

Chapter 2

Corruption in Australia

2.1 Corruption appears to exist at all levels of society. A commonly agreed definition of corruption—albeit a narrow one—is 'the misuse of entrusted power for private gain'.¹ It can take many forms depending on local culture and context.² Corruption can distort the making of public policy or the implementation of public policy.³

2.2 The Attorney-General's Department provides an explanation of the place corruption occupies on the continuum of human behaviour:

Corruption could be viewed as one end of a continuum of other undesirable behaviours, including maladministration and improper conduct.

...

Corruption can occur on many levels, from small illicit payments as part of routine bureaucratic processes, to the large scale diversions of public resources to corrupt individuals. Corruption affects both the public and private sectors and can be facilitated by bribery, embezzlement, money-laundering, nepotism and cronyism.⁴

2.3 Corruption has a negative effect on the countries, communities and institutions in which it is able to thrive. The Attorney-General's Department's 2011 National Anti-Corruption Plan discussion paper expanded on this point:

Corruption is a corrosive global phenomenon that has a wide range of devastating impacts. It undermines democracy and the rule of law; discourages investment and distorts markets; diverts resources from important services like schools, hospitals and roads; and provides a breeding ground for organised crime and terrorism.⁵

2.4 Corruption in Australia – a very wealthy country by global standards – is not the same as corruption in a poorer country. Professor Graycar informed the committee that the kinds of corruption risk in a rich country are not typically small scale bribes to

1 Attorney-General's Department, *The Commonwealth's approach to Anti-Corruption–Discussion Paper*, 2011, p. 7.

2 Attorney-General's Department, *The Commonwealth's approach to Anti-Corruption–Discussion Paper*, 2011, p. 7.

3 Professor Adam Graycar, *Submission 1*, p. 4.

4 Attorney-General's Department, *The Commonwealth's approach to Anti-Corruption–Discussion Paper*, 2011, pp. 7–8.

5 Attorney-General's Department, *The Commonwealth's approach to Anti-Corruption–Discussion Paper*, 2011, p. 3.

low level officials, but in corrupt conduct that influences the creation of new laws and awarding of government business.⁶

2.5 Reporting on community perceptions of corruption, a report from the Australian National University (ANU) dispelled the idea that corruption is a problem that only affects poorer countries:

In rich countries corruption certainly exists and has implications for governance, the delivery of services, the development of infrastructure, and general economic conditions, not least if there is a widespread perception that corruption is rife or increasing.⁷

Perceptions of corruption in Australia

2.6 Corruption has been found in Australia at the local council, state and Commonwealth level. In its most recent Corruption Perceptions Index, Transparency International (TI) ranked Australia number 13 globally, out of 168 other countries.⁸ Australia was ranked seventh in 2012.⁹ The authors of this index emphasised however that: 'transnational *perceptions* of corruption do not provide an objective, let alone relative measure of corruption or anti-corruption efforts in any given nation in *actuality*'.¹⁰

2.7 Transparency International Australia (TIA) expanded upon some of the reasons for Australia's decline in the TI rankings:

It is a corruption perception index, not an index of actual corruption or corruption findings. But the perception, I think, has essentially been driven by complacency in the government, particularly in the fields of financial bribery in illicit financial flows into Australia and perhaps out of Australia. There are a number of other issues as well, which are well known. Complacency has driven the index down because Australia is perceived to have not acted promptly.¹¹

2.8 In a survey conducted by the ANU—*ANUpoll on Perceptions of Corruption 2012* (ANU Poll)—it was found that evidence of corruption in Australia is generally low:

6 Professor Adam Graycar, *Committee Hansard*, 21 April 2016, p. 17.

7 ANU College of Arts and Social Sciences, *ANUpoll on Perceptions of Corruption 2012*, October 2012, p. 11.

8 Transparency International, *Corruption Perception Index 2015*, <http://www.transparency.org/cpi2015#results-table> (accessed: 26 April 2016).

9 Transparency International, *Corruption Perception Index 2012*, <http://www.transparency.org/cpi2012/results> (accessed: 26 April 2016).

10 Transparency International Australia, *A ten-point integrity plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan*, May 2012, p. 3.

