



Australian Government

Australian Public Service Commission

Australian Public Service Commissioner

Dr Jane Thomson
Committee Secretary
Senate Select Committee on the establishment
of a National Integrity Commission
PO Box 6100

Canberra ACT 2600

Dear Dr Thomson

I enclose a submission to the Select Committee's inquiry into the establishment of a National Integrity Commission.

Yours sincerely

Stephanie Foster
Acting Australian Public Service Commissioner
20 April 2016

Australian Public Service Commissioner

Submission to the Senate Select Committee on the establishment of a National Integrity Commission

Introduction

1. The Australian Public Service (APS) relies on the confidence and trust of the public it serves in order to carry out its functions. Confidence in the way that it exercises its authority from government, the way it uses government and public resources, and its accountability to government and the public.
2. The government rightly expects that the public service will embody ethical standards of behaviour that support good public administration generally and protect against fraud and corruption.
3. The APS, and particularly its senior leaders, strive to uphold and promote a robust culture of integrity and accountability. This is aided by processes, procedures and systems that support ethical behaviour.
4. All misconduct is taken seriously by the APS and is dealt with according to existing investigation and oversight mechanisms. The available data suggests that the level of corruption in the APS is low and that APS agencies are dealing with unlawful and corrupt conduct appropriately when it is identified.
5. Perceptions of corruption within the APS, as reported by public servants themselves, are also low.
6. This suggests that the existing anti-corruption and accountability arrangements of the APS are robust and effective. However, agencies are not complacent. They continue to focus on managing risks, including the risk of corruption. Across the APS generally there is a strong focus on integrity risks and their management.

Incidence of misconduct and corruption in the Australian Public Service

7. In its most recent annual State of the Service report, the data reported by the Australian Public Service Commission (the APSC) shows that the majority of misconduct was of a less serious kind. Between the 2013-2015 financial years, 1,149 misconduct investigations were concluded, with only 141 investigations resulting in termination of employment. During the same time, 534 employees were reprimanded for their misconduct.
8. In 2014-15, out of 557 finalised Code of Conduct investigations, 100 of those were identified as involving some type of behaviour that was reported by agencies as involving a form of corruption. The majority of these, however, involved acts of a less serious nature, such as inappropriate use of flex time or misuse of leave.
9. Misconduct findings involving acts that would be likely to be regarded as corrupt by community standards, such as theft, accepting bribes, or abuse of office, were relatively rare.
10. In the last employee census conducted by the APSC, only 3.6% of APS employees reported having witnessed another employee engaging in behaviour they regarded as corrupt.

11. The most common perceived corruption was cronyism followed by nepotism. This is likely to be, in most cases, a reaction to perceived favouritism in selection processes.

Operational issues for a National Integrity Commission

12. The reported relatively low incidence of actual and perceived corruption in the APS suggests that the current arrangements, with responsibility distributed between law enforcement and other specialist agencies, is working well.
13. The legislation that governs agencies with specific responsibilities for addressing and preventing corruption, such as the Auditor-General, the Commonwealth Ombudsman, the Australian Commission for Law Enforcement Integrity, the APSC, the Inspector General of Intelligence and Security and the Australian Federal Police, provides an effective framework defining the reach and expertise of those agencies. It operates to limit their reach to that intended by Parliament. It has also resulted, in practice, in those agencies having specialist expertise in their respective fields. This expertise may not exist, or may take considerable time to develop, in a national body with a wide jurisdiction.
14. The experience of the Independent Commission Against Corruption (ICAC) and counterpart bodies in other states is not reassuring. A number have encountered difficulties related to the misuse and over reach of their powers.
15. The risk of an anti-corruption body overreaching its jurisdiction is significant, given that the range of people covered by the jurisdiction of anti-corruption bodies tends to be extensive, ranging from Members of Parliament, the judiciary, police, the Australian Defence Force and current and former public servants.
16. Moreover, the powers of anti-corruption bodies are necessarily broadly defined to ensure that they cover the totality of the government activity. Such bodies generally have the function of investigating reports of 'corrupt conduct' and in some cases 'serious misconduct'.
17. The experiences of state-based anti-corruption bodies indicate that establishing a national integrity commission would require careful work to define the limits of its jurisdiction. In particular how a new entity would interact with the jurisdictions of existing agencies and the relationships between such a body and law enforcement agencies.

Budgetary and resourcing considerations

18. Experience in other jurisdictions indicates that the cost of establishing a national integrity commission is likely to represent a significant cost to the Budget even allowing for some offsetting reductions to existing bodies. It is not clear whether such substantial cost to the Budget would provide value for money in what appears to be a low corruption environment.
19. Also, the potentially high cost of running a national integrity commission may not provide any additional assurance about the prevention and management of corruption in the APS. Relatively few prosecutions have arisen from ICAC proceedings.

The existing APS framework

20. The *Public Service Act 1999* (the Act) is a key component of the integrity framework of the APS. The Act sets out the behavioural obligations of APS employees in the APS Values, Employment Principles and Code of Conduct.

21. The Australian Public Service Commissioner has statutory responsibility for upholding standards of integrity and conduct in the APS. This responsibility encompasses:
 - a. upholding and promoting the APS Values, Employment Principles and Code of Conduct
 - b. evaluating the extent to which agencies incorporate those principles and the adequacy of their compliance systems
 - c. issuing directions to agency heads regarding investigation procedures for determining suspected breaches of the Code of Conduct and relevant sanctions, and
 - d. investigating alleged breaches of the APS Code of Conduct by agency heads.
22. All APS employees are obliged to comply with the APS Values and Code of Conduct. This includes obligations to
 - a. act with integrity
 - b. uphold the highest ethical standards
 - c. comply with all applicable Australian law, and
 - d. behave at all times in a way that upholds the APS Values and Employment Principles, and the integrity and good reputation of their agency and the APS.
23. Senior leaders in the APS are expected to promote the Values and Employment Principles by personal example.
24. An important element of integrity in the APS is the reporting and investigation of alleged breaches of the Code of Conduct. All APS employees have a responsibility to report suspected misconduct. Agency heads have responsibility for investigating alleged misconduct and breaches of the Code of Conduct, and can impose sanctions up to and including termination of employment. In the cases of serious misconduct, including genuinely corrupt acts, matters are referred to the relevant law enforcement body.
25. Other legislation that underpins the APS integrity framework includes the *Commonwealth Fraud Control Framework 2014*, the *Public Governance, Performance and Accountability Act 2013* and the *Public Interest Disclosure Act 2013*.

Conclusion

26. An abiding level of public concern about corruption in the Commonwealth public sector and how it is prevented and managed is expected.
27. The available evidence suggests, however, that the incidence of genuine corruption in the APS is low and is being detected and prosecuted effectively within current arrangements.
28. A National Integrity Commission would be neither simple nor inexpensive. It is open to conjecture whether the creation of such a body would materially reduce the current levels of corrupt and unlawful behaviour.