

Chapter 2

The current multi-agency framework

2.1 At present, the Commonwealth's approach to public sector integrity and corruption comprises a multi-agency framework in which different agencies have distinct but at times overlapping responsibilities for maintaining the integrity of and addressing corruption within the Commonwealth public sector.

2.2 This chapter considers that multi-agency framework, in particular:

- how the Commonwealth defines corruption;
- the agencies that comprise the framework and the interaction between federal and state integrity agencies.
- other integrity measures that bolster the Commonwealth's integrity framework;
- the role of the Parliament in the integrity framework;
- measures addressing parliamentarians' use of work expenses, and standards governing the ministry and ministerial staff, and
- the role of the media in public sector integrity and accountability.

2.3 Finally, the chapter examines a collaborative project between Griffith University and Transparency International Australia (TIA) et al. assessing how Australia's integrity system can be strengthened and reformed.

The definition of 'corruption'

2.4 The definition of corruption and the extent to which it is desirable to define corruption for the purposes of the Commonwealth's integrity framework were the subject of discussion during the course of the inquiry.

2.5 'Corruption' with regard to the Commonwealth public sector is generally considered to be the dishonest or biased conduct of a public official's function or duties, often for personal benefit or gain, and of a serious nature. The concept of 'integrity' further expands the scope of behaviour or conduct by public officials which might be considered inappropriate but which might also be considered to be less serious or of lower risk than 'corruption'.

2.6 This broad definition of 'corruption' is derived from the Australian Public Service Commission's (APSC) annual Employee Census, which surveys the Australian Public Service (APS) and includes a question about corruption in the service (that is, whether APS employees have perceived, witnessed and/or reported corruption in their workplace). The APSC currently defines corruption as:

The dishonest or biased exercise of a Commonwealth public official's functions. A distinguishing characteristic of corrupt behaviour is that it

involves conduct that would usually justify serious penalties, such as termination of employment or criminal prosecution.¹

2.7 The APSC suggested that particular types of conduct fall within the definition of corrupt conduct but that for its purposes, the term is given a broad interpretation:

Senator KAKOSCHKE-MOORE: So, what is the commission's understanding of corruption, then, for the purposes of your functions?

Mr Casimir: The question we put to employees in the census was that we simply asked them to report whether they had seen behaviour in their agency that they considered may be serious enough to be viewed as corruption. We then put a series of things underneath that—things like bribery, domestic and foreign fraud, forgery, embezzlement, theft or misappropriation of assets. The list goes on.

Senator KAKOSCHKE-MOORE: So, the conduct you have just listed would be considered corruption for the purposes of the code of conduct?

Mr Casimir: It was considered corruption for the purposes of the question, yes.

Senator KAKOSCHKE-MOORE: But how do you define it now? Is there a definition you can point me to?

Mr Casimir: I think the answer to that is that we try to not change the questions very much from year to year so we get consistent data. This is a definition we use for our purposes. But there are other definitions, as you know, in places like the [*Law Enforcement Integrity Commissioner Act 2006* (LEIC Act)].²

2.8 Indeed, certain types of corrupt conduct, such as fraud and bribery, are defined in Commonwealth legislation for the purpose of outlining certain criminal offences. Yet other definitions of 'corruption' exist in Commonwealth legislation for the purpose of articulating the role and functions of some law enforcement agencies. The Commonwealth's current position, articulated by the Attorney-General's Department (AGD), is that beyond these existing definitions, corruption should not be defined too narrowly:

We are of the view...that we do not want to define 'corruption' too narrowly. Obviously there is a range, and I think we have here about five of the various definitions of 'corruption'. The [LEIC Act], the [*Australian Federal Police Act 1979* (AFP Act)], the Border Force Act, the [*Criminal Code Act 1995* (Criminal Code)] and the Crimes (Superannuation Benefits) Act are examples of those. We have looked at defining it previously and come to the conclusion that the risk of doing so may narrow the approach to corruption. We do discuss with each of the agencies—this is a discussion that we have ongoing with [the Australian Commission for Law

1 2013–14, p. 236; 2014–15, p. 46; 2015–16, p. 27.

2 Mr Paul Casimir, Director, Integrity, Australian Public Service Commission (APSC), *Committee Hansard*, 5 July 2017, p. 16. See also: APSC, answers to questions on notice, 5 July 2017 (received 3 August 2017).

Enforcement Integrity (ACLEI)], particularly, who have a very broad approach to the definition of 'corruption'. Law enforcement agencies provide them with everything—all of that advice—and then they triage.³

2.9 The following sections consider some of the existing definitions of corruption and corrupt conduct, such as those provided in the criminal law and those applicable to agencies comprising the national integrity framework.

Criminal offences

2.10 The criminal law applies in the same way to all natural persons, including public officials and parliamentarians. This means that offences outlined in the Criminal Code apply to public officials and parliamentarians in the same way as they do to other members of the community.

2.11 For example, the Criminal Code outlines a number of offences relating to fraudulent conduct, forgery and bribery of a foreign official. A public official suspected of fraudulent conduct, forgery or bribery of a foreign official is not immune from prosecution under these offences.

2.12 There are, however, a number of Commonwealth offences that apply particularly to public officials.

2.13 Under section 141.1 of the Criminal Code it is an offence for a Commonwealth public official to receive a bribe or corrupting benefit, carrying penalties of imprisonment and/or a fine. Section 142.2 makes it an offence to abuse public office, where a Commonwealth public official:

(i) exercises any influence that the official has in the official's capacity as a Commonwealth public official;

or

(ii) engages in any conduct in the exercise of the official's duties as a Commonwealth public official; or

(iii) uses any information that the official has obtained in the official's capacity as a Commonwealth public official; and

(b) the official does so with the intention of:

(i) dishonestly obtaining a benefit for himself or herself or for another person; or

(ii) dishonestly causing a detriment to another person.

2.14 These offences have extended geographical jurisdiction: they apply whether or not the conduct constituting the alleged offence occurs in Australia, and whether or not a result of the conduct constituting the alleged offence occurs in Australia.

3 Ms Nicole Rose PSM, Deputy Secretary, Criminal Justice Group, Attorney-General's Department (AGD), *Committee Hansard*, 5 July 2017, p. 28.

Related legislative definition

2.15 The *Crimes (Superannuation Benefits) Act 1989* relates 'to certain superannuation benefits paid or payable to or in respect of certain persons convicted of corruption purposes'. It allows superannuation payments to be withheld from an employee (other than an officer of the Australian Federal Police (AFP)) of the Commonwealth public sector where that person has been convicted of a corruption offence.

2.16 The Act defines a 'corruption offence' as an offence:

by a person who was an employee at the time when it was committed, being an offence:

- (a) whose commission involved an abuse by the person of his or her office as such an employee; or
- (b) that, having regard to the powers and duties of such an employee, was committed for a purpose that involved corruption; or
- (c) that was committed for the purpose of perverting, or attempting to pervert, the course of justice.⁴

Definitions of corruption for the purposes of law enforcement agencies

2.17 Further definitions of corruption and corrupt conduct are found in legislation establishing and outlining the roles and functions of Commonwealth law enforcement agencies.

Law Enforcement Integrity Commission Act 2006

2.18 Pursuant to the LEIC Act, the legislation governing the ACLEI, all law enforcement agencies are statutorily required to report any allegation, or information, that raises a corruption issue to the Integrity Commissioner.⁵

2.19 A 'law enforcement agency' is defined in the LEIC Act as:

- (a) the AFP; or
- (b) the [Australian Crime Commission (ACC)]; or
- (ba) the [Department of Immigration and Border Protection (DIBP)]; or
- (bb) [the Australian Transaction Reports and Analysis Centre (AUSTRAC)]; or
- (bd) the Agriculture Department; or
- (c) the former [National Crime Authority]; or
- (d) any other Commonwealth government agency that:
 - (i) has a law enforcement function; and

4 *Crimes (Superannuation Benefits) Act 1989*, s. 2.

