

Chapter 3

National anti-corruption framework

3.1 This chapter provides an overview of Australia' current anti-corruption framework, arguments for and against the establishment of a National Anti-corruption Commission (NAC), and considers how such a scheme might operate.¹ The issues raised in this chapter may be considered in greater length in the committee's final report.

3.2 The purpose of this chapter is to consider some of the key issues and concerns raised in relation to a prospective NAC. In raising these matters, the committee intends that this interim report will generate further discussion and evidence regarding the benefits and drawbacks of establishing a national NAC. In its final report therefore, the committee will endeavour to identify and explore some of the methods to address these challenges.

Calls for a national anti-corruption commissioner

3.3 Calls for the establishment of a NAC date back to at least the 1980s; a time when the first state-based anti-corruption bodies were being established.² Over recent years there have been renewed calls for the establishment of a NAC by non-government organisations, academics, and some politicians.

3.4 In 2005 the *National Integrity Systems Assessment Final Report* (NISA Report) by Transparency International (TI) and Griffith University put forward a best practice integrity model. The report strongly recommended a comprehensive independent anti-corruption agency which would operate across the Commonwealth, not just a few agencies.³ TIA repeated this call most recently in January 2016 when it publishing an issues paper arguing that 'the Australian Government should establish a broad-based federal anti-corruption agency'.⁴

1 This chapter of the report uses the term National Anti-corruption Commission (NAC). The committee has used the term 'anti-corruption' as this aligns with Australian Government language as used in the proposed *National Anti-Corruption Plan* and associated discussion paper, and the Australian Federal Police's Fraud and Anti-corruption Centre. NAC can be read as National Integrity Commission without loss of meaning.

2 B Bottom, 'Lack of federal integrity commission a national scandal', *The Australian*, 29 December 2012, p. 18.

3 Law Council of Australia, Submission to Attorney-General's Department review of Australia's compliance with chapters three and four of the *United Nations Convention Against Corruption*, 2011, <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/docs-2400-2499/2412%20United%20Nations%20Convention%20against%20Corruption.pdf> (accessed: 3 May 2016), p. 2.

4 Transparency International Australia, *Anti-corruption agencies in Australia*, position paper no. 3, January 2016, p. 2.

3.5 The Accountability Round Table (ART) argued for the establishment of a national commission in response to the Australian Government's 2011 discussion paper on the Commonwealth's approach to anti-corruption.⁵ The former Counsel assisting the NSW ICAC, Geoffrey Watson QC, similarly called for the establishment of a federal NAC in a lecture in 2015.⁶ Associate Professor Gabrielle Appleby of the University of New South Wales' Gilbert + Tobin Centre of Public Law has similarly argued that there is a need for a NAC.⁷

3.6 There have also been calls in various democratic forums for the establishment of a NAC, with the Australian Greens having have introduced three bills to establish a NAC.⁸

3.7 In 2011, the Parliamentary Joint Committee on the Australian Government Commission for Law Enforcement Integrity (PJCACLEI) recommended—on the basis that the committee had received evidence indicating gaps in the Commonwealth oversight regime—that the Australian Government:

...conduct a review of the Commonwealth integrity system with particular examination of the merits of establishing a Commonwealth integrity commission with anti-corruption oversight of all Commonwealth public sector agencies, taking into account the need to retain the expertise of ACLEI in the area of law enforcement.⁹

Arguments against a National Anti-corruption Commission

3.8 While the above highlights calls from various quarters to establish a NAC, these moves have been parried by some sections of the media and academia¹⁰, the public sector, as well as many elected officials.¹¹ None of these groups in any way argue that corruption should be ignored or underplayed, but that a NAC is not the best means to deal with any problems of corruption that may exist.

5 Accountability Round Table, *The national anti-corruption plan: submission of the Accountability Round Table*, 2011, p. 35.

6 N McKenzie and R Baker, 'National ICAC needed to probe federal politicians, says NSW Independent Commission Against Corruption counsel Geoffrey Watson, SC', *The Sydney Morning Herald* (online), 5 December 2014.

7 Associate Professor Gabrielle Appleby, 'What's the case for a federal ICAC?', *The Drum*, 10 September 2014, <http://www.abc.net.au/news/2014-09-10/appleby-what's-the-case-for-a-federal-icac/5733712> (accessed: 30 March 2016).

8 National Integrity Commissioner Bill 2010, National Integrity Commissioner Bill 2012, and the National Integrity Commission Bill 2013.

9 Parliamentary Joint Committee on Law Enforcement Integrity, *Inquiry into the operation of the Law Enforcement Integrity Commissioner Act 2006*, 2011, pp. 49–50.

10 'Do we really need a federal ICAC?', editorial, *The Age*, 11 September 2014; Professor Adam Graycar, *Submission 1*.

11 For instances, in the debate on the National Integrity Commissioner Bill 2013: Senator the Hon. Matthew Canavan, *Senate Hansard*, 13 August 2015, p. 5219; Senator Sue Lines, *Senate Hansard*, 13 August 2015, p. 5232; Senator Dean Smith, *Senate Hansard*, 15 May 2014, p. 2691, among others.

3.9 Those opposed to the establishment of a NAC generally put forward arguments, which can be broadly grouped into two categories, that there is:

- a lower risk, and a lower level, of corruption at federal level reducing the need for an overarching anti-corruption body; and
- already a strong anti-corruption framework in place that has proved successful at preventing and revealing corruption in the limited cases where it has occurred.

Lower risk of corruption at the federal level

3.10 One of the key arguments for not establishing a NAC is that there is, in general, less corruption at the federal level than at the state level. In 1993, Professor Peter Boyce put forward an explanation of why corruption appears to be lower in the federal arena compared to the state level:

[T]he Commonwealth is more concerned with broad policy issues which don't lend themselves to bribes, kickbacks or decisions affected by conflict of interest than the States, and the key decision makers are physically more remote from many of the day-to-day decisions where corruption can occur. Secondly, the Commonwealth has been much more conscientious in developing a system of parliamentary scrutiny than any of the States, and has set in place administrative review processes which tend to insulate the political actors.¹²

3.11 The Australian Public Service Commission (APSC)—the federal body responsible for the promotion of high standards of integrity and conduct in the Australia Public Service (APS)—put it to the PJCACLEI, echoing Boyce's arguments, that there is no need for a NAC as the risks of corruption are lower at the federal level of administration than they are in the state and local government spheres:

The commission's position is that we do not believe the APS needs a full-blown state ICAC style anticorruption commission. The view has been that that would be overkill given that there are a number of agencies that already have jurisdiction in that area. Already we have found that there has not been the systemic corruption that has been the subject of investigations in the state systems.

...

One of those is around the nature of the work of the APS—in particular, that we tend to be focused on national policy issues. A lot of the risks that are inherent within the state jurisdictions are about having a personal relationship that you can develop—transfer of money and particular decisions can be taken within a smaller group of people that you would actually have a relationship with. In health, in direct policing, in teaching

12 Professor Boyce, 'The three monkeys syndrome and possible remedies', paper presented to the Third Conference of the Samuel Griffith Society, Fremantle, 5–6 November 1993.

and those sorts of things, there is a direct relationship that you can develop over a period of time.¹³

3.12 The Merit Protection Commissioner further noted that 'there is no evidence of systemic corruption'.¹⁴ In 2011 the then Public Service Commissioner Mr Sedgwick similarly argued that there was no large scale problem with corruption at the federal level.¹⁵

3.13 In the 2012–13 APSC State of the Service Report, the APSC argued that while the Australian Government cannot take the risks posed by corruption lightly, the Australian Government is less susceptible to corrupt behaviours than the states and territories:

While the Australian Government faces corruption risks, particularly in the regulatory and law enforcement fields, due to the nature of the functions performed by state public services (for example, land planning approvals and mining licences) state activities are often inherently more susceptible to corruption.¹⁶

3.14 In the 2014 APS Employee Census showed that only 2.6 per cent of respondents indicated that they had witnessed another APS employee engage in behaviour they considered to be corruption, defined for the census as 'the dishonest or biased exercise of a Commonwealth public official's functions...that would usually justify serious penalties, such as termination of employment or criminal prosecution'.¹⁷

3.15 TI regularly rates Australia as among the least corrupt countries on the planet. In its most recent *Corruption Perception Index* published in 2015, Australia is ranked 13th out of 168 countries. Of the 12 countries ahead of Australia on the TI table only Singapore has a national anti-corruption body—and of the top 20 countries only two have NACs—highlighting that a NAC is not a panacea to preventing corruption.¹⁸

13 Ms Godwin, Merit Protection Commissioner, Australian Public Service Commission, *Joint Committee on the Australian Commission for Law Enforcement Integrity Hansard*, 14 August 2009, p. 22.

