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Corruption: Nip it in the bud

Submission - Quentin Dempster

Terms of Reference:

> *That a select committee, to be known as the Select Committee relating to the establishment of a National Integrity Commission, be established to inquire into and report, on or before 22 September 2016, on the following matters:*
>
> *a the adequacy of the Australian Government's legislative, institutional and policy framework in addressing all facets of institutional, organisational, political and electoral, and individual corruption and misconduct, with reference to:*

i the effectiveness of the current federal and state/territory agencies and commissions in preventing, investigating and prosecuting corruption and misconduct,

ii the interrelation between federal and state/territory agencies and commissions, and

iii the nature and extent of coercive powers possessed by the various agencies and commissions, and whether those coercive powers are consistent with fundamental democratic principles;

b whether a national integrity commission should be established to address institutional, organisational, political and electoral, and individual corruption and misconduct, with reference to:

i the scope of coverage by any national integrity commission,

ii the legislative and regulatory powers required by any national integrity commission to enable effective operation,

iii the advantages and disadvantages associated with domestic and international models of integrity and anti-corruption commissions/ agencies,

iv whether any national integrity commission should have broader educational powers,

v the necessity of any privacy and/or secrecy provisions,

vi any budgetary and resourcing considerations, and

vii any reporting accountability considerations; and

c any other related matter.

1. This submission is made in my capacity as a private individual but informed by my occupation as a journalist covering politics and corruption in Queensland, New South Wales and now the Commonwealth. In the first instance it should be said that through personal integrity fiercely guarded by public and private officials, ministers, department heads, senior and ancillary staff, corporate chief executives and senior subordinates, employees, tenderers, suppliers, tenants, applicants, regulators and service providers conducting themselves with a sense and sensibility for honour, professionalism and duty, an anti-corruption commission would not be necessary. But such is the human condition that corruption seems inevitable when organisational cultures and hierarchies conducive to it are allowed to develop.

2. The contention that a national integrity commission or federal independent commission against corruption is needed is supported by the publicly stated views of two former judicial officers, former NSW ICAC Commissioner David Ipp QC, and former Queensland commissioner Tony Fitzgerald QC (Queensland: Report of a Commission of Inquiry Pursuant to Orders in Council 1987-1989 - the Fitzgerald Inquiry). **Attachment A** contains brief extracts from a transcript of a preparatory interview with Mr Ipp conducted by the *Four Corners* investigative journalist Mr Linton Besser in 2014. They canvas Mr Ipp's view that corruption does not stop at the state border and the tactical advantage of public

hearings as an educative counter to corruption. **Attachment B** is an email received in answer to my recent on-the-record queries to Mr Fitzgerald during preparation of an article published on February 19 in *The Saturday Paper* **(Attachment C)**. And **Attachment D** is my draft of an article prepared from a Law Society forum on corruption in 2015 on the limits of journalism and the complementary role of journalists with lawyers and judicial officers commissioned through Acts of Parliament to fairly investigate and expose corruption. **Attachment E** is the ICAC's protocols and procedures to protect its informants. **Attachment F** is the NSW ICAC's definitions of corrupt conduct which, at the commission's independent discretion, may be investigated after the receipt of reliable information from its informants.

3. Of historic significance now is the current criticism of the New South Wales ICAC as an unfair destroyer of reputation for those under investigation and through declarative 'corrupt conduct' findings in its official reports. Such declarations are carried by the adversely named to the grave and beyond, while the misconduct in which they are declared to have engaged may never be prosecuted, or if it is, can result in acquittal.