11 The Hon. Anthony Whealy QC, Chairman, Transparency International Australia, *Committee Hansard*, 21 April 2016, p. 11.

The results confirm international surveys that show that the proportion of Australians who report an act of bribery involving a public official is consistently low. Less than one percent of the Australian population report that they have ‘often’ experienced bribery, and a further 3 percent report that they have experienced it ‘occasionally’, and 4 percent said it had ‘seldom’ happened. More than nine out of every 10 respondents said this had not happened to them or a family member in the previous five years.¹²

2.9 Despite the poll showing that people have virtually no personal or family experience of corruption, there is a public *belief* that corruption *is* increasing. Forty-three per cent of respondents indicated that they felt that corruption was increasing, and a further 41 per cent see corruption as having remained the same.¹³

2.10 The ANU Poll also surveyed community perceptions of corruption at different levels of government:

Of the three levels of government asked about in the survey—local, state and federal—local government was seen as corrupt by just 19 percent of the respondents, followed by 25 percent who mentioned state government. The federal government was seen as corrupt by almost one in three of the respondents.¹⁴

2.11 Submissions to this inquiry expressed concerns about the level of potential corruption within Australia:

I am extremely concerned that there is corruption within our political system. I am greatly concerned that corruption results in decisions being made by state and federal parliaments that [are] contrary to the wishes of the electorate. I am concerned that our political processes are being subverted by lobby groups and businesses with big wallets. I am concerned that political decisions are being made that [result] in actions that have deleterious impacts on our economy, social fabric, and natural environment.¹⁵

2.12 Veteran anti-corruption campaigner and journalist, Bob Bottom OAM, put it to the committee that the number of online petitions—altogether attracting over 10 000 signatures—indicate the concerns in the community about corruption in Australia.¹⁶

2.13 TIA hypothesised for the committee how an average Australian might view the current anti-corruption framework:

12 ANU College of Arts and Social Sciences, *ANUpoll on Perceptions of Corruption 2012*, October 2012, p. 11.

13 ANU College of Arts and Social Sciences, *ANUpoll on Perceptions of Corruption 2012*, October 2012, p. 5.

14 ANU College of Arts and Social Sciences, *ANUpoll on Perceptions of Corruption 2012*, October 2012, p. 13.

15 Elle Crush, *Submission 4*, p. 1.

16 Mr Bob Bottom OAM, *Submission 13*, pp. [1–2].

'What do the people of Australia think about this?' They see that every state and territory has an ICAC but the federal government does not. They would be mystified completely by that, and if you said to the community at large, 'That's because nothing's going wrong in Canberra or in the federal sphere,' they would just laugh.¹⁷

2.14 Somewhat paradoxically, TIA has argued that Australia's perception of being mostly free from corruption may actually be a weakness:

TIA considers the single largest corruption risk in Australia to be that of complacency—the frequent assumption that because things do not 'appear' to be as bad in Australia as elsewhere, or as bad in some Australian jurisdictions as others, that specific corruption-related conduct is occurring.¹⁸

State governments and corruption

2.15 All Australian states now have broad-based anti-corruption agencies. The NSW Independent Commission Against Corruption (ICAC), the Queensland Crime and Corruption Commission (Qld CCC) and the Western Australia Corruption and Crime Commission (WA CCC) have been operating in some form since the late 1980s. The Tasmanian Integrity Commission (IC), Victorian Independent Broad-based Anti-corruption Commission (IBAC) and the SA Independent Commission Against Corruption (ICAC) are more recent; all being establishing after 2010. The Northern Territory government has indicated a plan to establish an independent anti-corruption body in the first quarter of 2016.¹⁹

2.16 These agencies share a number of similarities. Specifically:

- They all have jurisdiction over the public but not the private sector (although the extent of jurisdiction across the public sector varies);
- All, with the exception of the Qld CCC, have investigative, preventive and educational functions;
- They all possess coercive powers similar to those of Royal Commissions; and
- Each is overseen by a Parliamentary committee.

2.17 The reason for the establishment of most anti-corruption commissions in Australia was grounded on the belief that corruption was going unchallenged and that

17 The Hon. Anthony Whealy QC, Chairman, Transparency International Australia, *Committee Hansard*, 21 April 2016, p. 11.