5 *Law Enforcement Integrity Commission Act 2006*, s. 19.

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- (ii) is prescribed by the regulations for the purposes of this paragraph.⁶

2.20 As noted above, there is no definition of 'corruption' in the LEIC Act. The definition of 'corrupt conduct' in the LEIC Act refers to the definition of 'engages in corrupt conduct',⁷ which is defined in the Act as follows:

- (1) For the purpose of this Act, a staff member of a law enforcement agency engages in corrupt conduct if the staff member, while a staff member of the agency, engages in:
 - (a) conduct that involves, or that is engaged in for the purpose of, the staff member abusing his or her office as a staff member of the agency; or
 - (b) conduct that perverts, or that is engaged in for the purpose of perverting, the course of justice; or
 - (c) conduct that, having regard to the duties and powers of the staff member as a staff member of the agency, involves, or is engaged in for the purpose of, corruption of any other kind.
- (2) If the law enforcement agency is one referred to in paragraph (d) of the definition of law enforcement agency, the staff member engages in corrupt conduct only if the conduct relates to the performance of a law enforcement function of the agency.⁸

2.21 The LEIC Act also contains further definitions of 'serious corruption' and 'systemic corruption.' Serious corruption is defined as:

...corrupt conduct engaged in by a staff member of a law enforcement agency that could result in the staff member being charged with an offence punishable, on conviction, by a term of imprisonment for 12 months or more.⁹

2.22 Systemic corruption is defined as 'instances of corrupt conduct (which may or may not constitute serious corruption) that reveal a pattern of corrupt conduct in a law enforcement agency or in law enforcement agencies'.¹⁰

2.23 TIA outlined the benefits of these statutory definitions as demonstrating that:

...it is possible to differentiate between broad ideas of 'corruption' that may seem mismatched with a commission's strong investigative powers, and others that align more closely with the commission's motivating purpose.¹¹

6 *Law Enforcement Integrity Commission Act 2006*, s. 5.

7 *Law Enforcement Integrity Commission Act 2006*, s. 5.

8 This term is defined at s. 6 of the *Law Enforcement Integrity Commission Act 2006*.

9 *Law Enforcement Integrity Commission Act 2006*, s. 5.

10 *Law Enforcement Integrity Commission Act 2006*, s. 5.

11 Transparency International Australia, *Submission 21*, p. 7.

2.24 The Integrity Commissioner also provided the committee with the following explanation of corruption in the context of an agency head's obligation to notify the Commissioner of a corruption issue:¹²

It is engaging in conduct—and the legislation refers to abuse of power; it refers to perverting or obstructing the course of justice; and it refers to, having regard to the office of an individual, whether or not what they have done amounts to corruption of any other kind. Now, you might say to me, 'What is corruption?' That is a question I asked myself when I took up the job. As is often the case in legislation, as I am sure you are aware, if there is not a definition, then one reverts to the ordinary everyday meaning. Courts, for a long time, have then gone to the *Macquarie* and looked at the definition, and so I did that. And if you look at the definition of 'corrupt' in *Macquarie*, you will see 'dishonest or lacking in integrity'. If you go to the definition of 'integrity', it is broader. It does not mention 'corrupt' or 'corruption' at all. It talks about 'soundness of moral principle and character'. It talks about the wholeness of the being. So, somewhere in that, I have to consider whether or not a matter that comes before me raises a corruption issue. That is something that occupies a considerable amount of the resourcing...But the bar is quite low.¹³

Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity inquiry

2.25 The operation of the LEIC Act was the subject of an inquiry by the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (PJACLEI). The PJACLEI handed down its final report on 7 July 2011 and the government responded to its recommendations in February 2012.¹⁴

2.26 The PJACLEI report considered the advantages and disadvantages of a broad definition versus a tightened definition of corruption.¹⁵ It concluded that, while a broad definition of corruption allowed for flexibility, the committee was of the view that:

...a more detailed and comprehensive definition of corruption is required. The committee considers that further definition of the term would provide greater clarity to the anticorruption work conducted by ACLEI, while serving to more effectively delineate corruption issues from issues better handled by other agencies.¹⁶

12 *Law Enforcement Integrity Commission Act 2006*, s. 19.

13 Mr Michael Griffin AM, Integrity Commissioner, Australian Commission for Law Enforcement Integrity (ACLEI), *Committee Hansard*, 5 July 2017, pp. 46–47.

14 Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (PJACLEI), *Inquiry into the Operation of the Law Enforcement Integrity Commissioner ACT 2006: Final Report*, July 2011.

15 PJACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner ACT 2006: Final Report*, July 2011, pp. 21–27.

16 PJACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner ACT 2006: Final Report*, July 2011, p. 26.

2.27 The committee recommended that ACLEI, the Commonwealth Ombudsman, the APSC, the Australian National Audit Office (ANAO) and the AGD:

...develop a more detailed and comprehensive definition of corruption for the purposes of the [LEIC Act]. A proposed definition should be circulated for public consultation, including this committee, no later than November 2011.¹⁷

2.28 It added that a detailed definition of corruption would also have an added advantage of providing a:

...stronger basis for the reporting and measurement of corruption issues. An appropriate definition may have applicability to the broader Commonwealth integrity system.¹⁸

2.29 The government agreed in principle to that recommendation, stating:

The Government agrees that the definition of corruption must be clear and appropriate, noting that the definition has relevance beyond the [LEIC Act]. The Government accordingly agrees that the [AGD] will work with relevant agencies to clarify the definition of corruption for the purposes of the [LEIC Act] and undertake public consultation on this issue.

The outcome of this work could be either guidance concerning the definition or an amendment to the [LEIC Act] to clarify the definition itself.¹⁹

2.30 Despite this response, there remains no explicit definition of corruption in the LEIC Act. Further, it is notable that no changes were made to the definitions associated with corruption in the LEIC Act—which remain as they were when the government's response was provided—as a result of this inquiry.

Australian Federal Police Act 1979

2.31 The AFP Act provides that 'corrupt conduct' also means 'engages in corrupt conduct' and refers to the definition in the LEIC Act. This Act also defines 'corruption offence' in respect of the loss of certain superannuation rights and benefits, substantially similar to the definition which appears in the *Crimes (Superannuation Benefits) Act 1989*:

corruption offence means an offence by a person who was an AFP employee or an old law member or staff member at the time when it was committed, being an offence:

17 PJACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner ACT 2006: Final Report*, July 2011, p. 27.

18 PJACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner ACT 2006: Final Report*, July 2011, p. 27.

19 Commonwealth of Australia, *Australian Government Response to: Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity – Final Report: Inquiry into the Operation of the Law Enforcement Integrity Commission Act 2006*, February 2012, p. 5.