14 Ms Godwin, Merit Protection Commissioner, Australian Public Service Commission, *Joint Committee on the Australian Commission for Law Enforcement Integrity Hansard*, 14 August 2009, p. 22.

15 Mr Sedgwick, Australian Public Service Commissioner, Australian Public Service Commission, *Joint Committee on the Australian Commission for Law Enforcement Integrity Hansard*, 11 February 2011, pp. 2–3.

16 Australian Public Service Commission, *State of the Service Report 2012–2013*, 2013, p. 66.

17 Australian Public Service Commission, *State of the Service Report 2013–2014*, 2014, pp. 236–237.

18 Professor Adam Graycar, *Submission 1*, p. 13. Care needs to be taken in extrapolating for the Corruption Perception Index (CPI). The CPI provides a national rating. As such, Australia's high rankings may be the result of the work of state and territory efforts to tackle corruption, rather than an endorsement of a lack of corruption in any specific sphere of administration.

Already a strong anti-corruption framework in place

3.16 Opponents of the establishment of a NAC highlight that there is already a robust anti-corruption framework in place at the national level, and that the high-risk areas that do exist are currently extensively monitored. A number of measures are currently in place at the federal level to address corruption. These include offence provisions which criminalise corrupt activities, statutorily prescribed public sector standards, and investigative, monitoring and supervisory functions performed by various regulatory and investigatory bodies.

3.17 The committee was informed by the Attorney-General's Department that the reason the government does not support the establishment of a NAC is that there are already robust measures in place both within and external to government:

The Australian government does not support a National Integrity Commission. The Australian government's approach to dealing with corruption is integrated and multifaceted. We work to get the standards and training right, assess risk and detect, investigate and respond to corruption. Underpinning this approach is our democratic system of representative government and the separation of powers enshrined in the Australian Constitution. There are a range of institutions that play a role in protecting against corruption and enabling scrutiny of the public and private sectors. These include parliamentary committees that scrutinise government activity and proposed laws; a free media; and an active civil society.¹⁹

3.18 Australia ratified the United Nations Convention against Corruption (UNCAC) on 7 December 2005. The Law Council of Australia (LCA) provides a summary of Australia's obligations under the UNCAC framework:

As a party to the UNCAC, Australia is required to develop policies in relation to anti-corruption; establish and promote practices to prevent corruption; strengthen systems for the recruitment, hiring, retention, promotion and retirement of public servants and other non-elected public officials; and promote accountability and transparency in public finance. Australia must also take steps to prevent corruption in the private sector.²⁰

3.19 Australia has also ratified the United Nations Convention against Transnational Organised Crime and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

3.20 At the federal level, a number of agencies or office holders have specific roles in relation to corruption.²¹ For example, the Australian Commission for Law Enforcement Integrity (ACLEI) provides independent assurance to government about

19 Ms Leanne Close, Deputy Secretary, Attorney-General's Department, *Committee Hansard*, 21 April 2016, p. 1.

20 Law Council of Australia, *Submission to the House Standing Committee on Social Policy and Legal Affairs: National Integrity Commissioner Bill 2012*, p. 5.

21 This chapter considers many of the key government agencies with an anti-corruption role, but is not an exhaustive list.

the integrity of Australia's law enforcement agencies.²² The APSC is responsible for promoting the APS' Values and Code of Conduct and evaluating the extent to which agencies uphold the APS' values and the adequacy of compliance with the Code of Conduct. Among other things, the Code of Conduct states that agency heads and APS employees must not use their employment improperly for personal gain.²³

3.21 The committee was informed that the APS emphasises a culture of integrity to prevent corruption:

[T]he first thing that we want to do in the Commonwealth is promote a culture of integrity to make sure that there is not corrupt behaviour happening. 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.²⁴

3.22 The Australian Federal Police (AFP) investigates serious or complex crimes against Australian Government laws, its revenue, expenditure or property. This can include both internal and external fraud committed in relation to Australian Government programs. Australian Government agencies refer allegations of corruption to the AFP for investigation.²⁵

3.23 In 2013 the AFP established the Fraud and Anti-Corruption Centre (FAC Centre) as a business unit within the AFP's Crime Program. The committee was advised that:

The FAC Centre, as it is called, coordinates the operational response to corruption by bringing together officials from a range of different agencies and leveraging their strengths and expertise. The AFP-led FAC Centre includes officials from the Australian Taxation Office, the Australian Securities and Investments Commission, the Australian Crime Commission, the Department of Human Services, the Department of Foreign Affairs and Trade, the Department of Immigration and Border Protection, the Department of Defence and the Australian Transaction Reports and Analysis Centre. Officials from the Attorney-General's Department and the

22 The agencies included in ACLEI's jurisdiction include: the Australian Border Force; the Australian Crime Commission; the Australian Federal Police; the Australian Transaction Reports and Analysis Centre; the CrimTrac Agency; prescribed aspects of the Department of Agriculture and Water Resources; the Department of Immigration and Border Protection; and the former National Crime Authority. Other agencies with a law enforcement function may also be added by regulation.

23 Attorney-General's Department, *The Commonwealth's approach to Anti-Corruption—Discussion Paper*, 2011, p. 5.

24 Ms Catherine Hawkins, First Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 21 April 2016, p. 4.

25 Attorney-General's Department, *The Commonwealth's approach to Anti-Corruption—Discussion Paper*, 2011, p. 13.

Commonwealth Director of Public Prosecutions are represented as advisory members.²⁶

3.24 The AFP argued that the FAC Centre provides the specialised expertise and collaborative networks to tackle complex fraud and corruption:

Complex fraud and corruption matters are generally protracted, requiring specialised skills and significant resources. The dedicated FAC teams provide a robust framework to build inter-departmental and industry engagement to seek to address these matters collaboratively and effectively.²⁷

3.25 The AFP emphasised to the committee that one of the critical capabilities of the FAC Centre is the ability to bring agencies together collaboratively to tackle corrupt activities:

The third aspect, and this is the really important aspect, is that by having different agencies at the table we were able to leverage off each other's strengths and capabilities. By having tax sitting next to AFP, sitting next to ASIC, sitting next to other agencies—in terms of being part of that task force arrangement—we are able to leverage off each other's capabilities, not just our own. I think that was a changing point in terms of how we approach this sort of crime type in this sort of way.²⁸

3.26 The Office of the Commonwealth Ombudsman takes complaints and enquiries from members of the public about government administrative action, and undertakes investigations into those complaints and other systemic problems on an 'own motion' basis. The Commonwealth Ombudsman's mission is to promote fair and accountable government administration.²⁹

3.27 The Auditor-General, assisted by the Australian National Audit Office, provides independent assurance about the use of public sector resources to parliament, the government, and the public. As Grant Hehir, Auditor-General, explains:

The key role of an audit office in the public sector is to advise Parliament about whether public money is being spent well and delivers value for money. This is achieved through providing assurance over how public money has been spent, and the adequacy of the decision-making and management that underpins such spending.³⁰

26 Ms Leanne Close, Deputy Secretary, Attorney-General's Department, *Committee Hansard*, 21 April 2016, p. 2.

27 Australian Federal Police, 'Fraud and Anti-Corruption', <http://www.afp.gov.au/policing/fraud/fac-business-area> (accessed: 22 April 2016).

28 Mr Ian McCartney, Acting Deputy Commissioner, Operations, Australian Federal Police, *Committee Hansard*, 21 April 2016, p. 3.

29 Attorney-General's Department, *The Commonwealth's approach to Anti-Corruption—Discussion Paper*, 2011, p. 15.

30 Grant Hehir, *A reflection of how far performance auditing has come from its roots in the 1970s to where we are today and where we are heading*, IMPACT Conference, Brisbane, 15 March 2016, p. 1.

3.28 In addition to the aforementioned organisations and policies in place to regulate the public sector and its law enforcement agencies, there are several measures in place to facilitate political integrity.

