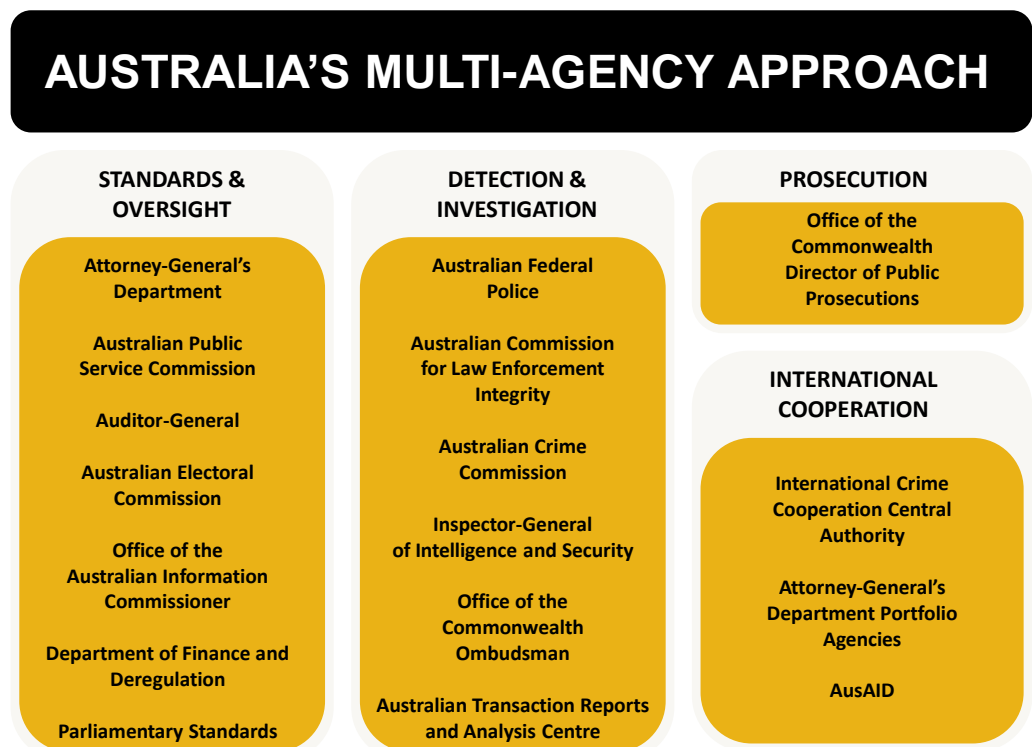
System strengths

What are the strengths of the existing integrity system, and which aspects might be important to preserve in further institutional strengthening? This part of the paper identifies key elements in the current approach which may *not* need to be ‘fixed’, but rather recognized and enhanced.

These features also provide important evaluative criteria for any options. In particular, of the five dimensions framing the national integrity system assessment, there are not only weaknesses but strengths in elements of the *Scope & mandate*, *Capacity*, *Relationships* and *Role performance* embedded in the existing system.

A first strength, cutting across all these dimensions, is the value of the Commonwealth’s ‘multi-agency approach’ – as opposed to dependence or over-dependence on any one agency. Figure 5 summarises the primary agencies and key roles in this approach as at 2012, which remain largely the same today with only three significant extensions.²⁵

Figure 5: The Multi-Agency Approach to Anti-Corruption (2012)²⁶



²⁵ As noted earlier, these are: the **Australian Federal Police**-led Fraud & Anti-corruption Centre (FAC) (2013-2014); extension of the **Commonwealth Ombudsman** into standard setting and oversight under the *Public Interest Disclosure Act* (2013); and under **Department of Finance/ Parliamentary Standards**, creation of the Independent Parliamentary Expenses Authority (2017).

²⁶ Attorney-General's Department, *Discussion Paper: Australia's Approach to Anti-Corruption*, Prepared as part of the development of the National Anti-Corruption Plan (Never Completed), March 2012, p.12. See also Australian Government Response to the 2011 Report of the PJC on Australian Commission for Law Enforcement Integrity (February 2012).

While this picture raises several important questions (see Part 3, Figure 7), it highlights the many concentrations of expertise and resources in the current system, many of them with decades of track record in sustaining integrity in Commonwealth administration and public life, as documented by the Senate Select Committee.

As noted at the outset, this system is also not static. It has evolved over time in response to changing objectives, opportunities and threats. Many of the key institutions – including the Australian Federal Police and the Commonwealth Ombudsman – date only since the 1970s. Others, such as ACLEI, are even newer.

The integrity system is also broader than Figure 5 implies. Additional mechanisms of parliamentary and political accountability include the Commonwealth's Senate Estimates Committee process, and the important roles of the Ethics & Privileges Committees of both houses of parliament. As also noted by the Senate Select Committee, the Secretary of the Department of Prime Minister & Cabinet has an administrative responsibility to assist with implementation of the Statement of Ministerial Standards.

Further, the AFP-led Fraud & Anti-Corruption Centre (FAC) includes participation of five additional agencies, not included in Figure 5, as set out below:

- **Australian Securities and Investments Commission** **
- **Australian Taxation Office** **
- **Department of Defence** **
- **Department of Human Services** **
- **Australian Border Force (Department of Home Affairs)** #
- *Australian Criminal Intelligence Commission*
- *Australian Transaction Reports and Analysis Centre*
- *Department of Foreign Affairs and Trade* *
- *Attorney-General's Department (advisory member)* *
- *Commonwealth Director of Public Prosecutions (advisory member)* *

Agency not included in Figure 5

*** Agency not yet included in jurisdiction of Australian Commission for Law Enforcement Integrity.**

These agencies highlight the different, broader role of the Commonwealth in Australia's anti-corruption strategies, by comparison with the States. Due to larger, economy-wide regulatory roles, the Commonwealth carries heavier responsibility for identifying and responding to corruption risks across the entire public and business sectors – not just the public sector and those dealing with it.

Moreover, the Commonwealth has the bulk of responsibility for defending Australia from transnational corruption risks, contributing to international anti-corruption cooperation, and extra-territorial enforcement of Australia's integrity and anti-corruption standards (again, spanning both public and private sectors).

However, only four of the 11 agencies participating in AFP-led FAC activities are subject to jurisdiction of the Australian Commission for Law Enforcement Integrity (ACLEI) – immediately reinforcing questions about coherence of the system.

The Commonwealth's transnational cooperation activities are significant. They include the Australian Government's leadership of the G20 Anti-Corruption Working Group in 2014; long term support for Transparency International's Asia-Pacific Regional Program;

and, after a slow start, increasing levels of cooperation with other countries in identifying corruption proceeds among illicit financial flows, in and out of Australia.²⁷

To be effective, these functions cannot be isolated into one agency, but must remain integrated with other international crime cooperation activities, including those relating to organised crime and counter-terrorism.

Other reasons for a differently configured multi-agency system, at the Commonwealth level, include the strict separation between judicial and other power under Chapter III of the Australian Constitution, as interpreted by the High Court of Australia. Principles of judicial independence are also observed by the States, and also result in differential anti-corruption arrangements for judges. Nevertheless, it is easier for the States to task Executive agencies to support integrity in the courts than for the Commonwealth, other than in respect of criminal conduct proscribed by the rule of law.

Similarly, the separation of powers between Legislative and Executive branches (as well as the doctrine of parliamentary privilege) requires caution around establishment of any anti-corruption agency with jurisdiction over non-Ministerial members of parliament, unless the agency reports to the Presiding Officers of the Parliament.

Other existing strengths or constraints of the Commonwealth are mentioned below. Key issues for consideration become: (1) what institutional options will best support the multi-agency collaboration necessary to maximise the Commonwealth's cross-jurisdictional and international anti-corruption responsibilities; and (2) within those, what institutional options will best ensure that domestic and international corruption are given sufficient priority, within a wide range of related and unrelated risks.

Beyond these issues, however, there is no particular magic to the fact that the Commonwealth has a 'multi-agency' or 'multi-faceted' system. Every State integrity and accountability framework, and every effective framework around the world, is a multi-agency, multi-faceted system. As identified by the Senate Select Committee, the question is whether it is configured to work as well as it can, and should.

Taking a pro-integrity approach

A second major strength often claimed for the Commonwealth Government is the traditionally high level of integrity embedded in its institutions and culture, relative to other jurisdictions. As outlined at the outset, this history provides no justification for assumptions that Commonwealth officials are any less exposed than others to integrity risks, or any better equipped to deal with them. However it points to real and important policy choices for any institutional strengthening.

As already identified, and reinforced in the next part, the Commonwealth integrity system requires strengthening to ensure corrupt and corruptive conduct is properly identified, monitored, investigated and dealt with. However, contrary to much discussion, the promotion and achievement of public integrity is not limited to eradication of corruption, nor may the removal of corruption risk *always* be the most crucial determinant of integrity.²⁸

²⁷ For example, in 2016-17, AUSTRAC "conducted 3,255 exchanges of financial intelligence with international FIUs (Financial Intelligence Units)—a significant increase from 1,723 in 2015-16. Exchanges were with 87 FIUs—seven more than the year before", and "facilitated 115 outgoing requests for information on behalf of ... domestic partner agencies", p.36, AUSTRAC (2017). 2016-17 Annual Report, <http://www.austrac.gov.au/sites/default/files/austrac-ar-2016-17-WEB.pdf>.

²⁸ See Heywood, P., and Rose, J., (2015), 'Curbing Corruption or Promoting Integrity? Probing the Hidden Conceptual Challenge,' in Hardi et al, (2015), *Debates of Corruption*, 102-119; Heywood, P., Marquette, H., Peiffer, C., and Zúñiga, N., (2017), 'Integrity and Integrity Management in Public Life,' European Commission

As a senior Attorney-General's Department official told the Senate Select Committee:

If you think about the fact that we have over 200,000 employees in the Commonwealth, our starting point is making sure that we have a culture of integrity so that there is not the kind of wrongdoing that you are talking about. That is a really key thing that agencies do.²⁹

Historically, key factors contributing to integrity among most Commonwealth public sector agencies, relative to many States or governments elsewhere, include (a) their relatively modern establishment (post-1950), (b) the associated strong "nation-building" ethos of many agencies, (c) higher than average salaries and benefits, (d) higher than average levels of education and training, and (e) the strong focus of many Commonwealth agencies and programs on equity in service delivery and outcomes.

The challenge is that these traditional bases of strength have become progressively less distinct over the past 20 years, and in an increasingly globalized and competitive world, diminish with every passing day.

In 1999, reinforcement of a positive 'values-based' approach to public service conduct and discipline, embedded in the *Public Service Act 1999* (Cth) and its associated Code of Conduct regime, was a central hallmark of the Commonwealth integrity system – and remains one of its most important formal backbones.

Yet, the current once-in-a-generation Independent Review of the Australian Public Service makes no reference to integrity in its terms of reference.³⁰ On the day of his retirement, the immediate past Australian Public Service Commissioner was found to have breached the APS Code of Conduct for which he was responsible.³¹

An important issue therefore becomes how current institutional strengthening can revive a sufficiently strong focus, in practice, upon achieving the pro-integrity outcomes traditionally supported by the Commonwealth, in the face of these pressures.

This task includes (3) the contribution of any reform to building consensus on the meaning and value of 'integrity' for the purpose of modern service as a Commonwealth elected or appointed official.³² Such consensus is needed to manage the tensions between different dimensions of integrity pursued within any system (e.g. 'personal-responsibility', 'institutional-legal' and 'effectiveness/implementation'³³) – or the four 'fundamental and

ANTICORPP, Accessed April 08, 2018. <http://anticorpp.eu/publications/integrity-and-integrity-management-in-public-life/>.

²⁹ Hawkins, Catherine (21 April, 2016). Senate Committee Public Hearing on the Establishment of a National Integrity Commission, pp 4. Transcript. <http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/fd9ab3c0-79be-433d-be89-91ccb912ae48/toc.pdf/Establishment%20of%20a%20National%20Integrity%20Commission%202016%2004%2021%204378.Official.pdf;fileType=application%2Fpdf#search=%22committees/commsen/fd9ab3c0-79be-433d-be89-91ccb912ae48/0000%22> (Accessed 10/7/2018)

³⁰ See Transparency International Australia, Submission to Independent Review of the APS, p.1. The closest reference is to 'how the APS monitors and measures performance, and how it ensures the transparent and most effective use of taxpayers' money in delivering outcomes': <https://www.apsreview.gov.au/about>.

³¹ See Ewin Hannan, 'Public service chief breached code of conduct, inquiry finds', *Weekend Australian*, 9 August 2018 <<https://www.theaustralian.com.au/national-affairs/public-service-chief-breached-code-of-conduct-inquiry-finds/news-story/77af1d5fa878251644c9d158d6f06482>>.

³² See the Australia & New Zealand School of Government's endorsement of an 'institution-first' approach to integrity, as one of 9 priority focuses for the APS Review: Submission, July 2018, p.12: <https://www.anzsoq.edu.au/preview-documents/publications-and-brochures/5283-anzsoq-submission-to-the-aps-review>. See also <https://www.themandarin.com.au/96690-nine-priority-areas-for-the-aps-review/> (2 August 2018). For this legitimacy-based concept, see Nikolas Kirby, 'An "Institution-First" Conception of Public Integrity', Working paper, Building Integrity Workshop, Blavatnik School of Government, University of Oxford, 3 May 2018. By contrast, for a more morally neutral construction of 'consistency-integrity', 'coherence-integrity' and 'context-integrity', see H. Breakey, T. Cadman & C. Sampford, 'Conceptualizing Personal and Institutional Integrity: The Comprehensive Integrity Framework' in *The Ethical Contribution of Organizations to Society, Research in Ethical Issues in Organizations*, Volume 14, 1-40.

³³ See Pat Dobel (1999), *Public Integrity*, Baltimore, Johns Hopkins University Press.

very simple elements' that constitute integrity on the part of individuals and institutions: 'honesty, fairness... openness' and the 'obvious element of overall diligence'.³⁴

Also needed (4) are robust strategies for ensuring a culture of integrity is pursued in practice, not simply in the abstract, and across the full Commonwealth and not only certain public service agencies – as seen in the next part.

These issues are directly relevant to the choice of options. While current proposals are often called an 'integrity commission',³⁵ they are also often simultaneously called a 'commission against corruption', even though this can be very different.

Historically, most anti-corruption commissions have some pro-integrity functions, particularly in corruption prevention. But these differ widely in approach, usually come a distant second behind corruption investigation in resource allocation, and may only involve select elements of integrity. Consistently with this history, for example, the design put forward by The Australia Institute's National Integrity Committee references corruption prevention as an object, but makes no further reference to it, other than reinforcing the educative value of public inquiries and reports about corruption.³⁶ The design is, in fact, an anti-corruption commission, not an integrity commission.

While stronger anti-corruption approaches are needed, limitation to this focus poses two risks: a potential failure to maximize existing pro-integrity strengths and traditions (including in corruption prevention), and the potential retrograde step of an 'integrity paradox', in which new laws and institutions obscure the behavioural challenges of organisational absorption of norms and values.³⁷

The options discussed below keep these tensions in mind.

Building on the Australian Commission for Law Enforcement Integrity

The principal option for institutional strengthening identified to date, by most parties, involves either expanding or replacing the existing Australian Commission for Law Enforcement Integrity (ACLEI).³⁸ This recognizes a core element of the current integrity system, as an important strength to be retained and built upon.

As an element of any reform, this option also has the benefit of provoking further discussion on what is needed to ensure a pro-integrity approach, and not simply an anti-corruption approach, as just discussed.

While *principally* an anti-corruption body, ACLEI also has 'integrity' in its title,³⁹ and its own conceptual approach and capabilities with respect to corruption prevention, including more advanced 'pro-integrity' approaches than many other anti-corruption agencies.⁴⁰ Consistently with a pro-integrity approach, its enabling legislation also gives it a more integrated role in the complaints, misconduct and disciplinary regimes of the agencies it

³⁴ See Hon IDF Callinan AC & N Aroney, *Review of the Crime and Misconduct Act [Qld 2001] and Related Matters: Report of the Independent Advisory Panel*, Queensland Government, Brisbane, 28 March 2013, pp.8 & 215.

³⁵ Including the title of the Greens legislation, the Senate Select Committee Report, and the Australian Labor Party commitment, cited above.

³⁶ See The Australia Institute, Paper 2 (Objects).

³⁷ See Mark Evans (2012), 'Beyond the integrity paradox – towards 'good enough' governance?' *Policy Studies* 33(1): 97-113.

³⁸ See e.g. Senate Select Committee, 4.148; The Australia Institute (2018), Paper 5.

³⁹ For background to this, see A J Brown (2005), 'Federal anti-corruption policy takes a new turn... but which way? Issues and options for a Commonwealth integrity agency', *Public Law Review* 16 (2): 93-98. ACLEI's originally proposed title was Inspector-General of Law Enforcement.

⁴⁰ See currently, <https://www.aclei.gov.au/corruption-prevention/corruption-prevention-toolkit/integrity-capability-link>.

oversights, than is true for most anti-corruption agencies. And, while this has been criticised,⁴¹ it may also work in closer partnership with other agencies.

Consideration must therefore include (5) whether ACLEI's are the *right* approaches to corruption-prevention and integrity-building, to expand to more of the Commonwealth public sector; and (6) an ability to strengthen additional pro-integrity functions beyond those currently lying with ACLEI or other anti-corruption agencies.

Beyond this, it is clear that the Commonwealth is well placed to scale up its anti-corruption efforts, simply by increasing the jurisdiction of ACLEI, because that is exactly what it has already progressively done, ever since ACLEI's creation by the Howard Coalition Government in 2006; and for which its legislation was designed.

It should be remembered that the Howard Government's reasons for creating an anti-corruption agency with such limited jurisdiction were quite specific. While it originally announced in June 2004 that it would create a full 'independent national anti-corruption body',⁴² its main objective was to change the Commonwealth police oversight system to defend against integrity concerns in the Australian Crime Commission, as well as to differentiate it from the Ombudsman-based model it was criticising in Victoria.

The main theoretical justification given for limiting ACLEI's jurisdiction simply to oversight of core law enforcement agencies, was that it was then those agencies' job – notably the AFP – to investigate corruption across the rest of the public sector. This justification relied on the assumption that between them, AFP criminal investigations and agency APS Code of Conduct investigations would be enough to deal with all corruption risks – in the case of APS investigations, without any further oversight.

The consequences are dealt with in the next part. The main point is that the original policy justification no longer applies, as ACLEI's jurisdiction has already been extended to providing direct, proactive anti-corruption oversight over a wider range of agencies, not necessarily using the AFP. Moreover, ACLEI has then found significant corruption in each agency, which had not been identified by or reported to the AFP.

As a result, the only major elements of ACLEI's scope and mandate that require changing for it to become a more broadly-based anti-corruption agency are:

- Its budget (determined by Government);
- Formal extension of its jurisdiction to further agencies (which can be achieved by regulation, although a broader legislative change would be more desirable);
- Formal removal of the legislative limit to investigating only the 'law enforcement functions' of law enforcement agencies (a mistake in the first place); and
- Its name (to be no longer restricted to law enforcement).

The more complex questions are:

- What budget is justified or within the realms of possibility?
- What should be the wider scope of the agencies or entities it oversees?
- Whether its current functions and approaches are the correct ones?
- How it retains specialist capacity and expertise in all the areas to which it applies?
- Whether its jurisdiction can/should extend to stronger integrity support and assurance with respect to Members of Parliament and/or judicial officers – and if not, who else will provide that support and assurance?

⁴¹ See e.g. Nick McKenzie and Richard Baker, 'Peter Dutton's home affairs ministry will investigate itself for corruption', *Sydney Morning Herald*, 21 July 2017 <https://www.smh.com.au/politics/federal/peter-duttons-home-affairs-ministry-will-investigate-itself-for-corruption-20170721-gxfwov.html>

⁴² Ministers Ruddock and Ellison (2004); see A J Brown (2008), 'Towards a Federal Integrity Commission: The Challenge of Institutional Capacity-Building in Australia' in Head, Brown & Connors (eds), *Promoting Integrity: Evaluating and Improving Public Institutions*, Ashgate, pp.169-196.

These are questions for the next part. The main lesson here is that, to the extent that institutional strengthening may require an anti-corruption agency, this need not be as politically contentious as often assumed – because the Commonwealth does already have one, on which it is well placed to build.

Definitions and investigatory powers: key advantages

A further question (7) is which options for strengthening the Commonwealth's anti-corruption capacities meet "best practice" criteria for the legal thresholds and powers of anti-corruption agencies. Would satisfying these criteria require changes to existing Commonwealth policy, or are they areas the Commonwealth already has covered?

This question frequently dominates judgments of anti-corruption agency effectiveness and is central to assessments of whether an agency has been set up to succeed or fail.⁴³ It has also dominated much advice to the Commonwealth on the standard of reform needed, additionally to the above – including the design principles and other detailed recommendations set out by The Australia Institute.⁴⁴

Fortunately, it is clear that on most key issues, the existing legal powers of ACLEI and like investigative agencies at the Commonwealth already meet these criteria. As leading Australian public lawyers have identified, within its current field, ACLEI already has 'a robust capacity to detect corruption, enforce integrity, and inform the public, as reflected in several features of institutional design'.⁴⁵ For example:

- **Definition of corruption**

An anti-corruption agency should be free to investigate and make findings about 'any conduct of any person that adversely affects or could adversely affect, directly or indirectly, the honest or impartial exercise of public administration', based on reasonable suspicion, with a focus on the serious or systemic.⁴⁶

This standard was informed by problems with the definition of corruption in several states – either narrowed to established criminal offences (South Australia and Victoria) or hampered by cumbersome drafting (NSW), and since amended, after controversy, to ensure agencies can operate effectively.⁴⁷

More could be done to clarify ACLEI's ability to investigate third parties; and as reviewed by the Senate Select Committee, action has been recommended since 2011 to arrive at a 'more detailed and comprehensive definition' of corruption under Commonwealth legislation.⁴⁸ As a starting point, however, the *Law Enforcement Integrity Commissioner Act 2006* (Cth) provides a very broad jurisdiction to

⁴³ See A. J. Brown & B. Head (2005), 'Institutional capacity and choice in Australia's integrity systems', *Australian Journal of Public Administration* 64: 84; Johnson, J., Hechler, H., De Sousa, L. and Mathisen, H. (2011), *How to monitor and evaluate anti-corruption agencies: Guidelines for agencies, donors, and evaluators*, U4 Anti-Corruption Resource Centre, Issue 2011: 8; Gabriel Kuris (2015), 'Watchdogs or guard dogs: Do anti-corruption agencies need strong teeth?' *Policy & Society* 34: 125–135; Quah, J., Brown, A. J., McDevitt, A., Romero, J.L., Thompson, M., Nanayakkara, R., Aminuzzaman, A., Khair, S. and Vink, T. (2015), *Anti-Corruption Agencies Strengthening Initiative: Research Implementation Guide*, Berlin: Transparency International.

⁴⁴ See The Australia Institute, Papers 1 (Jurisdiction), 3 (Public hearings) and 4 (Commissioners).

⁴⁵ Grant Hoole & Gabrielle Appleby (2017), 'Integrity of Purpose: A Legal Process Approach to Designing a Federal Anti-Corruption Commission', *Adelaide Law Review* Vol 38, p.398.

⁴⁶ See 'Principles for designing...' (Nov 2017) <http://www.tai.org.au/content/corruption-fighters-and-former-judges-design-national-corruption-watchdog>.

⁴⁷ In NSW, the complexity of s.8 of the *Independent Commission Against Corruption Act 1988* was a significant challenge in *ICAC v Cunneen* [2015] HCA 14, leading to amendments based on the recommendations of Murray Gleeson AC QC & Bruce McClinton SC, *Independent Panel – Review of the Jurisdiction of the Independent Commission Against Corruption: Report* (30 July 2015).