- (a) whose commission involved an abuse by the person of his or her office as such a person;
- (b) that, having regard to the powers and duties of such a person, as the case may be, was committed for a purpose that involved corruption; or
- (c) that was committed for the purpose of perverting, or attempting to pervert, the course of justice.²⁰

Australian Border Force Act 2015

2.32 The *Australian Border Force Act 2015* contains its own definition of 'engages in corrupt conduct' specific to DIBP workers:

...if the worker, while an Immigration and Border Protection worker, engages in:

- (a) conduct that:
 - (i) involves; or
 - (ii) is engaged in for the purpose (or for purposes including the purpose) of;
the worker abusing his or her position as an Immigration and Border Protection worker; or
- (b) conduct that:
 - (i) perverts; or
 - (ii) is engaged in for the purpose (or for purposes including the purpose) of perverting;
the course of justice; or
- (c) conduct that, having regard to the duties and powers of the worker as an Immigration and Border Protection worker:
 - (i) involves; or
 - (ii) is engaged in for the purpose (or for purposes including the purpose) of;
corruption of any other kind.²¹

Definitions of corruption for the purposes of intelligence agencies

2.33 Australia's intelligence agencies—the Australian Security Intelligence Organisation (ASIO); the Australian Secret Intelligence Service; the Australian Signals Directorate (ASD); the Australian Geospatial-Intelligence Organisation; the Defence Intelligence Organisation (DIO); and the Office of National Assessments (ONA)—are overseen by the Inspector-General of Intelligence and

20 *Australian Federal Police Act 1979*, s. 41.

21 *Australian Border Force Act 2015*, s. 4.

Security (IGIS),²² pursuant to the *Inspector-General of Intelligence and Security Act 1986* (IGIS Act).²³

2.34 The IGIS noted in its submission that it:

...also has functions under the *Public Interest Disclosure Act 2013* (PID Act) in relation to disclosures by current and former public officials about conduct relating to intelligence agencies. The definition of disclosable conduct in the PID Act includes maladministration, abuse of public trust and corruption.²⁴

2.35 Although there is no definition of 'corruption' or 'corrupt conduct' in the IGIS Act or PID Act, in its submission, the IGIS provided some examples of what it considers to be misconduct, noting that no investigations conducted under the IGIS Act or PID Act have 'indicated anything approaching widespread misconduct or corruption':

For example in 2011 there was an inquiry into allegations of inappropriate security vetting practices; in 2010 there was an inquiry into the possible compromise of a compliance test, and in 2009 there was an inquiry into allegations that ASD had spied on the Defence Minister. Since the introduction of the PID Act the IGIS office has been notified of a small number of disclosures concerning alleged misconduct in procurement and has received a number of disclosures alleging maladministration in staffing matters.²⁵

Agencies comprising the multi-agency framework

2.36 The current Commonwealth integrity system is referred to as the 'multi-agency framework'. At its core, the multi-agency framework consists of a number of key agencies with specific legislative responsibilities to address and prevent corruption. These agencies²⁶ include the:

22 Ms Margaret Stone, Inspector-General of Intelligence and Security, Office of the Inspector-General of Intelligence and Security (IGIS), *Committee Hansard*, 16 June 2017, p. 46.

23 *Inspector-General of Intelligence and Security Act 1986*, s. 4.

24 IGIS, *Submission 10*, p. 2 (citations omitted).

25 IGIS, *Submission 10*, p. 4 (citations omitted).

26 Other agencies referred to as playing 'a role safeguarding the integrity of government administration' include: the Australian Prudential Regulation Authority; the Department of Human Services; the Department of Defence; the Department of Foreign Affairs and Trade; Treasury; the Australian Taxation Office; the Fair Work Ombudsman; the Australian Competition and Consumer Commission; the Inspectors-General of Taxation, Intelligence and Security and Defence; the Australian Electoral Commission (AEC), the Department of Finance; the Office of National Assessments; and the Parliamentary Service Commissioner. In addition, individual agencies are responsible for implementing internal policies to prevent, detect, investigate and respond to corruption and misconduct under the Commonwealth's fraud control policy, the Australian Public Service (APS) values, the APS Code of Conduct and the *Public Service Act 1999*. See AGD, *Submission 23* [2016], p. 5.

- AGD;
- AFP;
- ACLEI;
- ANAO;
- APSC;
- Commonwealth Ombudsman;
- IGIS;
- Australian Electoral Commission (AEC);
- Australian Securities and Investment Commission (ASIC); and
- AUSTRAC.²⁷

2.37 The legislation that governs these agencies, according to the APSC, provides the Commonwealth with:

...an effective framework defining the reach and expertise of those agencies. It operates to limit their reach to that intended by Parliament. It has also resulted, in practice, in those agencies having specialist expertise in their respective fields.²⁸

2.38 The AGD provided the committee with an outline of the Commonwealth's integrity framework, and argued that this 'robust system' provides the Commonwealth with the appropriate 'safeguards against corruption' and supports the government's 'zero-tolerance approach to corruption in all its forms'.²⁹ The AGD reassured the committee that collaboration between it and its partner agencies ensures that the 'legal and policy frameworks against corruption remain effective'.³⁰

2.39 Under the current integrity framework:

...the strategic dispersion of responsibility amongst a range of agencies promotes accountability and creates a strong system of checks and balances. It protects against abuse of power within Australia's anticorruption framework by ensuring a high level of oversight in the development and implementation of anticorruption policy.³¹

2.40 The AGD argued that the current framework has enabled agencies to develop the necessary expertise and institutional knowledge to combat specific corruption risks. Specialised agencies include the AFP's Fraud and Anti-corruption Centre (FAC), that centralises the:

27 AGD, *Submission 23* (2016), pp. 2–5.

28 APSC, *Submission 16* (2016), p. 3.

29 Ms Rose, AGD, *Committee Hansard*, 5 July 2017, p. 25.

30 Ms Rose, AGD, *Committee Hansard*, 5 July 2017, p. 25.

31 Ms Rose, AGD, *Committee Hansard*, 5 July 2017, p. 25.

...capabilities and expertise of a broad range of Commonwealth agencies to address corrupt activities and risks. It has developed expertise in investigating serious and complex corruption offences, including fraud and foreign bribery.³²

2.41 The AGD also referred to ACLEI as a key agency with:

...specialist knowledge of corruption risks that face and are likely to face law enforcement agencies. ACLEI draws upon this knowledge and assists agencies with the design of tailored corruption prevention strategies, including developing risk assessments and control plans.³³

2.42 The Commonwealth Ombudsman informed the committee that, in its view, the current integrity framework is:

...for the most part, adequate and reasonable. The division of responsibility promotes accountability and transparency and can protect against abuse of power within the anticorruption framework itself.³⁴

2.43 This framework, according to the AGD, is also supported by Australia's democratic system of representative government, the judiciary, the press and civil society. These institutions:

...play an important role in protecting against corruption by enabling and encouraging scrutiny of both the public and private sectors. We are conscious that we must keep lifting the bar to ensure that Australia remains at the forefront of promoting transparency, integrity and accountability.³⁵

Attorney-General's Department

2.44 The AGD is the lead government department responsible for the Commonwealth's domestic and international anti-corruption policy, including:

- foreign bribery;
- anti-money laundering
- counter-terrorism financing regimes;
- Commonwealth fraud control; and
- the Protective Security Policy Framework.³⁶

2.45 Prior to the 2013 election, the AGD was tasked with developing a National Anti-Corruption Plan, which was not finalised.³⁷

32 Ms Rose, AGD, *Committee Hansard*, 5 July 2017, p. 25.

33 Ms Rose, AGD, *Committee Hansard*, 5 July 2017, p. 25.

34 Ms Doris Gibbs, Acting Commonwealth Ombudsman, Office of the Commonwealth Ombudsman (Commonwealth Ombudsman), *Committee Hansard*, 16 June 2017, p. 47.