3.29 In 2007, the Australian Government introduced new Standards of Ministerial Ethics (Standards), requiring of Commonwealth ministers a high standard of conduct. The Attorney-General's 2012 discussion paper explain the justification of the Standards:

The standards are underpinned by the principle that ministers and parliamentary secretaries must act with due regard for integrity, fairness, accountability, responsibility and the public interest ensuring that corrupt behaviour is not tolerated at the most senior levels of national government.³¹

3.30 The Statement on the Standards for Ministerial Staff, the Lobbying Code of Conduct and Register for Lobbyists, as well as the Australian Electoral Commission's funding and disclosure scheme—requiring the public disclosure of political donations above a certain threshold—are additional planks in the anti-corruption scaffold.

3.31 Both houses of the Parliament of Australia have also established committees dealing with alleged breaches of privilege. As explained by *Odgers' Australian Senate Practice* (Odgers'):

The term "privilege", in relation to parliamentary privilege, refers to an immunity from the ordinary law which is recognised by the law as a right of the Houses and their members.³²

3.32 The Attorney-General's 2012 discussion paper on the Commonwealth framework to prevent corruption also notes that 'robust democratic institutions play an important part in promoting a fair and transparent society and combatting corruption'.³³ The democratic institutions listed include:

- parliamentary committees;
- a free media;
- civil society, including integrity agencies, academia and non-government organisations; and
- Royal Commissions which Australian governments establish 'to inquire into and report on matters of public concern including allegations of systemic corruption'.³⁴

31 Attorney-General's Department, *The Commonwealth's approach to Anti-Corruption—Discussion Paper*, 2012, p. 9.

32 Harry Evans and Rosemary Laing, ed., *Odgers' Australian Senate Practice*, 13th edition, Department of the Senate, 2012, p. 40.

33 Attorney-General's Department, *The Commonwealth's approach to Anti-Corruption—Discussion Paper*, 2012, p. 11.

34 Attorney-General's Department, *The Commonwealth's approach to Anti-Corruption—Discussion Paper*, 2012, p. 11.

3.33 This division of responsibilities is known as the 'multi-agency' approach, and can be summarised as: '...a number of different agencies [having] specific responsibilities for tackling corruption in different levels of government, and in relation to specific types of corruption'.³⁵

3.34 One of the reasons put forward for the multi-agency approach is that 'the risks of corruption in the APS vary according to each agency's operating environment. It is critical that agencies consider their own risk profiles and take reasonable measures to mitigate risks.'³⁶

3.35 The Australian Government response to the aforementioned recommendation in the PJCACLEI emphasises the adequacy of the existing multi-agency approach:

The Government's approach to preventing corruption is based on the premise that no single body should be responsible. Instead, a strong constitutional foundation (the separation of powers and the rule of law) is enhanced by a range of bodies and government initiatives that promote accountability and transparency. This distribution of responsibility creates a strong system of checks and balances.

...

[On] the available evidence there is no convincing case for the establishment of a single overarching integrity commission.³⁷

Cost of a dedicated anti-corruption agency

3.36 Opponents of a dedicated anti-corruption agency often cite two costs associated with them; diminution of legal rights and financial costs.

3.37 The committee heard concerns that a dedicated NAC would threaten the legal rights of individuals, as well as potentially unfairly tarnish the reputation of individuals investigated, even when they are later found not to have engaged in corrupt conduct.

3.38 The Rule of Law Institute expressed concerns that a NAC creates a new system of justice without the legal protections embedded in the existing one:

It creates a parallel system of justice to the traditional criminal court system, initially with all the credibility of a court, but without any of the protections that have been built up around the court system over many generations, including the presumption of innocence, the high standard of proof beyond reasonable doubt, and the privilege against self-incrimination.³⁸

35 Attorney-General's Department, *The Commonwealth's approach to Anti-Corruption—Discussion Paper*, 2012, p. 4.

36 Australian Public Service Commission, *State of the Service Report 2012–2013*, 2013, p. 71.

37 Australian Government, *Australian Government response to: Parliamentary Joint Committee on Law Enforcement Integrity, Final Report, Inquiry into the operation of the Law Enforcement Integrity Commissioner Act 2006*, February 2012, pp. 7–8.

38 Rule of Law Institute, *Submission 8*, p. 2.

3.39 The Institute of Public Affairs informed the committee that anti-corruption agencies tend to possess powers that erode the protections for individuals that exist in other judicial systems:

A federal anti-corruption commission would be a regressive step from the perspective of the rule of law. Analysis conducted by the IPA demonstrates that the defining features of state anti-corruption agencies are the systematic breach of fundamental legal rights, including the presumption of innocence and the right to silence; a lack of transparency and oversight; and a disregard for the process and procedures adhered to by ordinary courts, including the rules of evidence.³⁹

3.40 The committee heard that potential reputational damage can be managed through the judicious use of public hearings; noting the concerns regarding the NSW ICAC model which conducts many of its hearings in public.⁴⁰

3.41 TIA, a strong proponent of the NAC model, conceded that:

I would finally say that, with the ICAC examples, of course it is legitimate that investigatory bodies do make mistakes and they sometimes overreach and reputations can be unfairly besmirched—everybody knows that—but those are not arguments against a federal ICAC at all.⁴¹

3.42 Although easier to measure, in that it has a dollar value attached, the suggested financial costs of establishing a NAC are unclear. Mr Quentin Dempster, a proponent of a NAC, acknowledged that a new dedicated anti-corruption body would be expensive, but noted that some of these costs would be offset:

It is going to be relatively expensive—\$100 million or something, maybe a little bit more than that—but I think the other tangible benefits would be the savings that would be made across all areas of government because there would be an obligation on everybody, from private sector to public sector.⁴²

3.43 By way of comparison, the NSW ICAC had a budget of just under \$30 million in the 2014–15 financial year.⁴³

3.44 One of the difficulties of assessing the financial costs of a NAC are taking into account the savings that might be made through integrating anti-corruption efforts and improved efficiencies created.⁴⁴

39 Mr Simon Breheny, Director of Policy, Institute of Public Affairs, *Committee Hansard*, 21 April 2016, pp. 17, 19.

40 Professor AJ Brown, *Committee Hansard*, 21 April 2016, p. 14.

41 The Hon. Anthony Whealy QC, Chairman, Transparency International Australia, *Committee Hansard*, 21 April 2016, p. 12.

42 Mr Quentin Dempster, *Committee Hansard*, 21 April 2016, p. 28.

43 Independent Commission Against Corruption, *ICAC Annual Report 2014–2015*, 2015, p. 12.

44 The Hon. Anthony Whealy QC, Chairman, Transparency International Australia, *Committee Hansard*, 21 April 2016, p. 16.

Concerns regarding the adequacy of the current system

3.45 Critics of the current multi-agency approach argue that it cannot be said to be working in light of scandals that have emerged in recent years. They question the underlying assumption that there is a reduced risk of corruption at the federal level, and argue that a multi-agency approach creates holes that may facilitate corruption.

Questioning the assumption of limited corruption at the national level

3.46 The opinion that the federal government is less prone to corruption has been questioned by some groups. As a general rule, former Supreme Court Judge Tim Smith QC argued:

...there will always be a government corruption problem (in all countries) unless a miracle occurs to remove greed and the desire for power and hubris from the psyche of *Homo sapiens*. There is also the fact that some of the species do not believe that the rules apply to them, and others believe that the end will always justify the means.⁴⁵

3.47 In 2011, then Commonwealth Ombudsman Allan Asher informed the PJCACLEI that there are opportunities and incentives for corruption at the national level:

[W]hile ever there is such a large range of Commonwealth programs, and programs where the Commonwealth is directly funding activities, there are incentives around for corruption, and corruption really results from incentive plus opportunity. Those incentives and opportunities are clearly increasing quite considerably.⁴⁶

3.48 Former NSW ICAC commissioner, Mr David Ipp, stated on the Australian Broadcasting Corporation *Four Corners* program, 'Democracy for Sale' that there was 'no reason to believe that the persons who occupy seats in the Federal Parliament are inherently better than those who occupy seats in the NSW Parliament.'⁴⁷

3.49 Mr Tim Smith has argued that current features of modern government in Australia have created a political landscape which is generally more vulnerable to corruption, including:

- increasing amounts of money spent by political parties on election campaigns;
- the privatisation of many government services involving significant discretionary powers conferred on ministers and government officials;
- a growth in the lobbying industry;
- an increase in the number of ministerial staff and their lack of accountability;

45 The Hon. T Smith QC, *Corruption: the abuse of power in Australia*, Australian Collaboration, 2010, p. 22.

46 Joint Select Committee on the Australian Commission for Law Enforcement Integrity, *Report on the Operation of the Law Enforcement Integrity Commissioner Act 2006*, 2011, p. 31.