18 Transparency International Australia, *A ten-point integrity plan for the Australian Government: Submission by Transparency International Australia on the Proposed National Anti-Corruption Plan*, May 2012, p. 3.

19 'Attorney General John Elferink announces the government will establish a Northern Territory anti-corruption body', *NT News*, 14 August 2015, <http://www.ntnews.com.au/news/northern-territory/attorney-general-john-elferink-announces-the-government-will-establish-a-northern-territory-anticorruption-body/news-story/fe2046bc6ecb1a6e9d5c81ddb6830e9> (accessed: 13 April 2016).

the existing frameworks did not have the ability to combat corruption. In some cases the perception of corruption was sufficient to lead to the establishment of anti-corruption bodies. A key theme in the establishment of anti-corruption bodies has been the restoration and maintenance of public trust in government institutions.

2.18 The report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (the Fitzgerald Inquiry) in 1989 in Queensland provides an summary of the typical role, purpose, and powers of the anti-corruption agency model (which at the time was limited in Australia to the ICAC in NSW):

An ICAC's central role is to detect and investigate corruption. It is therefore also concerned with organised crime.

An ICAC is a permanent structure which endeavours to identify patterns and trends in official misconduct and to expose root causes of crime and the crises and disruptions it causes in public administration. Its main concern is with these larger problems, but in addressing them it amasses evidence concerning individuals which is passed over to prosecution authorities for action.

It is inquisitorial, that is to say, it conducts hearings, usually closed, with a view to establishing facts and makes inquiries which involve questioning witnesses on oath, exercising powers of search and seizure, conducting covert surveillance and interceptions, compelling the production of documents and the provision of information and, sometimes, detaining people for interrogation and investigation.

It has its own investigators, including police and other specialist investigators, such as accountants, lawyers, bankers, analysts, statisticians, and computer operators. It is subject to obligations of confidentiality and secrecy. It is obliged to report generally on its activities, but not specifically on particular investigations. Some ICACs may be directed to investigate particular people or matters. Usually they cannot be directed not to investigate matters within their charter, but may have matters referred to them for investigation by the government.

An ICAC may also carry out community education and public relations exercises. It may conduct an information campaign aimed at public servants, businessmen and professional advisers. Such campaigns may contain information about what constitutes official misconduct in relation to tax evasion, stock exchange fraud and insurance fraud. This is done with a view to raising standards and increasing community awareness of the insidious impact of official corruption.²⁰

2.19 The NSW ICAC was established in 1988 following revelations of corruption by government ministers, members of the judiciary and the police force. In his second reading speech for the Bill to establish the NSW ICAC, the then Premier highlighted the importance of an independent body in restoring trust and legitimacy in the political system:

20 Tony Fitzgerald QC, *Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, 1989, pp. 300–301.

No government can maintain its claim to legitimacy while there remains the cloud of suspicion and doubt that has hung over government in New South Wales. I am determined that my Government will be free of that doubt and suspicion; that from this time forward the people of this State will be confident in the integrity of their Government, and that they will have an institution where they can go and complain of corruption, feeling confident that their grievances will be investigated fearlessly and honestly.²¹

2.20 In 1989 in Queensland, what has become the Qld CCC was formed in response to the findings of the Fitzgerald Inquiry.²² The Fitzgerald Inquiry, over a period of two years and 238 days of public hearings, heard evidence of widespread corruption within law enforcement and public administration.

2.21 Similarly in 2004 in Western Australia, the establishment of what is now the WA CCC was the result of a recommendation of the interim report of the 2002 Royal Commission.²³ The WA CCC replaced the Anti-Crime Commission, which the 2002 Royal Commission found had lost the trust of the public to prevent corruption:

In the circumstances, it has been possible at this stage of the work of the Commission to conclude that the identifiable flaws in the structure and powers of the ACC have brought about such a lack of public confidence in the current processes for the investigation of corrupt and criminal conduct that the establishment of a new permanent body is necessary.²⁴