35 Ms Rose, AGD, *Committee Hansard*, 5 July 2017, p. 25.

36 AGD, *Submission 23* [2016], p. 3.

37 Senate Standing Committee on Legal and Constitutional Affairs, AGD, Additional estimates 2016-17, *response to Question no. AE16/050*, 9 February 2016, p. 1.

2.46 In addition to its domestic work, the AGD has a key role in Australia's engagement with international anti-corruption forums aimed at combatting corruption, money laundering and foreign bribery. These forums are related to:

- the United Nations (UN) Convention against Corruption;
- the UN Convention against Transnational Organised Crime;
- the G20 Anti-Corruption Working Group;
- the Asia-Pacific Economic Cooperation (APEC) Anti-Corruption and Transparency Working Group;
- the Financial Action Task Force;
- the Asia-Pacific Group on Money Laundering; and
- the Organisation for Economic Cooperation and Development (OECD) Working Group on Bribery.³⁸

2.47 As the overarching coordinator in the prevention, detection and response to corruption, the AGD endeavours 'to ensure the legal and policy frameworks are effective' and administers the Criminal Code and the Crimes Act. Further, the committee heard that the AGD is also Australia's authority for extradition and mutual assistance arrangements.³⁹

2.48 Domestic laws that target corruption, for which the AGD is responsible, include police powers in the Crimes Act, and offences under the Criminal Code, such as:

- foreign bribery;
- misuse of public office; and
- fraud against the Commonwealth.⁴⁰

Australian Federal Police

2.49 The AFP is the primary law enforcement agency responsible for the investigation of serious or complex fraud and corruption against the Commonwealth. A dedicated centre within the AFP, known as the FAC, was established by the government in July 2014. The FAC delivers a whole-of-government approach to investigating fraud and corruption by bringing together the Australian Taxation Office (ATO), ASIC, the Australian Criminal Intelligence Commission (ACIC), AUSTRAC, the DIBP, the Department of Human Services, the Department of Defence and the Department of Foreign Affairs and Trade. The AGD and the Commonwealth Director of Public Prosecutions (CDPP) also act as advisory members of the FAC.⁴¹

38 AGD, *Submission 23* [2016], p. 3.

39 Ms Kelly Williams, Assistant Secretary, Criminal Law Policy Branch, AGD, *Committee Hansard*, 5 July 2017, p. 27.

40 Ms Rose, AGD, *Committee Hansard*, 5 July 2017, p. 25.

41 AGD, *Submission 23* [2016], p. 3.

2.50 According to the AGD, the FAC is tasked with facilitating:

...the referral of evaluations, triage and review for FAC matters, provides fraud training for Commonwealth agencies, gather intelligence and facilitates agency secondment and joint activity coordination.⁴²

2.51 A FAC factsheet describes the referral system. The FAC:

...will triage and evaluate serious and complex fraud and corruption referrals, where the referring agency has sought an AFP investigation or assistance and the allegation meets the criteria below:

- the allegation relates to an offence of foreign bribery or
- the allegation relates to any AFP "Fraud" incident type under the AFP Case Categorisation Prioritisation Model (CCPM),⁴³ and any of the following circumstances exist—
 - the investigation is expected to exceed six months;
 - the alleged value of the fraud exceeds \$250,000;
 - involves criminal or corrupt behaviour by Australian government employees;
 - involves bribing of Australian Government employees;
 - involves multiple offenders acting together in an organised way to perpetrate the crime;
 - involves the repeated commission of offences over a number of years; [and]
 - exposes a serious vulnerability in government systems, funding or revenue.⁴⁴

2.52 The AGD's submission to the 2016 Select Committee on the establishment of a National Integrity Commission (2016 select committee) provided an overview of the FAC's role in the Commonwealth's integrity framework. The FAC's work focuses on:

- strengthening the capabilities of law enforcement agencies to respond to serious and complex fraud, foreign bribery, corruption by employees of the Commonwealth, and complex identity crime;

42 Senate Standing Committee on Legal and Constitutional Affairs, AGD, Additional estimates 2016-17, *response to Question no. AE16/050*, 9 February 2016, pp. 1–2.

43 The Case Categorisation and Prioritisation Model (CCPM) assists with the consideration by the Australian Federal Police (AFP) of issues which lead to the acceptance, rejection, termination, finalisation or resourcing of its operations. Corruption is listed as one of the incident types. Further, the CCPM ranks the impact of 'corruption by a public official (including within Australian and bribery of a foreign official in other county)' as high. See, AFP, *The Case Categorisation & Prioritisation Model: Guidance for AFP Clients*, 1 July 2016, <https://www.afp.gov.au/sites/default/files/PDF/ccpm-july-2016.pdf> (accessed 22 June 2017).

44 AFP, *Fraud and Anti-corruption Centre fact sheet*, <https://www.afp.gov.au/sites/default/files/PDF/fac-centre-fact-sheet.pdf> (accessed 22 June 2017).

- co-ordinating the Commonwealth's operational response for matters requiring a joint agency approach; and the
- protection of Australia's finances.

2.53 The submission highlighted the FAC's multi-agency framework, noting it allows for the consideration of a 'range of responses based on the contributions of all agencies involved' that may include 'civil and administrative penalties based on the legislation, regulation and policy of the relevant agencies; up to and include criminal prosecution'.⁴⁵ Further, the FAC supports:

- the monitoring of financial crime behaviour and identifies policy, regulation and legislative reform;
- collaboration between the public and private sectors to promote financial crime prevention and education;
- 'agencies to address underlying systematic weaknesses and promote structural and cultural change to ensure Commonwealth agencies are robust';⁴⁶
- state and territory integrity agencies if a corruption matter falls outside of the Commonwealth's jurisdiction; and
- joint operations with ACLEI.⁴⁷

2.54 The FAC's headquarters are in Canberra, with teams also based in Melbourne, Sydney, Brisbane, Adelaide⁴⁸ and Perth.⁴⁹

Funding

2.55 In July 2015, the FAC received \$127.6 in million funding over four years for the Serious Financial Crime Taskforce. This taskforce's focus is on 'identifying and treating the threats posed by serious financial crime'.⁵⁰ In April 2016, the government announced a further \$14.7 million allocated to the FAC to expand its investigatory capability and 'bolster Australia's capability to respond to foreign bribery'.⁵¹ This funding supported an additional 26 specialist investigators, forensic accountants and litigators.⁵² The AFP informed the committee that although the additional funding supplements the capabilities to investigate foreign bribery in its Sydney, Melbourne and Perth offices, it also:

45 AGD, *Submission 23* [2016], p. 10.

46 AGD, *Submission 23* [2016], p. 10.

47 AGD, *Submission 23* [2016], p. 10.

48 The Hon. Michael Keenan MP, Minister for Justice, 'AFP-Hosted Fraud and Anti-Corruption Centre', *Media release*, 31 July 2014.

49 The Fraud and Anti-corruption Centre team based in Perth was established in September 2016.

50 Senate Standing Committee on Legal and Constitutional Affairs, AGD, *Additional estimates 2016-17, response to Question no. AE16/050*, 9 February 2016, p. 2.

