

Overview

I believe the proposal to create a Commonwealth Integrity Commission (CIC) to be a very important and overdue government initiative. It has the potential to bring significant positive benefits to the people of Australia by promoting good government and by helping to ensure the proper and efficient use of public resources.

My own experience suggests that there are currently significant and serious problems with the existing legal and administrative frameworks that are serving to impede the exposure of criminal behaviour in public service agencies, as well as helping to discourage public service whistleblowing.

The most serious of these is the current overreliance on self regulation in the administration of existing integrity measures, such as those described by the Public Interest Disclosure and Freedom of Information Acts respectively.

In addition, Australia, like elsewhere, is currently witnessing a major, historic decline in the capacity of traditional forms of media to employ investigative journalists, and thus a decline the capacity of the 'Fourth Estate' more generally to assist in holding public and private organisations to account.

Thus the need for new institutional structures and cultures that encourage and support the reporting of bad behaviour by public service officials is urgent and growing. Even if presented in a less-than-ideal form, the proposed legislation would have my enthusiastic support.

It is not difficult to see that there are obvious financial and reputational incentives and pressures acting on any public agency that may encourage them to 'cover up' wrong-doing, and it would appear few to help Whistleblowers and others to expose them.

Thus there is an urgent need for an *independent* Commonwealth integrity commission, one that has the requisite investigative and referral powers that protects ability to act without fear or favour.

I wish briefly to comment on the following particular aspects of the proposed body.

Whistleblowing protections

I welcome the proposed establishment of a Whistleblower Protection Commissioner And the introduction of a proposed new offence of a 'failure to report public sector corruption'. While I imagine prosecutions may be infrequent, the creation of such an Office and a related offence under Australian law should in and of itself encourage whistleblowers to come forward and will do much, I suspect, to change existing unhealthy cultures within agencies around the exposing and reporting of corruption by Agency employees that would place loyalty to a particular person or group above institutional probity and honesty.

Prevention and Education

Prevention should be the ultimate goal of the Commission and to this end I believe the CIC should have the power and authority not just to forward cases to the relevant bodies

prosecute individuals under the law, but also to make more generalised recommendations and comments about institutional cultures.

The flourishing of behaviours injurious to the public service may be more than merely the result of a few 'bad eggs'. They can often also be traced to broader aspects of an agency's culture. As a former ANU academic, David West, recently wrote in relation to Australian universities:

the modern university most rewards those who demonstrate both loyalty to superiors and effective control of subordinates. Good managers are those who get things done, which tends to mean that they are not hampered by either sensitivity for others' feelings or democratic scruples. They are assessed according to results rather than the methods they employ, by ends rather than means. It is little surprise, then, that managers are sometimes tempted to resort to a more intense regime of control. The rhetoric of instruction and compliance has largely replaced the more collaborative discourse of request and consent.¹

The goal of open and accountable management requires agencies, to select managers skilled in internal communication and conflict resolution, and foster a broader corporate culture premised on values of honesty, competency, accountability and shared vision.

I thus believe that education should also form part of the Commission's work. I suspect many Australians do not currently have a good understanding of how integrity in organisations is currently protected through administrative structures, and how work-place cultures can promote or inhibit, personal and professional integrity.

This educational work could be handled by a separate part of the Commission, given the possibility that such work could be inhibited if someone promoting the Commission's aims to an agency could also find themselves required to be a potential investigator/prosecutor of that agency.

Enforcement

It is axiomatic that for an Integrity Commission to be able to influence (and ultimately prevent) bad institutional behaviours it must have powers to speak out, and powers to enforce change.

The proposed legislation to my mind errs on the overly cautious. I believe the CIC should have the capacity to impose fines and/or recommend compensation payments or make recommendations to the Federal Police or other statutory law enforcement agencies.

It might also be considered whether the Commission could also be given limited powers to grant a form of immunity from further prosecution in return for an admission of responsibility, and/or liability from a party under investigation.

Relation to Other Authorities and Powers

In refining the scope of the Commission's powers, I would suggest that the drafters of the legislation here err on the side of overlap, rather than leaving gaps, with the current legal

¹ <http://demosjournal.com/the-managerial-university-a-failed-experiment/>

frameworks already in place. It is better to have an overlap than a gap because those prone to the temptations of corruption will inevitably exploit those gaps.

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