2.22 Tasmania set up its IC in response to the 2009 report *Public Office is Public Trust* prepared by the Parliamentary Joint Select Committee on Ethical Conduct. The report found that the development of standards and professional codes was *ad hoc* in nature, that the current mechanisms for investigation were inadequate, and that there was a lack of advice available to public officers in relation to the conduct of their duties.²⁵

2.23 In Victoria, the IBAC was established in response to the 2010 *Review of Victoria's Integrity and Anti-Corruption System* (Proust Review), which was commissioned in the wake of several reports into misconduct and corruption in 2009. The Proust Review found that:

21 The Hon. Mr Greiner, Premier of New South Wales, *Legislative Assembly Hansard*, 26 May 1988.

22 The Fitzgerald Inquiry did not recommend the establishment of a NSW style ICAC in Queensland.

23 G Kennedy AO QC, *Royal Commission into whether there has been Corrupt or Criminal Conduct by Western Australian Police Officers – Interim report*, Western Australia, December 2002, p. 105.

24 G Kennedy AO QC, *Royal Commission into whether there has been Corrupt or Criminal Conduct by Western Australian Police Officers – Interim report*, Western Australia, December 2002, p. 3.

25 Parliamentary Joint Select Committee on Ethical Conduct, *Public Office is Public Trust*, Tasmania, 2009, pp. 7–8.

There is a comparatively high level of concern within the Victorian community regarding the effectiveness of current efforts in addressing corruption, despite international rankings that rate Australian jurisdictions as being amongst the least vulnerable to corruption in the world.²⁶

2.24 The Proust Review's recommendation to establish a new, dedicated anti-corruption body was partly to address a lack of coordination between existing agencies and jurisdictional gaps:

There are opportunities for Victoria's integrity bodies to operate as a more collective and cohesive system. Victoria's integrity infrastructure has evolved over time, with the creation of new integrity bodies, each undertaking valuable but disparate functions. The resulting fragmentation, system gaps and overlaps have been exacerbated by legislative restrictions on the capacity of integrity bodies to share information.

Barriers to coordination between integrity bodies have been highlighted by recent examples of different bodies investigating the same area. Findings of misconduct by one integrity body have been dismissed or not upheld by another due to different evidentiary requirements or different interpretations of what constitutes misconduct and corruption. The result is public confusion and uncertainty about whether the investigated person or body misbehaved. The removal of legislative barriers to coordination and the establishment of a coordination forum of integrity bodies should strengthen the efficiency and effectiveness of the integrity system as a whole.²⁷

2.25 The establishment of South Australia's ICAC in 2012 was not in response to allegations of serious corruption or substantive failings of the existing integrity system, but to pre-empt any future corruption problems:

Unlike some States, South Australia has fortunately thus far not been in a circumstance where cases of corruption, be it systemic or otherwise, have required an anti-corruption body to be established so as to attempt to restore faith and confidence in public institutions. Given this, some may question why an integrity body such as the ICAC is required in South Australia. My answer to that is that with modern society becoming increasingly complex and the financial resources of public funds being stretched to meet the ever increasing needs for essential government services, the temptation to engage in corrupt conduct for personal gain by abuse of public office will exist. A modern and sophisticated society should pre-empt this risk and proactively act to safeguard and preserve community confidence in the integrity of public administration. Establishing an ICAC constitutes that pre-emptive strike and safeguard.²⁸

26 State Services Authority, *Review of Victoria's integrity and anti-corruption system*, Melbourne, 2010, p. viii.

27 State Services Authority, *Review of Victoria's integrity and anti-corruption system*, Melbourne, 2010, p. ix.

28 The Hon. T.R. Kenyon, Minister for Employment, Higher Education and Skills, Minister for Science and the Information Economy, Minister for Recreation and Sport, *House of Assembly Hansard*, 2 May 2012.

2.26 Anti-corruption bodies have been established in response to either serious incidents of corruption, or to address a public belief that corruption was a problem. Although there are variations between states regarding powers, jurisdiction, independence and accountability afforded to anti-corruption agencies they share some common themes. All are stand-alone bodies designed to detect and prevent corruption, and through doing this improve public trust in government and public administration.

2.27 The following chapter will consider calls to establish a similar anti-corruption structure at the federal level.