⁴⁸ Parliamentary Joint Committee on ACLEI (2011): see Senate Select Committee, 2.26. Abuse of public office is also a broad offence, hinging on use of office to dishonestly obtain a benefit or cause a detriment, under s.142.2 of the Commonwealth Criminal Code.

investigate 'corrupt conduct' and 'corruption issues' constituting or relating to any abuse of office by an official within jurisdiction.⁴⁹ This is interpreted as significantly broader than simply criminal offences and provides a flexible jurisdiction to the agency, by comparison with the States.

- **Independence**

Articles 6 and 36 of the UN Convention Against Corruption require State Parties to establish 'independent and specialised' authorities to combat corruption.

Whether the system as a whole meets these undertakings is examined later; but like other integrity agencies such as the Ombudsman, ACLEI already enjoys complete independence from Government or Ministerial direction. Under the *Law Enforcement Integrity Commissioner Act* (Cth), ACLEI cannot be directed in its investigations, although it can be requested by the Minister to undertake an inquiry. ACLEI also has authority to initiate investigations on its own motion, without need for referral by the government. In fact, only three States provide clear statutory independence to their anti-corruption commissions (Victoria, South Australia and Tasmania), leaving this at best assumed in others, including NSW.⁵⁰

- **Powers to make public reports and findings**

An anti-corruption agency should be entitled to make public findings of fact, and express such opinions and recommendations for action as it sees fit – including publicly, and including recommendations for criminal prosecutions or disciplinary action. Across Australia, only South Australia prevents its ICAC from making public report or reports to Parliament on specific investigations, and has been criticized, including by its own Commissioner, for this limitation.⁵¹

ACLEI is already able to make findings and recommendations as it sees fit, and to publicly report in the event of dissatisfaction with any agency responses to its investigations and inquiries. Further, ACLEI joins other integrity agencies such as the Ombudsman in having freedom to report publicly – wherever satisfied that it is in the public interest to do so – on any aspect of the exercise of its functions or powers, any investigation of a corruption issue, or any public inquiry.⁵²

- **Strong investigative powers, including public hearings**

ACLEI, like the Ombudsman and other agencies, has power to compel witnesses, require the production of evidence and documents, and to override the privilege against self-incrimination.

Public hearing powers have generated controversy due to past policies by one anti-corruption body – the NSW ICAC – to use them as a standard or default investigative method. Despite this, there is broad acceptance that an anti-corruption agency will conduct most investigations in private, but should be free to hold a public inquiry wherever satisfied that this is a necessary or more effective way of progressing an investigation, and is in the public interest.⁵³

The only anti-corruption body in Australia with no power to conduct public hearings is the South Australian ICAC – because its jurisdiction, alone, is limited entirely to criminal offences, and hence to placing matters before the courts. Even there, the

⁴⁹ See ss.6-7 of the Act.

⁵⁰ See section 18, *Victorian IBAC Act 2011*; section 7 (2), *SA ICAC Act 2012*; section 10, *Tasmanian Integrity Commission Act 2009*.

⁵¹ Ss 40, 41 and 42 of the *Independent Commissioner Against Corruption Act 2012* (SA).

⁵² LEIC Act 2006 (Cth), s.209(1).

⁵³ See 'Principles for designing...' (Nov 2017) <http://www.tai.org.au/content/corruption-fighters-and-former-judges-design-national-corruption-watchdog>.

Commissioner has called for public hearing powers for less serious conduct – misconduct and maladministration – with legislative amendments now in train.⁵⁴

While State provisions vary, the Commonwealth does not have this problem. ACLEI already has absolute discretion to conduct a hearing in such a manner as it sees fit, including in public, after having regard to four matters:

- (a) whether evidence ... is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence;
- (b) any unfair prejudice to a person's reputation that would be likely to be caused if the hearing took place in public;
- (c) whether it is in the public interest that the hearing take place in public;
- (d) any other relevant matter.⁵⁵

These are standard tests under Commonwealth law – also applying, for example, to ASIC's discretion to conduct public hearings under s.52 of the *Australian Securities and Investments Commission Act 2001 (Cth)*. They are not controversial.

There remains a case for intra- and inter-governmental effort to achieve a stronger consensus on best practice, and greater consistency, in legislative settings relating to public sector corruption within the Commonwealth and across Australia. However, by and large, the Commonwealth can accurately say that its integrity system already embodies effective legislative principles. The issues confronting the Commonwealth do not relate to legal capacity, but to scope, mandate, jurisdiction, financial capacity, coherence, coordination, and accessibility.

A partnership of agencies

Finally, the imperative to strengthen the integrity system need not, and should not assume that all problems will be solved through the creation of one new anti-corruption body, or the extension of a single existing body such as ACLEI.

Many agencies contribute to the integrity system, and all are likely to play a role in solutions to challenges, or will need to support those solutions. For example, as recognized by the Senate Select Committee and seen in the next part, reform to support Parliamentary integrity is also needed in order to bring the integrity system up to date – even with expansion or addition of an anti-corruption agency. This involves the Independent Parliamentary Expenses Authority and Australian Electoral Commission.

Similarly the role of the Auditor-General (Australian National Audit Office) has not been mentioned above, and receives little mention in the next part, because on all the evidence it is operating effectively as a part of the Commonwealth's integrity system – indeed, as its 'first statutory integrity entity', with a broad jurisdiction, high independence and strong relationship with the Parliament.⁵⁶

While the ANAO's role is likely to need to change least in any reform, that role is likely to be only more vital in a strengthened system, providing not only financial accountability

⁵⁴ See <http://www.adelaidenow.com.au/news/south-australia/icac-investigating-government-agencies-over-allegations-of-serious-and-significant-misuse-of-public-resources/news-story/799e2c44ada8f00a9dc44d9d95e2157a>; *Independent Commissioner Against Corruption (Investigation Powers) Bill 2018* to amend the ICAC Act to give the Commissioner powers to hold public hearings on matters of misconduct or maladministration in public administration, House of Assembly, 30 May 2018. NB: descriptions of Commissioner Lander as calling for public hearing powers for corruption are not accurate: The Australia Institute, 'Public hearings key to investigating and exposing corruption', p.1; 'Shining light on corruption' (July 2017), p.3, fn 3, p.6, fn 11 & 12.

⁵⁵ LEIC Act 2006 (Cth), s.82(4).

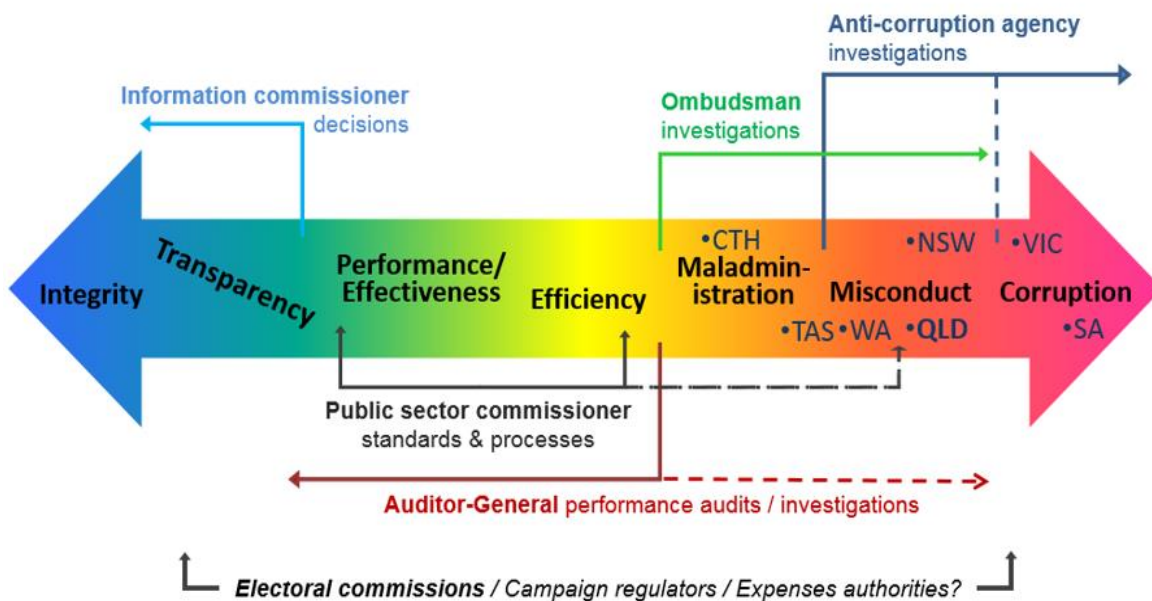
⁵⁶ Auditor-General, Submission 15 to the Senate Select Committee on a National Integrity Commission, 6 April 2017, Canberra.

assurance for the Commonwealth but assurance that enhanced anti-corruption and corruption prevention strategies are efficient and working.

Important issues of accountability are also emphasized by the role of the ANAO, as currently the only Commonwealth integrity agency which explicitly recognises itself as an 'independent officer of the Parliament' – not a sub-branch of the Executive.⁵⁷

Figure 6 highlights the core integrity agencies and functions operating in all Australian jurisdictions including the Commonwealth – the effectiveness of *all* of which will be strengthened by addressing specific challenges and weaknesses in any one part.

Figure 6. Core integrity agency responsibilities⁵⁸



For the integrity system to be enhanced, the accountability structures governing all relevant agencies need to be clear and consistent. This is especially true for all core integrity agencies, empowered to exercise independent discretion and significant powers, as recognized by the Senate Select Committee and all stakeholders. For all these agencies, clarification and enhancement of their direct lines of reporting to the Parliament, and improved coordination in that reporting, are also important features.

Final considerations therefore include: (8) what options will best support an effective, ongoing partnership between the core integrity agencies in the system, including mutual accountability relationships; and (9) whether the accountability of independent integrity agencies to the people, through the Parliament, will be maintained, clarified and where necessary, enhanced.

⁵⁷ Auditor-General, Submission 15 to the Senate Select Committee on a National Integrity Commission, 6 April 2017, Canberra. Note the consistency with Victoria's Constitution, which expressly requires there to be the Auditor-General, Ombudsman and Electoral Commissioner, providing that each is an 'independent officer of the Parliament': Constitution Act 1975 (Vic), ss. 94B(1), 94E(1) and 94F(1). At Commonwealth level, only the Auditor-General has implied constitutional status due to the Constitution's requirement for there to be 'review and audit by law of the receipt and expenditure of money on account of the Commonwealth': Section 97; see Hon WMC Gummow AC, 'A Fourth Branch of Government?' (2012) 70 *AIAL Forum* 19.

⁵⁸ Source: A J Brown (2018), 'The Fourth, Integrity Branch of Government: Resolving a Contested Idea', Australian Political Studies Association 2018 Presidential Address, World Congress of Political Science, Brisbane, 24 July 2018.

When corruption rears its head and causes anger and dismay through the community, quick fixes are usually sought. When put forward as the only solution, the urge to establish “a Federal ICAC” risks being one such quick fix; or of provoking opposition which results in either some further incremental change, or no change at all.

Even if there were one best practice model for an “ICAC” – and Australia’s experience demonstrates there is not – it would need to work in partnership, and be part of a package of reforms addressing the Commonwealth’s specific needs. A single agency tasked to deal with every current weakness would struggle to do so, and could easily duplicate or end up in a “turf war” with agencies already trying to tackle them.

The next part of the paper identifies *why* institutional strengthening is needed, in order to evaluate *what* strengthening will best meet those needs – while taking into account the existing strengths and imperatives discussed in this part.

3. Weaknesses in the integrity system

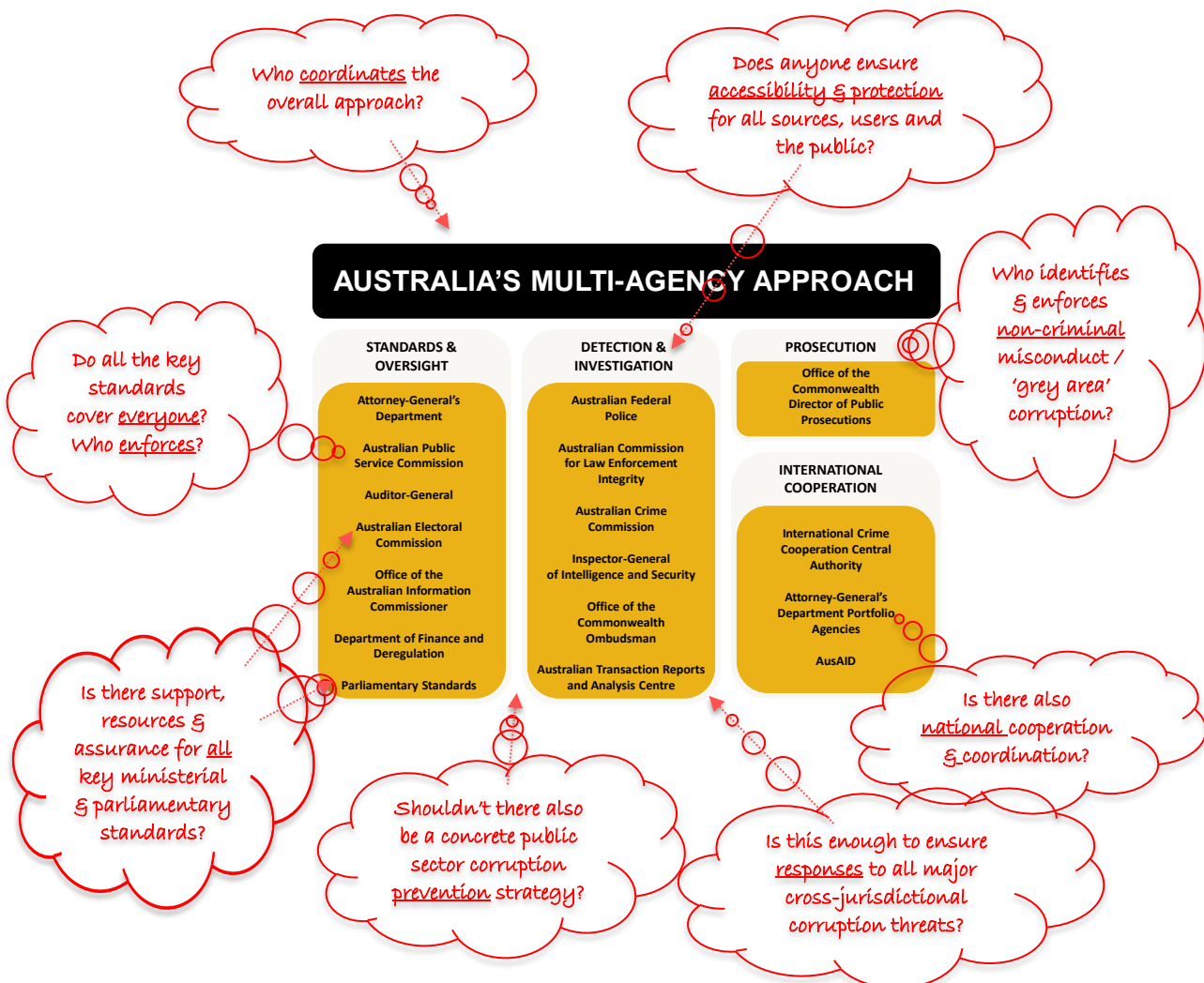
An overview

As noted at the outset, Australia faces both a general need to ensure that its federal public integrity system returns to having a reputation for being 'ahead of the curve', and a range of specific criticisms, including those verified by the Senate Select Committee.

Against the backdrop of existing system strengths, what are the areas at which strengthening needs to be directed, and which challenges do different design options need to meet?

As also noted earlier, basic review of the multi-agency approach leads to logical questions regarding the comprehensiveness and coherence of the system, such as outlined in Figure 7. Following these questions, seven major weaknesses can be identified, having regard to the specific background and needs of the Commonwealth system. The question then becomes what scale of change is needed to address these weaknesses, and which options will do so most effectively and efficiently.

Figure 7. The Multi-Agency Approach – Some Questions



3.1. No coordinated oversight of high-risk misconduct

Frequently, assessments as to whether an integrity system needs strengthening will focus on estimates of the extent of corruption in the jurisdiction, as a problem. In fact, the “real” level of corruption is difficult to measure. However, under a ‘pro-integrity’ approach, current attempts to measure corruption do not necessarily help determine whether the system is strong or weak:

- Measures, analysis, and frameworks tend to focus overwhelmingly, and sometimes solely, on criminal corrupt conduct (e.g. bribery)
- Even if these measures take a wider view of conduct and risks giving rise to corruption, they are reactive (waiting for the problem to have manifested) rather than proactive or preventive
- They assume sufficient systems are in place to mean that corruption and corruption risks are being effectively identified within agencies; that the information conveyed is accurate; and that the handling and outcomes of these matters meet a consistent, accepted standard, with independent verification.

There is good reason to believe that the extent of high-corruption-risk misconduct is currently still relatively low across most of the Commonwealth public sector, like most Australian governments. Welcome evidence was presented to the Senate Select Committee by the Australian Public Service Commission:

- During financial years 2013–2014, 2014–2015 and 2015–2016, agencies reported **117, 100 and 106** investigations into corrupt behaviour respectively;⁵⁹ ‘a very small proportion of the total workforce of over 150,000 employees’;⁶⁰
- The annual Australian Public Service (APS) Employee Census survey records ‘a low level of misconduct in the APS’ and low level of perceived corruption, with ‘the number of people reporting perceived corruption of a criminal nature’ amounting to ‘less than one per cent’ of the workforce.⁶¹

In 2017, 5% of responding employees said they had witnessed another employee engaging in corrupt behaviour (of whom 64% reported cronyism; 26% nepotism in the workplace; and 21% official decisions that improperly favoured a person or company).⁶²

However, these statistics also confirm that corruption and high-risk misconduct are real issues within the Commonwealth public sector, and reveal a weak system for ensuring that “frontline” corruption risks are being effectively managed. This is because they confirm three interrelated gaps in the Commonwealth integrity system:

⁵⁹ Senate Select Committee on a National Integrity Commission, Answers to Questions on Notice, APSC (5 July 2017), p3. <https://www.apsc.gov.au/DocumentStore.ashx?id=d8e5d17b-6dd2-4086-a2e0-7dff86d527e4>.

⁶⁰ Lloyd, John (5 July, 2017) Senate Select Committee Public Hearing, p 14. Transcript. <http://parlinfo.apsc.gov.au/parlInfo/download/committees/commsen/4486468b-1349-4a12-b7d5-00da3a85b172/toc.pdf/Select%20Committee%20on%20a%20National%20Integrity%20Commission%202017%2007%2005%205243%20Official.pdf;fileType=application%2Fpdf#search=%22committees/commsen/4486468b-1349-4a12-b7d5-00da3a85b172/0000%22> (accessed 10/7/2018).

⁶¹ Lloyd, John (5 July, 2017) Senate Select Committee Public Hearing, p.14 (ibid).

⁶² <https://stateoftheservice.apsc.gov.au/2018/01/aps-values-code-conduct-2/>. In the APS Employee Census survey, corruption was defined as: *The dishonest or biased exercise of a Commonwealth public official's functions. A distinguishing characteristic of corrupt behaviour is that it involves conduct that would usually justify serious penalties, such as termination of employment or criminal prosecution.* The 2017 Census reported the views of 98,943 respondents from 98 agencies, with a 71% response rate. This result in 2016 was 4%, and in 2015, 3.6%. In 2013-2014, the percentage of respondents reporting they had witnessed corruption was only 2.6%, but this may be owed to a different definition of corruption used in the survey: cf ABC News Online, ‘Reports of corruption in public service renew calls for federal ICAC’, 10 January 2018 <<http://www.abc.net.au/news/2018-01-10/reports-of-corruption-in-public-service-renew-calls-for-watchdog/9315666>>. For difficulties with method, see also M. Mannheim, ‘Public service clean, survey says, but corruption experts sceptical’, Canberra Times, 8 December 2014, <http://www.smh.com.au/national/public-service/public-service-clean-survey-says-but-corruption-experts-sceptical-20141208-11zyj7.html>.

- lack of clear, reliable and comprehensive sector-wide measures of the incidence of confirmed or likely high-risk misconduct;
- lack of a comprehensive sector-wide system for ensuring suspected high-risk misconduct is reported to any central or independent agency; and
- lack of a system for ensuring high-risk misconduct is investigated to a consistent and acceptable standard, with appropriate outcomes and specific and overall lessons learned from the matters suspected, reported or confirmed.

Five types of investigations into suspected corrupt conduct or high-risk misconduct are currently carried out across the Commonwealth sector (putting aside the Commonwealth parliament and federal judiciary), as a mean of identifying, tracking and responding to this misconduct:

- (1) internal investigations by Australian Public Service (APS) agencies,
- (2) investigations by the APS or Merit Protection Commissioner in APS agencies,
- (3) internal investigations and reviews conducted in non-APS agencies,
- (4) criminal investigation by agencies and/or the Australian Federal Police, and
- (5) investigation and oversight by the Australian Commission for Law Enforcement Integrity (ACLEI) in select agencies.

However, the above statistics relate only to the first of these. There is no centrally collected or monitored information regarding three of the remaining four mechanisms, and only the last mechanism involves a comprehensive system of both internal and independent oversight of high-risk misconduct.

1) Internal investigations by Australian Public Service (APS) agencies

These internal investigations are into breaches of the APS Code of Conduct. However, under these investigations, there are signs agencies may take a restrictive definition of what warrants investigation as corruption.

Agencies advised the APSC that 106 of their 717 finalised Code of Conduct investigations in 2015–16 involved corrupt behaviour, characterised by behaviour such as ‘inappropriate recording of flex time credits, misuse of personal leave to undertake paid employment, conflict of interest on selection panels, theft, and misuse of duties to gain a personal benefit.’⁶³ However, Table 2 shows the total number of individuals confirmed by these investigations to have breached the APS Values in 2015–16. In total at least 537 of these 1,736 individuals breached values indicative of a high risk of corruption (as highlighted). While difficult to establish, this appears to be significantly broader than the cases agencies are currently identifying as ‘corruption’.

There is also no other mechanism for recording and assessing these matters of high risk. These investigations are not subject to routine evaluation or monitoring, even where they relate to corruption or conduct of high corruption risk. Nor is there any central record or monitoring of suspicions or allegations that did not proceed to investigation; nor reporting of when investigations commence.

While the Australian Public Service Commissioner's Directions (2016) require all APS employees ‘to report and address misconduct and other unacceptable behaviour by public servants in a fair, timely and effective way’,⁶⁴ there is no requirement on APS agency heads to report these to anyone else, other than in an annual statistical return to the APSC, after the event.

⁶³ <https://www.apsc.gov.au/integrity-and-accountability> (July 2018).

⁶⁴ APSC, *Handling misconduct: a human resource manager's guide* (June 2015), par 4.1.3 <<https://apsc.govcms.gov.au/handling-misconduct-human-resource-managers-guide>>.

2) Investigations by the APS Commissioner or Merit Protection Commissioner

This second type of investigations are the only external, as against internal investigations of high-risk misconduct in APS agency investigations. However, these only occur where a breach of the Code is alleged against an agency head; or where an employee seeks review (appeals) an internal APS Code of Conduct investigation.

