

ACTION ALERT AA 20-6: COMMONWEALTH INTEGRITY COMMISSION

As Quakers we seek a world without war. We seek a sustainable and just community. We have a vision of an Australia that upholds human rights and builds peace internationally, with particular focus on our region. In our approach to government we will promote the importance of dialogue, of listening and of seeking that of God in every person. We aim to work for justice and to take away the occasion for war.

August 2019

The Federal Government has released its draft legislation for the creation of a national integrity commission, following many years of public debate. This Brief outlines the proposed terms for the body, and some initial reactions. It suggests action that can be taken in response.

The Proposed Body

The Federal Attorney-General, Christian Porter MP, announced on 2 November 2020 that the Coalition Government has committed \$147m to the development and operation of a Commonwealth Integrity Commission (CIC) “designed to strengthen and complement the existing multi-agency approach to integrity, anti-corruption and law enforcement at a federal level”. As the first stage of this process, the existing Australian Commission for Law Enforcement Agency (ACLEI) will have expanded powers and funds to cover four new agencies. The second stage will involve the new CIC absorbing the ACLEI. Other points made by the Attorney-General are:

- CIC will have resources and powers to investigate allegations of criminal conduct across the public sector, and have greater powers than a Royal Commission (including compulsion to produce documents and give evidence, and search and arrest powers).
- The model for the CIC takes into account the mistakes made by state integrity bodies and strikes the right balance between the need to protect individual rights and the need for an investigative body that can guard against corruption.
- New corruption offences will be added to the *Criminal Code 1995* to make the CIC’s range comprehensive.

The draft legislation includes two Bills – one to establish the CIC, and one for consequential amendments to existing legislation. The CIC will be an independent statutory agency and will have an Integrity Commissioner assisted by a Law Enforcement Integrity Commissioner and a Public sector Integrity Commissioner. The public sector integrity division will cover conduct by the public service, intelligence/defence agencies, federal judicial staff, parliamentarians and staff, higher education providers and research bodies.

A national consultation process will take place with civil society, academia and other stakeholders from all states and territories between now and March 2021. Until 12 February 2021, submissions can be made, see www.ag.gov.au/integrity/publications/cic-consultation-submission-template

Responses

Professor A.J. Brown (Governance, Griffith University) welcomes the announcement as a “historic step towards a genuine strengthening of Australia’s integrity system” (*The Conversation*, 3 November 2020). The strongest positive feature is that the CIC will have new funding that will give it \$42m a year, which is a significant contribution. The biggest problem is that CIC’s powers will extend to only 20% of the federal public sector. For 80% (including politicians) the strong powers can be exercised only in private and where there is reasonable suspicion of a criminal offence. Corruption like ‘conflict of interest’ remains a grey area, and whistleblowers will have little chance to be heard.

The National Integrity Committee of the Australia Institute has commented on the following points (*The Australia Institute*, 3 Nov 2020):

- The definition of corruption is too narrow, and excludes anyone outside the public sector who improperly influences public decision-making.
- No public hearings or findings of corrupt conduct are possible of parliamentarians or public servants.
- The CIC cannot investigate on its own initiative in the case of public sector corruption.
- What is needed is an independent statutory body that has the resources to investigate where it chooses and to hold public enquiries as it sees fit. Three commissioners should be appointed for fixed terms from a list approved by the relevant Parliamentary Committee.

Helen Haines MP, Independent for Indi, who introduced her own legislation to Parliament, says that the government’s proposal is “weak and inadequate” (*Illawarra Mercury*, 3 November 2020). Madeline Hislop (*Women’s Agenda*, 26 Oct) said: “Haines’ anti-corruption bill would establish a body called the Australian Federal Integrity Commission, that would be able to hold public hearings, and allow any member of the public to make referrals. It would include full retrospectivity, meaning it could look to past cases, and establish a new code of conduct for parliamentarians”. Further details of her legislation – called the Australian Federal Integrity Commission (AFIC) Bill 2020 - can be found at www.helenhaines.org. Cross-bench colleagues have supported her initiative – Andrew Wilkie MP, Zali Steggall MP, Rebekha Sharkie MP – and called for the legislation to be debated.

Norman Abjorensen (*Canberra Times*, 3 Nov 2020) recalled that The Greens pressed for a federal Integrity Commission over many years from 2009, introducing numerous Bills, none of which attracted support from the major parties. The Labor Party in 2018 adopted the idea, and the Coalition followed at the end of that year. There remain sceptics who think the existing state/territory bodies have not proved immune to political attacks on politicians without evidence.

Dr Fiona Wade (Law Council of Australia) issued a statement on 2 November 2020 saying that the Law Council had long advocated such a Commission, with two separate divisions (one for law enforcement bodies and one for the public sector), and welcomed the government’s proposals. She made the point that conduct deemed to be corrupt should be the same for members of either law enforcement agencies or other public sector agencies. She also said that hearings should generally be held in private, but some discretion should be allowed about public hearings if the matters is in the public interest.

Anti-Corruption Bodies in States/Territories

- Victoria's Anti-corruption Commission. It was established in 2012 and can hold public hearings, but only in "exceptional circumstances" where it is in the "public interest" to do so.
- The Northern Territory ICAC was established in late 2018. It can hold public hearings but has not done so yet.
- The South Australia ICAC was established in 2013. It can investigate only corruption that would be a criminal offence and it cannot hold public hearings.
- Western Australia's Corruption and Crime Commission started operations in 2004 and "generally" does not hold public hearings, though it can if doing so would be in the public interest.
- The Queensland Crime and Corruption Commission was established in 2001. It can hold public hearings but only where it is in the "public interest" to do so.
- The ACT Integrity Commission was established in the middle of this year. It will begin receiving complaints from December 1. It can hold public hearings but must pass a public interest test to do so.
- The Tasmanian Integrity Commission has the power to conduct public hearings where there is a "likely factual basis to support a finding of serious misconduct ... or systemic misconduct" and there is significant public concern.
- Independent Commission Against Corruption (NSW)
 - (a) The role of the ICAC is to investigate and expose serious and systemic corruption in the NSW public sector. Its jurisdiction extends to all NSW public sector agencies (except the NSW Police Force and the NSW Crime Commission) government departments state owned corporations, local councils, members of Parliament, Ministers, the judiciary, staff of universities and the governor.
 - (b) The ICAC has the powers of a Royal Commission. It can hold public hearings at which witnesses may be compelled to give evidence. It also has telephone intercept powers. The ICAC can recommend that criminal charges be considered by the DPP.
 - (c) Critics of the ICAC have argued that it can unfairly damage the reputation of individuals under investigation. Two former Premiers of NSW resigned following ICAC investigations which were criticised by certain media and political commentators as an unreasonable application of the Commission's powers.
 - (d) Supporters of the ICAC, including the Australian Greens, suggest that for a body at the Federal level to be effective it should have similar powers to the ICAC.

Questions for Friends

- Is the proposed integrity body being put forward by the Coalition appropriate and adequate to the task of bringing such matters to greater transparency and accountability.
- Do the scope and structure of the draft legislation give confidence that it will make a significant difference to the way government complies with accepted standards of conduct?
- Should hearings be held in public, or mainly in private with a discretion for public hearings in the public interest?

Action

1. Prepare a written submission (using the prescribed template shown at the link under 'The Draft Legislation' above) and send it to cic.consultation@ag.gov.au
2. Watch for details of public hearings and seek participation.
3. Check the details of Helen Haines' draft legislation (see www.helenhaines.org) to see where it differs from the government's draft, and how your response to the government moves might take it into account.