



Stephen Charles

Stephen Charles

[The Mandarin](#)

08.01.2015

[corruptionIndependent Broad-based Anti-corruption CommissionIndependent Commission Against CorruptionStephen Charles](#)

Corruption doesn't just happen at the state level. From AWB to Securrency and numerous incidents within the Canberra public service, who's watching the Commonwealth?

Last year Prime Minister Tony Abbott, asked by a reporter if there ought to be a Commonwealth anti-corruption commission, replied "no", saying he thought Canberra was a "pretty clean polity". It is possible that not many people agree with him – a Griffith University [Centre for Governance and Public Policy survey](#) found the federal government now ranks third behind state and local government on the crucial issue of trust.

In May last year Greens leader Christine Milne introduced in Parliament a bill to create a national anti-corruption body, saying at the outset that “the federal government is the only jurisdiction without the infrastructure to confront corruption”. Milne continued to make a powerful case for the creation of such a body; it’s the third time the Greens have put before the Parliament a bill to “crack down on public sector corruption and promote integrity in our public institutions” by creating such an office. Unsurprisingly, the bill was once again voted down.

The principal argument in favour of a federal anti-corruption commission can be very shortly stated. Corruption occurs when and where money, power and influence are found and persons pursue them in a criminal or improper way. Each state government now has an anti-corruption body because each controls money, power and influence in great quantity.

But by far the largest quantity of each is in the control of the Commonwealth government in Canberra and there is no obvious justification for assuming or asserting that some cleansing wind purifies the air in Canberra and stops abruptly at the outward boundaries of the ACT. In this context it should be noted the federal government each year purchases tens of billions of dollars of goods and services. In and between the years 2006 and 2009, the Defence Department alone spent more than \$48 billion. In 2009 there were more than \$45.5 billion worth of tenders sought by this department.

Corruption is usually well hidden, it is difficult to discover and expose, and it needs a body with the powers and bite of the New South Wales Independent Commission Against Corruption to achieve this result. And the Commonwealth ought to be an enthusiastic supporter of the creation of such a body since it is both a signatory of the United Nations Convention Against Corruption and a member since 2013 of the Open Government Partnership. Article 36 of UNCAC requires Australia, as a state party, to:

“... ensure the existence of a body or bodies specialised in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence ... to be able to carry out their functions **effectively** and without any undue influence. Such persons or staff of such body or bodies shall have the

appropriate training and resources to carry out their tasks.”
(emphasis added)

No such body or system has been established by the Australian government. Instead, the government created a specialised anti-corruption body, the Australian Commission for Law Enforcement Integrity, but initially confined its jurisdiction to the activities of three law enforcement bodies: the Australian Federal Police and the Australian Crime Commission, and has since added the Australian Customs and Border Protection Service, the Australian Transaction Reports Analysis Centre, the Crimtrack agency, prescribed aspects of the Department of Agriculture, and the former National Crime Authority.

There is now an inquiry underway as to whether ACLEI’s jurisdiction should be extended to cover the whole Department of Agriculture, the Australian Securities and Investments Commission, the Attorney-General’s Department and the Australian Taxation Office. But even if these bodies are brought within ACLEI’s jurisdiction, it will still not have jurisdiction over most public servants, members of Parliament, their staff, the judiciary or most federal bodies or persons making decisions or providing services involving the expenditure of public funds in the Commonwealth.

The Office of Integrity Commissioner and ACLEI were established by the *Law Enforcement Integrity Commissioner Act 2006*. The scheme of this act is to place various bodies under ACLEI’s jurisdiction, and to give ACLEI the primary role of investigating law enforcement-related corruption issues, giving priority to systematic and serious corruption. ACLEI also collects intelligence about corruption in support of the Integrity Commissioner’s functions.

The *LEIC Act* functions, however, by establishing a framework under which the Integrity Commissioner and the relevant agency heads are to prevent and deal with corrupt conduct jointly and co-operatively. The arrangement accepts that each agency will have set up internal corruption controls and will maintain continuing responsibility for the integrity of its staff members. The *LEIC Act* then requires the head of an agency in ACLEI’s jurisdiction to notify the Integrity Commissioner of any information or allegation that raises a corruption issue in that agency. The government’s approach to preventing corruption has therefore been that no single body should be

responsible, rather that there should be a range of bodies and governmental initiatives to promote accountability and transparency. The shared responsibility also relied on the obligation imposed on each agency to refer issues involving corruption to the Integrity Commissioner.