As an appeal mechanism, Merit Protection Commissioner review provides no systematic method for ensuring the quality of APS Code of Conduct investigations in corruption or high-corruption-risk matters, nor was designed for this purpose. Merit Protection Commissioner reviews are designed for 'employment decisions and other actions affecting individual Australian Public Service (APS) employees and, in some circumstances, former employees'.⁶⁵

In 2016-17, the Commissioner reviewed 47 Code of Conduct cases (out of 58 applications for review of a decision in relation to a Code breach), resulting in 19 breach findings being vacated or varied.⁶⁶ While this included one case 'where the agency failed to apply the most relevant element of the Code of Conduct to the employee's behaviour', and a breach was added, this mechanism is inherently unlikely to pick up cases where an agency fails to deal appropriately with an integrity violation, or imposes only a "soft" or lenient sanction.

Table 2. APS Code of Conduct Investigations – number of employees investigated (as reported by agencies) (2015-17)⁶⁷

Code of Conduct Breach	2016-2017 Finalised		2015-2016 Finalised	
	Investigated	Breach	Investigated	Breach
At all times behave in a way that upholds the APS Values and APS Employment Principles	454	403	543	472
Behave honestly and with integrity	333	287	427	355
Act with care and diligence	287	262	388	356
Use Commonwealth resources in a proper manner and for a proper purpose	137	126	135	114
Comply with any lawful and reasonable direction	136	121	183	160
Treat everyone with respect and courtesy	149	120	190	132
Not make improper use of: inside information, duties, status, power or authority	83	64	47	31
Not provide false or misleading information	57	50	73	60
Take reasonable steps to avoid any conflict of interest	48	44	52	37
Comply with all applicable Australian laws	28	16	31	14
While on duty overseas, at all times behave in a way that upholds the good reputation of Australia	6	1	2	1
Maintain appropriate confidentiality about dealings with any Minister	0	0	2	2
Comply with any other conduct requirement that is prescribed by the regulations	2	0	4	2
Total	1720	1494	2077	1736

⁶⁵ <https://www.apsc.gov.au/sites/g/files/net4441/f/Review-of-code-of-conduct-PRESS-READY-R1.pdf> (accessed 7/7/2018). See section 33, *Public Service Act 1999*.

⁶⁶ MPC (2017) Annual Report. https://apsc-site.govcms.gov.au/sites/g/files/net4441/f/MPC-AR-2016-17_web.pdf (Accessed 7/7/2018)

⁶⁷ <https://stateoftheservice.apsc.gov.au/aps-values-code-of-conduct-data/#Table2> (Accessed 6/7/2018)

Further, while the above statistics are often presented or interpreted as covering the entire Commonwealth sector, this is not actually the case. Even the inadequate snapshot above is only a partial one. This is because only 152,095 or **63.4 per cent** of the Commonwealth's total body of 239,800 employees are employed by Australian Public Service (APS) agencies, under the regime to which the above statistics relate.⁶⁸

3) Internal investigations and reviews in non-APS agencies

There are no equivalent overall statistics or regime for overseeing corruption, high-risk misconduct, or indeed any misconduct, for the remaining 36.6 per cent or **87,705** Commonwealth employees, located in Commonwealth agencies and entities which are not covered by the *Public Service Act 1999*. For corruption purposes, 92.5 per cent of this workforce is not subject to any central review, monitoring or reporting.

Rather there are separate or individual agency misconduct regimes. For example, the largest single non-APS agency, the Australian Defence Force (58,612 employees), is subject to its own statutory conduct and discipline regime under the *Defence Force Discipline Act 1982*. While the ADF has its own statutory Inspector-General, providing additional review and investigations, its primary functions concern the military justice, grievance and redress system rather than anti-corruption oversight.⁶⁹

Under the *Public Governance, Performance and Accountability Act 2013*, all Commonwealth entities and officials are also subject to additional, overlapping, general accountability duties with risk of sanctions,⁷⁰ but as primarily a financial accountability and risk management framework, this provides no additional conduct system or oversight. This third type of investigations are not accounted for above, not supervised by any overall system, and were not reviewed by the Senate Select Committee.

4) Criminal investigations by agencies and/or the Australian Federal Police

This fourth type of corruption investigation covers all agencies. However, these relate only to suspected criminal offences and are reported on, in crime statistics, only if they proceed to prosecution or conviction. A little more is known due to the Senate Select Committee, which heard that between July 2014 and April 2017, the AFP Fraud & Anti-Corruption (FAC) Centre received 34 referrals related to corruption, 10 of which were investigated or still subject to evaluation.⁷¹

Part 2 noted the presumption as at 2006, that the integrity system would work because corruption would be investigated by the AFP; with ACLEI then ensuring the integrity of the AFP. However, it is now clear that within the Commonwealth, corruption is no longer seen as simply involving criminal matters, and that a range of high-risk misconduct should be dealt with as serious and corruptive, even if no criminal offence could be proved. The AFP plays no role in assessing high-risk misconduct cases with no prospect of a criminal conviction – under current law – even if they represent major abuses of office (such as making decisions under the influence of undisclosed conflicts of interest).

⁶⁸ See <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6248.0.55.002Main+Features12016-17?OpenDocument> (accessed 5/7/2018); APSC, Annual Report 2016-2017, p 5 https://www.apsc.gov.au/sites/g/files/net4441/f/2016-17_sosr.pdf (accessed 5/7/2018).

⁶⁹ See <http://www.defence.gov.au/mjs/organisations.asp#1>. Also in the non-APS group are Australian Security and Intelligence Organisation (ASIO) and Australian Secret Intelligence Service (ASIS), who are subject to some independent oversight by the Inspector-General of Intelligence & Security, but this is again primarily a complaints body (to ensure these agencies 'act legally and with propriety, comply with ministerial guidelines and directives and respect human rights') rather than an anti-corruption or conduct body. NB the 1,154 employees of the Parliamentary Departments, i.e. the Parliamentary Services Act employees, are non-APS but have the same conduct regime and Commissioners as for the APS, and so are less separate.

⁷⁰ See Sections 15-32 (Duties of authorities and officials).

⁷¹ Senate Select Committee Report, 2017, par.2.64-2.65. The chief reasons for non-investigation were lack of evidence, no Commonwealth offence identified, and not meeting AFP investigation thresholds.

Further, even if the AFP was willing and able to play a role in overseeing and supporting non-criminal corruption investigations, no agency is currently *obliged* to refer suspected corruption or high-risk misconduct cases to the AFP. This may also explain the low number of referrals. Indeed, the Commonwealth's chief guide to agencies on handling misconduct, published by the APSC (2015), does not mention corruption at all. It simply reminds agencies that they 'will need to consider referral' to the AFP if investigations concern 'fraud or other criminal behaviour', and on these matters to 'follow the agency's fraud control policy and procedures'.⁷²

5) Australian Commission for Law Enforcement Integrity

The fifth and final type of corruption investigation and oversight involves the Australian Commission for Law Enforcement Integrity (ACLEI). Of all these mechanisms, ACLEI's jurisdiction with respect to high-risk misconduct is the most specialised. As shown in Figure 8 below, this provides an additional investigative layer beyond the above internal investigations to approximately **22,537** or 9.4 per cent of all Commonwealth employees, in five agencies (or parts of agencies), spanning both APS and non-APS – as follows:

- Australian Federal Police (non-APS) (6,540 employees)
- Australian Criminal Intelligence Commission (APS) (829 employees)
- AUSTRAC (APS) (313 employees)
- Department of Home Affairs (inc Australian Border Force) (APS) (14,355 employees)
- prescribed aspects of the Department of Agriculture and Water Resources (APS) (approx. 500 employees).

In Figure 8, 'anti-corruption agency' coverage for Commonwealth employees means ACLEI. Comparison is also provided with the States.

In ACLEI's jurisdiction, by contrast with the rest, agencies are subject both to their own code of conduct regime, primarily for normal disciplinary and performance matters – and ACLEI supervision for possible or likely corruption issues (broadly defined, as per Part 2). In the APS agencies covered by ACLEI, this is the same Code regime reviewed earlier. Further, the AFP also still has its own statutory Code of Conduct, but one formally aligning with ACLEI's role, and differentiating between four categories of conduct:

- Category 1 -- least serious and relating principally to customer service*
- Category 2 -- minor misconduct and inappropriate or unsatisfactory behavior*
- Category 3 -- serious misconduct that does not give rise to a corruption issue*
- Category 4 – corruption issues, referred to ACLEI.*⁷³

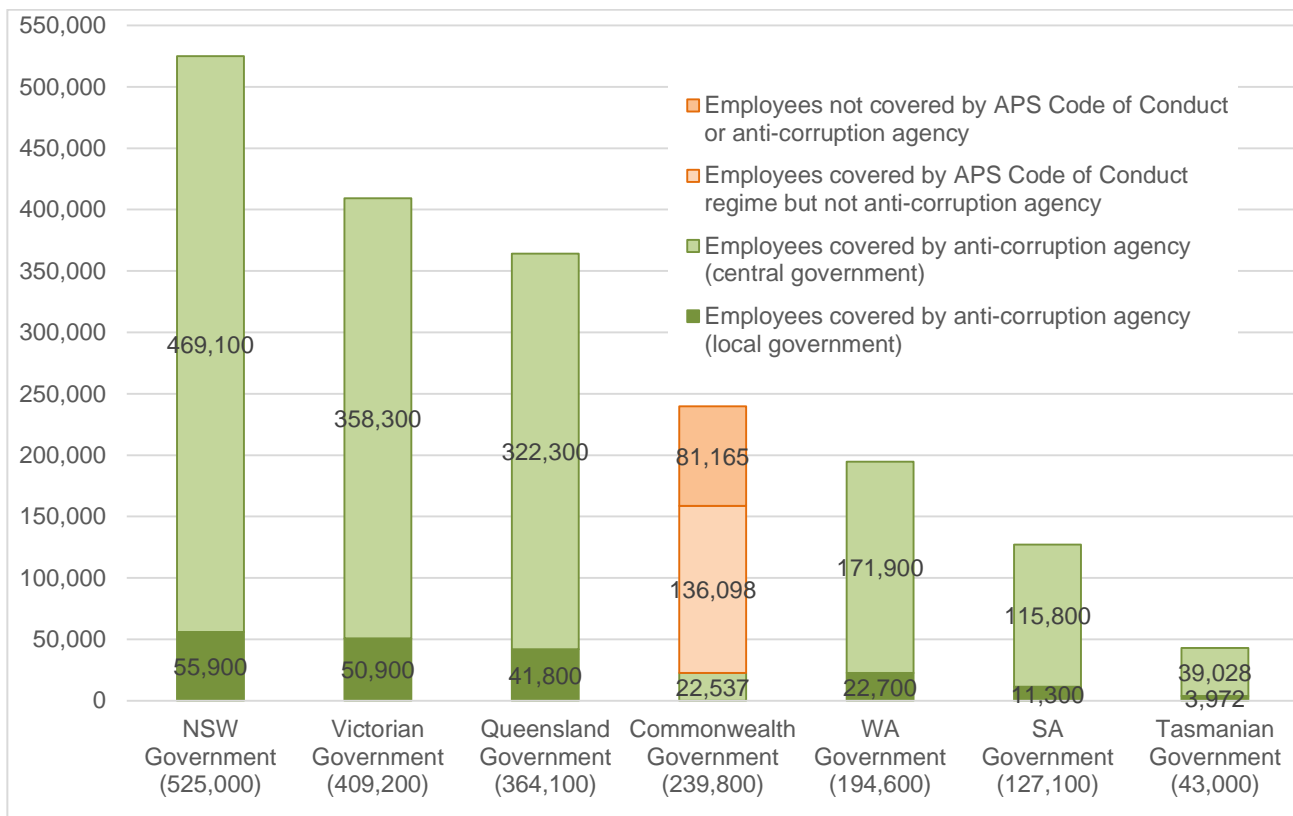
This reporting and referral arrangement for corruption issues (AFP Category 4) is a mandatory one. ACLEI's legislation requires that 'as soon as practicable after the head of a law enforcement agency becomes aware of an allegation, or information' raising a corruption issue, she or he must notify ACLEI, with details and an assessment.⁷⁴ Options then follow for direct investigation by ACLEI, joint investigation, referral back with oversight, or referral back with an obligation to report the outcome.

⁷² APSC, *Handling misconduct: a human resource manager's guide* (June 2015), par 6.3, 6.3.1, 6.3.2 <<https://apsc.govcms.gov.au/handling-misconduct-human-resource-managers-guide>>. While the Commonwealth Fraud Control Policy defines 'fraud' broadly, to include any conduct which involves 'dishonestly obtaining a benefit, or causing a loss', it is plainly focused primarily on matters involving actual pecuniary theft and direct financial loss: Par 14, p.C7. Moreover, under the Fraud Guidance and Australian Government Investigation Standards, agencies are simply 'encouraged' to seek guidance from the AFP, and only in serious or complex matters, with only 'non-corporate entities' obliged to refer cases, if potentially serious or complex; and if they deem themselves as not having the capacity and resources to investigate: Fraud Guidance, pars.71-72, p.C16.

⁷³ See Part IV, *Australian Federal Police Act* 1979, and Australian Federal Police Categories of Conduct Determination 2013; AFP (2017) Annual Report, p.114. <https://www.afp.gov.au/sites/default/files/PDF/Reports/amended14122017-afp-annual-report-2016-2017.pdf> (Accessed 5/7/2018).

See also <https://www.legislation.gov.au/Details/F2013L01429> for detail of the four categories of misconduct.

⁷⁴ *Law Enforcement Integrity Commissioner Act* 2006, s.19(2).

Figure 8. Anti-corruption coverage: public sector employees (Australia) 2017⁷⁵

Reviewing these five investigation types, results in three different sets of approaches governing Commonwealth employees and agencies, exposes the fragmented and inadequate nature of the system. Figure 8 emphasises that of Australia's 1.9 million federal and state public servants, only the Commonwealth has major sections of its workforce *not* subject to a sector-wide system of oversight for corrupt and high-risk misconduct cases. In all States, all agencies and entities are covered by such a system, in addition to normal misconduct and disciplinary regimes; but in the Commonwealth, less than 10 per cent have the equivalent coverage (i.e. ACLEI); while another 37 per cent are not even part of the central code of conduct regime managed by the APSC.⁷⁶

The consequences are significant. They include a lack of basic, reliable information about the true state of high-risk misconduct reporting and agency responses to it, across the Commonwealth. No oversight agency, either singly or in combination, currently has the ability to estimate the number of matters being dealt with, let alone monitor and evaluate their nature; let alone provide meaningful assurance regarding the quality and consistency of agency responses.

The bulk of Australia's public sectors, apart from the Commonwealth, now operate with an equivalent mandatory reporting system.⁷⁷ This represents a fundamental backbone for an effective integrity system, without which it cannot be known that matters are being handled appropriately and consistently, investigations cannot be conducted

⁷⁵ Source: Australian Bureau of Statistics Series 6248.0.55.002 - Employment and Earnings, Public Sector, Australia, 2016-17; Australian Public Service Statistical Bulletin 2017 <<https://apsc.govcms.gov.au/apsc-statistical-bulletin-december-2017>>.

⁷⁶ The notion presented to the Senate Select Committee that between them, the Australian Public Service Commissioner and ACLEI have the sector covered in some kind of consistent and coherent way simply bears little relationship to reality: see Senate Select Committee report, pars. 4.130, 4.131 (APSC).

⁷⁷ See recent amendments to Victoria's IBAC legislation to establish mandatory agency reporting, following NSW and, originally, Queensland.

independently when needed, and sector-wide information cannot be generated regarding emerging corruption risks and their handling.

Moreover, there are no logistical justifications for the Commonwealth to be forced to settle for such a fragmented and inadequate system. As also seen in Figure 8, the Commonwealth is only Australia's fourth largest employer – well capable of adjusting to a system of mandatory reporting and oversight on an expanded ACLEI model. Central monitoring, case oversight and independent investigation capacity is imperative for confidence that high-risk misconduct is being accurately diagnosed and monitored, and effectively monitored and handled.

3.2. Most strategic areas of corruption risk unsupervised

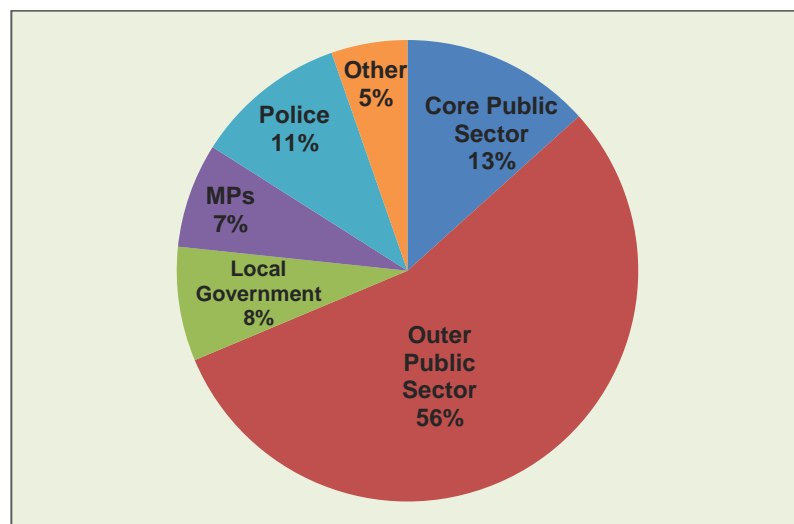
The second weakness flowing from this approach is that not only large numbers of employees, but some of the most strategic areas of corruption risk at the Commonwealth level, are left without independent anti-corruption supervision and assurance.

This is not to suggest that all strategic areas of corruption risk are left exposed. For example, for matters involving direct fraud on the Commonwealth or its agencies, there is good reason to believe that the combination of agency fraud control systems, AUSTRAC support, AFP investigative capacity, and Department of Finance and ANAO oversight constitute a strong system. This remains natural for the jurisdiction which collects and redistributes over 80% of the nation's public finances, and maintains Australia's highest spending programs in terms of direct financial distributions, including social security and Medicare.

However, there are at least three reasons for the Commonwealth to be concerned about high levels of corruption risk currently being left undermanaged.

First, it is areas of government **beyond the 'core' public service** – e.g. beyond APS agencies – with their own separate and differential misconduct regimes, that can become the most prone to corruption. This may be because their variable processes flow through to different standards, lack of control, and cultural issues such as nepotism, or because they are seen as weak points for corrupting influences to target and penetrate.

Figure 9. Focus of State anti-corruption agency reports by sector (2007-17)⁷⁸



⁷⁸ Source: Ken Coghill & Marco Bini (2018), 'Jurisdictional Variation in Anti-Corruption Investigations in Australia' (forthcoming), Figure 2.

This is affirmed by State experience which shows a strong focus of reported State anti-corruption agency investigations over the past decade lies not in the core public sector (e.g. departments) but among the statutory authorities and controlled entities that make up the ‘outer’ public sector. Figure 9 summarises the results of analysis of the 135 publicly reported investigations from State anti-corruption agencies over the period 2007 to 2017.⁷⁹ Over half of reported corruption investigations focused on statutory authorities and independent entities (the “outer public sector”) rather than departments. This was especially true of the major jurisdictions (NSW, Queensland and to a lesser extent WA). Of the examined reports in NSW, 85% involved the outer public sector. Victoria had a 50/50 split between departments and the outer public sector.

The diversity of Commonwealth arrangements thus emphasizes where some of the greatest risks may naturally lie, given it is at the periphery or margins of existing systems that risks of corruption may be greatest. Both the Australian Wheat Board⁸⁰ and the Reserve Bank’s noteprinting enterprises,⁸¹ for example, were located in this outer sector.

A second area of strategic risk is **law enforcement** – the focus at ACLEI’s creation.

One rationale for establishing ACLEI was that law enforcement is an especially sensitive area, with high corruption risks, involving strong regulatory powers and access to information. This focus began with just two agencies (AFP and Australian Crime Commission), and now extends to five (or parts thereof) as detailed in the last section.

However, there are further law enforcement agencies that share this risk, including sharing sensitive information of value to organized crime or those seeking to influence regulatory actions. The most obvious are the agencies engaged in fighting serious financial crime and corruption through the AFP Fraud & Anti-Corruption Centre.

Table 3. Fraud and Anti-Corruption (FAC) Centre participating agencies

1. *Australian Federal Police*
2. *Australian Border Force (Department of Home Affairs)*
3. *Australian Criminal Intelligence Commission*
4. *Australian Transaction Reports and Analysis Centre*
5. *Australian Securities and Investments Commission **
6. *Australian Taxation Office **
7. *Department of Defence **
8. *Department of Human Services **
9. *Department of Foreign Affairs and Trade **
10. *Attorney-General’s Department (advisory member) **
11. *Commonwealth Director of Public Prosecutions (advisory member) **

* Agency not included in jurisdiction of Australian Commission for Law Enforcement Integrity.

As shown in Table 3, seven of those 11 agencies are not subject to oversight by ACLEI. The result is that anyone seeking to corruptly obtain or provide information to evade attention or gain advantage can target a weaker link (i.e. an agency not subject to oversight rather than one in which integrity protections are higher).

This is not a new problem. It is 12 years since then AFP Commissioner Mick Keelty told the Senate Committee on the original ACLEI Bill, that ‘if we are serious about this, and if

⁷⁹ Ken Coghill & Marco Bini (2018): 135 investigation reports since 2007: NSW ICAC (68), Qld CMC (15), WA CCC (36), Tas IC (3), SA ICAC (1), Vic IBAC (12). Excludes annual reports, educational reports.

⁸⁰ Commissioner Terence Cole, *Report of the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme*, 24 November 2006, Attorney-General’s Department (Australia), vol. 1, p. lxxxii.

⁸¹ See <https://www.cdpp.gov.au/news/former-rba-and-security-employee-sentenced>.

it is not just a quick fix,' it would be better for law enforcement if the ACLEI had 'a wider remit':⁸²

Speaking from experience there is a displacement factor.... [O]rganised crime will go to the heart of corruption. ... If you have an oversight or governance regime in a particular place then you need to expect that, if you tighten it up in one area, displacement may create a problem for you in another area.⁸³

Integrity challenges in the Australian Taxation Office would tend to bear this out. Today, the fact that not all of the core group of regulatory agencies at the nation's frontline are supported by the same degree of oversight, leaves the whole group exposed to the risk of corruption.

Finally, specialist, independent anti-corruption oversight is weak in respect of the single largest source of corruption risk – **procurement of goods, equipment, facilities and services**.

The Australian Government undertakes enormous procurement. According to its own reporting via Austender, the total value of Commonwealth contracts over \$10,000 over the past five years (2012-2017) was \$251.9 billion, disbursed through up to 70,000 contracts and procurement actions per year.⁸⁴

Table 4 shows the top 10 agencies responsible for these contracts. Only one of these top 10 procurement agencies (Border Protection, now Home Affairs) lies in ACLEI's jurisdiction, and is subject to independent oversight, and even then only in respect of law enforcement functions. Agencies not covered at all include the Defence procurement program which amounted to \$32.7 billion in 2016-17 alone.

Table 4. Commonwealth procurement: top 10 agencies (2016-17)⁸⁵

2016-17 Procurement Contracts: Top 10 Agencies

Agency	2016-17		RANK		
	Value \$m	% of total Value	2016-17	2015-16	2014-15
Department of Defence*	32,721.7	69.1	1	1	N/A*
Commonwealth of Australia#	2,555.5	5.4	2	Null	Null
Department of Education and Training	1,347.9	2.9	3	6	28
Department of Health	1,183.8	2.5	4	7	9
Department of Human Services	1,122.9	2.4	5	4	7
Department of Immigration and Border Protection	1,016.6	2.2	6	3	5
Australian Taxation Office	713.1	1.5	7	9	10
Department of Foreign Affairs and Trade - Australian Aid Program	565.6	1.2	8	5	6
Department of Foreign Affairs and Trade	519.8	1.1	9	11	14
Department of the Environment and Energy	432.6	0.9	10	N/A*	N/A*

* The formation of new entities following Machinery of Government changes means they can't be compared to entities of previous financial years.