51 AGD, *Submission 11*, p. 4.

52 The Hon. Michael Keenan MP, *Press conference transcript*, 5 September 2016.

...allowed a sort of flow-on effect of the capabilities that may have been focused on those to be freed up to look at broader fraud and corruption based issues, both in those centres but more broadly across the organisation.⁵³

2.56 The AFP also stated:

Whilst we are allocated funding across the organisation, it is hard to tie it down to specific investigations, because the AFP's budget is such that it covers a range of different capabilities, both investigative, but other specialist skills, that are applied when we determine the most effective treatment that we will put against an issue, and then we work out how we prioritise each of those individual investigations and then we apply the resources to those to get the most effective treatment.⁵⁴

Investigations

2.57 The committee sought clarification from the AFP on the characterisation of its investigations, and whether more work occurs on foreign bribery or domestic corruption. In response, the AFP said it was difficult to clarify because:

There are a number of high-profile investigations that are currently being undertaken in the foreign bribery space. Importantly, there are the resources that go into some of those investigations and they go over an extended period of time. We previously reported to the committee that, within the findings of the 41 OECD nations, the average investigations in this space go for about 7.3 years and about 46 per cent of those go for between five and 10 years. So our resource commitment to those investigations from start to finalisation is extensive. But that does not mean that, where we are looking at other key issues of both fraud and corruption that exist in the space and sit under the mandate of the AFP, and more broadly within the FAC Centre, it is not prioritised. We prioritise those investigations depending on how they are referred to us.⁵⁵

2.58 The great length of many foreign bribery investigations is due to evidence being sought from international jurisdictions. That said, the committee was advised that the AFP is working with its international and domestic partners to reduce the time frames of these investigations through legislative reforms and new initiatives, such as:

...looking at different ways of how we manage, in a very proactive way, legal professional privilege. We are looking at proactive ways to address mutual assistance requests with our partners. We are looking to put better analysis and assessment across a range of the offending which occurs over that period of time to try to identify where we might get the best and most effective outcome in terms of where we put our investigative resources. When I say 'our investigative resources', I do not just mean the traditional

53 Commander Peter Crozier, Manager, Criminal Assets, Fraud and Anti-Corruption, AFP, *Committee Hansard*, 5 July 2017, p. 33.

54 Commander Crozier, AFP, *Committee Hansard*, 5 July 2017, p. 33.

55 Commander Crozier, AFP, *Committee Hansard*, 5 July 2017, p. 34.

investigator; I also mean our technical capabilities that sit across the organisation.⁵⁶

2.59 On notice, the AFP further addressed a concern raised with the committee that the FAC is too strongly focused on foreign bribery matters. The AFP acknowledged that foreign bribery investigations:

...have been a particular area of focus for the AFP in recent years; however the foreign bribery crime type is only one crime type within the remit of the [FAC].⁵⁷

2.60 The AFP further explained that the:

...increased focus on foreign bribery matters has been in response to specific issues identified by the [OECD], however this has not resulted in foreign bribery matters being progressed at the detriment of other crime types, including allegations of corruption relevant to Commonwealth officials.⁵⁸

2.61 The AFP referred to the CCPM and highlighted that 'corruption matters involving Commonwealth officials are characterised at the same level or higher than foreign bribery matters'.⁵⁹

2.62 The AFP described the process for determining whether to conduct an investigation. The AFP reassured the committee that:

...no single element of the CCPM is considered in isolation. Instead, the AFP considers a combination of the model's Impact and Priority ratings. Further, each matter is assessed on an individual basis. As a general rule, one referral is not assessed in the context of another.

The FAC Centre brings together the capabilities of 12 Australian Government agencies to assess, prioritise and respond to serious and complex fraud and corruption matters, including corruption by Australian Government employees, foreign bribery and complex identity crime. The FAC Centre places equal priority across these crime types.

The FAC Centre model allows for consultation and negotiation regarding resources to be undertaken in a whole-of-government context and means the AFP can leverage of the resources and capabilities of other agencies.

Following the evaluation of the referral by the FAC Centre, matters which are accepted for investigation by the AFP are then assigned to an AFP investigation team, usually within the Criminal Assets, Fraud and Anti-Corruption (CAFAC) Business Area. The CAFAC Business Area is the same area of the AFP that hosts the FAC Centre.

56 Commander Crozier, AFP, *Committee Hansard*, 5 July 2017, p. 34.

57 AFP, answers to questions on notice, 5 July 2017 (received 16 August 2017).

58 AFP, answers to questions on notice, 5 July 2017 (received 16 August 2017).

59 AFP, answers to questions on notice, 5 July 2017 (received 16 August 2017).

The AFP and the FAC Centre employs a resource management strategy that ensures the flexible application of resources to activities that are likely to have the greatest impact on criminal networks and security threats, both within Australia and overseas.

In practice this means the AFP is able to redirect resources to high priority matters on an as-needed basis, such as by providing a surge capacity for the FAC Centre to assess a sensitive or time critical referral of corruption or when investigative actions in the CAFAC Business Area move into significant overt phases.⁶⁰

2.63 The AFP detailed the nature of domestic corruption investigations and the collaboration between agencies to identify vulnerabilities and draw together evidence for investigations:

...people are developing processes or doing things to try to conceal their behaviour. We are looking for ways to not only work with partners to identify where those issues and those vulnerabilities may sit within systems but also how we can more effectively, through analysis and other technical capabilities, bring forward the opportunities for us to draw evidence in those investigations. They are not overly different from some of the challenges we have in broader serious and complex organised crime investigations. The legislation that we may be working with is different and the partners that we work with are different, but overall we have certainly shown in some of those investigations that it is very effective.⁶¹

2.64 The committee was informed that since the inception of the FAC in July 2014 to 30 April 2017 there were 34 referrals relating to corruption. These include 17 allegations of cases of abuse of public office; five alleged cases of receiving/bribery as a Commonwealth Public Official; two cases of alleged theft; one alleged case of obtaining financial advantage by deception; and nine other offences against the *Corporations Act 2001* (Corporations Act), Criminal Code, and the PID Act.⁶²

2.65 Of those 34 referrals: two are subject to evaluation; seven are ongoing investigations; one investigation has been finalised; and 24 were rejected and not investigated by the AFP. The primary reasons for the rejections were insufficient evidence (14 instances); no Commonwealth criminal offence was identified (four instances); five cases were referred to another agency or department for further investigation; and one matter was returned to the complainant, with the AFP recommending it be referred to another agency.⁶³ The AFP informed the committee that the five matters referred to another agency/department were because: they did not meet the AFP thresholds; the AFP believed the referring agency was best placed to

60 AFP, answers to questions on notice, 5 July 2017 (received 16 August 2017).

61 Commander Crozier, AFP, *Committee Hansard*, 5 July 2017, p. 34.

62 AFP, answers to questions on notice (private briefing), 5 May 2017 (received 15 May 2017).

63 AFP, answers to questions on notice (private briefing), 5 May 2017 (received 15 May 2017).

investigate the matter; and/or the matter had already been investigated by or referred to the other agency or department.⁶⁴

2.66 In addition to investigations into corruption, between July 2014 and April 2017 the FAC received 130 referrals relating to matters of fraud, foreign bribery and identity crime.⁶⁵

2.67 The committee was informed that the AFP did not consider current legislation a hindrance to its ability to conduct investigations into allegations of corruption. The AFP remarked:

...the legislation is effective and provides us options in the initial part of an investigation. If it is something where we would think, 'Clearly this is a fraud or this is a theft', due to the investigation and the way we go about actually exploring it, it might indicate to us there is a different form of offending, which might be an abuse of office or a bribery issue. As it stands, the current legislative framework that we have is effective.⁶⁶

2.68 Further, the AFP added that it works closely with the AGD:

...on a continuous basis to review the efficacy of the laws and the offences provisions and the powers available to us. It is an ongoing discussion, and that is why there have been reforms over the last few years. There are discussions papers out at the moment regarding deferred prosecution agreements and things of that nature, so while we certainly would not say the regime is perfect, it is, as Officer Crozier said, largely effective, and we continue to refine it where we can.⁶⁷