4. In his final report and recommendations in 1989 Mr Fitzgerald did not favour the establishment of an ICAC in Queensland. His final report was published one year after the establishment of the NSW ICAC by the Greiner Government in that state. The NSW ICAC was established by an Act of Parliament following inquiries in Hong Kong by then NSW Attorney General John Dowd QC and Mr Greiner's then principal advisor Garry Sturgess. Mr Fitzgerald chose a different reform to address future misconduct in Queensland. He said (P 366):

> *Elsewhere, misconduct has been addressed by the setting up of Independent Commissions Against Corruption (ICACs), which have been given many powers and made more or less autonomous. Such bodies are understandably controversial in a democratic society, where those with power are usually held to be accountable for its exercise. Independence is essential to a body charged with investigating misconduct, but autonomy is not necessary for effectiveness.*

4. Now in 2016, in supporting the establishment of a national integrity commission , Mr Fitzgerald's email directly addresses the issue of independence, autonomy and procedural fairness. In short, there should be no declarative 'corrupt conduct' findings. Admissible evidence discovered by the commission should be forwarded to a Special Prosecutor for the formulation of charges. Of immediate concern to Mr Fitzgerald is the form and powers of any national anti-corruption commission. This contentious point has a significant history which I observed first hand and reported in my work as a journalist over the years. It may be the key to establishing a national integrity commission of significant public benefit in exposing criminality, corrupt conduct, misappropriation and malfeasance but which engenders public support and trust through its anonymous or public interest reporting protocols and by its procedurally fair processes for those under investigation. Its educative benefits in countering cynicism, influence peddling and cultures conducive to corruption would become evident over time.

4. This committee's Terms of Reference b ("whether a national integrity commission should be established to address institutional, organisational, political and electoral, and individual corruption and misconduct") goes to justification or the demonstrable need for a national integrity commission. In Attachment C is a non-exhaustive list of justifications covering vulnerable agencies of government: vocational and tertiary education currently in public contention, the Australian Tax Office, job placement agencies, defence materiel procurement, visa and immigration fraud, social security fraud, inadequate investigation of fraud by internal audit, political 'slush funding' or 'influence peddling' involving the potential compromise of MPs through fund raising activities necessarily required to build political campaign war chests in addition to direct bribery. Further recent allegations of trade union infiltration by organised crime and allegations of criminality involving commercial subsidiaries of the Reserve Bank raise further justification for a standing national anti-corruption body with a capacity to monitor government trading agencies, registered trade unions and government regulators vulnerable to what is known as 'regulatory capture' by vested interests.

5. The success of any national integrity commission would of course depend almost entirely on the courage, resourcefulness, judgement, professionalism and competence of its appointed officials, meta data and financial analysts, investigators and IT specialists and the trust with which the new institution was regarded by the Australian public. In this regard the protocols to protect the commission's informants would be crucial to success. Attachment E is the NSW ICAC's protected disclosure protocols which could be refined for a national investigative body.

6. Also relevant to this injury is the current two year statutory review of the Commonwealth's disclosure laws, the Public Interest Disclosure Act, being conducted by Mr Phillip Moss, a former integrity commissioner, for the Department of Prime Minister and Cabinet. There is reportage that the current PID has been misused more as a vehicle for more minor workplace complaints and is not effective in the exposure of any systemic or serious corruption which may exist. Mr Moss' report will be delivered in July and may soon appear to be of significant assistance to this Senate inquiry into the need for and functioning of a national integrity commission.

Quentin Dempster
Sydney
18th April 2016

ATTACHMENT A - Submission of Quentin Dempster

Extracts from transcript of interview David Ipp QC with journalist Linton Besser (ABC Four Corners).

Ipp: The establishment of a federal anti-graft commission, I think, is very important. There is 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 state parliament … and there is a huge amount of lobbying. It is far more substantial … than anything in the states.

Besser: In Canberra the Australian Commission for Law Enforcement Integrity expressly says that its model is to work in partnership with the agencies over which it holds purview and that they investigate in secret. Is that an effective means by which to investigate and expose corruption?

Ipp: I'm reluctant to criticise .. other agencies. I'm sure they all do their best and many of them have been successful in some issues, but I don't agree with that at all. Ah .. I do not think that I would ever act in partnership with another .. with an agency who we're investigating .. I think that compromises the independence of ICAC … because once ICAC is in partnership with another agency then there will be pressures on ICAC to please the other agency.

Besser: And there's a problem of perception as well isn't there?

Ipp: And there's a problem of perception. I mean ICAC has worked in partnership with the auditor general and the attorney general in investigating the department of mines. That's different and the ICAC Act specifically allows for that kind of cooperation but ICAC would , in my time, never cooperate, never sought the cooperation of senior members of a department to investigate wrongdoing in that department.