47 Mr Bob Bottom OAM, *Submission 13*, p. [2].

- an increasing dependent by the media on the supply of information by the government combined with additional government media resources; and
- the projected challenges regarding policymaking on sustainability issues, which could substantially affect some businesses' profits.⁴⁸

3.50 The ART has also noted that the risks of corruption have been increased in recent years by: the increase in government control of information; the increased funding needs of political campaigns; the privatisation of government services and projects; the flow of Ministers and their staff to the lobbying industry on retirement from official duties; and large infrastructure funding decision, alongside other risks.⁴⁹

3.51 At least one Australian state government had previously made similar claims regarding being at a lower risk of corruption than other jurisdictions. This was not the surveyed opinion of residents of that jurisdiction however:

It has been suggested that the level of misconduct or corruption risk in Tasmania is less than in other jurisdictions. In this latest survey, we sought to test if this is a view shared by the broader community. It is not—88% of those survey (sic) agreed that 'people in Tasmania's public sector are just as likely to behave unethically as people in the public sector anywhere else in Australia'.⁵⁰

3.52 Western Australia's Corruption and Crime Commission argued that there has been no evidence provided that corruption does not exist at the national level:

The [National Anti-corruption Plan discussion paper] asserts that there is a low level of corruption within the Commonwealth sphere, but this assertion is not backed by substantive research into this issue, and/or the experience of a dedicated Commonwealth anti-corruption organisation.

The Commission's own experience is that corruption levels within state public sector organisations vary greatly from the levels these organisations claim to exist. The Australian experience of Royal Commissions, Parliamentary Inquiries and the Australian Wheat Board...illustrate the point that organisations can be motivated to under-report corruption that exists within them.⁵¹

3.53 It has also been suggested that the way the commonwealth has conflated corruption and fraud results in a lower awareness of corruption:

48 Law Council of Australia, Submission to Attorney-General's Department review of Australia's compliance with chapters three and four of the *United Nations Convention Against Corruption*, 2011, <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/docs-2400-2499/2412%20United%20Nations%20Convention%20against%20Corruption.pdf> (accessed: 3 May 2016), p. 3.

49 Accountability Round Table, Submission to Parliamentary Joint Committee on ACLEI, 21 January 2011, p. [4].

50 Integrity Commission, *Annual Report 2014–15*, Tasmania, 2015, p. 46.

51 Corruption and Crime Commission, *Submission to the National anti-corruption plan discussion paper*, 2012, p. 5.

[The] Commonwealth's heavy reliance on financial accountability and fraud control as integrity mechanisms also means a low sensitivity to detection and prevention of corruption *other than* fraud.⁵²

Recent incidents of corruption

3.54 Those who do not believe the federal sphere to be corruption free can point to many instances to show that corruption has in fact been a feature of Australian political life.

3.55 Recent years have shown several high-profile instances of alleged corruption at the commonwealth level. In 2005, the Australian Wheat Board made headlines for allegedly violating United Nations sanctions and Australian law by paying bribes to Iraqi leader Saddam Hussein to retain business.⁵³ In 2009, allegations emerged in the media that Securrency, a note-printing company half-owned by the Reserve Bank of Australia (RBA) and another company—Note Printing Australia, fully owned by the RBA—had engaged in corrupt conduct to secure contracts.⁵⁴ In 2015, an Australian Bureau of Statistics (ABS) employee was imprisoned for using unpublished official data to derive personal gain on the financial markets.⁵⁵

3.56 The ART provided evidence in 2012 of at least nine examples of corrupt conduct from 1999 to 2012 involving a range of public agencies at the commonwealth level.⁵⁶

3.57 While these cases provide evidence that the federal level of governance and politics is not free from corruption, they do not necessarily indicate whether the current system is working or not. On the one hand it can be argued that because these cases came to light the current system is working to prevent corruption, and catching it when it does occur. For example, the committee was informed by the AFP that the discovery and prosecution of the aforementioned ABS employee was as a result of the work of the FAC Centre.⁵⁷

52 Transparency International Australia and Griffith University, *National Integrity Systems Assessment—Final Report*, 2005, p. 31. Emphasis in original.

53 Commissioner the Hon. Terence RH Cole AO RFD QC, *Report of the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme*, 2006, p. xiv.

54 Joint Select Committee on the Australian Commission for Law Enforcement Integrity, *Integrity of overseas Commonwealth law enforcement operations*, 2013, pp. 9–11.

55 Helen Vines, 'Greedy' pair Lukas Kamay, Christopher Hill jailed over \$7 million ABS insider trading scam, Australian Broadcasting Company News, 17 March 2015, (<http://www.abc.net.au/news/2015-03-17/pair-sentenced-over-abs-insider-trading/6324526>, accessed: 3 May 2016).

56 Joint Select Committee on the Australian Commission for Law Enforcement Integrity, *Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity*, Accountability Round Table, *Submission 11*, pp. 4–5.

57 Mr Ian McCartney, Acting Deputy Commissioner, Operations, Australian Federal Police, *Committee Hansard*, 21 April 2016, p. 3.

3.58 On the other hand it can be argued that the cases that have come to light are only the few cases that have been discovered—principally through the media—with many other instances of corruption left undiscovered.

3.59 Extending this idea more broadly, the lack of evidence of corruption under the current system should not be extrapolated to there being no corruption, rather than the more limited interpretation of there simply being no evidence of corruption. It has been pointed out elsewhere that the absence of evidence of corruption does not mean that there is not a corruption problem.⁵⁸

Multiagency approach has flaws

3.60 Groups such as TI and the ART argue that the current multi-agency model is flawed, and is not adequate to prevent or discover corruption. In a particularly critical summary of the current system, TIA wrote in 2012:

The recent adoption of the term ‘model’ suggests that current Commonwealth arrangements reflect a degree of pre-existing planning or coherence which, in TIA’s assessment, is factually and historically inaccurate. The Commonwealth’s present arrangements would be better understood as the result of decades of largely uncoordinated developments in administrative law, criminal law and public sector management, together with political accident.⁵⁹

3.61 Elsewhere, ART has also criticised the existing system as being fragmented and ill-defined:

We note also that the core of the Federal Government’s approach of distributing accountability obligations among the Federal public service, non-statutory agencies, statutory agencies, statutory corporations and government business enterprises is contained in a network of inter-related statutes: the Public Services Act, Financial Management and Accountability Act and the Commonwealth Authorities and Companies Act. This collection of legislation has a range of deficiencies. It does not clearly distinguish between appropriate ex ante and ex poste accountability mechanisms or provide for clear processes. In addition, the accountability framework appears to have been developed in isolation of any clarification of how these statutory accountability obligations intersect with the extension of ministerial responsibility obligations to non-departmental governmental bodies outside the constitutional core of government. The consequence is an ill-defined and fragmented accountability framework that lacks a clearly identifiable and enforceable body of principles to guide the behaviour of public officials.⁶⁰

58 The Hon. T Smith QC, *Corruption: the abuse of power in Australia*, Australian Collaboration, 2010, p. 22.

59 Transparency International Australia, *Submission to the National anti-corruption plan discussion paper*, 2012, p. 9.

60 Accountability Round Table, *Submission to the International Review of Australia's Implementation of UNCAC*, 2012, <http://www.accountabilityrt.org/federal-anti-corruption-systems-review-submissions/> (accessed: 3 May 2016), p. 11.