Whole of Australian Government Air Travel Services includes entities estimate of air travel spend across a five year period from 2016 to 2021.

Red indicates agency/area not subject to the jurisdiction of ACLEI or any independent anti-corruption agency.

⁸² Senate Legal & Constitutional Legislation Committee, Hansard, Sydney, Thursday, 27 April 2006, L&C 42.

⁸³ Senate Legal & Constitutional Legislation Committee, 27 April 2006, L&C 43.

⁸⁴ Ibid.

⁸⁵ Source: <https://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/>.

The ANAO has commented on the failure of defence procurement procedures to mitigate risks.⁸⁶ These risks are high; Australia has let contracts to at least two suppliers subject to criticism in recent years: French submarine maker DCNS and German military vehicle supplier Rheinmetall.⁸⁷ However, the present Commonwealth integrity system leaves these areas of high risk without independent anti-corruption oversight and monitoring, subject only to the internal control processes of the portfolio, plus AFP oversight in the event of a clear, prosecutable case of bribery or fraud.

These gaps reinforce the extent of risks in the present system.

3.3. No coherent system-wide corruption prevention framework

The previous weaknesses relate to identification, investigation and responses to corruption risks. However, as discussed in Part 2, a historic strength of the Commonwealth integrity system has been its traditional corruption resistance advantages by comparison with some other governments, enabling it to rely on a 'pro-integrity' approach to conduct without being forced to also develop strong corruption control.

This is consistent with the goal of any integrity system – to not just respond to corruption and other violations, but to prevent them from occurring in the first place, supporting government in its ability to fulfil its purposes to the highest level. It requires more than the focus on detection and law enforcement that is often the priority of integrity agencies.⁸⁸ Instead, there is a need for coordinated systems and measures that change the fundamental conditions which lead corruption to occur in the first place.⁸⁹ Effective corruption prevention involves more than 'detection, disruption and deterrence'⁹⁰ and takes measures which systemically analyse vulnerabilities, harden targets, and make interventions to support ethical cultures, climates and leadership – or change cultures and behaviours where needed.

It is not unusual in Australia, as elsewhere, to find that corruption prevention efforts are ad hoc, and continuing to rely on the educational power of investigations, broad education programs, standards development, and encouragement of whistleblowing.⁹¹ While essential, there is little evidence to support their long-term effectiveness in preventing corruption in the absence of a more systemic and integrated approach.⁹²

The Commonwealth integrity system therefore shares this general weakness with many jurisdictions.

However, the weakness is all the more pronounced if the Commonwealth is to sustain and strengthen its preferred 'pro-integrity' approach. The weakness manifests at three levels.

⁸⁶ See <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting>.

⁸⁷ Both companies received a "D" categorisation in Transparency International's most recent Defence Companies Anti-Corruption Index (2015), meaning that they exhibited limited evidence of ethics and anti-corruption programmes based on publicly available material; see <http://companies.defenceindex.org/view-report-dataset/>.

⁸⁸ Graycar A and Prenzler T (2013) *Understanding and preventing corruption*, Palgrave Macmillan.

⁸⁹ OECD Anti-Corruption Network for Eastern Europe and Central Asia (2015) *Prevention of Corruption in the Public Sector in Eastern Europe and Central Asia*, OECD, p15.

⁹⁰ ACLEI, <https://www.aclei.gov.au/corruption-prevention>.

⁹¹ Graycar A and Prenzler T (2013), p71.

⁹² Similarly, arguments that law enforcement approaches can deter future misconduct are not supported by research on deterrence, which show limited deterrent impact across a range of offending types: Nagin D, Solow RM and Lum C (2015) 'Deterrence, criminal opportunities and police', *Criminology* 53(1), pp174-185. This is particularly so in organisational contexts such as those within which most corruption occurs: Simpson S, Rorie M, Alper M and Schell N (2014) 'Corporate crime deterrence: a systematic review', *Campbell Collaboration*.

Leadership

No agency currently has a clear mandate to develop and foster corruption prevention approaches across the Commonwealth – other than ACLEI with respect to the five agencies it oversees. There remains no over-arching policy commitment to this goal or broad strategy for how it might be pursued, even voluntarily by agencies, even in the APS sector.

The lack of reference to integrity in the terms of reference in the current Independent Review of the APS, mentioned in Part 2, is indicative of this state. As will be mentioned further below, the Commonwealth lacks even a general, sector-wide anti-corruption plan; it commenced a process for developing a National Anti-Corruption Plan in 2011, but it was not finalized before a change of government in 2013.⁹³

Similarly, despite the evidence of many officials to explain how the multi-agency system covered all gaps, the Senate Select Committee concluded that they ‘struggled to explain... how their individual roles and responsibilities inter-connect’ to form a ‘seamless’ approach.⁹⁴ A coherent corruption prevention strategy requires overcoming these difficulties.

Operational coordination

Just as there is no overall coordination for Commonwealth reporting and detection of corruption, there is no operational framework for prevention. Instead, any effort faces the same challenges of bifurcated jurisdictions and responsibilities, in an area where coordination and consistency are key – particularly when there are multiple bodies involved, with different missions.

This means that individual agencies risk developing standards, approaches and integrity measures in a vacuum. By contrast, an agency with a coordinating role would develop and test new approaches, promote effective prevention across the public and private sectors, and advocate for sufficient resources. At present, no Commonwealth agency performs these functions, and there is no systemic cross-agency cooperation.

Agency level resources, objective and responsibilities

As mentioned previously, the Commonwealth does have strong pro-accountability mechanisms under the *Public Governance, Performance and Accountability Act 2013* in addition to the conduct regimes reviewed in section 3.1. However, while this more unified framework permeates all Commonwealth entities and officials and includes additional, overlapping, accountability duties to those contained in Codes of Conduct,⁹⁵ it is primarily a *financial* accountability and risk management framework, and it is only these aspects that are carried through into operational frameworks for agencies.

This framework therefore further emphasizes the extent of the prevention gap, and points to how it could be filled at Commonwealth level. It provides the basis for the Commonwealth’s fraud control framework, already mentioned, which has long been its closest thing to a corruption control framework. Indeed, as noted above, guidance on misconduct tends to presume that in serious corruption cases that involve criminal or high-risk misconduct, it is an agency’s *fraud* control policy which will apply.

As noted earlier, “fraud” under the Policy is defined quite broadly, to include any conduct which involves ‘dishonestly obtaining a benefit, or causing a loss’, and thus includes a range of potential corruption. Further, in practice, many individual agencies now use this

⁹³ See Senate Select Committee, par 2.45.

⁹⁴ See Senate Select Committee, par. 4.137.

⁹⁵ See Sections 15-32 (Duties of authorities and officials).

framework to develop not simply 'Fraud Control Plans', but 'Fraud and Anti-Corruption Plans', and 'Fraud Control and Corruption Prevention Plans'.

However, neither the Commonwealth Fraud Control Policy⁹⁶ nor the Commonwealth Risk Management Policy⁹⁷ specifically mention corruption (or integrity), and continue to provide no *direct* support or obligations upon agencies to develop plans that would equate to corruption prevention policies.

While these developments show the need and the importance placed by agencies on developing such measures, therefore, they are neither supported nor required to take this approach, nor coordinated or consistent, nor do they extend into the types of measures associated with a wider pro-integrity approach. Fraud remains inherently focused on risks and actions to control theft and direct financial loss, and the language of plans remains focused on the objectives 'to deter, detect and deal with' fraud and corruption, rather than a full suite of approaches.⁹⁸

It was noteworthy that while the Commonwealth's Fraud Control Framework was included in Attorney-General's Department written submissions to the Senate Select Committee, the Department did not refer to or discuss the framework during its appearance before the committee.⁹⁹

Overall, the Commonwealth suffers from a patchy and inconsistent approach to corruption prevention. While ACLEI has devoted some resources to prevention, its limited jurisdictional mandate leaves out most of the Commonwealth sector. International studies suggest that effective corruption prevention efforts require, among other factors:¹⁰⁰

- Effective use of research on corruption and anti-corruption
- Comprehensive, and publically reported, risk analysis across all public sector bodies and sectors
- Engagement of senior management in designing and promoting integrity measures
- Building adequate prevention systems including clear rules and practical tools, guidance, training, monitoring and enforcement
- Development of indicators of effectiveness in corruption prevention
- Ensuring working and transparent inter-institutional coordination in corruption prevention.

The current Commonwealth system falls considerably short of these standards.

⁹⁶ Cth Fraud Control Plan (2017), consisting of the Fraud Rule, Fraud Policy and Fraud Guidance, the first being mandatory for all Commonwealth entities, and the second and third only advisory for corporate i.e. non-core Commonwealth entities: <https://www.ag.gov.au/CrimeAndCorruption/FraudControl/Documents/CommonwealthFraudControlFramework2017.PDF>. These only reference to corruption in the Fraud Guidance, which recognizes the availability of ACLEI to support its five agencies 'to detect and prevent corrupt conduct', and citing 'internal and complex fraud incidents in these entities' as also capable of being regarded as 'corrupt conduct' (par C5); and suggesting that 'where corruption or other entity risks are concerned', the guide be used 'as a starting point... in conjunction with other appropriate guidance materials' (par C6).

⁹⁷ Commonwealth Department of Finance, *Implementing the Commonwealth Risk Management Policy – Guidance, 2016 - Resource Management Guide 211*, p.15 <https://www.finance.gov.au/sites/default/files/implementing-the-rm-policy.docx>. Examples of suggested 'specialist risk categories' with their own legislation, standards, compliance and reporting obligations, and suggested 'specialist programs and processes', are: business continuity and disaster recovery; fraud control; workplace health and safety; and protective security.

⁹⁸ <https://www.ag.gov.au/CrimeAndCorruption/FraudControl/Pages/default.aspx>, referencing the Fraud Control and Corruption Prevention Plan 2017–2019.

⁹⁹ See Senate Select Committee, par. 2.251.

¹⁰⁰ OECD Anti-Corruption Network for Eastern Europe and Central Asia (2015)

3.4. Inadequate support for parliamentary and ministerial standards

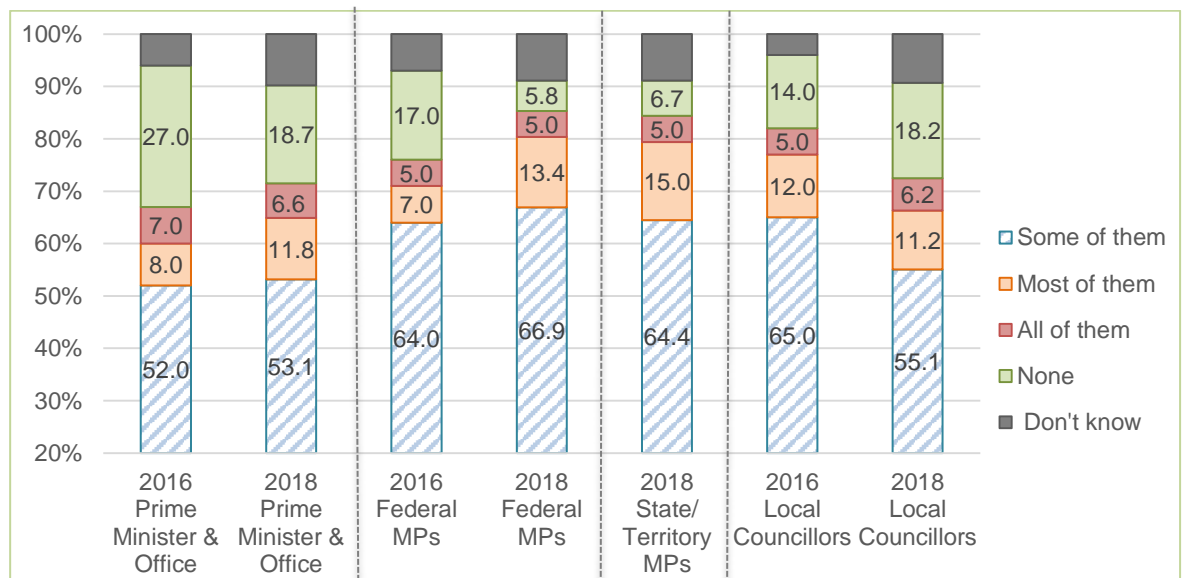
The bulk of discussion about the Commonwealth's multi-agency system, as shown so far, focuses on integrity and anti-corruption in executive government agencies and entities in the general public sector. While strengthening the system as it relates to these is important, the most crucial area for strengthening is arguably at the parliamentary and political levels. This is where the public perceive the major – and growing – corruption problems.

Falling public confidence in government, generally, is a more complex issue than can be solved simply by strengthening integrity systems. However, as noted earlier in Part 1 (Figures 2-4), the strength of relationships between corruption concerns and overall trust, as well as citizens' assessments that a government is making an effort to control corruption, makes a stronger integrity system a vital part of the answer.

Figure 10 sets out further results from the 2018 Global Corruption Barometer, highlighting the urgency of this problem for federal parliamentarians (details at Appendix 1). Since 2016, the proportion of citizens perceiving that no federal parliamentarians are corrupt has fallen by two-thirds, while the proportion perceiving some or most to be corrupt, has risen from 71% to 80% -- the same or worse than the average view with respect to State parliamentarians, and the worst for all three levels of government. This, while perception data shows that confidence in government's response to corruption is associated with higher trust, the challenge is getting more acute.

Figure 10. Extent of corruption perceived among Australian elected officials (2016-2018)

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



As also noted earlier, the 245 respondents who had ever **worked in the federal government** not only recorded the highest strong support for a new anti-corruption agency (Figure 2), but were more likely than other respondents to have witnessed or suspected an official or politician of making **a decision in favour of a business or individual** who gave them political donations or support (68% against national average of 56%). This provides insights into the breadth of areas that need to be addressed, for a strengthened integrity system to earn and sustain public trust.

These data confirm that perceptions of the integrity of the Parliament and Ministers hinge **both** on ensuring the good conduct of elected officials once in office, and on ensuring good conduct in the process of achieving office, including on the part of *others* trying to influence electoral outcomes and policy, and the overall processes of political fundraising, fair access to decision-making, and further employment.

Prompt resolution of parliamentary and ministerial integrity concerns

Already, the Commonwealth has taken important action to provide greater public confidence that elected officials cannot abuse their expenses (formerly 'entitlements') through creation, in 2017, of the Independent Parliamentary Expenses Authority.¹⁰¹

These developments nevertheless highlight the continued, fragmented nature of the system, likely to continue to give rise to public integrity concerns. They come against a long background of uncertainty over inconsistency between the types of integrity standards imposed by parliaments on other public officials and the wider community – and the system of 'puzzling self-regulation' maintained by parliamentarians and ministers themselves.¹⁰² While the IPEA has been created, it has an 'extremely limited mandate' of advice, monitoring, reporting, and auditing relating only to expenses.¹⁰³ This highlights the much wider range of matters that may generate integrity concerns, which could also be better prevented, managed, investigated and resolved.

It also highlights other gaps in the integrity system. Integrity and accountability arrangements also need to apply to ministerial and electoral staff.¹⁰⁴ However, the whistleblower protections in the *Public Interest Disclosure Act 2013* are not available to officials who disclose any wrongdoing on the part of parliamentarians, nor any of the staff of members of parliament. Anyone wishing to disclose even abuse of expenses to the IPEA would not have the benefit of those protections.

The Senate Select Committee identified key areas for improvement: the value of strengthening ethical support and advice for parliamentarians generally, for example through creation of a Parliamentary Integrity Commissioner to help prevent and resolve integrity issues; and strengthening the processes available to the Prime Minister to help enforce the Statement of Ministerial Conduct.¹⁰⁵

There is clear scope for increasing expertise and advice to parliamentarians and ministers to manage and prevent integrity concerns.¹⁰⁶ However, the gap will remain the ability of the parliament and Prime Minister to demonstrate that when perceived breaches arise, they have been examined with sufficient independence and robustness. Between the draconian option of police involvement, and the tepid option of departmental review, options include strengthened independent mechanisms attached to the parliament itself; and coverage by independent anti-corruption bodies, as occurs in most States. To be an effective solution, however, any option requires parliamentarians to establish sufficiently clear standards, through their own codes of conduct, against which they are prepared to hold themselves and colleagues to account.¹⁰⁷

¹⁰¹ For some background, see L. Thompson (2015), 'Can Bronwyn Bishop learn anything from the UK expenses scandal? *The Conversation*, 22 July 2015.

¹⁰² John Uhr (2005), *Terms of Trust: Arguments Over Ethics in Australian Government*, UNSW Press, p.147.

¹⁰³ Hoole & Appleby (2017), 'Integrity of Purpose...'; see *Independent Parliamentary Expenses Authority Act 2017* (Cth) ss 3 and 10.

¹⁰⁴ M Abbott & B Cohen (2014) 'The accountability of ministerial staff in Australia', *Australian Journal of Political Science* 49(2), 316-333.

¹⁰⁵ Senate Select Committee, pars. 4.155 and 4.164.

¹⁰⁶ See for example, Queensland's *Integrity Commissioner Act*, and the role of the Tasmanian Parliamentary Standards Commissioner including providing advice to MPs regarding conduct, propriety, ethics and codes of conduct: *Integrity Commission Act 2009* (Tas), section 28(1)(a).

¹⁰⁷ For the regime recommended by the Commonwealth Parliamentary Association, see *Recommended Benchmarks for Codes of Conduct applying to Members of Parliament*, Commonwealth Parliamentary

Undue influence

The Commonwealth's wider approach to reducing perceptions of the risk of undue influence in political, parliamentary and executive decision-making is at least as vital, but even more complex. It has been accentuated by two sets of concerns:

- Perceptions of public office as a form of "revolving door" in which it becomes legitimate for elected or senior officials to use their official experience in service of sectional outside interests, post-employment but also possibly even while employed, or shortly before leaving employment, in ways that influence decision-making in ways it would not have otherwise been influenced;¹⁰⁸ and
- Widespread concern over the price being paid by the public, and the public interest, by parliamentarians' and political parties' pursuit of campaign finance and other forms of electoral and campaign support – ranging from the corrupting influence of foreign political donations,¹⁰⁹ to ongoing concern over real and perceived links between political donations and specific government decisions, especially business and developmental approvals,¹¹⁰ to concerns over the use of political fundraising vehicles and weak electoral laws to circumvent stronger campaign finance and disclosure laws in other jurisdictions.¹¹¹

Many of these issues were recognized, but either not extensively discussed or not resolved by the Senate Select Committee.¹¹² They have been the subject of longstanding controversy among most political parties, and which have proved intractable to progress at the Commonwealth level – even though public concern is clear, and even though some States have moved to address them in innovative ways.¹¹³

To address weaknesses in the Commonwealth's regimes for political finance, disclosure, lobbying, outside employment, post-separation employment and improper influence requires larger solutions than simply an anti-corruption commission. As recently argued, of perhaps 10 key areas of action required, most require overall reform of the rules – only one relates to having 'an effective compliance and enforcement regime', including support from an anti-corruption body, as in NSW or elsewhere, but hingeing first on 'an adequately resourced Australian Electoral Commission which adopts a regulatory approach toward political finance laws'.¹¹⁴

Commonwealth institutional strengthening must address these imperatives. Options flowing from these issues will be taken up in Part 4 and 5.

Association, 2015 <<http://www.cpahq.org/CPAHQ/CMDownload.aspx?ContentKey=81941905-eb05-4791-abeb-83a04a55bedb&ContentItemKey=9bd04488-8829-4592-a574-a801da458d2a>>.

¹⁰⁸ Examples include a position taken by former Minister Andrew Robb <<https://www.smh.com.au/national/liberal-andrew-robb-took-880k-china-job-as-soon-as-he-left-parliament-20170602-gwje3e.html>>, and a position accepted by former Minister Bruce Billson, reviewed in detail by the Senate Select Committee, pars. 2.324-2.331 & 4.159-4.162.

¹⁰⁹ See <http://www.abc.net.au/news/2017-12-12/sam-dastyari-resigns-from-parliament/9247390>, 12 December 2017.

¹¹⁰ See Transparency International Australia (2017), *Corruption Risks: Mining Approvals in Australia, Melbourne* <http://transparency.org.au/our-work/mining-for-sustainable-development/mining-in-australia/>; The Australia Institute (2017), 'The tip of the iceberg: political donations from the mining industry' <http://www.tai.org.au/content/tip-iceberg-political-donations-mining-industry>.

¹¹¹ See ABC Four Corners, 'Democracy for Sale', 23 June 2014 <http://www.abc.net.au/4corners/democracy-for-sale/5546008>.

¹¹² Senate Select Committee, pars. 2.180-2.201, 2.254.

¹¹³ See e.g. Queensland's introduction of Australia's first 'real time' continuous online disclosure of political donations, in March 2017. This reform was first recommended by Australia's first National Integrity System Assessment -- see Chaos or Coherence? Strengths, Challenges and Opportunities for Australia's Integrity Systems, *National Integrity Systems Assessment Final Report*, TI Australia & Griffith University, December 2005, pp 73-6: http://transparency.org.au/wp-content/uploads/2012/08/nisa_final.pdf.

¹¹⁴ Joo Cheong Tham (2017), 'Ten-point plan to clean up money in federal politics', *Accountability and the Law Conference*, Parliament House, Canberra, August 2017.

3.5. Low and uncertain levels of resourcing

It is not widely appreciated that, in line with its fragmentation and insufficient coherent, sector-wide approaches, the Commonwealth integrity system is notable for a serious lack of resourcing – relative to need and to other jurisdictions.

Figures 11-13 compare the Commonwealth's expenditure on independent direct anti-corruption purposes and other core independent integrity agencies, with the same measure for each Australian State, for all Australian federal and state jurisdictions combined, and for two other jurisdictions including New Zealand. The measure is a simple proportion (ratio) of this expenditure (actual, budgeted or estimated) against total actual expenditure. Figures 11 and 12 were published in a recent peer-reviewed study in the international journal, *Crime Law and Social Change*.¹¹⁵

Figure 11 shows the very low proportion expended by the Commonwealth (0.002%) on its only current independent specialist anti-corruption agency (ACLEI). This is consistent with, but also emphasizes, ACLEI's current limited jurisdiction and size.

However, the same study emphasizes that given the roles of different agencies in a multi-agency system, a more meaningful measure of investment is provided by examining combined expenditure on a wider range of core integrity agencies. Figure 12 thus compares the combined expenditure on anti-corruption agencies (Figure 11) plus the Ombudsman and Auditor-General for the same jurisdictions.

As seen, this makes a marked difference for many jurisdictions including New Zealand whose total ratio rises to 0.111%. By contrast, Australia's total ratio remains only 0.069% and the Commonwealth's remains only 0.025%.

To attempt to compensate for ACLEI's small jurisdiction, Figure 13 shows what the result might be if investment was included from the AFP-led Fraud & Anti-Corruption Centre (FAC). As discussed below, no details are currently published of the budget of the FAC, let alone the resources spent by the FAC on *public sector* integrity and anti-corruption, in particular. Figure 13 therefore assumes a total of 2% of the combined expenditure the AFP, ACIC and Austrac, for this purpose (or \$33.8 million in 2015-2016).¹¹⁶ This is likely to be a significant over-estimate. However, even this would only lift current Commonwealth expenditure to 0.033%, and Australia's total to 0.074%.

In other words, the Commonwealth spends, at best, **around a quarter** of what the States typically spend on their core public integrity systems; contributing substantially to the fact that in total, Australia's public sector spends **a third less** than New Zealand, pro rata, on the same core public integrity functions.