Besser: What about the secrecy? Again ACLEI is my example but you don't need to criticise ACLEI .. but is it possible to expose corruption and only hold private hearings and not name individuals?

Ipp: Well, I think it'd be difficult but I suppose it's possible. I mean (it's) something I've never had to do. I don't think I can say more than that. The importance lies on the fact that through public hearings the corruption is exposed and the public can see .. members of the public can see for themselves the strength or weakness of the evidence and allowing the media full access to the inquiry with transcript reports every evening … and trying to cooperate with the media in that sense by giving the media full access. That's how corruption is exposed. …. If you remove the public inquiry, you remove the cutting edge.

ATTACHMENT B - Submission of Quentin Dempster

Email from Tony Fitzgerald QC to Quentin Dempster February 12 2016.

In broad terms, corruption is an abuse of power or authority and, as such, an erosion of democracy. Power and authority are given to politicians and bureaucrats to be used for the public good, not personal benefit or the benefit of associates.

The possibility of corruption exists wherever a dishonest public official has power or authority to grant benefits, such as licenses, approvals, subsidies, contracts, etc., and dishonesty is a common human flaw.

Anti-corruption commissions exemplify the modern trend to appoint specialist bodies with special powers to prevent and investigate serious criminal activity which presents a grave threat to the community and, for one reason or another, is beyond the powers, resources and capacities of traditional law enforcement authorities, notably the police. Other examples include bodies charged to prevent and investigate terrorism, organised crime, illicit drug distribution, etc

Such bodies almost always involve major departures from general legal protections for the liberty and privacy of law-abiding citizens; for example, the privilege against self-incrimination, telephone intercepts, etc. In broad terms, they are incompatible with the conditions of a free society, are only justified when the material criminal activity presents a sufficient threat to the well-being of society and must be tightly supervised and controlled.

One contentious area is the use by such bodies of compulsory private interrogations and public hearings. That is a proper subject for serious debate and ongoing review. My opinion, based on my personal experience, is that interrogations must sometimes be held in private to protect confidential information, including the scope and direction of investigations and the identity of informants, and that public hearings are sometimes essential to ensure that the voting public is properly informed and supportive of essential work when it is properly carried out.

For me, the most contentious aspect of the NSW ICAC's work, is its power and practice of declaring that some individuals and groups which it investigates are guilty of corruption, that is, of a serious criminal offence. Such a declaration, which for investigative and prosecutorial purposes adds nothing, is likely to destroy the reputation of the person affected, even if that person is later not charged or is acquitted. Moreover, I regard it as fundamentally incompatible with the notion of fair trial which underpins our criminal justice system.

ICAC is an investigative body which is part of the Executive, not the Judicial, branch of government. Indeed some would have it also possess a prosecutorial function. I am sufficiently old-fashioned to believe that it is fundamentally wrong for such a body, which in substance is a protagonist representing the State, to have any role in determining guilt and innocence. That is axiomatically a matter for judges and juries, carried out in accordance with long-established principles including proof beyond reasonable doubt. The role of a body such as ICAC is performed when it reports what it finds has occurred without adding a superfluous, immaterial opinion about the legal consequences.

ATTACHMENT C - Submission of Quentin Dempster

FEB 19, 2016 The Saturday Paper

The case for a federal ICAC

The case for a federal ICAC is compelling. With highly skilled forensic accountants, metadata analysts and IT specialists; phone tap, covert surveillance and search warrant powers to gather evidence; and the power to compel attendance at preliminary in-camera interrogation, a federal commission against corruption could start to correct the myth that there is little or no corruption at the Commonwealth level.

David Ipp, QC, and Tony Fitzgerald, QC – two former judicial officers commissioned by New South Wales and Queensland respectively, who have exposed deep-seated political and administrative corruption within those jurisdictions – both say the malaise does not stop at the state border.

"The possibility of corruption exists wherever a dishonest public official has power or authority to grant benefits, such as licences, approvals, subsidies, contracts, et cetera," Fitzgerald told *The Saturday Paper*. "And dishonesty is a common human flaw."