3.62 The committee also heard evidence that the existing framework does not have the resources or inclination to investigate corrupt practices that might fall short of the definition of serious crime:

The Australian Federal Police and the fraud agencies that we have heard discussed are doing a good job; there can be no doubt about that. They are doing their best. We would seriously doubt that they are adequately resourced, and it is difficult for them to get on with prosecutions and get successful outcomes, but they do not have the resources, the time or the inclination to look at misbehaviour that falls short of criminal conduct. It is not really part of their job, so they are not really going to fill that gap, and nor should they, really; it is not their job.⁶¹

3.63 Professor Brown highlighted that the Australian Government is trying to prevent corruption through the multi-agency model, but noted 'a multi-faceted approach is not automatically a comprehensive approach, a well-coordinated approach or an approach that delivers satisfaction that all the gaps are actually being adequately covered'.⁶²

3.64 ART raised concerns that fragmentation and resourcing constraints might lead to corruption slipping through jurisdictional cracks, or that overlapping jurisdictions will similarly create opportunities for corruption to go unpunished.⁶³ TIA highlighted some areas of concern where there remain gaps that potentially allow corrupt activities to occur. TIA contended that:

Most federal agencies' anti-corruption efforts continue to go unsupervised (other than clear criminal conduct reported to the AFP), including around half of the total federal public sector not in the jurisdiction of the Australian Public Service Commission;

There are no independent mechanisms supporting federal parliamentary integrity (other than AFP investigations into criminal conduct);

Corruption prevention, risk assessment and monitoring activities are patchy and uncoordinated; and

The criminal law enforcement focus of the AFP Fraud and Anti-Corruption Centre, while important, includes foreign bribery, anti-money laundering and other criminal cases, and cannot provide the necessary oversight of 'softer' or 'grey area' corruption investigation and prevention activity across the federal sector.⁶⁴

61 The Hon. Anthony Whealy QC, Chairman, Transparency International Australia, *Committee Hansard*, 21 April 2016, p. 9.

62 Professor AJ Brown, *Committee Hansard*, 21 April 2016, p. 10.

63 Accountability Round Table, *Submission to the National anti-corruption plan discussion paper*, pp. 19–20.

64 Transparency International Australia, *Anti-corruption agencies in Australia*, position paper no. 3, January 2016, p.2.

3.65 The ART argued that the current multi-body approach employed at the commonwealth level is inadequate as it creates a shared assumption that there is effective external oversight, noting:

[The] danger of relying on a multi-body approach and shared responsibility was that each body was likely to assume effective oversight from every other body, and thus abrogate their own ultimate responsibility.⁶⁵

...

[No] one had ultimate responsibility and each body involved was likely to assume that all was well because the other body had been making sure that nothing corrupt was going on.⁶⁶

3.66 The multi-agency approach also relies on each agency developing the skills and expertise to monitor compliance, educate and investigate. Agencies are likely to have competing priorities and potential conflicts of interest in dealing with corruption internally. Internal systems are also at risk of themselves becoming corrupted.⁶⁷

3.67 The role of discretion in the current framework was also questioned. ART noted that there was discretion within the public service as to whether or not a matter was referred to the AFP, and then the AFP could determine whether to investigate. The ART argues that the AFP should investigate suspicions of corruption when they come to light; even if on the surface the consequence of a particular case appear minor.⁶⁸

3.68 Furthermore, the Australian Crime Commission's *Organised Crime in Australia 2015 Report* noted that 'as the sophistication of organised crime increases, corrupt conduct is likely to become less susceptible to discovery than was previously the case'.⁶⁹

3.69 The current investigatory mechanisms in place such as Royal Commissions and independent inquiries are used on an ad-hoc basis. Critics of these mechanisms note that the terms of reference are often written in such a way as to protect the

65 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity*, Accountability Round Table, *Submission 11*, p. 2.

66 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, *Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity*, Accountability Round Table, *Submission 11*, p. 4.

67 Accountability Round Table, *Submission to the National anti-corruption plan discussion paper*, pp. 20–21.

68 Accountability Round Table, *Submission to the National anti-corruption plan discussion paper*, p. 23.

69 Australian Crime Commission, *Organised Crime in Australia 2015 Report*, Canberra, 2015, p. 29.

government of the day.⁷⁰ The Law Council of Australia noted that these are only effective 'where there is a political will'.⁷¹ The importance of political will was highlighted in New South Wales in 2010 when the State government prorogued Parliament three months before the election, in what some commentators saw an attempt to avoid parliamentary committee scrutiny.⁷² The committee's Chair reported that as a result of this, 'the Committee was stymied in its efforts to uncover the facts surrounding the Gentrader transactions'.⁷³

Arguments in favour of a NAC

3.70 A national anti-corruption framework, adopting some of the properties used in the states and territories has been proposed to address the flaws identified in the current anti-corruption framework.⁷⁴ This report has already discussed the history of calls to establish a NAC, and the circumstances that lead to the creation of dedicated anti-corruption agencies in the states; this section will discuss some of the proposed benefits of such a system.

3.71 While the most prominent function of a NAC is the discovery and investigation of corruption, a NAC may also improve policy co-ordination, provide leadership and education services, reduce potential jurisdictional gaps, increase administrative efficiency, send an unambiguous signal that the issue of corruption is being taken seriously, and provide confidence to the public that corruption is minimised at the highest level of government.⁷⁵

3.72 Most of the state-based bodies also complete an educative function, as well as an investigatory one. Providing education services surrounding corruption can increase the resilience of organisations and individuals to corruption, and clarify expectations around what does and does not constitute corrupt behaviours.

70 Joint Select Committee on the Australian Commission for Law Enforcement Integrity, *Operation of the Law Enforcement Integrity Commissioner Act 2006*, Professor Brown, *Submission 15*, p. [4].

71 Law Council of Australia, Submission to Attorney-General's Department review of Australia's compliance with chapters three and four of the *United Nations Convention Against Corruption*, 2011, <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/docs-2400-2499/2412%20United%20Nations%20Convention%20against%20Corruption.pdf> (accessed: 3 May 2016), p. 1.

72 Alexandra Smith, 'Turn off: Keneally blocks probe into power sale by closing parliament', *The Sydney Morning Herald*, 22 December 2010; Imre Salusinszky, 'Keneally can't avoid sell-off probe', *The Australian*, 23 December 2010, p. 1.

73 Parliament of New South Wales General Purpose Standing Committee No. 1, *The Gentrader transactions*, 23 February 2011, p. ix.

74 Transparency International Australia and Griffith University, *National Integrity Systems Assessment—Final Report*, 2005, pp. 93–101.

75 Gabrielle Appleby, 'What's the case for a federal ICAC?', *The Drum*, 10 September 2014, <http://www.abc.net.au/news/2014-09-10/appleby-what's-the-case-for-a-federal-icac/5733712> (accessed: 25 February 2016).

3.73 The committee heard that there were significant educative benefits to having a stand-alone body: 'The educative benefits of the establishment of this at a Commonwealth level would be quite clear from the moment such a commission were established, and everything would flow from that'.⁷⁶

3.74 The establishment of a stand-alone NAC sends a strong signal to the general public, as well as those who are covered by the jurisdiction of the body, that corruption is taken seriously by the political establishment and that there is a commitment to preventing corruption.

3.75 Mr Quentin Dempster suggested that a dedicated anti-corruption body provides the public with confidence that the corruption is taken seriously and the work of the Parliament and administration is not based on undue influences:

Corruption is a secret transaction and very hard to discover. Without a capacity to expose it, the public is left with cynicism, distrust and conspiracy theories. The mere existence of a national integrity commission would go a long way, I believe, to help to nip corruption, through influence peddling and slush funding of politicians and political parties by powerful vested interests, corporates or trade unions, tycoons or criminals, in the bud. It would show the public of Australia that it is their parliament, through the honourable discharge of their duties by elected members of the House of Representatives and the Senate, which runs the country, not any external influence-peddling power operating through devices conducive to corruption.⁷⁷

3.76 Associate Professor Gabrielle Appleby—quoted in *The Mandarin*—explained:

One of the main purposes of these types of bodies is to promote public confidence in the integrity of government administration. The establishment, in and of itself, is one way of demonstrating that.⁷⁸

3.77 The *State of the Service Report 2014–15* argued that there is a strong correlation between strong ethical leadership and perceptions of how well an organisation deals with and manages corruption.⁷⁹ A NAC sends a strong signal to the public, public servants and political participants that, at the highest level of government leadership, corruption is being taken seriously.

3.78 The Queensland Integrity Commissioner noted that relying of broad-based awareness training is not sufficient to address the challenges of corruption, and that a

76 Mr Quentin Dempster, *Committee Hansard*, 21 April 2016, p. 28.

77 Mr Quentin Dempster, *Committee Hansard*, 21 April 2016, p. 24.

78 Stephen Easton, 'Federal ICAC case strong, despite anti-bribery measures', *The Mandarin*, 27 April 2015, <http://www.themandarin.com.au/31553-anti-bribery-measures-beefed-up-but-the-case-for-a-federal-icac-remains/?pgnc=1> (accessed: 25 February 2016).