¹¹⁵ A J Brown & Mark Bruerton (2017), 'Sufficient, stable and secure? An exploratory comparative analysis of integrity agency financial resourcing', *Crime Law & Social Change* Vol 68(5), DOI: 10.1007/s10611-017-9711-5 (September 2017).

¹¹⁶ Sources: Agency expenditure for the 2015-2016 financial year (Annual Reports):

Austrac	ACIC	AFP	Total	2.0%
\$ 85.6 m	\$181.9 m	\$1,421.6 m	\$ 1,689.0 m	\$ 33.8 m

Figure 11. Anti-corruption agency expenditure as a % of total public expenditure (2010-16)¹¹⁷

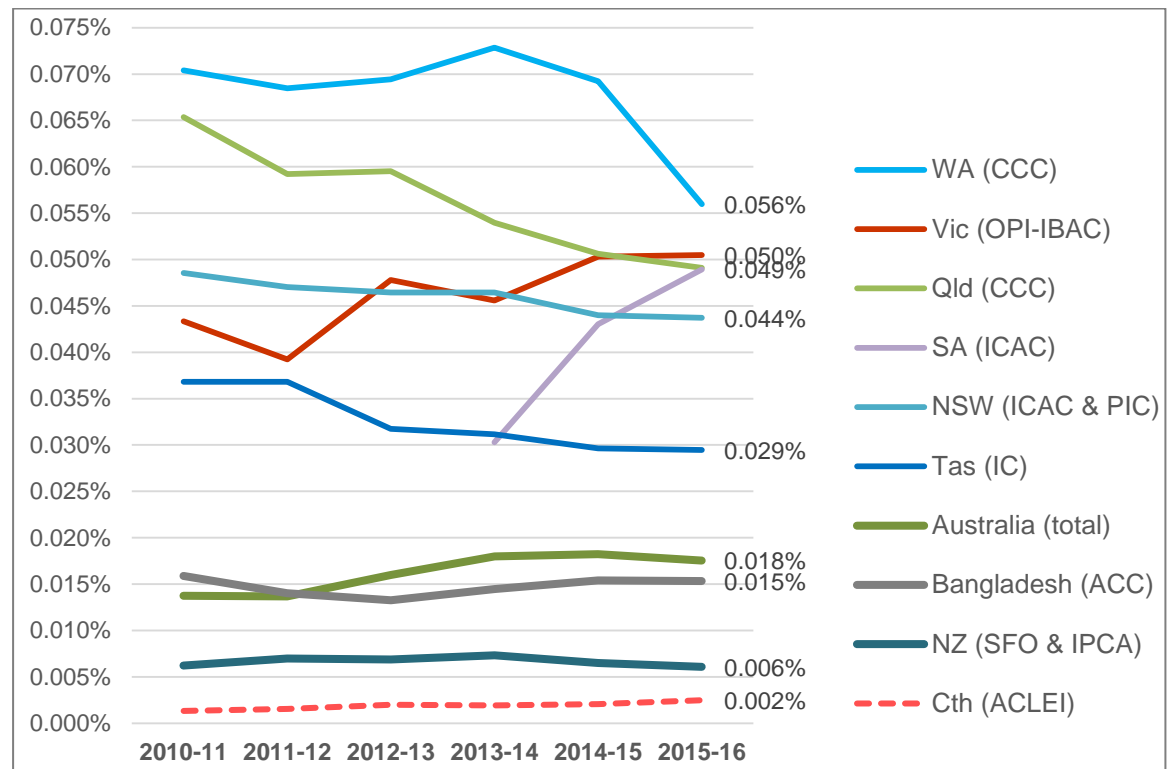
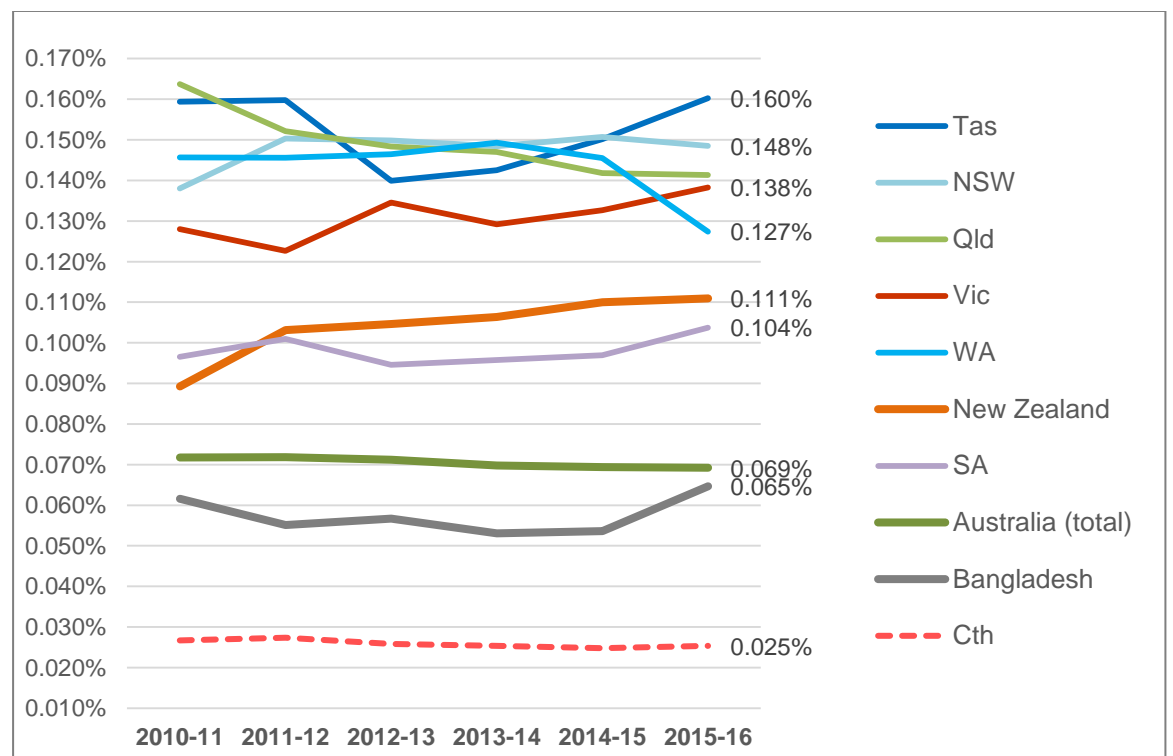


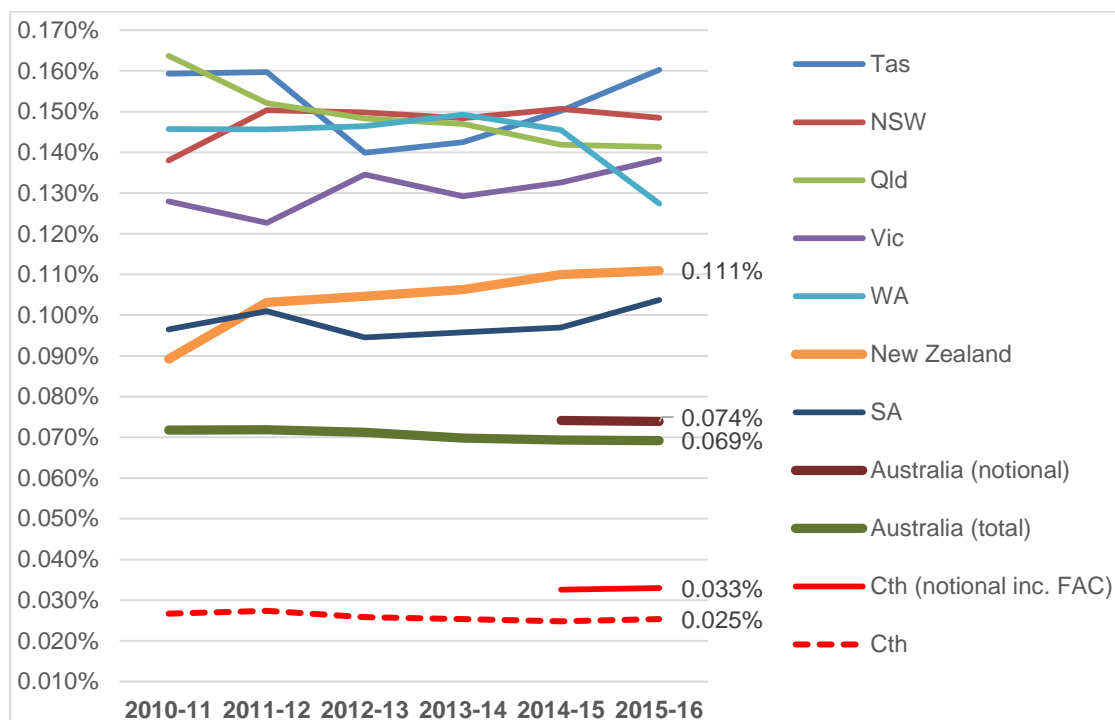
Figure 12. Total core integrity agency expenditure as a % of total public expenditure (2010-16)¹¹⁸



¹¹⁷ Source: Brown & Bruerton (2017), above, Figure 2.

¹¹⁸ Source: Brown & Bruerton (2017), above, Figure 3.

Figure 13. Total core integrity agency expenditure as a % of total public expenditure (2010-16) (including notional FAC contribution)



As a method of estimating the resourcing of the integrity system, this picture could now be updated to include the budget of the Independent Parliamentary Expenses Authority (\$10.1 million in 2017-18) (see Part 4 below). Independent misconduct investigations undertaken or oversighted by public sector commissions could also be added, for all jurisdictions; as could other functions. However, for reasons stated earlier, this would be unlikely to improve the Commonwealth position.

There may be structural reasons why the level of Commonwealth resourcing need not exactly match the States. For example, a higher proportion of federal expenditure takes the form of direct funding distributions (transfers, grants, benefits and payments) rather than employment of personnel. This is one reason for the importance placed by the Commonwealth on fraud control, as outlined in the previous section.

Nevertheless, the overall problem remains. The low level of core integrity agency resourcing by the Commonwealth is consistent with the weaknesses identified earlier, for which significant additional resourcing would be justified. For Australia's overall core integrity agency expenditure to reach the same level as New Zealand (0.111%) or most States, **additional or reallocated Commonwealth expenditure of approximately \$295 million per annum** would be required.

As noted elsewhere, the benefits of this investment are highly likely to outweigh the costs – economic modelling suggests that Australia's fall on Transparency International's Corruption Perceptions Index since 2012 may equate to a reduction of Australia's GDP by 4%, or \$72.3 billion in that time.¹¹⁹ While security, intelligence and privacy have been seen as significant areas in which to invest to safeguard Australia's system of governance, integrity and anti-corruption are plainly no less important.

¹¹⁹ See The Australia Institute, 10 January 2018: <http://www.tai.org.au/content/corruption%E2%80%99s-723-billion-hit-gdp>.

There are also two further weaknesses in the Commonwealth integrity system, indicated by the current low level of resourcing.

The first is a reminder of the **extent of delay** experienced in the Commonwealth's efforts to strengthen the integrity system, from point of realisation that reform is needed, to realising that intention. When the Australian Law Reform Commission first recommended establishment of a National Integrity & Investigations Commission in 1996, it estimated that a staff of about 30, with 15 investigators would be required.¹²⁰ It was 11 years before the agency (ACLEI) was established, and then another 5 years before it reached the same scale of operation as recommended 16 years earlier.

This is an incredible lag, given developments in the domestic and international economy, and realization about the extent of the risks of corruption for Australia and the importance of addressing them. It is little wonder that the present scale of investment is now seen to be even more out of date and inadequate. The Commonwealth can ill-afford to retain this pace and approach to institutional strengthening in the modern day.

Second, there is major reason for concern about **lack of certainty and clarity** in the current level of Commonwealth resourcing of anti-corruption efforts.

As noted above, no details are currently published about the budget of the AFP-led Fraud and Anti-Corruption Centre (FAC), even though it currently represents the 'front line' resource for the investigation of serious (i.e. criminal) corruption matters for the Commonwealth public sector, as well as more broadly.

In fact, as documented by the Senate Select Committee, the bulk of available resources are currently being devoted to foreign bribery investigations and serious financial crime involving business; and to a lesser degree fraud against the Commonwealth; rather than proactive public sector corruption investigations.¹²¹ This is especially the case due to the lack of a system of mandatory reporting of suspected corruption; and the limits of the AFP's criminal jurisdiction, as discussed earlier.

However, there are wider problems flowing from the fact that the specific budget of the AFP-led FAC does not seem to be capable of being identified. As noted in Part 1, the Senate Select Committee looked to a review of the resources and jurisdictions of ACLEI and the FAC Centre capabilities, then a commitment in Australia's first Open Government Partnership National Action Plan, as an important input into assessing what strengthening was needed.¹²² However, this review never occurred.

A large part of the difficulty is that the FAC has no independent budget. It is a multi-agency taskforce with resourcing coming primarily from staff secondment contributions from member agencies, which fluctuate over time, providing no specific or stable funding basis against which to report. It does not undertake investigations itself, but acts as a triage, evaluation and coordination centre. It has no records of its own of the resources actually placed into investigations. While the FAC 'employs a resource management strategy that ensures the flexible application of resources to activities that are likely to have the greatest impact on criminal networks and security threats',¹²³ it also means that

¹²⁰ ALRC (1996), 'Integrity: But Not By Trust Alone — Australian Federal Police & National Crime Authority complaints and disciplinary systems', *Australian Law Reform Commission Report No. 82*, Commonwealth of Australia, Sydney.

¹²¹ See AFP (5 July 2017), Answers to Questions on Notice, Senate Select Committee on a National Integrity Commission, p.2. <https://www.aph.gov.au/DocumentStore.ashx?id=eeb91148-5205-4350-953b-c6925b237eef> (accessed 10/7/2018).

¹²² See http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/National_Integrity_Commission: par 4.147, Recommendation 3.

¹²³ AFP (5 July 2017), Answers to Questions on Notice, Senate Select Committee on a National Integrity Commission, p3.

the actual funding deployed is hard to “tie down”¹²⁴ and ‘a very fluid issue’ – which, before the Senate Select Committee, the Commander of the FAC was unable to quantify.¹²⁵

Consequently, not only is it hard to identify what the actual current investment is – it is impossible to be certain whether that investment is going up, down, or is totally insecure. For example, the Commonwealth announced in April 2016 that it was making a \$15 million boost to the FAC for foreign bribery investigations – but only for a three year period.¹²⁶ Eighteen months later, it was announced that funding for the AFP’s work in a number of areas, including fraud and anti-corruption, would be ‘cut back’.¹²⁷ Without the anti-corruption enforcement budget being knowable, and published, it is not possible to be confident what actually occurred.

These uncertainties provide a major reminder why integrity and anti-corruption agencies are established as **independent** – so that their legal status and resources have stability, can be verified, and any changes or reductions as a result of political interference can be established.

As noted earlier, Australia has committed under Articles 6 and 36 of the UN Convention Against Corruption (UNCAC, 2004) to ensuring it has ‘a body or bodies or persons’ who are both specialised and independent in their ability to combat corruption.¹²⁸ The effective independence of anti-corruption bodies is a vital issue, internationally.¹²⁹

It has already been suggested that Australia is in breach of the UNCAC, due to the lack of a broad-based independent national anti-corruption agency.¹³⁰ Australia is not in breach of the UNCAC for tasking other bodies to investigate corruption, provided they are qualified, specialised and have legal and effective independence in decisions as to who to investigate, and how.¹³¹

However if a country is unable to identify the actual budget that it is placing behind this function, and that the budget is secure and stable, there is good reason to question whether it is truly satisfying its obligations under the UNCAC. That is currently the case for the Commonwealth integrity system.

¹²⁴ Commander Peter Crozer, Senate Select Committee Public Hearing on the Establishment of a National Integrity Commission, 5 July, 2017, Transcript, p.33: http://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/4486468b-1349-4a12-b7d5-00da3a85b172/toc_pdf/Select%20Committee%20on%20a%20National%20Integrity%20Commission_2017_07_05_5243_Official.pdf?fileType=application%2Fpdf#search=%22committees/commsen/4486468b-1349-4a12-b7d5-00da3a85b172/0000%22 (accessed 10/7/2018).

¹²⁵ Senate Select Committee Public Hearing on the Establishment of a National Integrity Commission, 5 July, 2017, Transcript, p.48.

¹²⁶ See <https://www.smh.com.au/politics/federal/afp-given-15-million-boost-to-tackle-corporate-foreign-bribery-20160422-gocwt0.html> (22 April 2016): \$15 million boost to fund three new foreign bribery investigation teams (26 new positions in total) over 3 years.

¹²⁷ See *Daily Telegraph*, 23 October 2017: <https://www.dailytelegraph.com.au/news/nsw/afps-organised-crime-anticorruption-operations-scaled-back-in-forecast-184m-budget-cut/news-story/ec7929bdbc52d98e7e4cb1d84646e1cd>, referencing an \$184 million budget squeeze.

¹²⁸ See Senate Select Committee at par. 2.46 and 4.106, footnote 124.

¹²⁹ See e.g. *Jakarta Statement on Principles for Anti-Corruption Agencies* (2012), Jakarta, 26–27 November 2012 <http://www.unodc.org/eastasiaandpacific/en/2012/12/corruption-kpkl/story.html>.

¹³⁰ See ABC/RMIT Fact check: ‘Is Australia in breach of its UN anti-corruption obligations?’, 10 November 2017: <http://www.abc.net.au/news/2017-09-28/fact-check-is-australia-in-breach-of-anti-corruption-obligations/8974742>.

¹³¹ NB the AFP is not subject to ministerial direction other than in matters of ‘general policy’ about its functions: *Australian Federal Police Act* 1979, s.37(2) (General administration and control).

3.6. Cross-jurisdictional challenges (public and private)

Much has been said about the importance of coordination and leadership in any integrity system, especially in the complex environment in which the Commonwealth Government operates. Most of what has been discussed in this part also relates to the Commonwealth *public* integrity system.

However, as recognized in Part 2, the Commonwealth has a different, broader anti-corruption role than State governments. Due to its economy-wide regulatory roles, it carries heavier responsibility for identifying and responding to corruption risks across the entire public and business sectors – not just the public sector and those dealing with it. Moreover, the Commonwealth has the bulk of responsibility for defending Australia from transnational corruption risks, international anti-corruption cooperation, and extra-territorial enforcement of Australia's integrity and anti-corruption standards (again, spanning both public and private sectors).

The question is how well it has performed these tasks, and whether they also point to priority areas for institutional strengthening.

While the Commonwealth can claim significant efforts and successes in many areas of its inter-jurisdictional and cross-jurisdictional responsibilities, these have also often been less, and slower, and achieved with far less efficiency and agility, than they could and should have been.

Responsible Business Conduct (inc. foreign bribery)

The Commonwealth's overall approach to its anti-corruption responsibilities can be seen in similar terms to its response to a wider range of business and financial integrity challenges, including those that provoked the current Royal Commission into Misconduct in Banking, Superannuation and Financial Services.

As described to the Senate Select Committee, intensive effort to address foreign bribery, in the last five years, has been welcome. However, it came late, slowly, and to date, still without much to show for it. Law reform to bring Australia's Criminal Code up to standard has been slow and remains incomplete. General issues of capacity and prioritization span these related challenges.

As current debates demonstrate, the international business conduct of Australian enterprises is increasingly inseparable from national conduct, with anti-corruption, anti-money-laundering and corporate transparency issues cutting across traditional regulatory divides. For example, as a signatory to the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, the Australian Government, via the Australian National Contact Point¹³² (currently within Treasury) is also meant to promote the Guidelines to Australian enterprises acting abroad, and investigate alleged breaches including combatting bribery, bribe solicitation and extortion principles.¹³³

Open questions remain as to how well-placed, well-coordinated, and well-equipped Australian regulatory agencies and law reform are, to not only catch up, but get ahead of the curve on these trends. Especially given the direct complicity of Commonwealth-controlled and licensed entities in foreign bribery, a general question is how resources are to be marshalled to assess and manage corruption risks and responses in a more agile way, across a range of institutions and the public-private divide.

¹³² <https://ausncp.gov.au/>

¹³³ See OECD (2011), OECD Guidelines for Multinational Enterprises: Recommendations for responsible business conduct in a global context, Paris; <http://www.oecd.org/daf/inv/mne/48004323.pdf>

Proceeds of corruption and unexplained wealth

Similar questions surround the effort placed on identifying and returning the proceeds of corruption, within Australia's rapidly changing and improving efforts in anti-money-laundering. Despite world-leading technical capacity and systems, Australia's enforcement response on AML/CTF has also, until recent years, been slow and partial, and criticized in international evaluations as a consequence.¹³⁴

While legislative reform is catching up,¹³⁵ reforms to include further key professions and industries in the AML regime remain overdue. And while the regime itself continues to strengthen, its role in the identification and return of *corruption* proceeds – both nationally and internationally – remains somewhat embryonic.¹³⁶

Corruption in real estate

Again, Australia has woken up slowly to the risks and negative effects of offshore property investment into Australia.¹³⁷ The Commonwealth Government has transferred regulatory responsibility for controlling the flow of proceeds of corruption and crime into Australian real estate, along with unwanted investment generally, from the Foreign Investment Review Board to the Australian Taxation Office (ATO).

However, as recently reviewed by the Australian National Audit Office, most key elements of this effort are also in their relative infancy.¹³⁸ Further, the fact that the ATO has been given this key responsibility in the Commonwealth's anti-corruption response, only makes it more worrying that it is not itself subject to anti-corruption supervision by ACLEI, as mentioned in section 3.2 – despite this having been discussed by the Joint Parliamentary Committee on ACLEI since July 2011.

Anonymous shell companies

Despite Australia's success in helping achieve the G20 High Level Principles on Beneficial Ownership Transparency (2014), it remains slow in itself implementing the principles needed to limit or end the use of anonymous shell companies in the facilitation of corruption and other misconduct.¹³⁹ Action to ensure beneficial ownership transparency was included in Australia's first Open Government Partnership National Action Plan (2016-2018), but at time of writing, remains incomplete.¹⁴⁰

National cooperation

Just as the Senate Select Committee failed to be convinced that the Commonwealth public integrity system was operating 'seamlessly', the Financial Action Task Force (2015) identified Australian federal and State action against money-laundering as 'not effectively coordinated', despite Australia being an 'attractive destination' for corruption proceeds. As long as it has remained in denial regarding the strength of its own system, the Commonwealth has been in a weak position to play a meaningful coordinating role in a more coherent national response to domestic and international corruption.

¹³⁴ See Financial Action Task Force (FATF) (2015), *Anti-money laundering and counter-terrorist financing measures in Australia: Mutual Evaluation Report*, Paris.

¹³⁵ See for example, the Anti-Money Laundering and Counter –Terrorism Financing Amendment Act, 2017; Crimes Legislation Amendment (International Crime Cooperation and other measures) Act 2018.

¹³⁶ For a critical analysis of Australia's historical performance, see J. C. Sharman, *The Despot's Guide to Wealth Management: On the International Campaign against Grand Corruption*, Cornell University Press, 2017. For a real life case prompted by the international NGO, The Sentry, see <http://www.abc.net.au/news/2018-05-14/court-document-shed-new-light-on-alleged-money-laundering-case/9738920>.

¹³⁷ See Transparency International, *Doors Wide Open: Corruption and Real Estate in Four Key Markets*, March 2017 <<http://transparency.org.au/30-march-2017-doors-wide-open-corruption-and-real-estate-in-four-key-markets/>.

¹³⁸ See <https://www.anao.gov.au/work/performance-audit/compliance-foreign-investment-obligations-residential-real-estate>.