All these issues have repeatedly been taken up by the Accountability Round Table, a non-partisan body of individuals concerned to pursue the achievement of accountability and transparency in government throughout Australia, in a series of submissions to governments at the federal level since at least the start of January 2011. The ART's concerns are that even with the bodies presently under consideration, the jurisdiction of ACLEI is inadequate, and Australia needs a single national anti-corruption body covering the whole Commonwealth sector.

The risk of corruption is increasing

The ART has been concerned that the risk of corruption is continuing to increase exponentially. But most of all the ART seeks to challenge the government's approach to corruption, with no single body being responsible; the danger being that a multi-body approach and shared responsibility results in no body having ultimate responsibility and each body involved being likely to assume that all is well because there is someone else making sure that nothing corrupt is occurring.

Not only does this mean that corruption can fall through the gaps between the various bodies, but also, since the system depends on co-operation between the bodies and their heads, there can be a variety of reasons for the head of one agency not referring a matter to the Integrity Commissioner. In the ART's view, its arguments have been made good by the happening of a succession of scandals in the Commonwealth arena, occurring while ACLEI was the only body supposedly in charge of investigating any corruption in that area.

There are numerous instances of misconduct in government agencies and entities at the intersection of money, power and influence. From the Australian Wheat Board scandal to the more recent bribery allegations concerning Note Printing Australia and Securency. ART submissions to the Attorney-General's Department in 2012 noted at least nine examples of corrupt conduct involving a range of public agencies including companies closely associated with the RBA, an assistant commissioner of taxation, evi-

dence of corruption of the Defence procurement system, bribery of an ATO inspector, corruption of at least 15 Customs and Border Protection officers and rorting of allowances by employees in the Attorney-General's Department. In May 2012 information was revealed from a top-secret Polaris Task Force Report of "rampant corruption" involving customs and quarantine officials, port workers and organised criminals.

"... at least 2120 APS employees were investigated for suspected breaches of the Commonwealth code of conduct ..."

The public services commissioner's [*State of the Service report of 2010-11*](#) indicated that at least 2120 APS employees were investigated for suspected breaches of the Commonwealth code of conduct involving dishonesty, theft (including identity theft), misuse of Commonwealth resources, misuse of information for private gain, misuse of authority or power or conflict of interest.

A *Sydney Morning Herald* investigation led to reports in September 2011 by Linton Besser that there had been over 3800 internal investigations of APS staff in nine departments and 1300 in the Department of Defence; in the previous two years 83 internal investigations in the ATO; and in the previous 12 months in 10 agencies, 21 allegations of corruption, 65 of conflicts of interest and 47 cases of fraud. But Besser also found that the AFP concentrated on drug traffic and counter-terrorism and were reluctant to deal with fraud matters, and would only deal with official misconduct which touched on criminality at the top end of the spectrum because it had other priorities.

As recently as September 17, a man who worked for the Australian Bureau of Statistics pleaded guilty in the Melbourne Magistrate's Court to passing inside information on employment, trade and retail figures moments before they were released to the market to a banker who used the data to make trades on currency markets based on which direction the Australian dollar was expected to move. The scheme was alleged to have reaped \$7 million for the banker in illegal foreign exchange trades.

The ART's case for the necessity to set up an anti-corruption commission in Canberra argues that the risks of corruption have been increasing in recent years for a variety of reasons. These include the increase in government control of information, the ever-increasing need for funding of political

campaigns, the methods employed by government and the failure to enact legislation to provide adequate controls and transparency, the commercialisation of government services and projects, the development of lobbying, the inadequacies of any attempt to control that activity and make it transparent in a timely manner, and the failure to stop or control the flow of ministers and their staff to the lobbying industry on retirement from their positions.

Combined with these factors there is an increased risk of corruption resulting from the impact on major vested commercial interests of the significant changes that will be needed to address the problems posed by climate change and the exhaustion of natural resources, including energy, water and phosphate.

Relying on co-operation between a range of bodies covering only part of the activities of the Commonwealth was never a satisfactory approach to the prevention of corruption in the federal area, and has been shown to be completely ineffective. It is essential that there be in place a single body with overarching responsibility to expose and prevent corruption.

It is high time that a comprehensive independent integrity system was created for the Commonwealth, incorporating a general purpose Commonwealth anti-corruption agency with educative, research and policy functions and all necessary powers, and which is subject to parliamentary oversight.

This is edited extract from the article “Do we need a federal ICAC?” in the latest [Victorian Bar News journal](#)