

Australian Government Announces Proposal for New Federal Corruption Watchdog

IN SHORT

The Situation: The Federal Government has introduced a proposal to create a Commonwealth Integrity Commission ("CIC") to replace the current "multiagency approach" to integrity and anticorruption arrangements of the federal Public Sector. It represents a further manifestation of a crackdown on corporate wrongdoing in Australia.

The Development: Although establishing a federal corruption watchdog appears to have gained bipartisan political support, whether the CIC is ultimately created will depend on the result of the upcoming Federal Election on 18 May 2019.

Looking Ahead: The Federal Opposition, or ALP, has proposed an alternative model which would provide the federal watchdog with various different powers and functions.

Commonwealth Integrity Commission

On 13 December 2018, the Federal Government announced its intention to create CIC to "detect, deter and investigate suspected corruption" across the federal public sector. The CIC is to form a central body which expands and consolidates existing federal integrity and anticorruption arrangements that are currently split across a number of different agencies (such as the Australian Public Service Commission, Australian Federal Police and Australian Commission for Law Enforcement Integrity).

The reform package also proposes that a new "public sector corruption offences" division be inserted into Chapter 7 of the *Criminal Code Act 1995*.

Proposed Structure of the Commonwealth Integrity Commission

The CIC will consist of two divisions: (i) a Law Enforcement Integrity Division, which will incorporate the existing structure, jurisdiction and powers of the Australian Commission for Law Enforcement Integrity ("ACLEI"); and (ii) a Public Sector Integrity Division.

Both divisions will be headed by separate Deputy Commissioners, who will each report to a new Commonwealth Integrity Commissioner.

Law Enforcement Division

The Law Enforcement Division will continue to investigate corruption pursuant to the parameters of the existing Law Enforcement Integrity Commissioner Act 2006, including investigating corrupt conduct that involves: abuse of office; perversion of the course of justice; or corruption of any other kind having regard to the duties and powers of the relevant person within the law enforcement division's jurisdiction.

In conducting its role, the Law Enforcement Division will have powers to:

- compel the production of documents;
- question people;



This broadening of jurisdiction is said to reflect the fact that Australia's corporate regulators bear "significant resemblance" to the traditional law enforcement bodies already within ACLEI's



- hold public and private hearings;
- arrest;
- enter/search premises;
- seize evidence;
- undertake controlled operations and assumed identities; and
- undertake integrity testing.

The Law Enforcement Division's jurisdiction is to be broader than the ACLEI's current remit, with jurisdiction being extended to cover Australia's corporate regulators (including Australian Securities and Investments Commission, Australian Prudential Regulation Authority, Australian Competition and Consumer Commission and Australian Taxation Office). This broadening of jurisdiction is said to reflect the fact that Australia's corporate regulators bear "significant resemblance" to the traditional law enforcement bodies already within ACLEI's remit.

Public Sector Division

The Public Sector Division will be responsible for investigating "corrupt conduct" where the Commissioner has a reasonable suspicion that the conduct constitutes a criminal offence. The Public Sector Division will have jurisdiction over:

- public service departments and agencies, parliamentary departments, statutory agencies, Commonwealth companies/corporations;
- Commonwealth service providers and any subcontractors they engage; and
- parliamentarians and their staff.

It is proposed that the Public Sector Division will only have powers to investigate criminal offences. The Public Sector Division will *not* have powers to make findings of corruption (or other criminal offending), but will have discretion to refer criminal briefs to the Commonwealth Director of Prosecutions. It is said that this approach is aimed at avoiding "one of the key flaws in various state anticorruption bodies, being that findings of corruption can be made at large without having to follow fundamental justice processes."

In discharging its function, the Public Sector Division will have power to:

- compel the production of documents;
- question people;
- hold private hearings; and
- enter/search premises.

New "Public Sector Corruption Offences"

It is proposed that a new "public sector corruption offences" division be inserted into Chapter 7 of the *Criminal Code* in order to consolidate existing offences and introduce new proposed offences.

The new offences proposed include:

- two "aggravated offences", these being: (i) the offence of "repeated public sector corruption," which will apply to persons who have committed the same offence three times or more; and (ii) the offence of "corrupt conduct by a senior official," which will apply where a person is a member of the Senior Executive Service (or equivalent position) and that person uses his or her position, influence, resources or knowledge to commit an offence; and
- an offence of "failure to report public sector corruption," which will apply if a person: (i) is a senior public service official; (ii) knows of information that would lead a reasonable person to believe that an employee or agent of the agency has engaged in conduct; (ii) that such conduct, if engaged in, would constitute an offence in the Public Sector Division of the

Criminal Code, and (iv) did not take reasonable steps to report the conduct to law enforcement or other appropriate authorities.

THREE KEY TAKEAWAYS

1. The proposed CIC model has received much political and media attention. Whether the CIC is ultimately established will depend on the result of the upcoming Federal Election on 18 May 2019.
2. The Federal Opposition, or ALP, has criticised the proposed CIC reforms for not going far enough and have proposed an alternative National Integrity Commission.
3. One key difference between the two models is that the National Integrity Commission would allow for public hearings into public sector corruption cases, unlike the proposed CIC.



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