¹³⁹ For an early review, see Transparency International (2015), *Just for Show? Reviewing G20 Promises on Beneficial Ownership*: https://www.transparency.org/whatwedo/publication/just_for_show_g20_promises.

¹⁴⁰ See <https://ogpau.pmc.gov.au/commitment/12-beneficial-ownership-transparency> (August 2018).

The consequence has been a loose and inconsistent framework with little national cooperation between anti-corruption authorities, by comparison with other law enforcement and accountability frameworks. The lack of federal leadership has left the States to their own devices in terms of frameworks, common benchmarks and practices, without a shared national picture of integrity and corruption risks. This situation compares poorly with most other national cooperation models, from counter-terrorism laws to domestic violence to Australia's Organised Crime Strategic Framework and National Organised Crime Response Plan (2015-2017).

Leadership and coordination

These issues beg a common question, regarding how the Commonwealth can achieve an improved, more coordinated and agile response to the nation's integrity and anti-corruption policy needs – both among Commonwealth agencies, nationally and internationally, and across the public-private divide.

Among capacity needs, improved coordination is a priority. The limited and informal state of coordination in the present multi-agency system has been documented since at least 2010,¹⁴¹ with little action apart from the upgraded operational coordination of criminal matters through the Fraud & Anti-Corruption Centre.

Separate questions involve what level of enhanced coordination capacity is needed, and whether it should be located within a policy agency (Attorney-General's Department), an operational agency (e.g. an enhanced lead integrity or anti-corruption agency), or a mixture of both. Certainly, although the AGD currently has a lead role in relation to the coordination of Commonwealth integrity agencies,¹⁴² the size and number of agencies involved – especially when considered nationally and internationally – mitigates in favour of additional resources and new options, as discussed in Part 4.

In any event, an objective of a strengthened system should be development and support for a meaningful national anti-corruption plan, of the kind commenced in 2011 but never finalized. Multiple countries around the world develop and use National Anti-Corruption Strategies to implement and monitor their commitments under the UN Convention Against Corruption. Many countries announced their intention to develop such plans at the UK-hosted Anti-Corruption Summit in March 2016.¹⁴³ The UK Government itself announced its 5-year strategy in December 2017.¹⁴⁴

In fact, as an example of improved anti-corruption leadership, the UK experience is instructive. As outlined in Part 1 (Figure 1), Australia has slipped 8 points on Transparency International's Corruption Perceptions Index (CPI) since 2012 – but by contrast, the UK has risen 8 points over that period. As a leader in foreign bribery and beneficial ownership reform, and host of the Anti-Corruption Summit, the UK has demonstrated much of the leadership that, for whatever reasons, has been relatively absent in Australia.

Finding improved mechanisms to not only better coordinate, but establish and maintain momentum on policy and operational priorities should be a key objective of any reform. Based on experience, the reward can be a rebuilding of public confidence at a time when public trust in major institutions, from government to the churches to the banks, has been sorely tested.

¹⁴¹ See John McMillan (2010), Re-thinking the Separation of Powers, 38 *Federal Law Review* 423-443; Attorney-General's Department, *Discussion Paper: Australia's Approach to Anti-Corruption*, Prepared as part of the development of the National Anti-Corruption Plan (Never Completed), March 2012, p.21.

¹⁴² See par 2.44, Senate Select Committee.

¹⁴³ See <https://www.gov.uk/government/publications/anti-corruption-summit-country-statements>

¹⁴⁴ See <https://www.gov.uk/government/publications/uk-anti-corruption-strategy-2017-to-2022>.

3.7. Public accessibility & whistleblower support (public and private)

A further and final weakness in the Commonwealth integrity system is the absence of a clear overall gateway for stakeholders to access and navigate the system, including, in particular, those organizational insiders willing to provide crucial information for integrity and anti-corruption purposes (whistleblowers).

This weakness has been squarely identified not only by the Senate Select Committee on a National Integrity Commission, but other federal committees including the Parliamentary Joint Committee on Corporations and Financial Services.

Finding that the current framework was ‘a complex and poorly understood system that can be opaque, difficult to access and challenging to navigate’, the Senate Select Committee recommended that any new national agency should be an ‘umbrella agency with which all Commonwealth integrity and corruption complaints could be lodged’, with powers to refer and oversight their handling by other agencies.¹⁴⁵

The same day, the nine-month inquiry of the Parliamentary Joint Committee on Corporations – which was also noted by the Senate Select Committee¹⁴⁶ -- reported that federal whistleblower protections required comprehensive strengthening, for both the public and private sector; and unanimously recommended:

A one-stop shop Whistleblower Protection Authority be established to cover both the public and private sectors... in an appropriate existing body.¹⁴⁷

Indeed, the Parliamentary Joint Committee noted that a federal whistleblowing agency had first been recommended by a previous Senate Select Committee on Public Interest Whistleblowing, as far back as 1994.¹⁴⁸

Accessibility and navigability

The first major gap noted by the Senate Select Committee, is a general one – the fact that the Commonwealth lacks any central reporting channel for corruption, resulting in matters either not being reported or raised, or getting lost, in the event that a person persists with trying to find the right “place” in the system to deal with them. It is not obvious that a citizen or public servant wishing to report a serious corruption concern would know where best to start; especially if they were cautious about raising it within their own company or agency.

To the extent that ACLEI currently has the greatest expertise of any Commonwealth agency in triaging and managing a full range of corruption issues, it also suffers from having a very low public profile.¹⁴⁹ Accordingly, even if it could provide useful advice as to the right contact points, it is unlikely to be accessed.

At present, a person contacting any of the other logical points – the Commonwealth Ombudsman, APSC Ethics Advisory Service or AFP – would suffer the same challenge. Unless their specific matter happened to fall neatly within jurisdiction and be so serious as to be recognized quickly and elevated to a criminal investigation or royal commission, they would be advised to report within their own agency, or company, as there is no

¹⁴⁵ Senate Select Committee, pars 4.136 and 4.144.

¹⁴⁶ Senate Select Committee, par 2.239.

¹⁴⁷ Parliamentary Joint Committee on Corporations and Financial Services, *Whistleblower Protections*, September 2017, Recommendation 12.1 (p.158). https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/WhistleblowerProtections/Report.

¹⁴⁸ Senate Select Committee on Public Interest Whistleblowing, *In the public interest: Report of the Senate Select Committee on Public Interest Whistleblowing*, Commonwealth of Australia, 1994; see Parliamentary Joint Committee (2017), p.141.

¹⁴⁹ Hoole & Appleby (2017), ‘Integrity of purpose,’ above.

independent alternative. This is not a source-friendly system, even for public servants or officials. As a system also needing to be accessible to private sector employees with information about possible corruption, business rivals or competitors suspecting corruption, or individual citizens, it is doubly unnavigable.

Public sector whistleblower protection

As recognized by both parliamentary committees, the ability of public officials to raise corruption or serious misconduct concerns and be protected from detrimental outcomes is vital to a well-functioning system. Section 3.3 noted that encouragement of whistleblowing is a standard part of both corruption detection and corruption prevention – but is purely symbolic unless it results in action and protection.

The Parliamentary Joint Committee confirmed, however, that presently the whistleblowing regime under the *Public Interest Disclosure Act 2013* effectively provides no protection, unless a whistleblower experiences a criminal reprisal which they can take to the AFP, or are personally prepared and able to seek an injunction or remedies in a federal court or tribunal. The Commonwealth Ombudsman's office, who ensures that agencies have appropriate procedures for managing disclosures, told the Committee:

If a discloser alleges that they are subject to reprisal action, the [Office of the Commonwealth Ombudsman] advises the discloser to use the protections of the PID Act, namely: seek legal advice, contact the police, submit an application to the Federal Court or the Federal Circuit Court or contact the PID risk assessment officer within the agency. The [Ombudsman] is not a law enforcement agency, nor can our Office provide a person with available remedies under the PID Act. The [Ombudsman] does not have the jurisdiction to investigate whether or not reprisal action has occurred.¹⁵⁰

This major gap is confirmed in Figure 14, reporting a recent international study of the institutional whistleblowing protection arrangements in a range of countries. Describing only the federal public sector regime, the figure shows that of the six countries compared, only Australia has no independent or specialist whistleblowing agency that either investigates retaliation or is able to assist whistleblowers with accessing remedies.

Despite high original hopes,¹⁵¹ this outcome confirms that the public sector whistleblowing regime will remain unworkable until such time as an independent agency is empowered and resourced to fulfil these missing roles.

Joint public-private sector whistleblower protection authority

The Parliamentary Joint Committee confirmed that protections for private sector whistleblowers reporting fraud, corruption or other wrongdoing were even worse, and recommended a joint whistleblower protection authority as part of a wholesale overhaul of existing law, including a new stand-alone private sector law – in addition to filling the unmet need identified above for the public sector.

This proposal was logical because, while private and public sector whistleblowers might provide information from different contexts, it is in the interests of a holistic view of misconduct to receive information from both sides of the public-private divide; because advice on safe reporting, protection and how to survive investigations would be the same; and because the recommended avenues for legal remedies would be the same, including employment remedies obtained from the Fair Work Ombudsman, Fair Work Commission or Federal Court.

According to the Parliamentary Joint Committee, the Whistleblower Protection Authority would exercise the following functions:

¹⁵⁰ Commonwealth Ombudsman, *Answers to QON*, 7 June 2017; Parliamentary Joint Committee, p.151

¹⁵¹ See A J Brown, 'Towards 'ideal' whistleblowing legislation? Some lessons from recent Australian experience', (2013) 2(3) *E-Journal of International and Comparative Labour Studies* 153–182.

- provide a clearing house for whistleblowers bringing forward public interest disclosures;
- provide advice and assistance to whistleblowers;
- support and protect whistleblowers, including by:
 - investigating non-criminal reprisals in the public and private sectors; and
 - taking non-criminal matters to the workplace tribunal or courts on behalf of whistleblowers or on the agency's own motion to remedy reprisals or detrimental outcomes in appropriate cases.¹⁵²

While the Government is yet to formally respond to the recommendations of either committee, on 7 December 2017 it introduced a first stage of legislation to improve private sector whistleblower protections, as amendments to the existing *Corporations Act* provisions.¹⁵³ These are yet to pass the Parliament,¹⁵⁴ and do not yet seek to establish a whistleblower protection authority or reward scheme – issues which await the Government's response.

Nevertheless, in anticipation of these interim *Corporations Act* reforms, the Government already announced \$6.6 million over two years for the Australian Securities and Investments Commission (ASIC) to begin implementing the provisions.¹⁵⁵ These funds are 'so that ASIC can better receive, assess, triage and address whistleblower disclosures about misconduct' – i.e. do not include acting as a whistleblower protection authority, for which ASIC has been given no powers or responsibilities.¹⁵⁶

The Parliamentary Joint Committee also recommended the establishment of a reward scheme to help fund whistleblowers, administered by the authority, based on recovery of penalties imposed on companies or wrongdoers as a result of corruption or misconduct being found as a result of whistleblowing matters.¹⁵⁷

Accordingly, such a scheme could also involve some potential for cost recovery, if not only the whistleblower but the authority was to have access to proceeds of corruption and penalties or financial recoveries, as a mechanism for funding whistleblower protection.

The provision of clearer gateway, receipt, advice, referral, and more active and effective informant/ whistleblower protection functions, are all critical and interrelated needs if the Commonwealth expects its integrity system to work. While there are various options for the location of these functions, their co-location in a body with a high profile and lead responsibility for coordinating Commonwealth corruption responses, would make a great deal of sense. Irrespective of how, for the reasons identified by both parliamentary committees, they are a fundamental need and imperative in any strengthening.

¹⁵² Parliamentary Joint Committee, par 12.79, p.157.

¹⁵³ *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017* – also amending the *Taxation Administration Act 1953* (Cth) to insert almost identical provisions there for the first time.

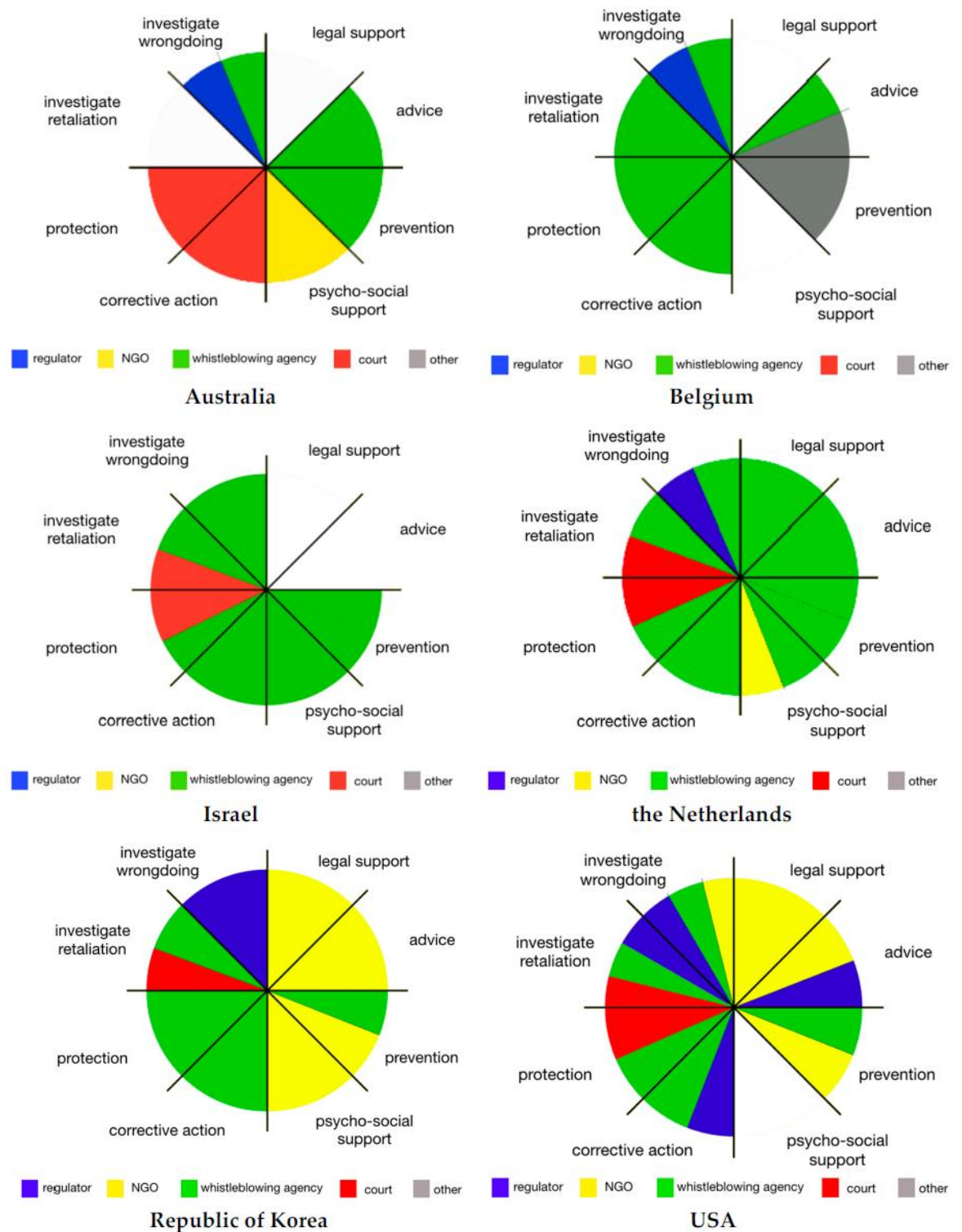
¹⁵⁴ For a review, see Kath Hall & A. J. Brown (2018), 'From symbols to systems: progress in the reform of Australia's private sector whistleblowing laws,' *Law and Financial Markets Review*, DOI: 10.1080/17521440.2018.1435456.

¹⁵⁵ 'Turnbull Government expands ASIC's armoury', Joint media release, Hon Scott Morrison MP, Treasurer, Kelly O'Dwyer MP, Minister for Revenue and Financial Services, 7 August 2018 <<http://kmo.ministers.treasury.gov.au/media-release/092-2018/>>.

¹⁵⁶ The bill makes ASIC the primary recipient of a wide range of disclosures, requires it to enforce new requirements for companies to have whistleblowing policies (clause 1317AI), and empowers it to seek civil penalties order for criminal victimisation, but otherwise does not bestow whistleblower protection functions.

¹⁵⁷ Parliamentary Joint Committee, Recommendation 11.1, p.138.

Figure 14. Institutional whistleblowing arrangements (public sector) (6 countries)¹⁵⁸



¹⁵⁸ Loyens, K.; Vandekerckhove, W. (2018) 'Whistleblowing from an International Perspective: A Comparative Analysis of Institutional Arrangements', *Administrative Science*. 2018, 8, p.30.

4. Options for Australia

Overview of options

This paper presents three options for more coherent strengthening of Australia's federal public integrity system, as a response to the issues set out above – as an extension on the tradition of incremental and sometimes piecemeal reform that has characterised the Commonwealth's approach over recent decades. The options examined are:

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

These options are intended to stimulate a more concrete discussion on the direction, purpose, scope and shape of reform needed for Australia to regain its position 'ahead of the curve' in public integrity and anti-corruption.

We do not discuss a *status quo* or 'business as usual' option. For the reasons set out by the Senate Select Committee on a National Integrity Commission, and given the extent of the weaknesses and needs in Part 3, we agree that there is no viable option to *not* significantly strengthen the system.

These options range from minimalist to comprehensive, and are **not mutually exclusive**. For example, both Option 2 and Option 3 would involve expanding the Australian Commission for Law Enforcement Integrity (ACLEI) as part of a broad-based anti-corruption investigation and prevention agency for the Commonwealth public sector. Option 1 could also accompany this.

These are also **not the only options**. In particular, there are valid reasons, when considering Option 2 or Option 3, to weigh the alternatives of having a number of specialised anti-corruption agencies in the multi-agency system in addition to, or instead of, expanding the Australian Commission for Law Enforcement Integrity (ACLEI). An even more 'specialist/bifurcated' model¹⁵⁹ such as this would see more agencies created or upgraded as part of the system, to deliver stronger integrity and anti-corruption oversight to different parts of the Commonwealth (e.g. APS, Defence, corporate Commonwealth entities). Option 3 is already slightly more 'specialist/bifurcated' by also proposing specialist integrity mechanisms for the Parliament and Ministers, supported by but not restricted to a new broad-based, independent commission.

Finally, there are other **common elements** across the options.

For example, all should entail strong **accountability** arrangements for the agencies involved, especially those exercising coercive investigative powers. While there is an important debate about the effectiveness of existing oversight and judicial review mechanisms in relation to integrity agencies,¹⁶⁰ there are no differences between the options on these issues – we consider they apply equally to all independent integrity agencies with significant powers, including established ones as well as new ones. As a result, we see this as a separate debate spanning the entire system, not as a basis for differentiating these options.

¹⁵⁹ See Scott Prasser, 'Australian Integrity Agencies in Critical Perspective' (2012) 33 *Policy Studies* 21, 27.

¹⁶⁰ See e.g. Hon Wayne Martin CJ, 'Forewarned and Four-Armed – Administrative Law Values and the Fourth Arm of Government', 2013 Whitmore Lecture, (2014) 88 *Australian Law Journal* 106; cf C Wheeler, 'Response to the 2013 Whitmore Lecture', (2014) 88 *Australian Law Journal* 740.

Similarly, all options contemplate that the agencies involved should be subject to more effective, specialized **performance monitoring and evaluation** to ensure progress in the promotion of integrity and suppression of corruption. An example of a more coherent framework for anti-corruption agency performance monitoring was recently developed by the Victorian Parliament, to govern its IBAC.¹⁶¹

All options also presume the value of strong Parliamentary **oversight and support** of the integrity system, and also for particular agencies.¹⁶² As seen in Part 1, the Senate Select Committee presumed the ongoing role of parliamentary committees to oversight the major integrity agencies, and recommended stronger support in the form of a Parliamentary Counsel or Advisor, similar to Queensland (4.153, Recommendation 4). Both Options 2 and 3 would entail this support, either in addition or in place of an Inspector, reporting to the oversight committee on agency compliance with the law.

In fact, as recognised by the Senate Select Committee, it is another weakness of the existing system that not every major integrity agency is supported and supervised by a dedicated or specialist parliamentary committee (par 4.136). Rather than multiple committees, the strongest system would include a smaller number of parliamentary committees – or perhaps even one -- collectively exercising oversight of all the major agencies, including the Ombudsman, ACIC, IPEA and AFP-FAC in addition to any anti-corruption body or bodies involved in the system. This principle is something we suggest makes sense across all the options.

Nevertheless, the options do involve significant differences in scope, mandate, capacity and resources, as spelt out below.

For all options, indicative **resources** are estimated using a standard multiplier of an average annual cost of \$240,000 per full-time equivalent (FTE) staffmember, plus differential capital costs per agencies depending on their scale/nature. This recognises the average cost per FTE of existing similar Commonwealth agencies,¹⁶³ but also that most of the agencies described entail a wider range of functions. As seen below, the average cost per FTE for anti-corruption bodies ranges from the Commonwealth at the top end to Queensland at the lowest (\$164,000 per annum per FTE):¹⁶⁴

Jurisdiction	ACA	FTE	\$mill	Cost per FTE (\$'000)
NSW	ICAC	98	21.1	215.3
Qld	CCC	343 ¹⁶⁵	56.4	164.4
WA	CCC	125	30.1	240.8
Cth	ACLEI	44	11.3	256.8
Tas	IC	13	2.3	176.9
SA	ICAC	48	10.1	210.4
Vic	IBAC	169	36.3	214.7

¹⁶¹ See Victorian Parliament, *A framework for monitoring the performance of the Independent Broad-based Anti-corruption Commission*, Report of the Independent Broad-based Anti-corruption Commission Committee, 14 Nov 2017 <<https://www.parliament.vic.gov.au/ibacc/article/3972>>. Also previously, A J Brown (2006), 'Towards a Performance Measurement Framework for Integrity Agencies', in *Proceedings of the 2nd National Conference of Parliamentary Oversight Committees of Anti-Corruption/Crime Bodies*, Parliament House, Sydney.

¹⁶² See Wettenhall, R. (2012), 'Integrity agencies: the significance of the parliamentary relationship', *Policy Studies* 33(1): 65-78.

¹⁶³ E.g. Average annual cost per FTE for ACLEI is \$256,000; average annual cost per FTE for the Fair Work Ombudsman and Registered Organisations Commission is \$252,000.

¹⁶⁴ Source: Coghill & Bini (2018), op cit.

¹⁶⁵ Including Crime Commission functions.

4.1. *An Integrity & Anti-Corruption Coordination Council*

Overview

This option is closest to the existing multi-agency system, and proposes strengthening by providing improved, more formalised coordination between the agencies involved.

Reporting to the Prime Minister or Attorney-General, this body would be focused on cooperation and bridging the gaps between existing agencies such as the Australian Federal Police, ACLEI, Australian Public Service Commission, Ombudsman, Independent Parliamentary Expenses Authority, Auditor-General, Australian Taxation Office and Director of Public Prosecutions. It would provide stronger policy and operational coordination, including as a mechanism for referring integrity risks and corruption issues to the most appropriate existing investigation agency, to make sure none fall through the cracks.

The council could have a statutory basis but would not necessarily require its own executive agency, and could be supported by a policy and coordination secretariat located in an existing central agency.

