

## Democracy in Australia – Corruption

### Corruption in Australia

Australia is a signatory to two important international anti-corruption conventions: the United Nations Convention against Corruption (entered into force 14 December 2005) and the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials (entered into force 15 February 1999). In 1999, the Commonwealth Parliament passed the *Criminal Code Amendment (Bribery of Foreign Public Officials) Act* to implement Australia's obligation under the OECD Convention.

Until very recently New South Wales (the Independent Commission Against Corruption), Queensland (Crime and Misconduct Commission) and Western Australia (Corruption and Crime Commission) were the only states to have specialised independent bodies to deal with corruption. In late 2012, the Victorian Government introduced legislation establishing the Independent Broad-based Anti-corruption Commission, replacing the Office of Police Integrity with a broader anti-corruption commission, modelled on the New South Wales Independent Commission Against Corruption. The South Australian government has recently appointed its first Independent Commissioner against Corruption, in preparation for the commencement of its first anti-corruption body in late 2013. Tasmania currently has an Integrity Commission, which plays an advisory and educational role in enhancing ethical standards for those in public office. There is not, however, any similar commitment from the Australian Government or the Opposition.

There remains no statutory Commonwealth anti-corruption body. The Commonwealth Ombudsman has expressed concern that his Office has the sole responsibility for investigations into corruption allegations (Annual Report 2003-04). In the absence of a federal anti-corruption commission it is left to journalists and whistleblowers to expose wrongdoing. The fragmented nature of Australian defamation laws makes it difficult for journalists to expose corruption (Hindess, 2004), though the commencement of the *Public Interest Disclosure Act* in mid-2013 may prove somewhat beneficial for future Commonwealth whistleblowers.

### International comparisons

Australia has a good record of anti-corruption performance on the international scales designed by Transparency International. However, Transparency International has previously criticised Australian law for its low and ineffective penalties for corruption and found in its 2009 report that Australia made 'little or no effort' to enforce the OECD Convention on Combating Bribery of Foreign Public Officials in international business transactions. This indicates the need for the establishment of a national anti-corruption body in Australia with powers extending beyond the monitoring of corruption and bribery within law enforcement bodies.

### National anti-corruption bodies

There is no statutory Commonwealth anti-corruption body. The Commonwealth Ombudsman Office has sole responsibility for investigations into corruption allegations. It is therefore left to journalists and whistleblowers to expose wrong-doing.

The Commonwealth does, however, have the Australian Commission for Law Enforcement Integrity (ACLEI), established in June 2004. It is the only agency with the power to investigate and root out corruption in the federal sphere. Unfortunately it is limited in scope and jurisdiction to the detection, investigation and prevention of corruption in the Australian Crime Commission, the Australian Federal Police, the Australian Transaction Reports and Analysis Centre (AUSTRAC), the CrimTrac Agency and prescribed aspects of the Department of Agriculture. It therefore has no jurisdiction over the majority of the Commonwealth public service.

### Establishing a National Integrity Commission

In its 2006 report, the Cole Inquiry into the UN Oil-For-Food Programme recommended that a new national commissioner with comprehensive powers should be appointed.

In 2011, the Joint Parliamentary Committee on ACLEI reported recommendations to extend the oversight of ACLEI, review the Commonwealth integrity system and examine the merits of establishing a Commonwealth Integrity Commission, with anti-corruption oversight over all Commonwealth sector agencies.

A national anti-corruption plan was to be developed by the Attorney-General's office, taking into account the 2012 United Nations Convention Against Corruption Independent review of Australia's compliance and public consultations.

The plan, prepared before the 2013 federal election by the former Labor government, noted that Commonwealth agencies reported almost 2,000 cases of corruption between 2008 and 2011. Nevertheless, the plan fell short of calling for an independent graft watchdog. Instead, the plan recommended a mandatory reporting and new departmental committees as a federal safeguard against the threat of bribery. The federal regime, did not envisage oversight over federal politicians.

The Australian Greens have been in the forefront of calling for a National Integrity Commission. The *National Integrity Commission Bill 2013* was introduced to the Senate by (then) Tasmania Leader of Australian Greens, Senator Christine Milne in November 2013 as a private senator's bill. Their move was followed by a number of similar calls following corruption revelations in 2014 by the NSW ICAC. An editorial in the Sydney Morning Herald on 17 April reviewed the actions of the NSW ICAC and remarked on the establishment of anti-corruption bodies in Victoria, Western Australia and Queensland. It went on to say,

*But there remains no equivalent federal watchdog. The situation is concerning, given that – due, if nothing else, to the amount of money flowing to Canberra – the potential for corruption at the federal level dwarfs that of the states.*

The *National Integrity Commission Bill 2013* had its second reading in Federal Parliament on Thursday 15th of May 2014. The Bill was spoken to by Senator Milne, and was supported by Independent Senator, Nick Xenophon. However it was defeated in a division by a combined Liberal and Labor vote.