While Fitzgerald has concerns about what form a federal corruption commission should take, he agrees with Ipp's public remarks on the issue: "The establishment of a federal anti-graft commission, I think, is very important. There is 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 state parliament … and there is a huge amount of lobbying. It is far more substantial … than anything in the states."

John Mant, who for 40 years was a public administrator, town planner and ministerial adviser, as well as an acting ICAC commissioner, told *The Saturday Paper* a federal Independent Commission Against Corruption was needed.

Mant said the Commonwealth public service culture, which stemmed from federation in 1901, was always different from the colonial and clannish state administrations. But both had fundamentally changed through increasingly politicised hierarchies. The Commonwealth now has wider and more diverse engagement, too, with approvals, monopolies, supply, service and procurement contracts, grants and tenders.

In modern corruption-busting, the resources and powers of traditional Westminster auditors-general are limited.

"Things have changed so much," Mant told me, "that I now would strongly support the need for a federal ICAC."

Although fraud and malfeasance have been picked up through internal audits and the work of the state auditors-general and the independent Australian National Audit Office, invariably this was done reactively. In modern corruption-busting, the resources and powers of traditional Westminster auditors-general are limited. "Greater discretionary power requires greater transparency … particularly with a significant increase in political intervention in the processes of government," Mant said.

Auditors-general can help, though. David Ipp's ICAC seconded expert staff from then NSW auditor-general, Peter Achterstraat, in its 2014 investigation into the mines department, which exposed cronyism and coalmine exploration licence corruption at a ministerial level.

"Together with our own investigators they worked enormously hard and with great skill and dedication to unearth corruption that had been very carefully concealed," Ipp said.

A standing corruption commission can act on tipoffs from audit and law enforcement agencies, concerned informants and from the general public. Public hearings often produce additional information when the public can see where an investigation is headed.

Under an ICAC Act, all senior public officials are statutorily obliged to report their reasonable suspicions about individual or systemic corruption. Protocols are in place to give anonymity to informants, to eliminate any physical or employment risks that may be initiated by those under suspicion.