Description

- The Council would identify the range of integrity and corruption risks at the Commonwealth level, and work with its participating agencies to develop a strategic plan of activities to address these, beginning with a stronger consensus on the nature of corruption and of the strategies needed to promote integrity.
- It would join other agencies in being able to receive submissions and complaints, but would have no investigative capacity or powers; rather it would “direct the traffic” and refer these to the most appropriate authority.
- It would increase coordination and close gaps through ‘follow up’ powers, requiring any authority in the system to report on its activities, progress or outcomes.
- It would track the incidence of integrity violations and supervise more comprehensive research to measure corruption and integrity more accurately across the entire Commonwealth.
- The Council would publish an annual report in Parliament, and could publish ad hoc reports as needed, analysing issues that need to be addressed to ensure a more effective and seamless system, and making recommendations as to better agency coordination, priorities, trends and policy options.

Rationale

This option responds to the identified weaknesses by first pursuing a more coherent understanding across the Commonwealth of the right processes for dealing with behaviour that falls short of acceptable standards, and promoting behavior of the highest standard. It recognizes that corruption can be perpetrated by any types of officials, politicians, contractors, non-government bodies or stakeholders with whom government engages, and covers a wide range of concerns from minor theft to major financial irregularity, and from bad judgement to incompetence to maladministration to wilful obstruction to corruption.

The Council would help ensure a comprehensive consensus to ensure all matters are dealt with appropriately. Highest risk activities such as bribery, extortion, patronage, nepotism, self-dealing, abuse of discretion and conflict of interest would be better differentiated from property crime such as misappropriation and fraud, which would continue to be dealt with through regular criminal processes.

The Council would strengthen the policy focus on activities that give rise to corruption – including exercise of discretions in commissioning and administering programs and services, procurement, appointing personnel, collecting revenues, regulating or controlling activities (licensing / regulation/ issuing of permits), and managing disasters. It would assist the existing integrity agencies, and line agencies to develop stronger Fraud and Anti-Corruption Plans to deal with risks in these areas. Its research would help identify new risks as new circumstances come into play.

The Council would have a significant focus on the means by which integrity violations are detected and investigated, but would focus on policy and operational solutions by providing specialist advice on (1) the nature of the problem raised, whether by whistleblowers, informants, complainants, agencies or proactive intelligence and research; and (2) who “owns” the problem, and the various solutions to it.

A Council would work towards answering these questions within a long term goal of producing a coherent and coordinated integrity master plan for the entire public sector.

Maximising existing management and law enforcement capacity to investigate specific matters would build on existing agency skills rather than establishing or expanding investigative agencies.

Recognising the many causes of corruption, including poor public administration or incompetence that permits corrupt practices, poor ethical practices, culture and leadership, the Council would develop a cascading range and variety of techniques for adoption in agency plans ranging from:

- Referral to law enforcement bodies
- Legal processes, including disciplinary proceedings and civil recovery and confiscation of profits
- Targeted prevention, risk management and deterrence programs
- Good public management
- Codes of conduct, and
- Integrity in government and administration

Structure / Administration

The Council would comprise an independent non-government Chair and have up to 10 members, including a small number of government representatives, but also members from business, civil society, sports, and the professions.

The Attorney-General or Prime Minister would be required to table the Council's reports and would be enabled to refer matters to the Council for consideration and advice.

A small secretariat would undertake the practical assessment and referral work involved in directing the traffic, as well collecting and analysing data on the incidence and prevalence of corruption across the entire sector (including sanctions, prosecutions, convictions and penalties), and addressing each of the tasks identified above.

The secretariat would support and promote cooperative arrangements with all relevant law enforcement and integrity agencies in relation to information and data sharing; and support (and participate in) the development of a more integrated and consistent approach to corruption and misconduct reporting, such as based on the Australian Criminal Intelligence Commission (ACIC)'s Australian Cybercrime Online Reporting Network (ACORN). Where necessary the Council would advise complainants as to referral action, and provide necessary information and materials to the subject agency.

The Council would work with existing departments and agencies to promote anti-corruption activities and take appropriate initiatives, disseminate strategic assessments and raise awareness within the community and with stakeholder groups.

Legislation

The Council could be established by the Executive direction of Cabinet, but a statutory basis should be examined. In the first instance, cooperation by agencies and between agencies would be the subject of assessment and report, to identify where specific gaps in operations require legislative amendment in the enabling legislation of existing agencies. Should the data collection and co-ordination deficits be overcome, and should the Council make a strong case for a fully-blown statutory agency to replace it, this could then be developed. There are no constitutional issues.

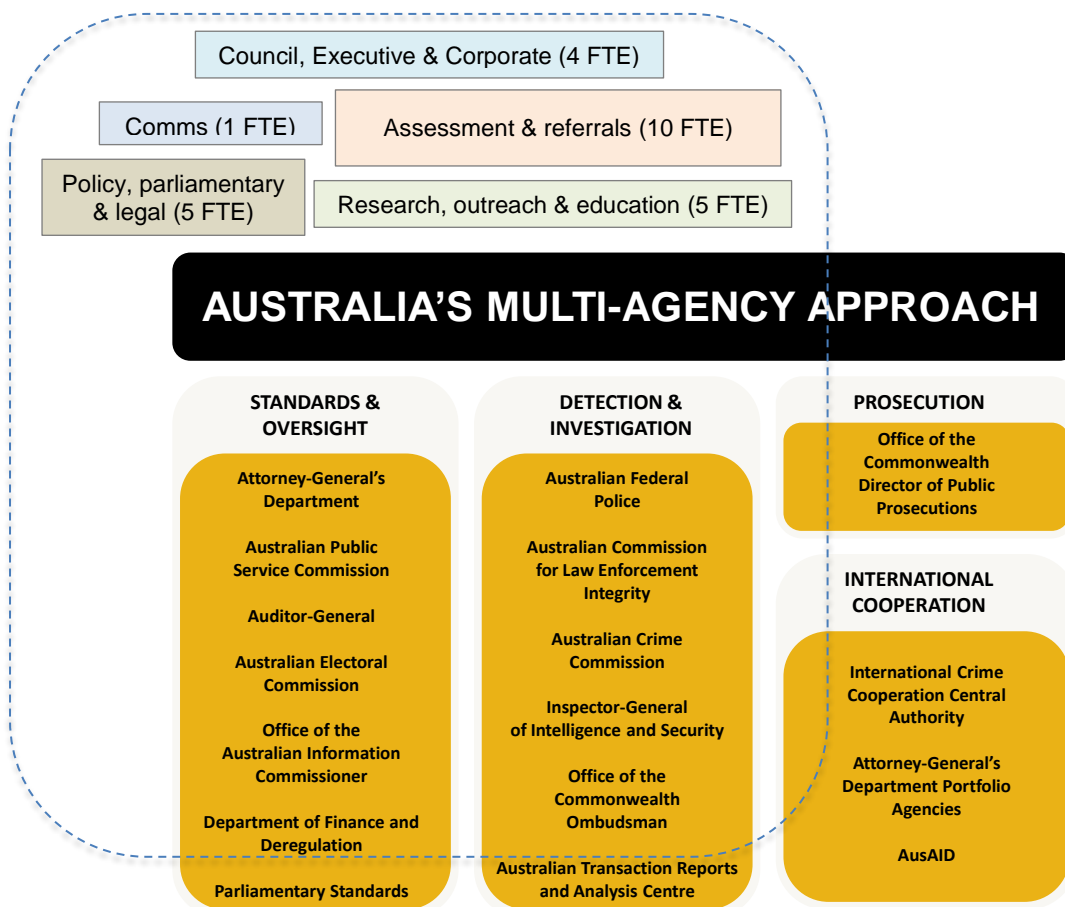
Resources

Indicative resources for the Council and Secretariat would involve an annual budget of approx **\$6.5 million per annum** including \$6.0 million for 25 FTEs (as shown in Figure 15) and \$0.5 million per annum capital costs.

As shown in Figure 18 below, this would marginally lift Commonwealth expenditure on its core public integrity agencies from a notional 0.033% of total public expenditure, to **0.037%**; and Australia's total expenditure on core public integrity agencies to **0.076%**.

Additional resources might be required to bolster the ability of existing agencies such as the APSC to better handle centrally more Code of Conduct investigations, or the AFP to undertake more complex public sector investigations, identified through improved coordination.

Figure 15. Option 1 – Integrity & Anti-Corruption Coordinational Council



4.2. *An Independent Commission Against Corruption*

Overview

This option would involve a best-practice independent, broad-based anti-corruption commission for the Commonwealth, based on lessons from State experience.

The Commission would represent a major development to address several of the main gaps in the existing multi-agency system, including monitoring and directly overseeing the handling of serious misconduct and corruption allegations from across the Commonwealth public sector (Australian Public Service as well as non-APS).

It would have a prevention program also extending across the sector. To the extent possible under the Constitution, it would provide assurance to the judicial and parliamentary integrity systems by supporting the presiding officers of the federal courts and houses of parliament with the handling and management of corruption allegations. The commissioners would be constituted as independent officers of the parliament, for these purposes.

The Commission would have a statutory basis, be subject to the oversight of the parliament via a multi-party joint parliamentary committee supported by a parliamentary counsel and an inspector, and would not be subject to ministerial direction with respect to the receipt, referral or conduct of investigations.

Description

- The Commission would be 'comprehensive', 'omnibus' or 'broad-based' to denote coverage of all political and public sector functions at the federal level.
- Its features and powers would be along the lines recommended by The Australia Institute's National Integrity Committee
- The Commission would incorporate and build upon the work of ACLEI, and utilise its existing extensive coercive powers where possible, including its existing public hearing powers
- It would be supported by a mandatory reporting obligation on Commonwealth officials and agency heads to directly report suspected corrupt conduct and serious misconduct, as part of a central monitoring system.
- It would have powers of referral to other agencies, and of oversight with respect to investigations by other agencies.
- It would have public reporting powers, powers to make findings of fact, and powers to make recommendations as it saw fit including referrals for prosecution.

Rationale

The key rationale is that corruption and serious misconduct risks are not limited to law enforcement bodies but occur across all domains of politics and the public sector. As a dedicated comprehensive agency, the Commission would provide coverage of all areas of risk, and ensure skills and resources to identify, stop and prosecute serious misconduct, support agencies with recommendations for corruption prevention, and actively promote corruption prevention strategies.

The Commission would become an enlarged core integrity agency of the Commonwealth, and share its research and prevention advice and directions with the other agencies in the multi-agency system, but would not otherwise be responsible for coordination of the system.

The Commission would not replace any other existing agency other than ACLEI. It would relieve the AFP of responsibility for public sector corruption and major internal fraud

investigations, other than where the AFP's assistance was requested. The AFP-FAC and existing agencies would retain responsibility for private sector corruption, foreign bribery, serious financial crimes and other enforcement of the Criminal Code.

The anti-corruption regime overseen by the Commission would not replace the APS Code of Conduct or other disciplinary regimes. It would work as a parallel regime in which all serious code breaches were reported directly to the Commission and managed subject to its advice and direction, rather than only being reported as a statistic after the fact or where complaints arise. The Australian Public Service Commission would retain responsibility for the APS Code of Conduct and other aspects of public sector management and discipline in the APS.

Structure / administrative arrangements

The Commission would consist of three commissioners supported by a statutory agency, answerable to the Parliament. It would have a national footprint, and dedicated investigation teams dealing with the key domains of jurisdiction that require consistent focus – such as law enforcement (the current agencies covered by ACLEI), defence, and other major portfolios. Functions of research and prevention, on the one hand, and investigations and referrals for prosecutions, on the other hand, would support all these domains with specialist dedicated staff.

Legislation

Its enabling legislation would adopt and replace the *Law Enforcement Integrity Commissioner Act 2006* (Cth), with enhancements where needed. It would retain a broad scope and definition of corruption after the consultation between Commonwealth agencies and stakeholders previously recommended in 2011 by the Joint Parliamentary Committee. It would have powers of referral to any agencies but limits on its discretion, ensuring it retained a lead role in all relevant integrity matters rather than delegating matters back to government entities – especially formal investigations – where there is risk of real or perceived bias.

Its investigative powers would be supported by powers of 'follow-up' – that is, the ability to report publicly on compliance (or lack thereof) with reports and recommendations, such as given to Victoria's Independent Broad-based Anti-Corruption Commission (IBAC). There would be no constitutional constraints on the ability of the Commission to direct, receive and investigate matters relating to the public service, Commonwealth-controlled entities, corporations and individuals dealing with the Commonwealth, and offences under the Criminal Code.

For the Commission to exercise jurisdiction over members of parliament or judicial officers, at the request and in support of the presiding officers of the Parliament and the Federal Courts, it would be constituted as an independent officer of the Parliament for the purposes of the relevant sections of the Constitution.

Resources

The conversion of ACLEI into a larger agency would involve both costs and savings. Overall, the development of stronger dedicated prevention and early-detection processes – including facilitation of in-house prevention – should also contribute to cost savings to government through reduced incidents of scandals, major inquiries and prosecutions, as well as other economic benefits discussed earlier in the paper.

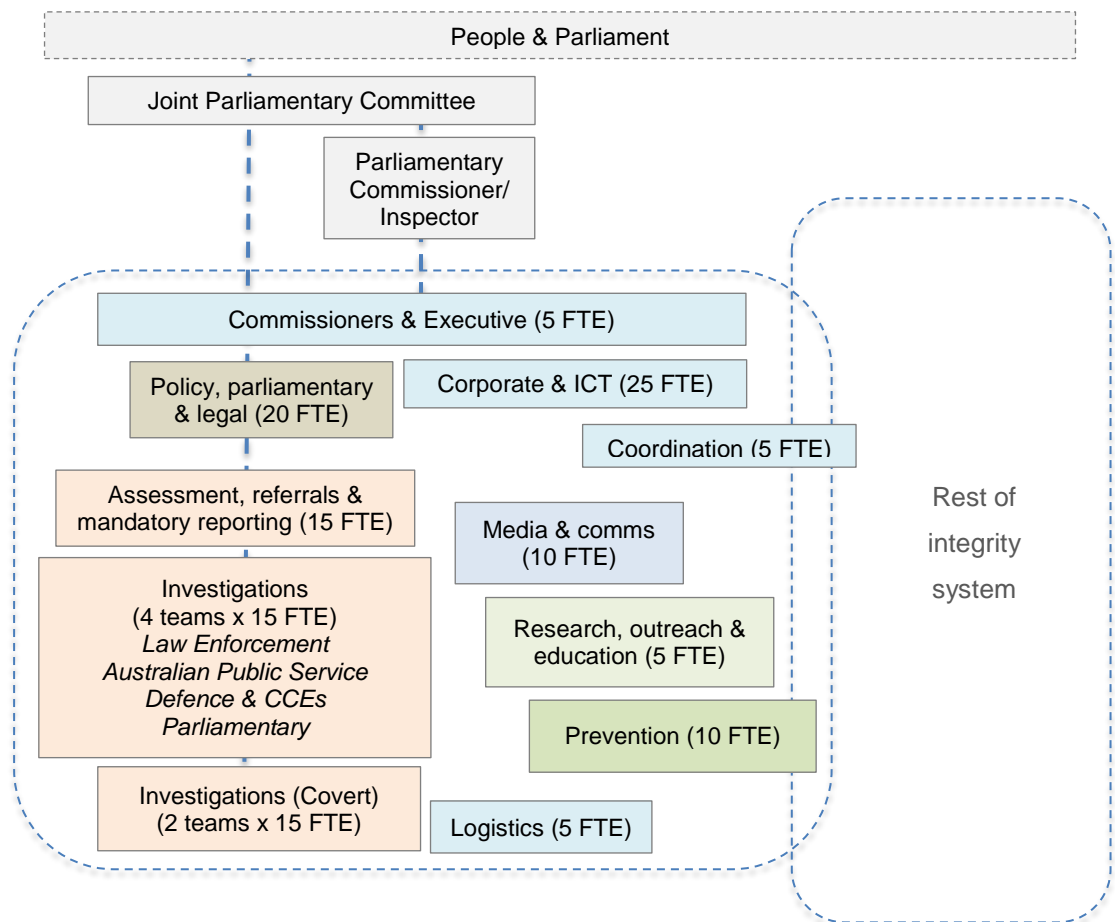
Previously, the Commonwealth Parliamentary Budget Office costed a proposal for an ICAC at **\$109 million** over the forward estimate period (4 years from 2016), based on

the budget of the NSW ICAC.¹⁶⁶ More recently, the Australian Labor Party commitment to such a commission cited the Parliamentary Budget Office as having costed the concept at **\$58.7 million** over the forward estimates.¹⁶⁷ However this figure is plainly inadequate for a broad-based national anti-corruption commission of this kind, as it represents only marginally more than the existing budget of ACLEI. If intended as a statement of *additional* cost, it would approach \$109 million over 4 years as previously estimated.

A more realistic indicative forward estimates cost of a well-functioning Commonwealth ICAC would be \$190.4 million over 4 years. This estimate is based on a cost of **\$46.7 million per annum** including \$45.6 million for 190 FTEs (as shown in Figure 16) and \$2 million per annum capital costs. With a saving of \$11.0 million from ACLEI's existing budget, this option would require additional expenditure of \$36.6 million per year.

As shown in Figure 18 below, this option would lift Commonwealth expenditure on core public integrity agencies from a notional 0.033% of total public expenditure, to **0.045%**; and Australia's total expenditure on core public integrity agencies to **0.081%** -- still well short of the levels of investment of any Australian State, or of New Zealand.

Figure 16. Option 2 – Independent Commission Against Corruption



¹⁶⁶ 24 June 2016:

<http://www.aph.gov.au/~media/05%20About%20Parliament/54%20Parliamentary%20Depts/548%20Parliamentary%20Budget%20Office/2016%20general%20election/Greens%20costings/PBO%20-%20GRN018%20-%20A%20National%20Anti-Corruption%20Watchdog%20-%202024%20June%202016%20MSWORD.docx>

¹⁶⁷ See HON BILL SHORTEN MP & HON. MARK DREYFUS QC MP, SHADOW ATTORNEY-GENERAL, 'A NATIONAL INTEGRITY COMMISSION – RESTORING TRUST IN POLITICS & THE PUBLIC SECTOR', Media Release 30 January 2018; https://www.alp.org.au/national_integrity_commission <30 January 2018>.

4.3. *A custom-built Commonwealth Integrity Commission model*

Overview

This option would incorporate and extend upon Option 2, while also embodying elements of Option 1 not addressed by Option 2.

It would involve a best-practice independent, broad-based public sector anti-corruption commission for the Commonwealth, including lessons from State experience, but also with a broader range of functions relevant to the Commonwealth's role and present needs – jurisdictionally, nationally and internationally – as well as a stronger pro-integrity approach.

In addition, the model would separately involve direct expansion of the parliamentary integrity system, with support from the Integrity Commission only where needed.

The Commission would represent a major development in an effort to help address all the main weaknesses of the existing multi-agency system. It would have a statutory basis but also involve new and amended legislation and mechanisms for parliamentary and ministerial standards, and electoral campaign regulation.

Description

- The main reform, a **Commonwealth Integrity Commission**, would include an independent, broad-based public sector anti-corruption commission (Option 2), also subsuming ACLEI and adopting its present powers
- The Commission would build directly on ACLEI's specialist expertise and strengths by also taking a more sector-blind approach to corruption risk, and government's role within it; as well as a stronger prevention approach
- The Commission would include a strategic coordination function for the Commonwealth's response to major corruption risks across all sectors and jurisdictions, including engaging with a broad range of stakeholders (Option 1)
- It would lead a stronger and more embedded corruption prevention program than previously undertaken by the States, as part of a pro-integrity approach
- It would be positioned and resourced to provide a clearer contact point and clearing-house for all Commonwealth-related integrity and misconduct matters, including in support of other Commonwealth regulators
- It would fill the major gap in Commonwealth whistleblower support in the public and private sectors, by acting as the whistleblower protection authority recommended by the Parliamentary Joint Committee on Corporations and Financial Services.
- The Independent Parliamentary Expenses Authority (IPEA) would be extended and upgraded to an **Independent Parliamentary Standards Authority** (IPSA), supporting the presiding officers, Ethics & Privileges Committees and Prime Minister with independent mechanisms for reviewing and resolving parliamentary and ministerial integrity matters, including lobbying and post-separation employment
- The IPSA, presiding officers, parliamentary committees and Prime Minister could also call on the Integrity Commission (or AFP) for additional support if required
- Accompanying reforms to political donations, fundraising, and electoral campaign regulation laws relating to, would involve extended powers and resources for the **Australian Electoral Commission**, also supported where necessary by the Commonwealth Integrity Commission.

Rationale

The Commonwealth's role in fighting corruption is not limited to policing its own public sector. It also involves responsibilities, experience and live challenges relating to major integrity and corruption risks affecting all sectors, nationally and internationally. The scope and mandate of strengthened institutions should therefore take account of all these responsibilities and challenges.

Crucial needs include providing greater clarity, navigability and agility to the responses of existing integrity and regulatory agencies, on issues of corruption and serious misconduct across all sectors; as well as improved national coordination. An Integrity Commission can work with other national bodies including ACIC and Austrac to provide greater coordination and accessibility to the regulatory system as a whole.

There is only limited value in strengthening the **public sector misconduct system** in isolation, when major weaknesses relate to the effectiveness of efforts to combat corruption-enabled border crime and abuse of the financial systems across the economy as a whole, and the inability of public or private sector whistleblowers to secure protection for the disclosure of wrongdoing which may relate to public sector misconduct, private sector misconduct or both.

This model would therefore combine the functions of an independent commission against corruption with responsibility for leading strategic coordination and prioritization functions on national-level corruption issues; becoming a primary national contact point and referral gateway for integrity and corruption concerns in both federal government and business; and being the Commonwealth whistleblower protection authority.

Within the public sector misconduct system, the Commonwealth has both need and reason to strengthen its historical **pro-integrity approach**, by becoming the first Australian jurisdiction to adopt a comprehensive framework for corruption prevention in which all agencies are statutorily required to have an integrity and corruption control plan, in which fraud is included, rather than fraud control plans in which integrity and corruption control may or may not be included. This would be supported by an active, devolved program of Integrity Commission work, including out-posted officers.

The most pressing challenges of corruption perception in the community relate to the integrity reputations of **elected officials (Members of Parliament and Ministers)**, and abuse of high office, rather than public servants. There is only limited value in strengthening the public sector misconduct system with anti-corruption processes developed primarily for public servants and executive officials, when enhanced responses are needed elsewhere.

This model would therefore also strengthen mechanisms for parliamentary and ministerial integrity, through enhanced standards, resources and independent expertise and assurance in responding to specific allegations, but keeping leadership of these within the purview of the Parliament; and only resorting to the Commonwealth Integrity Commission or law enforcement agencies where extra is required.

Structure / administrative arrangements

The **Commonwealth Integrity Commission** would be a mid-sized statutory agency, constituted similarly to Option 2, but larger with a more sophisticated operating and management structure, including clear lines of separation between its wider range of functions. It would achieve economies of scale by combining several functions.

Its strategic policy coordination functions would make it a major participant and agenda-setter in the AFP Fraud & Anti-Corruption Centre, and a logical point of policy leadership and coordination for that Centre. It would also provide a secretariat for coordination with State anti-corruption and integrity agencies.

Its misconduct and investigation functions would be the same as Option 2. Its corruption prevention functions would be significantly enlarged on Option 2. It would have public gateway, assessment and referral functions beyond Option 2, to provide the accessibility and navigability recommended by the Senate Select Committee.

Its whistleblower protection functions would be extensive, and include:

- advice and support to those contemplating disclosures, across all sectors;
- specialist advice and referrals depending on the sector;
- case referral and follow-up with the relevant Commonwealth integrity, regulatory or law enforcement agency (or agencies);
- investigating and resolving suspected detrimental action against whistleblowers, including in partnership with other agencies (e.g. Fair Work Ombudsman);
- providing legal advice and support in confirmed detrimental action cases;
- administering a whistleblowing-related penalties and reward scheme;
- standard-setting, advice and monitoring for whistleblower protection systems and policies for the private and not-for-profit sectors (this function would remain with the Commonwealth Ombudsman for the public sector).