Collaboration and co-operation

2.69 In addition to its engagement with AGD, the FAC's operations have meant it is able to:

...understand some of the issues that are happening within agencies and where we may be able not just to assist in terms of a treatment in the criminal space but also to assist agencies identify potential vulnerabilities.⁶⁸

2.70 The value and importance of co-operation in the fraud and anti-corruption space was reflected upon by Commander Peter Crozier, Manager, Criminal Assets, Fraud and Anti-Corruption, AFP. Commander Crozier's observation, in his current and previous roles, has been about:

...the effectiveness of partnerships and being able to bring agencies together. To get a better understanding of what is happening in an area and a potential fraud type, it is always better to get those people who know. For

64 AFP, answers to questions on notice (private briefing), 5 May 2017 (received 15 May 2017).

65 AFP, answers to questions on notice (private briefing), 5 May 2017 (received 15 May 2017).

66 Commander Crozier, AFP, *Committee Hansard*, 5 July 2017, pp. 34–35.

67 Mr Tony Alderman, Manager, Government and Communications, AFP, *Committee Hansard*, 5 July 2017, p. 35.

68 Commander Crozier, AFP, *Committee Hansard*, 5 July 2017, p. 36.

a long time, in my experience, I thought I had the answers, but often, if other agencies, who know their policies, their processes and their issues far better than I do, are able to be brought into a centre such as that, we can share that experience and understand what it is we are looking at and what options are available to us to treat those issues.⁶⁹

2.71 One aspect of the co-operation between the AFP and other agencies is that these other agencies are often involved in the AFP's evaluation of a matter. In these instances, consideration is given to whether a matter is a criminal matter, or should be dealt with internally via a code of conduct process. The AFP reassured the committee that, if a matter is referred back to an agency, the AFP would continue to engage in the process to improve and change behaviour. The reason for this level of engagement is that the AFP does not:

...want an agency being disenfranchised or not being able to deal with an issue and then that issue permeating and going on and on and on and eventually coming back to us in another form because processes have fallen down. We continue to engage, address vulnerabilities and build that resilience within agencies, and, importantly, build those relationships and networks so we can have that exchange.⁷⁰

2.72 Internationally, the AFP also participates in a number of forums relating to anti-corruption, such as the:

- OECD Working Group on Bribery;
- the International Foreign Bribery Taskforce;
- the G20 Anti-Corruption Working Group; and
- the Financial Action Task Force.⁷¹

Australian Commission for Law Enforcement Integrity

2.73 The ACLEI is the only federal agency dedicated to the 'prevention, detection, investigation and prosecution of corruption'.⁷² It was established in 2006 by the LEIC Act. The objectives of the LEIC Act are:

- (a) to facilitate:
 - (i) the detection of corrupt conduct in law enforcement agencies; and
 - (ii) the investigation of corruption issues that relate to law enforcement agencies; and
- (b) to enable criminal offences to be prosecuted, and civil penalty proceedings to be brought, following those investigations; and

69 Commander Crozier, AFP, *Committee Hansard*, 5 July 2017, p. 37.

70 Commander Crozier, AFP, *Committee Hansard*, 5 July 2017, p. 37.

71 AGD, *Submission 23* [2016], p. 11.

72 ACLEI, *Submission 12*, p. 1.

- (c) to prevent corrupt conduct in law enforcement agencies; and
- (d) to maintain and improve the integrity of staff members of law enforcement agencies.⁷³

2.74 ACLEI is an impartial and independent statutory authority whose primary role is 'to detect and investigate law enforcement-related corruption issues, giving priority to systemic and serious corruption' and make 'administrative findings about the conduct of individuals'.⁷⁴ The Integrity Commissioner may make recommendations for changes to 'laws and administrative practices of government agencies that might contribute to corrupt practices or prevent their early detection' and 'report annually on any patterns and trends concerning corruption in law enforcement agencies'.⁷⁵

Investigation options and powers

2.75 ACLEI can independently determine how it deals with 'allegations, information and intelligence about corrupt conduct concerning agencies' within its jurisdiction. Priority, however, must be given to serious or systemic corruption. There is no requirement that ACLEI investigate every allegation or all information about corruption and may choose to:

- investigate a corruption issue;
- refer a corruption issue to a law enforcement agency for it to conduct an internal investigation and report its findings to ACLEI;
- refer a corruption issue to the AFP, unless the AFP is implicated;
- investigate a corruption issue in partnership with another government agency or a state integrity agency; or
- take no further action.⁷⁶

2.76 Section 27 of the LEIC Act sets out how the Integrity Commissioner deals with a corruption issue. Priority is given to corruption issues that may:

- indicate a link between law enforcement and organised crime;
- involve suspected conduct⁷⁷ that would undermine a law enforcement agency's function;
- bring into doubt the integrity of senior law enforcement managers;
- relate to law enforcement activities with a higher inherent corruption risk;
- warrant the use of the Integrity Commissioner's information-gathering powers, including conducting hearings; or

73 *Law Enforcement Integrity Commissioner Act 2006*, ss. 3(1).

74 ACLEI, *Submission 12*, p. 3.

75 ACLEI, *Submission 12*, p. 3.

76 ACLEI, *Submission 12*, p. 4.

77 Such as the use of illicit drugs.

- would otherwise benefit from an independent investigation.⁷⁸

2.77 The Integrity Commissioner may also prioritise corruption issues 'that have a nexus to the law enforcement character of the agencies in [ACLEI's] jurisdiction, having regard to the objects of the LEIC Act'.⁷⁹

2.78 Key investigative powers available to the Integrity Commissioner under Part 9 the LEIC Act are:

- notices to produce information, documents or things;
- summons to attend an information-gathering hearing, answer questions and give sworn evidence, and/or to produce documents or things;
- intrusive information-gathering (covert);
 - telecommunications interception;⁸⁰
 - electronic and physical surveillance;⁸¹
 - controlled operations;⁸²
 - assumed identities;⁸³
 - scrutiny of financial transactions; and
 - access to specialised information databases for law enforcement purposes;
- search warrants;
- right of entry to law enforcement premises and associated search and seizure powers;
- integrity testing; and
- arrest (relating to the investigation of a corruption issue).⁸⁴

2.79 It is also an offence for an individual 'not to comply with notices, not to answer truthfully in hearings, or otherwise to be in contempt of ACLEI'.⁸⁵

78 PJACLEI, Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity, ACLEI, *Submission 1*, p. 3.

79 PJACLEI, Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity, ACLEI, *Submission 1*, p. 3.

80 Under the *Telecommunications (Interception and Access) Act 1979*.

81 Under the *Surveillance Devices Act 2004*.

82 Under the *Crimes Act 1914*.

83 Under the *Crimes Act 1914*.

84 PJACLEI, Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity, ACLEI, *Submission 1*, p. 4.

85 PJACLEI, Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity, ACLEI, *Submission 1*, p. 4.

2.80 The Integrity Commissioner is also an approved authority under the *Witness Protection Act 1994* and is therefore able to provide witness identity protection for operatives.⁸⁶

2.81 On the matter of hearings, the Integrity Commissioner has discretionary power to hold a public or private hearing⁸⁷ under section 82 of the LEIC Act.

2.82 The Integrity Commissioner explained to the committee the internal process that must occur when considering a public hearing. ACLEI first considers the intelligence available and then considers what is happening in other environments, such as the courts or police investigations. ACLEI will:

...cast our net very wide and then I will go to the criteria that are in the act. The first of those is to consider whether or not confidential information will be disclosed. As you would appreciate, that is a very broad brush. It might be commercial in confidence, contractual matters or personal financial circumstances. It might be medical in confidence, it might be psychology in confidence or it might be legal in confidence—the full range of issues that I must address there.