An ICAC hotline and one-click online tipoffs can trigger immediate covert operations to investigate corruption in real time if the information received is reliable, enabling phone taps and hidden cameras to catch suspects "chockers and starkers" – a pejorative term for evidence of the highest probative value.
The indicia that serious or systemic corruption may already infect the Commonwealth's operations come from the following non-exhaustive list, compiled with the help of anti-corruption informants and investigative journalists.
First is the malfeasance and fraud now apparent within the nationally subsidised vocational education VET FEE-HELP system, where allegedly shonky training organisations induce students with free laptops to take on courses that a reported majority do not finish. FEE-HELP's cost to taxpayers has reached $1.6 billion a year.
Then there is corruption within the department of immigration, where cash-for-visas bribery has been rife. In 2013 an ABC investigation exposed internal audits showing a 50 per cent fraud rate covering passports, visas and IDs. In 2015 a Brisbane court case exposed a $500,000 visa scam where bribes were paid through intermediaries to a corrupt immigration official.
In tax, the system of private binding rulings and other discretionary powers of senior tax officials creates a significant corruption risk. The 2008 conviction of then assistant taxation commissioner Nick Petroulias exposed the Australian Taxation Office's vulnerability.
Worthy of a federal ICAC would have been the billions spent in the Gillard government's school-building projects and the Rudd government's roof insulation stimulus spending with poor implementation controls. So, too, the fabrication of job-placement data in nationally subsidised private-sector employment agencies. There are also the recent allegations of private schools subsidised by the Commonwealth Department of Education granting personal loans to school board directors for non-school-related activities.
The slush funding of political parties and individual candidates by powerful vested interests – a practice once described in the United States as virtually "forcing every member of Congress to become a crook" – is certainly worth investigation by such a body. The poorly regulated political lobbying industry, and the poorly policed party political donations regime, are continuously contentious. Stuart Robert's forced resignation from the Turnbull cabinet last week exposed an example of contemporary contempt for the Westminster convention that a minister must so order his/her affairs that no conflict arises, or appears to arise, between a minister's public duties and private interests.
In defence, materiel procurement bribery in contract and tender evaluation worth billions, exposed in the US as a continual corruption risk, would benefit from oversight.
In forestry, there are the recent revelations exposing contractors who agree to exit the industry in return for taxpayer-funded compensation payments but nevertheless continue under questionable dispensations.
One of the problems with the current system is that fraud is too rarely referred on for prosecution. In a 2011 series for *The Sydney Morning Herald*, investigative journalist Linton Besser found that internal audits often failed to expose deliberately concealed corruption, writing off cases as "failures of compliance" that had now been attended to rather than referring the fraud to the Australian Federal Police. In the six years to 2011, Besser found, almost a thousand investigations into bureaucrats were terminated because the bureaucrat being investigated had resigned during the course of the inquiry.
Whistleblowers Australia's national president, Cynthia Kardell, said that systemic corruption was rarely exposed through the case histories of Commonwealth employees who made public interest disclosures. "We've found that it is standard procedure from human resources departments to effectively bury any insistent complainant by staging their workplace exits through their rapidly declining mental health."
The current campaign by strident elements of the Sydney-based Murdoch press to discredit the NSW ICAC over its investigation into the alleged perversion of justice by deputy senior Crown prosecutor Margaret Cunneen, SC, has transfixed the city's legal, media and political milieu. But this highly diverting bunfight will not affect the survival of ICAC. After a High Court ruling on Cunneen v ICAC provoked a review by Murray Gleeson, QC, and Bruce McClintock, SC, ICAC's continued existence was legislatively assured by the Baird government, with support from Labor. An amendment was also made to constrain ICAC's corrupt conduct declarations to uncodified "serious" corruption only.
In now supporting the need for a federal corruption commission, Tony Fitzgerald said the NSW ICAC's practice of making declarative "corrupt conduct" findings against individuals was problematic. ICAC is an administrative tribunal and not a court, and its capacity to make findings that a court cannot later uphold is a central criticism.
"Such a declaration, which for investigative and prosecutorial purposes adds nothing, is likely to destroy the reputation of the person affected, even if that person is later not charged or is acquitted," Fitzgerald said.

“Moreover, I regard it as fundamentally incompatible with the notion of fair trial, which underpins our criminal justice system.”

In his groundbreaking Queensland corruption inquiry in the 1980s, Fitzgerald made no “corrupt conduct” findings as such against any person, including former premier Sir Joh Bjelke-Petersen and former police commissioner Sir Terence Lewis.

But the factual details of their conduct, including the delivery and receipt of cash in bags, was published in his final report. A special prosecutor was then established by the Queensland government to formulate criminal charges and launch prosecutions.

So a special prosecutor in concert with a standing federal corruption commission to expose Commonwealth corruption may evolve as a more procedurally fair methodology through the current national debate.

Resistance to a federal corruption commission is expected to be intense from within the political parties and the Murdoch press because, as in NSW, its very existence would confront Australia’s corruptible and influence-peddling political and commercial cultures.

Examples of corruption will be fobbed off as “just a few bad apples”. As in NSW, such an investigative body will be likened to a “star chamber” or a Russian show trial.

But the need and the benefits are manifest.

The Palmer United Party’s senator for Western Australia, Dio Wang, has flagged his intention to amend the title and scope of the Turnbull government’s Australian Building and Construction Commission to cover all public sector, agency and political corruption, as well as trade union standover and kickback practices. The ABCC Bill is currently in committee stages before the federal parliament.

The NSW ICAC, with a budget of $25 million, assesses an annual state public-sector budget of $70 billion. With the Commonwealth’s annual expenditure now running at $434 billion, the case for an adequately funded countermeasure for a culture vulnerable to corruption would seem to be self-evident.

This article was first published in the print edition of The Saturday Paper on Feb 19, 2016 as "Going to the watchdogs".

ATTACHMENT D - Submission of Quentin Dempster

Journalists and lawyers - Australia's tag team in the fight against corruption

The role of committed journalists, whether in a functioning democracy like Australia, or a country under a kleptocracy, totalitarian or politburo governance, is to tell the public what is really going on.