79 Australian Public Service Commission, *State of the Service Report 2014–2015*, 2015, pp. 46–48.

specialised body that can provide tailored, confidential and practical advice would improve the integrity system.⁸⁰

3.79 The establishment of an independent and ongoing body that does not rely on the government of the day for its establishment or terms of reference addresses some of the shortcoming of the current system of independent inquiries and Royal Commissions. A NAC would be able to monitor whether or not governments and organisations appropriately respond to recommendations and reports. Furthermore, the perception that governments carefully insulate themselves from any adverse findings through the careful crafting of terms of references may be eroded. As highlighted to the committee by TIA:

The great difference between the kind of task force that the Federal Police were talking about and this body is that it would be permanent. Task forces come and go. They are resourced sometimes and not resourced at other times. They tend to be split up by their very nature. What we are advocating is one body that, of course, draws on all of those spectrums like ASIC, the Australian Taxation Office and the Australian Crime Commission but that is totally and solely focused on serious crime of that nature.⁸¹

3.80 It was argued that a NAC is a clear indication that corruption will be addressed. Associate Professor Gabrielle Appleby has argued that 'by fostering greater awareness and education, the introduction of a new body also provides an important moment around which cultural change within government can occur'.⁸² The APSC appears to recognise that preventing corruption requires a cultural commitment to anti-corruption supported by an adequate framework:

While preventing corruption is an important goal for Australian Government administration, a focus on corruption prevention alone is too narrow to support a robust culture of integrity. This means that employees, managers and leaders must do what is right, rather than merely avoiding doing what is wrong. The new APS Values and Employment Principles provide an opportunity for agencies to reinforce a culture of ethical awareness and integrity across the APS when embedding them into work. The APS Values and Employment Principles need hardwiring into systems, processes and procedures and should form the basis for every management decision.⁸³

3.81 While most submissions and witnesses seemed to agree that a measure of independence was required for integrity commissions to complete their work, it was pointed out to the committee that balancing independence and accountability has

80 Queensland Integrity Commissioner, *Submission 2*, p. 1.

81 The Hon. Anthony Whealy QC, Chairman, Transparency International Australia, Committee Hansard, 21 April 2016, p. 8.

82 Gabrielle Appleby, 'What's the case for a federal ICAC?', *The Drum*, 10 September 2014, <http://www.abc.net.au/news/2014-09-10/appleby-what's-the-case-for-a-federal-icac/5733712> (accessed: 25 February 2016).

83 Australian Public Service Commission, *State of the Service Report 2012–2013*, 2013, p. 71.

proved notoriously difficult. The IPA noted that following the establishment of anti-corruption agencies, governments have been disinclined to undertake necessary modifications for fear of being accused of attempting a cover-up.⁸⁴

3.82 TIA, quoted above, highlighted that there are a number of areas—such as Parliament, sections of the public service, and matters such as electoral funding—that do not currently fall under the auspices of any anti-corruption body.⁸⁵

3.83 Professor AJ Brown from Griffith University argued for an overarching body to cover other Commonwealth departments and agencies, arguing that:

Currently there are very large areas of important Commonwealth public administration which are not subject to effective review and oversight in relation to the management of integrity risks and breaches. While it is valid and sensible for the Commonwealth Parliament to prioritise those areas of activity which should be subject to closer scrutiny and oversight than others, the fact is that all agencies and departments should be included in these elements of the Commonwealth's overall integrity system.⁸⁶

3.84 Speaking to the committee, Professor Brown argued further that the areas of corruption most concerning to the community are often those with the least oversight, and there remain tracts of public administration inadequately covered by the current system:

The other big gaps that exist relate to jurisdiction. We have heard a lot from the Attorney-General's Department about the Australian Public Service and about APS agencies. There is something of a regime that governs APS agencies, but, when it comes to non-criminal and a broader comprehensive approach to corruption risks, we have to recognise that Australian Public Service agencies only account for around half, if you are lucky, of total Commonwealth public sector activity and agencies. There is a huge issue around having a coordinated system that works right across the whole of the Commonwealth. That is without going close to parliamentary and political integrity, to political finance risks and to all the other aspects of corruption that really worry the community, just as if not more powerfully than the types of corruption problems that occur within the public service or law enforcement or at the coalface.⁸⁷

3.85 A NAC with broad-ranging jurisdiction may prevent an investigation into corrupt behaviour being prematurely terminated through an activity falling into a

84 Mr Simon Breheny, Director of Policy, Institute of Public Affairs, *Committee Hansard*, 21 April 2016, p. 20.

85 Transparency International Australia, *A ten-point integrity plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan*, May 2012, pp. 11–13.

86 Joint Select Committee on the Australian Commission for Law Enforcement Integrity, *Operation of the Law Enforcement Integrity Commissioner Act 2006*, Professor Brown, *Submission 15*, p. [2].

87 Professor AJ Brown, *Committee Hansard*, 21 April 2016, p. 10.

jurisdictional gap and ensure that all public servants and office holders are accountable.

3.86 A NAC provides a single point of contact for complaints and tips from individuals. The Queensland Integrity Commissioner highlighted that public servants are less likely to seek advice on corruption if the agency or institution in question will be investigating itself:

In providing advice on specific situations, there is a significant risk if the body giving the advice is also the one which will need to investigate any subsequent complaint. In addition to this conflict risk, in my experience public officers are less likely to seek advice if the body giving the advice may also investigate a complaint against them. They will be naturally reticent to fully disclose a matter which puts them at risk of further action.⁸⁸

3.87 It was suggested that a NAC removes this conflict of interest as an independent agency has no incentive to cover up any corrupt activities that may have occurred. While the committee accepts that the APS has some mechanisms in place to prevent and respond to corruption, the 2014–15 State of the Service report noted that of the APS employees who had witnessed behaviour that *they* perceived as corrupt, only 34 per cent had reported that behaviour.⁸⁹

3.88 Some submitters suggested that the establishment of a NAC provides an opportunity to improve collaboration with state bodies and concentrate policy expertise in a single agency. Currently each agency under the commonwealth framework maintains their own policies and expertise to ensure compliance with anti-corruption requirements. The establishment of a NAC would reduce duplication across the public sector while at the same time developing corporate knowledge that could be accessed throughout the public sector.

3.89 In addition to discovery of corruption, a single body may provide 'systemic oversight, education and coordination for the existing mechanisms'.⁹⁰ A NAC would be well placed to work with state-based anti-corruption bodies to discover and prevent corruption. TIA notes that:

One of the most robust elements of Australia's anti-corruption systems is the growing presence, at State level, of coordinated capacity for the independent investigation, oversight and review of serious non-criminal misconduct risks across the entire public sector.⁹¹

88 Queensland Integrity Commissioner, *Submission 2*, p. 2.

89 Australian Public Service Commission, *State of the Service Report 2014–2015*, 2015, p. 46.

90 Gabrielle Appleby, 'What's the case for a federal ICAC?', *The Drum*, 10 September 2014, <http://www.abc.net.au/news/2014-09-10/appleby-what's-the-case-for-a-federal-icac/5733712> (accessed: 25 February 2016).

91 Transparency International Australia, *A ten-point integrity plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan*, May 2012, p. 12.

3.90 It can be assumed that a single body with responsibility for anti-corruption would be able to build stronger working relationships with key state-based counterparts, further strengthening Australia's anti-corruption system.

Effectiveness of anti-corruption agencies: experiences of the states

3.91 The expenditure of public money always requires justification. Any expansion of public services should be accompanied by expectations and measures of success. In a polity with no corruption, there would be no need to take any anti-corruption measures. In the absence of anti-corruption measures it is doubtful that any corruption would be uncovered, creating the impression of there being no corruption; even if this is only because there is no-one looking.