The second limb of that first test is: will there be information that gives rise to the possible commission of an offence, a criminal offence? Again, that has to be a broad consideration because there may be police investigations underway into the same or similar matters. If I were to conduct a public hearing, I might prejudice those police investigations or there may be court proceedings and I would run the risk of prejudicing a fair trial to a person. So the issues surrounding that second limb of the first test are many.

Having addressed the first limb, I then move to consider the unfair prejudice to the persons involved. As you would appreciate, that is a complex consideration as well. The test does not talk about unfairness to an individual; it talks about unfair prejudice to the reputation of a person. There are a number of concepts involved in that phraseology. It is not just a simple unfairness test. You might reflect for a moment on the Victorian matter, the IBAC, where it was decided that a public hearing was necessary even though it affected people's reputations. There were matters of very significant public interest there, I think, for the parents of the children at the schools in Victoria where the money that was supposed to be for the children was going into another place. So there was a weighing up there, and I have to look at similar sorts of questions. That then comes to the final test of the public interest, which is affected by the two that have gone before, really—I have to weigh that up as well—and then, finally, any other relevant information, of which there may be a multitude.

We do that on each and every occasion. We document it. It is a reviewable document. It is a statement of reasons under the Administrative Decisions (Judicial Review) Act, or the Federal Court can review it. It is there.⁸⁸

86 *Witness Protection Act 1994*, s. 3.

87 Mr Griffin, ACLEI, *Committee Hansard*, 5 July 2017, p. 44.

88 Mr Griffin, ACLEI, *Committee Hansard*, 5 July 2017, p. 44.

2.83 ACLEI also has the power to exonerate a person if, through a preliminary intelligence review, it considers there to be no cause to suspect alleged wrongdoing. In such instances, ACLEI will report to the head of an agency with its evidence to support the exoneration of an individual.⁸⁹

2.84 Since ACLEI's inception, there have been 33 successful prosecutions (two of which are under appeal). The committee was advised that, as at 7 April 2017 there were a further eight prosecutions in progress.⁹⁰

Corrupt conduct

2.85 Section 6 of the LEIC Act states the meaning of 'engages in corrupt conduct' is when a staff member of a law enforcement agency engages in:

- (a) conduct that involves, or that is engaged in for the purpose of, the staff member abusing his or her office as a staff member of the agency; or
- (b) conduct that perverts, or that is engaged in for the purpose of perverting, the course of justice; or
- (c) conduct that, having regard to the duties and powers of the staff member as a staff member of the agency, involves, or is engaged in for the purpose of, corruption of any other kind.⁹¹

2.86 Provisions are also made for ACLEI to prosecute its own staff, and members of the public or employees of other government agencies.⁹² Section 10 of the LEIC Act defines staff members of law enforcement agencies under ACLEI's jurisdiction, including provisions for secondees and contractors.⁹³

ACLEI's jurisdiction

2.87 There have been three iterations of ACLEI's jurisdiction. Initially, ACLEI's jurisdiction included the AFP,⁹⁴ the National Crime Authority⁹⁵ and the then ACC⁹⁶ with the intention of progressively including other law enforcement agencies into its jurisdiction by regulations.⁹⁷ ACLEI's jurisdiction first expanded in 2011 to include the then Australian Customs and Border Protection Service (Customs).

89 Mr Griffin, ACLEI, *Committee Hansard*, 5 July 2017, p. 43.

90 ACLEI, *Submission 12*, p. 8.

91 *Law Enforcement Integrity Commissioner Act 2006*, s. 6.

92 ACLEI, *Submission 12*, p. 8.

93 *Law Enforcement Integrity Commissioner Act 2006*, s. 10.

94 The Australian Capital Territory's police force is also included in ACLEI's jurisdiction.

95 The National Crime Authority was abolished in 2002.

96 The Australian Crime Commission is now known as the Australian Criminal Intelligence Commission.

97 The Hon. Philip Ruddock MP, Attorney-General, *House of Representatives Hansard*, 29 March 2006, p. 9.

2.88 Further additions were made in 2013, with the inclusion of AUSTRAC, CrimTrac and certain quarantine-related functions of the then Department of Agriculture, Fisheries and Forestry (now the Department of Agriculture and Water Resources⁹⁸ (Agriculture)).⁹⁹ Which Agriculture staff members are included in ACLEI's jurisdiction is specified under section 7 the *Law Enforcement Integrity Commissioner Regulations 2017*.

2.89 In 2015, ACLEI's jurisdiction was expanded once again to include the entirety of the DIBP including the Australian Border Force (ABF), which had integrated Customs' functions.¹⁰⁰

2.90 ACLEI investigations frequently focus on corruption-enabled border crime, namely instances of officials facilitating the importation of illicit drugs and other contraband into Australia. Since the inclusion of DIBP in its entirety, ACLEI has seen an increase in the number of corruption investigations into areas of border regulation, such as biosecurity and visa operations. ACLEI's submission stated the:

...potential impacts of this form of corruption may vary—such as advancing the interests of one business entity over another for economic advantage (resulting from a bribe), or enabling money laundering to occur (as part of organised criminal activity).¹⁰¹

2.91 The PJACLEI has considered ACLEI's jurisdiction on two occasions: initially in a 2011 report on its inquiry into the operation of the *Law Enforcement Integrity Commissioner Act 2006*; and more recently in its inquiry into the jurisdiction of the ACLEI (tabled 5 May 2016).

Inquiry into the operation of the Law Enforcement Integrity Commissioner Act 2006

2.92 The PCJACLEI tabled two reports as part of its inquiry into the operation of the LEIC Act. The interim report recommended that Customs be prescribed as a law enforcement agency under the LEIC Act and that ACLEI become adequately resourced to detect, prevent and investigate corruption 'in an agency of the size and complexity of [Customs]'.¹⁰² These two recommendations were agreed to by

98 ACLEI's oversight of the Department of Agriculture and Water Resources includes approximately 1000 staff and its biosecurity role in screening sea cargo: Mr Griffin, ACLEI, *Committee Hansard*, 5 July 2017, p. 41.

99 PJACLEI, *Inquiry into the jurisdiction of the ACLEI*, May 2016, p. 2.

100 PJACLEI, *Inquiry into the jurisdiction of the ACLEI*, May 2016, pp. 7–9.

101 ACLEI, *Submission 12*, p. 7.

102 PJACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Interim report*, February 2010, p. vii.

government¹⁰³ and subsequently led to Customs being added to ACLEI's jurisdiction in January 2011.¹⁰⁴

2.93 PJCACLEI's final report considered ACLEI's jurisdiction in more detail, including ACLEI's proposal for a tiered model for its jurisdiction. This model would consist of three tiers:

- Tier one applies to agencies with 'significant law enforcement functions' and 'high inherent corruption risks'. These agencies would have a mandatory relationship with ACLEI and would be compelled by legislation to inform the Integrity Commissioner of any potential corruption issues. ACLEI would be required to provide agencies with a corruption risk assessment, preventing and awareness-raising assistance.¹⁰⁵
- Tier two applies to agencies with important law enforcement functions and lower inherent corruption risks. These agencies would have the power to use discretion on whether a matter is referred to ACLEI, and could seek assistance with a corruption risk assessment and advice.¹⁰⁶
- Tier three agencies would include all other Commonwealth agencies that do not have a high or intermediate level of risk. These agencies could seek advice from ACLEI, potentially on either a cost-recovery or fee-for-service basis. These agencies would not have a mandated relationship with ACLEI and would not have the ability to refer a corruption issue to ACLEI.¹⁰⁷

2.94 The committee provided in-principle support for the tiered model proposed by ACLEI. It stated the first tier was already in existence, through prescribed agencies under the LEIC Act. The second tier, in the committee's view, was desirable for two reasons.