This can involve the journalist in conflict from time to time where reporting can reflect adversely on government and its agencies in scandals about corruption or the abuse of power.

Even if the journalist reports the available gathered facts and the conclusions fairly reached from those facts, I regret to report authority does not always like being exposed and brought to account.

Journalists can be jailed. In Russia or the Philippines and other countries observed on the International Federation of Journalists' website, they can be murdered. In Malaysia, according to the recent Four Corners' expose of alleged corruption at the highest levels of government, they can be silenced by intimidation and run out of the country.

In Australia, apart from the disappearance of Juanita Nielsen, the murder of journalists is unheard of.

Here we can be sued for defamation.

That is why the bigger media organisations have in-house or outsourced lawyers to vet contentious material before publication. Over the years a sort of tag team of journalists and lawyers has evolved in the exposure of corruption.

Media lawyers have to find public interest defences and apply a now well known template to material being assembled before publication: fair comment, honest opinion, qualified privilege, the justification of truth.

Litigation is very expensive and the reputational and occupational risk is high for the individual journalists involved. Journalists doing this sort of work in Australia are now very limited because of the digital revolution's disruption to print media's business model, the costs and the risks involved.

The other constraint on journalists is one the lawyers may call 'jurisdictional'. We have informants but no coercive powers. We can successfully be sued for defamation if we are

unable to reasonably substantiate the imputations contained in the words published. Substantiation is the big challenge for journalists.

We cannot demand documents. We have no search warrant powers as law enforcers do. We can FOI documents, including emails and papers, if they are not Cabinet-in-Confidence or exempted by commercial-in-confidence considerations.

Documents can be leaked to us, of course.

Our sources often seek anonymity because of the physical and occupational dangers involved in their activity. That is why we have been campaigning internationally for shield laws to prohibit the identification of the sources of journalists.

We can seek answers to our questions but there is no obligation on anyone to answer. "No comment" is the most courteous response, but an evidentiary roadblock nevertheless. We do not have phone tap powers. We cannot legally access phone and bank records unless they are leaked to us by an informant. (Rupert Murdoch's UK outlets hacked the voice mails on mobile phones, but only for commercially exploitable, celebrity and voyeuristic tittle tattle. Shame on you Rupert.)

Journalists rely on the sometimes courageous whistleblower or informant, some data and financial analysis where these additional investigative costs can be justified. But because we only have lawful access to publicly available information, ASIC, share register, land and property searches and other public source information, now including the publicly accessed pages of social media, you clearly can see we often only get a part of or the first evidentiary leads to the truth of the matter at issue.

This is why the phenomenon of the whistleblower has emerged. *Four Corners*' most recent expose of CommInsure insurance malpractice via files delivered to journalist Adele Ferguson by a CBA whistleblower, a medical practitioner, is the latest example.

The Fairfax/Huffington Post revelations of large scale bribery or 'facilitation payments' in the international oil industry to secure lucrative pipeline and other contracts were based on a drop of thousands of confidential emails. The journalists had their work cut out for them identifying the participants only listed by code names.

Journalism has moved mountains. Journalism provoked the Fitzgerald inquiry in Queensland which helped to crack in that state what was a worldwide syndrome - a vicious code of silence within police culture. The cops would verbal and 'load up' suspects and frame any incorruptible colleagues to the point where their cabals organised the crime with their 'greenlighted' criminal associates - they did not fight it. Great public benefit ensued in the exposure of police culture which helped to change attitudes by police, re-committing most of them to the honourable discharge of their duties. And journalism has moved politicians in other states to set up special commissions of inquiry from time to time: more evidence of the journalist to lawyer tag team in action.

Journalist Joanne McCarthy's reporting of child sexual abuse in the Maitland Newcastle diocese of the Catholic Church moved then Prime Minister, Julia Gillard, and the states to establish the royal commission into institutional responses to child abuse. Great public benefit in changes to institutional culture in child protection has gathered momentum.