3.92 Careful thought needs to be given to measuring success in the case of an anti-corruption agency. An anti-corruption agency that uncovers no corruption may be any of; extremely successful, incompetent, severely under resourced, or operating in a corruption free environment. The response to this problem in Australia has typically been to rely on qualitative measures of trust in government and perceptions of corruption. As the former NSW Premier Nick Greiner argued:

...it would also be crass and naïve to measure the success of the independent commission by how many convictions it gets or how much corruption it uncovers. The simple fact is that the measure of its success will be the enhancement of integrity and, most importantly, of community confidence in public administration in this State.⁹²

3.93 Due to this, the NSW ICAC has commissioned surveys addressing perceptions of ICAC's effectiveness in terms of its success in exposing and reducing corruption. The most recent report, published in 2013, found that:

More than two-thirds indicated that the ICAC had been successful at exposing corruption and more than half indicated that the ICAC had been successful at reducing corruption. While the percentage of respondents who indicated that the ICAC had been successful at exposing corruption has decreased since post-2000, the percentage who thought that the ICAC had been successful does not appear to have markedly changed and the percentage who thought that the ICAC is a good thing for the people of NSW appears to have increased from an already high starting point.⁹³

3.94 In addition, the same report concluded that '[a]most all respondents who were aware of the ICAC indicated that it was a good thing for the people of NSW'.⁹⁴

92 The Hon. Mr Greiner, Premier of New South Wales, *Legislative Assembly Hansard*, 26 May 1988.

93 Independent Commission Against Corruption, *Community attitudes to corruption and to the ICAC: report on the 2012 survey*, July 2013, p. 19.

94 Independent Commission Against Corruption, *Community attitudes to corruption and to the ICAC: report on the 2012 survey*, July 2013, p. 19.

3.95 The Tasmanian IC has commissioned three community perception surveys since its inception in 2010. The Tasmanian IC's *Annual Report 2014–15* reported on the latest of these surveys conducted in May 2015:

A key finding was that the majority—92% of respondents—believe that Tasmania needs an Integrity Commission (89% in 2013) and that 61% of respondents also agree there is now more attention on ethical behaviour in Tasmania's public sector since the Commission started operating in 2010.

A large number (87%) of respondents agreed that 'there will always be some dishonesty, unethical behaviour and corruption in the public sector' (90% in 2013). There was a significant decrease in the responses indicating that 'there is no point reporting corruption or unethical behaviour in the Tasmanian public sector as nothing will be done about it' (22%, down 8%). This indicates that Tasmanians are becoming increasingly confident that misconduct will be appropriately dealt with. This is a key objective for the Commission, set out in its legislation.⁹⁵

3.96 In October 2015, the outgoing Tasmanian Integrity Commissioner, Diane Merryfull, spoke to the ABC about the early years of the IC:

I think it's been a bit of a surprise to people that the Integrity Commission's been so effective.

Often when I speak to senior people across the public sector I don't think they expected the Integrity Commission would be as public and as resolute in pursuing its agenda as it has been.

The Integrity Commission is in the process of proving itself to everybody, including the Tasmanian Government.

We believe that transparency and accountability are the absolute essentials to improving integrity.⁹⁶

3.97 In 2014 SA undertook a review to consider whether the SA ICAC had 'made an appreciable difference to the prevention or minimisation of corruption, misconduct and maladministration in public administration'. The report concluded that:

It is not possible to make this assessment on a strictly quantitative basis. However it is possible to draw inferences from the nature of the organisation which has been created and the activities in which it has been involved. The ICAC website provides an insight into the educational activities which have been undertaken. There would seem to be no doubt that the purpose and function of ICAC is reasonably well-known in the community and that public officers, in particular, would be aware of its role. It is likely that information and advice given to public authorities by ICAC has led to a heightened awareness of the importance of institutional

95 Integrity Commission, *Annual Report 2014–15*, Tasmania, 2015, p. 46.

96 Michael Atkin, 'Tasmanian senior public servants resistant to change, departing integrity watchdog boss says', *Australian Broadcasting Corporation*, 7 October 2015, <http://www.abc.net.au/news/2015-10-07/tasmanian-public-servants-resistant-to-change-says-merryfull/6832330> (accessed: 13 April 2016).

probity. Publicity has also been given to the matters in which there has been a referral to prosecuting and disciplinary authorities.

In the light of these educative activities and the action which has been taken by the Commissioner in particular matters, I am of the view that the operations of ICAC have contributed in an effective manner to the prevention of conduct of the type which the Commissioner is required to investigate.⁹⁷

3.98 Following the conviction of Queensland parliamentarian Gordon Nuttall in 2009, then Queensland Premier gave a speech on purpose of the Qld CCC, and whether anti-corruption bodies were effective:

It is the great irony of accountable public administration that if you establish an independent watchdog, give it the powers and resources needed to investigate improper behaviour and it exposes wrong doing, question marks will be raised about your administration. Conversely, if you have no such independent watchdog and nothing is investigated or discovered your administration will escape perceptions of odious behaviour.

Despite the inevitable embarrassment from time to time, I would much rather live and work in a system which is not afraid to pick up the rock and discover the ugliness underneath than one that is content to leave the rock alone and assume that an undisturbed rock is a sign of good health.

So, are these mechanisms a good investment? Yes.⁹⁸

3.99 The WA CCC—in addition to the regular metrics on the number of allegations received and the number of reports published—also reports on the average cost of service per full-time equivalent employed in agencies under the WA CCC's jurisdiction. In 2014–15 it was reported that it cost \$205 per FTE employed within public authorities under the WA CCC's jurisdiction.⁹⁹

Structure of a national anti-corruption commission

3.100 There are many possible structures of a NAC, as evidenced by the diversity of organisations that have been developed at state level; each with broadly the same purpose, but with differing organisational structures, responsibilities and powers.

3.101 In 2005 TI's NISA Report recommended the establishment of a NAC. The recommendations in the NISA Report outline in some detail the best-practice principles and administrative arrangements that the body should take. The recommendation to establish as NAC—in full—reads:

97 The Hon. Kevin Duggan AM, QC, *Report of a review of the operations of the Independent Commissioner Against Corruption and the Office for Public Integrity for the period 1 July 2014 to 30 June 2015*, Adelaide, 2015, p. 21.

98 The Hon. Anna Bligh, 'Has nothing—or everything—changed in Queensland?', *Crikey*, (<http://www.crikey.com.au/2009/07/29/anna-bligh-has-nothing-or-everything-changed-in-queensland/>, accessed: 11 April 2016).

99 Crime and Corruption Commission, *Annual Report 2014–15*, Western Australia, September 2015, p. 25.

That the Commonwealth Government's proposed new independent statutory authority be tasked as a comprehensive lead agency for investigation and prevention of official corruption, criminal activity and serious misconduct involving Commonwealth officials, based on the following principles:

1. That the agency's jurisdiction not be limited to select agencies but include all Commonwealth officials from secretaries or equivalent down, including employees of Commonwealth-owned corporations, and any other persons involved or implicated in wrongdoing affecting the integrity of Commonwealth operations;
2. That the agency be made (i) an ex officio member of the Commonwealth Governance Review Council or other integrity coordination body created pursuant to recommendation 2, or failing that the existing Administrative Review Council, and (ii) subject to parliamentary oversight by a suitable parliamentary standing committee, preferably the same committee responsible for overseeing other core Commonwealth integrity agencies (see recommendation 3);
3. That the jurisdiction of the agency also include Commonwealth parliamentarians and ministers provided that, if recommendation 6 is taken up and an effective parliamentary and ministerial integrity system established, the agency's jurisdiction is only triggered by a request of the Parliamentary Integrity Commissioner, presiding officer of either House, or where in the opinion of the agency head an important matter of public interest would otherwise go uninvestigated;
4. That the agency be charged with a statutory responsibility to promote integrity and accountability as well as investigate wrongdoing, and be given a commensurate positive title rather than one defined by crime, misconduct or corruption;
5. That the agency be empowered and required to:
 - (i) undertake inquiries of its own motion as well as receive and investigate complaints from whatever source;
 - (ii) exercise concurrent jurisdiction and participate in a statutorily-based investigations clearing house with other federal investigative agencies including the Commonwealth Ombudsman and Australian Federal Police; and
 - (iii) share all relevant information with other Commonwealth and state integrity institutions, and conduct cooperative investigations with them including delegating its own investigatory powers, when in either its or their opinion their own jurisdiction is also involved;
6. That the Commonwealth review its operational definitions of corruption to include internal fraud and any other offences or types of serious

misconduct with the potential to seriously affect public integrity, and revise its reporting, monitoring and prevention policies accordingly.¹⁰⁰

3.102 The recommendation of the NISA report goes to the jurisdiction, oversight, responsibilities, and powers of a NAC. It makes clear that while the most public feature of a NAC is the investigation of allegations of corruption, the role of a NAC extends to promoting integrity and accountability. The body would be accountable to a suitable parliamentary standing committee (in the same way that PCJACLEI currently monitors the performance of ACLEI) and work with state and territory integrity bodies to help prevent and investigate corruption regardless of where it occurs.