Separate reforms would create an **effective Independent Parliamentary Standards Authority**, with power to involve the CIC or AFP as needed. A Parliamentary Integrity Commissioner could be separately appointed to assist the Parliaments' Ethics & Privileges Committees, presiding officers and Prime Minister with ethical advice to support to parliamentarians, ministers and their staff.

The Prime Minister would retain responsibility for the Statement of Ministerial Standards, but it would be upgraded to a more formal, recognized code, and the Prime Minister would have available to her or him, specialist independent resources to help assess and resolve possible breaches of the code (either the IPSA, CIC or both).

Specialist resources for administering and enforcing an improved regime of political finance and campaign regulation would be separate, and sit most logically (once developed) with the **Australian Electoral Commission**. Principles are referenced in Part 3.4 of the paper. However, as at State level, the AEC could call on either the CIC or the AFP to assist with investigations and enforcement, where needed.

Legislation

Enabling legislation for the Commonwealth Integrity Commission would replace ACLEI's legislation as for Option 2, but involve a wider scope of functions. It would also include clearer relationships with the statutory basis of the APS Code of Conduct regime, other conduct regimes, and requirements for Commonwealth agencies and controlled-entities under the *Public Governance, Performance and Accountability Act 2013* (Cth), in support of the CIC's corruption prevention functions.

The whistleblower protection functions of the CIC would be bestowed under separate legislation – the reformed *Public Interest Disclosure Act 2013* (Cth) as recommended by the Moss Review and Parliamentary Joint Committee on Corporations and Financial Services, and a corresponding Act for the private and not-for-profit sectors, extending on and replacing the new Part 9.4AAA of the *Corporations Act* currently before the Commonwealth Parliament. This framework is estimated to take 2 years to develop.

Constitutional implications would be as for Option 2, with wider regulatory and whistleblower protection responsibilities supported by the same heads of power relied upon by the Commonwealth for economic and business regulation, and workplace relations.

Resources

1. The Commonwealth Integrity Commission would have an estimated cost of **\$104.7 million per annum** including \$97.7 million for 407 FTEs (as shown in Figure 17) and \$7 million per annum capital costs. With a saving of \$11.0 per million from ACLEI's existing budget, this option would require additional Commonwealth expenditure of \$93.7 million per year. As well as the same costs as for Option 2, this element includes:
 - additional outreach resources
 - additional resources for greater system-wide coordination of the kind proposed in Option 1 plus strategic assessment resources for the prioritization of private sector, sector-blind and national corruption risks (20 FTEs)
 - enhanced assessment and referrals (an additional 15 FTEs)
 - stronger prevention resources in line with implementation, support and monitoring of sector-wide anti-corruption plans (an additional 30 FTEs)
 - and the Whistleblower Protection Authority (97 FTEs).

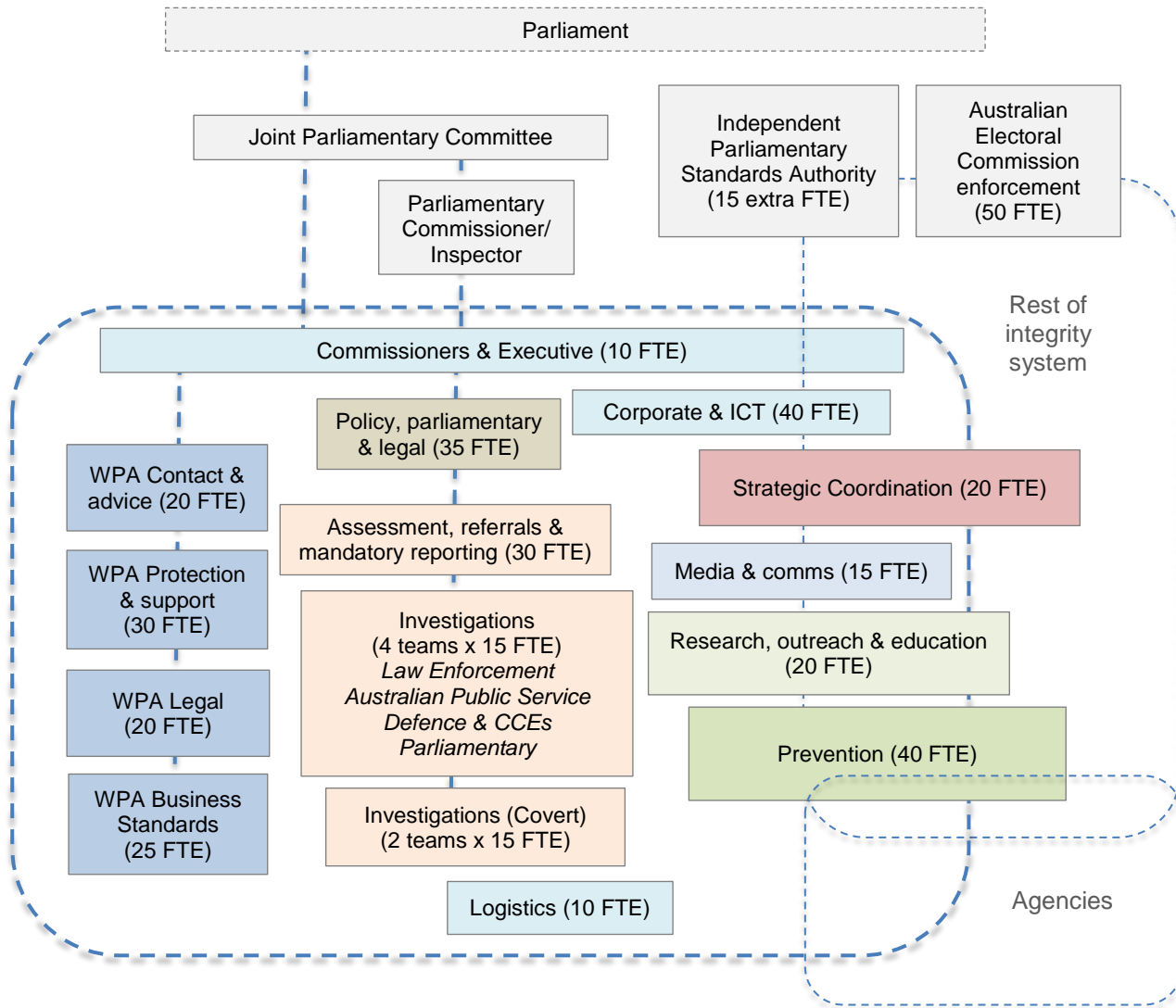
These functions entail potential for cost recovery if the commission has direct access to proceeds of corruption, and also to penalties and financial loss recovered through whistleblowing disclosures (e.g. as part of a reward scheme).

2. **\$4.1 million per annum** is estimated for upgrading the Independent Parliamentary Expenses Authority to the Independent Parliamentary Standards Authority, with an additional \$3.6 million for 15 FTEs including a Parliamentary Integrity Commissioner and \$0.5 million per annum capital costs.
3. **\$13.0 million per annum** is estimated to support an effective regulatory regime for political donations and campaign finance disclosure and control, including an additional \$12 million per annum for 50 FTEs plus \$1 million capital costs.

Together these components would require in the order of **\$110.8 million per year** in both FTEs and capital costs.

As shown in Figure 18 below, this option would lift Commonwealth expenditure on core public integrity agencies from a notional 0.033% of total public expenditure, to **0.07%**; and Australia's total expenditure on core public integrity agencies to **0.096%**. This is approximately the level of the weakest Australian State, and approaching New Zealand.

Figure 17. Option 3 – Custom-built Commonwealth Integrity Commission model



5. Evaluation and conclusion

The options compared

The three options set out above provide a new basis for evaluating possible strengthening of Australia's Commonwealth integrity system. These configurations address the issues in Parts 1, 2 and 3 in different ways. To assist comparison of the strengths and weaknesses of each approach, Tables 5-7 below summarise our views on how well each option would be likely to address the issues identified in this paper.

Space does not permit a detailed justification of each rating; these are intended simply as indicative, based on previous research and experience, for the purposes of stimulating discussion and analysis. As noted earlier, the options are not mutually exclusive, nor do they represent the only options. A marrying of attributes from different options would result in a different set of ratings. The purpose of Tables 5-7 is to provoke consideration of what reform is attempting to achieve, and what may be the best way to achieve it.

Table 5 compares the options' contribution to preserving or maximizing key existing strengths of the Commonwealth integrity system, detailed in Part 2. This recognises that institutional strengthening will not be occurring in a "greenfield site" but will have impacts on existing arrangements, some of which retain the potential to work well, or should be preserved, in a reformed system.

Table 6 compares the options' contribution to addressing the seven major areas of weakness identified in Part 3. These comparisons emphasise the risk of "missing the point" of reform unless the model is well designed to address specific objectives. Mere assumptions that a given institution will "fix" all the main problems, known and unknown, are not a sound basis for policy decision without confidence as to those problems and what is needed to fix them.

Finally, Table 7 compares the options' contribution to addressing the key priorities identified by the Senate Select Committee on a National Integrity Commission, set out in Part 1.¹⁶⁸ While the Committee's analysis was not highly systematic, it provided a strong sense of fundamental priorities or approaches that need to be taken when considering options, and a valuable basis for testing their relative contribution.

In Table 7, the issues identified by the Senate Select Committee are also listed as they relate to main themes of the National Integrity System Assessment, of which this paper is a part: *Scope & mandate, Capacity, Governance, and Relationships*. It is especially relevant that the Committee's analysis fell under a number of these key themes.

The content of the issues in the three tables overlap – they are frequently different lenses on related issues. Hence there is no value in an additive ranking or score based on these ratings. Their value lies in visual inspection, and discussion.

¹⁶⁸ See http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/National_Integrity_Commission.

Table 5. Options contribution to key existing strengths / attributes (Part 2)

	Option 1. Coordination Council	Option 2. ICAC	Option 3. Integrity Commission model
(1) support the collaboration necessary to maximise the Commonwealth's cross-jurisdictional and international anti-corruption responsibilities	Low	Medium	High
(2) ensure that domestic and international corruption are given sufficient priority, within a wide range of both related and unrelated risks	Low	Low	Medium
(3) build consensus on the meaning and value of 'integrity' for the purpose of modern service as a Commonwealth elected or appointed official	High	Medium	High
(4) robust strategies for ensuring that a culture of public integrity is pursued in practice, and not simply in abstract	Low	Medium	High
(5) ensure the <i>right</i> approaches to corruption-prevention and integrity-building, to expand to more of the Commonwealth public sector	Medium	Medium	High
(6) strengthen additional pro-integrity functions beyond those lying with ACLEI or an anti-corruption agency	Medium	Low	High
(7) meet "best practice" criteria for anti-corruption investigation legal thresholds and investigative powers	High	High	High
(8) support effective, ongoing partnership between core integrity agencies, including mutual accountability relationships	Medium	Low	High
(9) maintain, clarify and where necessary, enhance the accountability of independent integrity agencies to the people, through the Parliament	Low	Medium	High

Table 6. Options contribution to addressing key weaknesses (Part 3)

	Option 1. Coordination Council	Option 2. ICAC	Option 3. Integrity Commission model
<i>3.1. No coordinated oversight of high-risk misconduct</i>	Low	High	High
<i>3.2. Most strategic areas of corruption risk unsupervised</i>	Low	High	High
<i>3.3. No coherent system-wide corruption prevention framework</i>	Medium	Medium	High
<i>3.4. Inadequate support for parliamentary and ministerial standards</i>	Low	Medium	High
<i>3.5. Low and uncertain levels of resourcing</i>	Low	Medium	High
<i>3.6. Cross-jurisdictional challenges (public and private)</i>	Medium	Low	High
<i>3.7. Public accessibility & whistleblower support (public and private)</i>	Low	Medium	High

Table 7. Options contribution to Senate Select Committee priorities (Part 1)

	Option 1. Coordination Council	Option 2. ICAC	Option 3. Integrity Commission model
Scope & mandate			
Comprehensiveness / breadth of scope and jurisdiction (4.140, 4.143, Recommendations 1 & 2)	Low	Medium	High
Parliamentary Integrity Commissioner to accompany any national integrity agency (4.155, Recommendation 5)	Low	Low	High
Capacity			
Maximise and extend ACLEI and Fraud & Anti-corruption Centre capabilities (4.147, Recommendation 3)	Low	High	High
Stronger procedures for enforcement of <i>Commonwealth Statement of Ministerial Standards</i> (4.164, Recommendation 7).	Low	Medium	Medium

Governance			
Stronger support for parliamentary oversight committees (4.153, Recommendation 4)	Low	High	High
Relationships			
Coherence / agencies able to legitimately explain how their roles and responsibilities inter-connect in a seamless approach (4.137, 4.140)	High	Medium	High
Powers to refer and oversight handling by other agencies (4.144)	Medium	High	High
Accessible / transparent / easily understood / navigable / gateway for all Commonwealth integrity and corruption complaints (4.136, 4.140, 4.144)	Medium	Medium	High

As seen, Option 1 (an **Integrity and Anti-corruption Coordination Council**) could be a worthwhile reform as a means of strengthening the existing multi-agency approach – if there were no major gaps in scope, mandate and capacity in the existing system, and if greater coordination and collaboration, alone, would allow the system to operate in a more effective way. Option 1 would also be the least expensive (Figure 18 opposite).

Option 2 (an **Independent Commission Against Corruption** based on State experience) would be a more worthwhile reform, assuming that its jurisdiction is broad-based, its resources are sufficient, and that mechanisms are developed for ensuring its role as a partner in the multi-agency system rather than a stand-alone solution.

This option would address most weaknesses to at least some degree, and some to a high level. If properly resourced, it would require a significant investment by the Commonwealth – more than previously considered.

Option 3 (a custom-built **Commonwealth Integrity Commission**) would provide a more comprehensive package of reforms. It assumes that a strengthened integrity system should involve both improved coordination and enhanced anti-corruption capacity, as envisaged by Options 1 and 2, but also that a wider combination of reforms is needed to address the unique needs, strengths and weaknesses of the Commonwealth integrity system, to the highest feasible degree.

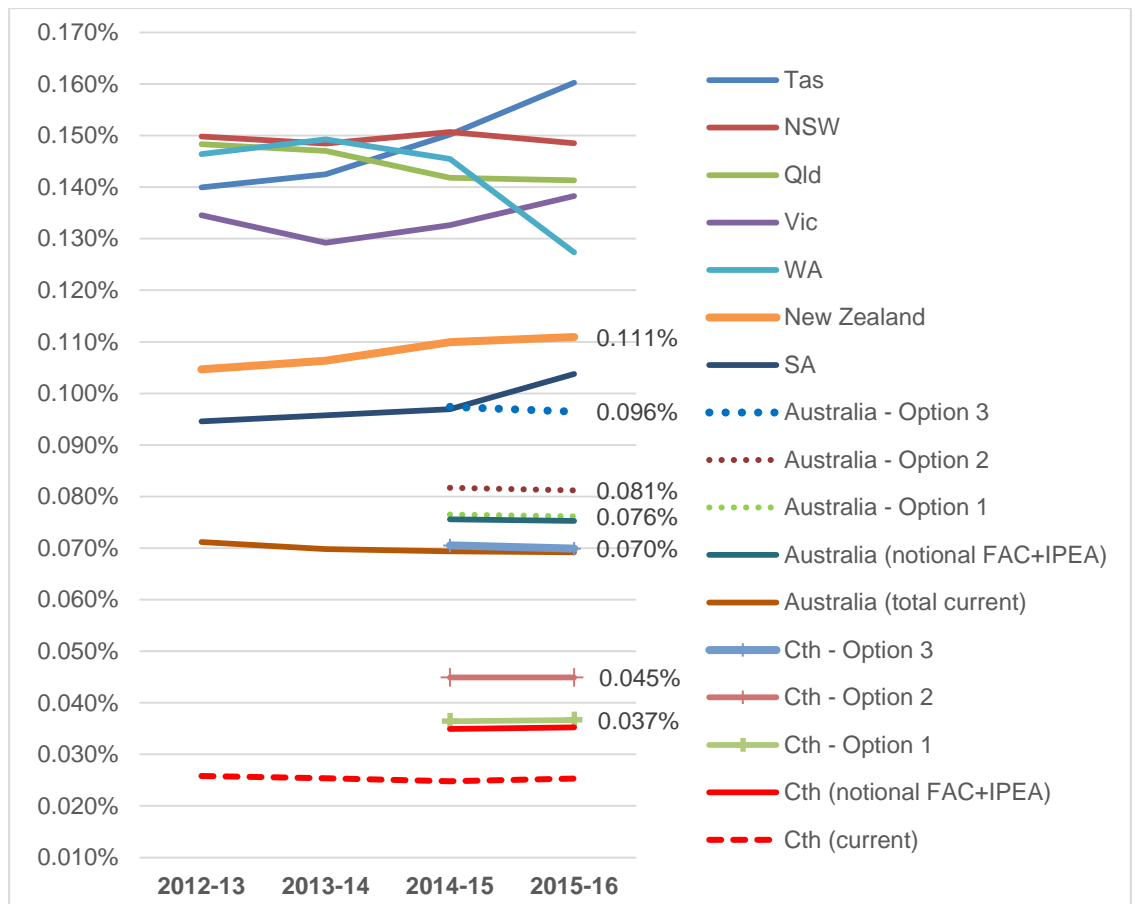
This option would also entail creation of a new commission, but one with a different and wider configuration of functions than Option 2, taking into account the coordination needs addressed by Option 1 and the nature of further specific gaps at the Commonwealth level, such as whistleblowing support. Further, it would entail separate institutional reforms to support parliamentary and ministerial integrity.

All options would require investment. Option 3 would also entail potential for cost recovery depending on the Commission's access to proceeds of corruption and to penalties and financial loss recovered through whistleblowing disclosures.

However, as seen in Figure 18, even the most expensive option (Option 3) would only barely bring the Commonwealth towards parity with the weakest contribution of the States, and of New Zealand, in investment in its core integrity system. This level of investment is therefore not only feasible, but highly justified, rendering all options relatively cheap when compared with the demonstrated need.

Finally, as discussed earlier in the paper, investment in the integrity system also needs to be considered in light of the wider benefits to Australia of bringing the integrity system back ‘ahead of the curve’ – and the economic costs of not doing so.

Figure 18. All options: cost contribution to Australia’s integrity system (combined expenditure of core public integrity agencies as a % of total public expenditure)¹⁶⁹



Conclusion: getting back ahead of the curve

All options compared in this paper highlight that the Commonwealth faces a strategic opportunity. Although the options are not mutually exclusive, nor the only ones, they show the choice between responses which continue to address challenges in isolation – and a wider, longer term view, in which in a more comprehensive approach addresses more problems at once, and better stands the test of time.

The Commonwealth's chief approach over recent decades, has been the former. However, for the reasons laid out in Part 3, a comprehensive approach is needed, recognising the necessity to better interconnect the critical institutional and operational elements of the federal integrity system. This opportunity to systematically address a range of major issues through coordinated reform is a rare one; but to fully realise it is not a simple process.

¹⁶⁹ See Figures 11-13 above for original methodology and agencies.

As recognised by all options, there is more to be done to establish 'best practice' in the design and operation of integrity institutions in Australia. Transparency International and others have previously argued for a formal intergovernmental process to reach a higher consensus on best practice principles for the powers and accountabilities of anti-corruption agencies, definitions of public sector corruption, and coordination mechanisms for public integrity in the nation as a whole. A special initiative to integrate and harmonise integrity frameworks would be a logical priority for the Council of Australian Governments (COAG), through its Law, Crime and Community Safety Council.

A more coherent national approach also requires the Commonwealth to take a leadership role, even if not the sole role, to help ensure that subnational anti-corruption bodies are properly coordinated, share information, participate in the type of improved framework envisaged by Option 3, and help identify where strategic oversight and vigilance by Commonwealth agencies will help make the most difference.

International experience shows that agreement is needed on the legislative status and powers of integrity agencies, and especially anti-corruption authorities, whether at a national or sub-national level. A consensus is required to ensure they are protected from political interference or governmental control – while still pursuing best practice processes which honour procedural fairness and efficiently lead to better anti-corruption outcomes. This paper is intended to help that process.

As discussed in section 3.6, this is also the right opportunity for the Commonwealth, through the Attorney-General's Department, to resume the unfinished task of a comprehensive national strategic plan to combat corruption. Ongoing work to revise and strengthen the National Integrity Framework as part of Australia's Open Government Partnership national action plans is an invaluable step – but only the Commonwealth, with the support of reforms such as canvassed here, is in a position to help facilitate a truly sector-blind picture of the nation's strengths, weaknesses and opportunities for ensuring integrity in business and government as a whole.

Similarly, as discussed in section 3.4 and reflected in Option 3, public confidence in government and institutions is unlikely to be restored without addressing real and perceived risks of undue influence through political donations, fundraising, finance and other forms of campaign support. These are complex issues, relying not only on more effective systems of transparency, disclosure, enforcement powers and resources, but strengthening of the underlying rules themselves. This is also an international challenge – but Australia is uniquely placed to develop a more consistent and coherent approach to protecting the reputation of its democracy.

Despite this complexity, the time is now for government to chart how it will return from a position in which it is too often forced to look over its own shoulder for fear of unaddressed integrity risks.

Instead, government should be able to proceed with its program undistracted by lack of confidence in the processes available to resolve corruption concerns that arise, and safe in the knowledge that robust systems are in place to minimize them in the first place.

As shown here, this is not currently the case for the Commonwealth integrity system. A comprehensive approach now provides the opportunity for Australia to get back ahead of the curve in the standards and strengths of its integrity system, and regain all the benefits of greater resilience, security, productivity and popular confidence.

It is in our national and international interest to take it.

Appendix 1.

Global Corruption Barometer (Australia) 2018 – Data sources

2018 – Global Corruption Barometer (Australia)

Global Corruption Barometer (Australia) conducted nationally by telephone among 2,218 respondents aged 18 years and over.

Survey fieldwork conducted over the period May 21 - June 27 2018.

All results post-weighted to ABS data on age *within* sex *within* each major region (i.e. within each of Sydney, rest of NSW/ ACT, Melbourne, etc.); a national rim weight for level of highest schooling completed; and phone accessibility ('mobile only'/'landline only'/'dual').

Project Funding

Conducted by OmniPoll for Griffith University and funded by the Australian Research Council (ARC Linkage Project LP160100267), Transparency International Australia, Crime & Corruption Commission (Queensland) and Integrity Commission (Tasmania). Full details www.griffith.edu.au/anti-corruption.

2016/2017 – Global Corruption Barometer (Transparency International)

The world's largest survey of public opinion and experience with respect to corruption: <http://www.transparency.org/research/gcb>

Australia -- Conducted nationally by Action Mark Research (Adelaide) for Efficiencie3 for Transparency International.

Survey fieldwork conducted over the period 6 September to 12 October 2016.

Computer Assisted Telephone Interviews of representative sample of 1002 citizens.

Full results released in *People and Corruption: Asia Pacific* (March 2017)

2008-2017 -- Australian Constitutional Values Survey

Conducted nationally by telephone for Griffith University by Newspoll Limited (2008-2014) and OmniPoll (2016-2017)

Respondents: Australian citizens and permanent residents aged 18 years and over.

	n	Fieldwork conducted over the period
2008	1,201	1-8 May
2010	1,100	1-14 March
2012	1,219	24 Sept–9 Oct
2014	1,204	19 Aug-2 Sept
2017	1,201	1-24 Aug