Investigative reports into alleged links between trade unions and some criminal elements in the construction industry; the practice of slush funding of political parties by vested interest individuals and industries; and the alleged infiltration of political parties by Mafia figures have sustained debate about the need for a federal anti-corruption commission. This is getting some traction now through the federal election campaign and the debate about the Turnbull Government's Australian Building and Construction Commission.

Even if substantially true a journalist's initial reporting can simply be ignored or dismissed by government confident that in the 24 hour news cycle the public will move on, particularly if rival media simply ignores the issue and calculatedly omits to follow it up.

If our informants quite reasonably seek anonymity to protect their future employability or their physical security, our reports can sometimes seem obscure or incomplete … or what we journalists call 'heavily lawyered'.

So to the point of the journalist-lawyer tag team. Formal follow-up to journalistic exposure in the form of judicial inquiries or, better, a standing national anti-corruption commission, is the next logical step to cover public administration, defence expenditure, social security, universities, health and education, police, judiciary, private sector corporate conduct, 'regulatory capture,' security and intelligence services.

The anti-corruption effort worldwide has required special commissions external to law enforcement and government but operating under procedurally fair protocols under the inquisitorial model - preferably through public hearings after preliminary inquiries.

Any standing anti-corruption commission should have its fairness procedures subject to Supreme or Federal Court challenge. That is a necessary check and balance against the risk of abuse of power or the development of a star chamber or show trial.

So as a journalist I fully acknowledge the constraints on the practice of journalism imposed by the law. We need the lawyers as back up in any robust democracy displaying institutional independence (the separation of powers) and strength.

The role and functions of the standing commission on corruption in New South Wales - the Independent Commission Against Corruption - has been under attack for about a year now.

But its coercive powers and public hearing procedures have survived a high level review by former chief Justice Murray Gleeson QC and leading lawyer Bruce McClintock SC.

The state of NSW with its rich colonial Rum Corps history has, through the ICAC, pressed the reform envelope in our sometimes battered Westminster democracy.

The model which has evolved should, in my view, be exported.

We need a federal ICAC.

Our institutions are made all the stronger by the intellectual honesty involved which can counter cynicism, restore or build trust in government.

There can be no clearer public benefit.

* This article was revised from Quentin Dempster's paper to the NSW Law Society's forum - Reflections on Corruption, Sydney, August 2015.

ATTACHMENT E - Submission of Quentin Dempster

NSW ICAC

Protections for public officials

Many individuals are discouraged from reporting suspected conduct for fear of retaliation.
NSW public officials can report suspected corruption under the *Public Interest Disclosures Act 1994* (the PID Act) which offers legal protection from workplace reprisals. Protection only applies if the disclosure is made through the channels described below.
The PID Act provides protection against reprisals that may be taken against public officials or certain contractors who make public interest disclosures, including:

- injury, damage or loss
- intimidation or harassment
- discrimination, disadvantage or adverse treatment in relation to employment
- dismissal from or prejudice in employment
- disciplinary proceedings.

Reprisals are an offence under the PID Act and persons who act in reprisal against public officials or certain contractors making public interest disclosures can be prosecuted. If convicted, a person may be fined and/or imprisoned.
Please note that a disclosure is not protected if:

- the maker does not hold an honest belief that it shows, or tends to show, corrupt conduct, maladministration, serious and substantial waste, government information contravention or a pecuniary interest breach
- is made solely or substantially to avoid disciplinary action
- primarily questions the merits of government policy
- is not voluntary.

Prior to making a public interest disclosure, confirm that the matter falls within the ICAC's jurisdiction or call the ICAC to check on 02 8281 5999 or freecall 1800 463 909 (callers outside Sydney).
Before making a public interest disclosure, public officials should:

- review the agency's policy on making a public interest disclosure
- consider contacting the NSW Ombudsman or a lawyer for independent advice,
- keep the details of the disclosure confidential, except for the Ombudsman or any legal representation.

Once the disclosure has been made a log should be maintained of any detrimental action against the public official due to the complaint, including dates, conversation details and copies of relevant documents.
The online corruption report form can be used to submit a public interest disclosure to the ICAC.