## Fraud and Anti-Corruption Centre

While Australia is viewed as having a reputation for high standards of governance, robust law and justice institutions, its national ability to prosecute complex cases like corruption and fraud has attracted criticism in the past.

For this reason a Fraud and Anti-Corruption Centre was established within the Australian Federal Police's Canberra headquarters, aimed at targeting the hundreds of cases of Commonwealth government corruption reported every year.

The announcement comes in the wake of revelations the Victorian Supreme Court recently issued a wide-ranging suppression order in a case involving high-ranking government officials in Indonesia, Malaysia and Vietnam. The court order, released by WikiLeaks, states that it is "necessary to prevent prejudice to the interests of the Commonwealth in relation to national security".

The new Centre will evaluate serious fraud, foreign bribery and corruption complaints and refer them on to state-based investigation teams. It will also assist in training Commonwealth agencies in fraud prevention.

The Centre will have federal police working with officials from the Australian Taxation Office, Australian Securities and Investments Commission, Australian Customs and Border Protection Service, Department of Human Services, Department of Immigration and Border Protection, Department of Defense, and Department of Foreign Affairs and Trade. Importantly, the Centre will also leverage the intelligence capabilities of the Australian Crime Commission. The signing of a formal multi-agency agreement is intended to allow for unprecedented intelligence sharing between the various government departments involved

As new independent anti-corruption bodies have been introduced or announced in Tasmania, Victoria and South Australia pressure increases to move on a Commonwealth body.

For a more detailed look at corruption in Australia and recommendations for preventing and addressing corruption, see the Australian Collaboration essay, *Corruption: The abuse of entrusted power in Australia* written by Hon Tim Smith QC, retired Supreme Court judge. Smith points out that Australia has access to a well-considered model in

the report of the National Integrity Systems Assessment (NISA) Final Report, published by the Key Centre for Ethics Law Justice and Governance, Griffith University and Transparency International.

## Sources

Accountability Round Table, 2012, Submission to the National Anti-Corruption Plan Consultation  
<http://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Documents/TheAccountabilityRoundTable.pdf>

Accountability Round Table, "A Federal ICAC", 21 October 2014  
<http://www.accountabilityrt.org/a-federal-icac-2/>

Attorney-General's Department, National Anti-Corruption Plan  
<http://www.ag.gov.au/CrimeAndCorruption/AntiCorruption/Pages/ConsultationontheNationalAnti-CorruptionPlan.aspx>

Australian Government, Australian Commission for Law Enforcement Integrity (ACLE),  
<http://www.aclei.gov.au/Pages/default.aspx>

Bergen, A., and Connery, D., 'Necessary, but not sufficient: Australia's new Fraud and Anti-corruption Centre', Australian Strategic Policy Institute Blog, The Strategist, 7 August 2014  
<http://www.aspistrategist.org.au/necessary-but-not-sufficient-australias-new-fraud-and-anti-corruption-centre/>

Besser, L., D'Souza, G. and Christodoulou, M. *National anti-corruption plan prepared by Attorney-General's Department did not include independent watchdog*, Four Corners, ABC News, 23 June 2014  
<http://www.abc.net.au/news/2014-06-23/national-corruption-plan-didnt-include-independent-watchdog/5541908>

Box, D., 'AFP to lead government corruption pursuit', *The Australian.com*, 31 July 2014  
<http://www.theaustralian.com.au/national-affairs/afp-to-lead-government-corruption-pursuit/story-fn59niix-1227007932216>

Hindess, B., 2004, Corruption and democracy within Australia

[http://democratic.audit.anu.edu.au/papers/focussed\\_audits/200408\\_hindess\\_corruption.pdf](http://democratic.audit.anu.edu.au/papers/focussed_audits/200408_hindess_corruption.pdf)

Joint Parliamentary Committee on the Australian Commission for Law Enforcement Integrity Report 2011  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Committees?url=aclei\\_ctte/completed\\_inquiries/2010-13/integrity\\_com\\_act/report/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=aclei_ctte/completed_inquiries/2010-13/integrity_com_act/report/index.htm)

Kurtz, J., 2006, The failure of Australian anti-corruption measures  
[http://democratic.audit.anu.edu.au/papers/20060526\\_kurtz\\_corrup.pdf](http://democratic.audit.anu.edu.au/papers/20060526_kurtz_corrup.pdf)

Sawer, M., Abjorensen, N. and Larkin, P., 2009, *Australia: The State of Democracy*, The Federation Press, Sydney

Transparency International, Progress Report 2009 on Enforcing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions  
[http://www.transparency.org/content/download/44447/712572/file/2009\\_OECD\\_Progress\\_Report\\_final.pdf](http://www.transparency.org/content/download/44447/712572/file/2009_OECD_Progress_Report_final.pdf)

*Last revised April 2015*