3.103 The committee also heard that an effective model could be the use of a coordinating council model (CCM) to remove concerns regarding conflicts of interest. In a CCM a central body acts as a clearing house for allegations of corruption, referring the investigation to an existing agency which already has the specialist expertise to deal with the allegations. Professor Graycar explained that a CCM allows the existing administrative infrastructure and expertise to investigate allegations of corruption, while an external body provides some assurance that matters are being investigated:

In essence, the council would direct the traffic rather than set up a separate body with investigative and prosecutorial powers.

...

One is an organisation that directs the traffic, but reports, perhaps to the Attorney, perhaps to a parliamentary committee, on the way it has done this, how it has increased awareness of corruption in society, how it has monitored performance and how it has monitored Australia's adherence to our international agreements, and so on. But, in addition, very often we find that our major anti-corruption agencies do not have all the detailed knowledge of the transgressions in the specific policy area.

...

Again, the council would be able to identify the way in which inspectors-general deal with their own internal issues and the way in which the various players perform, all of whom have a role in increasing integrity. The Ombudsman; the Public Service Commissioner; the Auditor-General, who chases stuff; the AFP: all of them have a role.¹⁰¹

3.104 The structure proposed by TIA also clearly defines the relationship between the NAC and the executive. Professor AJ Brown from Griffith University has argued that an anti-corruption body needs to be free from the influence of the executive:

100 Transparency International Australia and Griffith University, *National Integrity Systems Assessment—Final Report*, 2005, pp. 92–93.

101 Professor Adam Graycar, *Committee Hansard*, 21 April 2016, p. 22.

The starting principle should be that the agency (as a standing agency) has a clear, legislated jurisdiction which everyone understands, and which does not change on the whim of the executive.¹⁰²

3.105 Through ensuring that there is sufficient distance from the executive—while maintaining appropriate oversight—the NAC will be free to investigate corruption wherever it may occur. Sufficient distance also addresses the concerns raised earlier about the perception that governments can shield themselves from unwanted scrutiny.

3.106 Several proponents and opponents of a NAC have highlighted the importance of resourcing to the efficacy of anti-corruption regimes. Associate Professor Appleby warned that: 'A poorly funded anti-corruption body also poses a danger, providing a façade of increased commitment to integrity without adequate resources to carry through on that mandate'.¹⁰³ Similarly, a critic of the NAC approach noted that:

...if resources are not abundant, the cynics might suggest that politicians and players are working behind the scenes in order to ensure that the new agency is in fact hamstrung or politically toothless, so that business can proceed as normal. This scenario has played out with other anti-corruption agencies in Europe and Asia.¹⁰⁴

3.107 Any new body has to be appropriately funded to perform its designated tasks to the standards expected by the Australian public.

Exploring models for Australia's national anti-corruption needs

3.108 As discussed above, there are multiple different models that Australia could adopt to prevent corruption. These models need to take into account the community's appetite for increased costs—both financial and legal—in exchange for increased certainty of public integrity, as well as the kinds of corruption present in Australia.

3.109 The committee was informed by Professor Graycar that 'much of the research that has been done on poor country corruption and we often try to apply poor country models to rich counties', despite being aware that the kinds of corruption in rich and poor countries are very different.¹⁰⁵ The importance of finding an appropriate anti-corruption model for the given socio-political environment is highlighted by the fact that of the countries listed as less corrupt than Australia on TI's *Corruption Perception Index*, only one has a dedicated national anti-corruption agency.¹⁰⁶

102 Joint Select Committee on the Australian Commission for Law Enforcement Integrity, *Operation of the Law Enforcement Integrity Commissioner Act 2006*, Professor Brown, *Submission 15*, p. [4].

103 Gabrielle Appleby, 'What's the case for a federal ICAC?', *The Drum*, 10 September 2014, <http://www.abc.net.au/news/2014-09-10/appleby-what's-the-case-for-a-federal-icac/5733712> (accessed: 25 February 2016).

104 Professor Adam Graycar, *Submission 1*, p. 13.

105 Professor Adam Graycar, *Committee Hansard*, 21 April 2016, p. 17.

106 Professor Adam Graycar, *Committee Hansard*, 21 April 2016, p. 18.

3.110 To this end, TIA updated the committee on their ongoing research efforts 'for the setting up of a national integrity system analysis—that is, broad based, comprehensive research into all of those difficulties to see which is the best way forward'.¹⁰⁷

3.111 Professor Brown from Griffith University informed the committee of research currently underway—in partnership with TIA—on identifying appropriate anti-corruption systems in Australia.¹⁰⁸ This research would draw together the experiences of the Australian jurisdictions in tackling corruption and may provide insights into how the Australian Government could improve its own anti-corruption measures. Professor Brown reported that the NSW and Queensland integrity agencies and the Attorney-Generals' Department, had already engaged with this research. The research project is currently awaiting the outcome of an Australian Research Council research grant funding round before progressing further.¹⁰⁹

3.112 Highlighting the importance of additional research, the committee was informed that there has been no research on anti-corruption agencies in federal systems. Professor Graycar reported to the committee:

I have just started a piece of research...on anti-corruption agencies in federal systems. There has been no research on that at all. Most of the countries that have collaborative models are not federal systems, so it is not as if there is a great body of anti-corruption agencies or anti-corruption councils; they are all dealt with in different ways depending on the problem they are trying to solve.¹¹⁰

3.113 TIA concluded: 'whatever way you look at it, though, I think you need to do research into this topic and come up with a number of models'.¹¹¹

Committee view

3.114 The establishment of a NAC is a significant decision. The tension of weighing up the creation of a new body with significant powers versus the need to prevent corruption was eloquently expressed by veteran journalist Mr Quentin Dempster:

I wish we did not have to have anti-corruption commissions. They have extraordinary coercive, sometimes you could say draconian, powers. Reputations can be damaged, sometimes unfairly.

...

The thing I wanted to say from my observation here in Queensland and in New South Wales is that we have had these institutions—these states have

107 The Hon. Anthony Whealy QC, Chairman, Transparency International Australia, *Committee Hansard*, 21 April 2016, p. 9.

108 Professor AJ Brown, *Committee Hansard*, 21 April 2016, p. 14.

109 Professor AJ Brown, *Committee Hansard*, 21 April 2016, p. 14.

110 Professor Adam Graycar, *Committee Hansard*, 21 April 2016, p. 20.

111 The Hon. Anthony Whealy QC, Chairman, Transparency International Australia, *Committee Hansard*, 21 April 2016, p. 13.

had the benefit of what really has been a cutting edge of countermeasures of corruption, and it has been fraught with difficulty and great contention by the polities and the politicians, the lawyers and public officials in those jurisdictions, but I think the public benefit of their existence is substantial.¹¹²

3.115 The decision between the establishment of a NAC and the multi-agency model is not a binary choice. Both should be components of Australia's integrity system. Agencies still need to have in place appropriate safeguards to minimise corruption, leaders will still have to model the behaviours they expect in their subordinates, and the legislature will be called upon—from time to time—to establish independent inquiries on specific matters.

3.116 This report has highlighted the shortcomings of the existing arrangements. It has also identified some of the risks and challenges to strengthen Australia's robustness against corruption at the highest levels. The committee will endeavour to explore these matters during the course of its inquiry while considering various anti-corruption models.

3.117 The committee is of the view that further Australian specific research will assist in future considerations of the establishment of an NAC. The committee encourages further research that brings together the expertise of academia, current anti-corruption agencies, and the public and non-governmental sectors to assess the merits, scope and structure of possible anti-corruption mechanisms. Although it may be premature for this interim report to make recommendations with regard to the establishment of NAC, findings from such research can aid the government and the Parliament in determining the most suitable model if NAC were to be established.

Recommendation 1

3.118 The committee recommends that the Australian Government support current and sound future research into potential anti-corruption systems appropriate for Australia including the research led by Griffith University, in partnership with Transparency International Australia.

Senator Zhenya Wang

Committee Chair

112 Mr Quentin Dempster, *Committee Hansard*, 21 April 2016, p. 24.