To make a public interest disclosure about an agency

Contact:

- the head of the agency, or
- the agency's public interest disclosures coordinator, or
- the ICAC (concerning corrupt conduct), or
- the NSW Ombudsman (concerning maladministration), or
- the NSW Auditor General (concerning a serious and substantial waste of public money) or
- the Department of Local Government (concerning serious and substantial waste in local government or breaches of pecuniary interest obligations)
- the Information Commissioner (concerning government information contraventions)

To make a public interest disclosure to a Member of Parliament or journalist

Legal protection when making a disclosure to an MP or journalist is only provided if all the following apply:

- the disclosure has been made through one of channels detailed above
- the agency or officer to whom the disclosure was made has undertaken one or more of the following:
  - decided not to investigate
  - failed to complete the investigation within six months of the disclosure
  - the matter was investigated but not recommended for any further action
  - failed to notify the public official within six months of the disclosure about whether the matter will be investigated
- there are reasonable grounds for believing the disclosure is true
- the disclosure is substantially true.

Confidentiality

Confidentiality is one of the main protections available under the PID Act. The agency concerned is required to keep the identity of the claimant confidential except in certain circumstances. The fewer people who know about a public interest disclosure, the less likelihood there is of reprisals.

The identity of a public official will not be disclosed unless:

- consent is given in writing; or
- it is necessary to disclose the identity to the person the information concerns because of the requirements of procedural fairness; or
- it is essential to effectively investigate the matter; or
- the release of the information is necessary and in the public interest.

Documents relating to a public interest disclosure cannot be released under a *Government Information (Public Access) Act 2009* request.

Protection against legal liability

Under the PID Act, a person is not subject to any legal liability for making a public interest disclosure. The Act provides legal protection against defamation procedures that may be brought against a person making a disclosure that may damage a reputation. The Act also protects the person making the disclosure from criminal and disciplinary action for a breach of confidentiality.

How the ICAC deals with public interest disclosures

Once a matter is reported, the ICAC considers whether the PID Act applies to the information. The ICAC may seek further details to assist this consideration.

ATTACHMENT F - Submission of Quentin Dempster

8 General nature of corrupt conduct NSW ICAC Act

(1) Corrupt conduct is:

(a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or

(b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or

(c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or

(d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

(2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:

(a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),

(b) bribery,

(c) blackmail,

(d) obtaining or offering secret commissions,

(e) fraud,

(f) theft,

(g) perverting the course of justice,

(h) embezzlement,

(i) election bribery,

(j) election funding offences,

(k) election fraud,

(l) treating,

(m) tax evasion,

(n) revenue evasion,

(o) currency violations,

(p) illegal drug dealings,

(q) illegal gambling,

(r) obtaining financial benefit by vice engaged in by others,

(s) bankruptcy and company violations,

(t) harbouring criminals,

(u) forgery,

(v) treason or other offences against the Sovereign,
(w) homicide or violence,
(x) matters of the same or a similar nature to any listed above,
(y) any conspiracy or attempt in relation to any of the above.
(2A) Corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:
(a) collusive tendering,
(b) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,
(c) dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,
(d) defrauding the public revenue,
(e) fraudulently obtaining or retaining employment or appointment as a public official.
(3) Conduct may amount to corrupt conduct under subsection (1), (2) or (2A) even though it occurred before the commencement of that subsection, and it does not matter that some or all of the effects or other ingredients necessary to establish such corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials.
(4) Conduct committed by or in relation to a person who was not or is not a public official may amount to corrupt conduct under this section with respect to the exercise of his or her official functions after becoming a public official. This subsection extends to a person seeking to become a public official even if the person fails to become a public official.
(5) Conduct may amount to corrupt conduct under this section even though it occurred outside the State or outside Australia, and matters listed in subsection (2) or (2A) refer to:
(a) matters arising in the State or matters arising under the law of the State, or
(b) matters arising outside the State or outside Australia or matters arising under the law of the Commonwealth or under any other law.
(6) The specific mention of a kind of conduct in a provision of this section shall not be regarded as limiting or expanding the scope of any other provision of this section.