2.95 The first was that it would expand ACLEI's corruption oversight, without impacting adversely on 'ACLEI's effectiveness and ability to manage with current

103 Government response to PJCACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Interim report*, February 2010, dated September 2010, http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Australian_Commission_for_Law_Enforcement_Integrity/Completed_inquiries/2010-13/integrity_com_act/index.

104 PJCACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, p. 2.

105 PJCACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, p. 7.

106 PJCACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, p. 8.

107 PJCACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, p. 8.

resources'.¹⁰⁸ The committee expressed a concern that expanding ACLEI's jurisdiction would risk overburdening the agency and reduce its effectiveness.¹⁰⁹

2.96 Secondly, these second tier agencies would form a relationship with ACLEI, 'building resistance to corruption in these agencies through education, awareness raising and ongoing communication'. In addition:

ACLEI would develop a greater understanding of the corruption risk profile of tier two agencies [and] provide a growing knowledge-base that could prompt future revisions of ACLEI's jurisdiction, including the movement of tier two agencies to tier one agencies'.¹¹⁰

2.97 To ensure ACLEI's independence, the committee advocated for the Integrity Commissioner to have the power to initiate an investigation or inquiry into tier two agencies on his or her own initiative.¹¹¹

2.98 The second tier agencies identified in the report were: the ATO, CrimTrac, AUSTRAC, the then Australian Quarantine and Inspection Service and the then Department of Immigration and Citizenship.¹¹² As of 2017, all of these agencies (current and former), except for the ATO, are now subject to ACLEI's jurisdiction.

2.99 The committee also acknowledged arguments in favour of including under the LEIC Act agencies that provide briefs to the CDPP and those in the Heads of Commonwealth Law Enforcement Agencies group. For this reason, the committee recommended a review be conducted two years after the establishment of a tiered jurisdiction model to determine whether additional agencies should be added to, or existing agencies moved within, the tiered structure.¹¹³

2.100 The committee was less supportive of the proposed third tier. It acknowledged that ACLEI:

...should have some involvement in the provision of corruption prevention advice and education about corruption risks to the broader public service. However, the committee does not consider that amendment of the LEIC Act to establish a third tier of jurisdiction is required to achieve this.¹¹⁴

108 PJACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, p. 8.

109 PJACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, p. 8.

110 PJACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, p. 8.

111 PJACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, p. 8.

112 PJACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, pp. 9–16.

113 PJACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, p. 16.

114 PJACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, p. 16.

2.101 The PJCACLEI had two concerns with the proposed third tier. The first concern was that it would divert resources away from ACLEI's core investigatory functions. PJCACLEI's second concern, which accorded with comments made by the APSC, was 'the need to maintain a coordinated approach to public service-wide education and training'.¹¹⁵ The APSC stated:

The ethical framework within which the Public Service operates is very broad. The messages that we are sending out are not simply about breaches of the law; our messages are about doing the right thing. It is an ethical construct that is much bigger than a particular focus on corruption. It covers corruption, but it is much bigger than that.¹¹⁶

2.102 The APSC also stated:

One of the important things there is to minimise the number of separate messages being sent. You confuse people when you send messages that appear to be overlapping and kind of unclear. The code of conduct makes it absolutely crystal clear. If you act illegally or abuse power you are in breach of the code of conduct. That is a serious issue. We argue you do not really need another agency to say exactly the same thing.¹¹⁷

2.103 The committee reiterated its support for ACLEI to continue its engagement with the APSC and recommended that:

ACLEI and the Australian Public Service Commission continue to collaborate in the development of ethics training provided to public servants to include corruption prevention using ACLEI's specialised experience and knowledge.¹¹⁸

2.104 The government response to the report, received in February 2012, explained that the government would consider whether it would be appropriate to expand ACLEI's jurisdiction to include additional agencies that have a law enforcement function. The government advised the PJCACLEI that no further changes would be made for a period of '12 to 18 months for ACLEI to consolidate its existing jurisdiction following the inclusion of [Customs]' and '[t]hat experience can then be used to properly inform any further expansion of ACLEI's functions'.¹¹⁹

115 PJCACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, p. 34.

116 PJCACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, p. 34.

117 PJCACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, pp. 34–35.

118 PJCACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, p. 35.

119 Government response to PJCACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, available: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Australian_Commission_for_Law_Enforcement_Integrity/Completed_inquiries/2010-13/integrity_com_act/index, p. 3.

2.105 The government did not support the PJACLEI's recommendation that a second tier function be developed within ACLEI. The government response stated that those agencies:

...are subject to the [*Public Service Act 1999* (PS Act)] and as such are bound by the APS Values and Code of Conduct. These agencies also have existing internal and external corruption prevention and investigation measures.¹²⁰

2.106 The government supported the PJACLEI's recommendation for ACLEI and the APSC to:

...collaborate as appropriate in the development of ethics training provided to public servants to promote the importance of appropriate behaviours, including avoidance of corruption activity.¹²¹

Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity

2.107 The PJACLEI reported on ACLEI's jurisdiction again in May 2016.¹²² The following agencies were considered in the report:

- ASIC;
- the ATO;
- the AGD;
- the DIBP;¹²³ and
- other areas within Agriculture.¹²⁴

2.108 The committee also considered the merits of a National Integrity Commission (NIC).¹²⁵

2.109 The PCJACLEI's consideration of each of these agencies, except DIBP, is outlined below.

120 Government response to PJACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, available: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Australian_Commission_for_Law_Enforcement_Integrity/Completed_inquiries/2010-13/integrity_com_act/index, p. 3.

121 Government response to PJACLEI, *Inquiry into the Operation of the Law Enforcement Integrity Commissioner Act 2006: Final Report*, July 2011, available: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Australian_Commission_for_Law_Enforcement_Integrity/Completed_inquiries/2010-13/integrity_com_act/index, p. 4.

122 This reported was in response to the Parliamentary Joint Committee on Law Enforcement's recommending in its report on the gather and use of criminal intelligence that the PJACLEI consider expanding ACLEI's jurisdiction to include Australian Securities and Investment Commission (ASIC), the AGD and the ATO.

123 The DIBP had been included in ACLEI's jurisdiction as of 1 July 2015.

124 PJACLEI, *Inquiry into the jurisdiction of the ACLEI*, May 2016, p. 2.

125 PJACLEI, *Inquiry into the jurisdiction of the ACLEI*, May 2016, p. 2.

Department of Agriculture and Water Resources

2.110 As noted above, the LEIC Act and associated regulations prescribe certain positions within Agriculture that are included within ACLEI's jurisdiction.¹²⁶ These positions include:

- the departmental Secretary;
- Regional Managers;
- members of staff that undertake assessments, clearance or control of vessels or cargo imported into Australia; and
- members of staff that have access to the Integrated Cargo System.¹²⁷

2.111 The PJCACLEI expressed concern about an instance of jurisdictional uncertainty over Agriculture's staff and that:

...this uncertainty poses a real risk for future ACLEI investigations involving agencies such as Agriculture where partial ACLEI coverage is prescribed.¹²⁸

2.112 A further concern was expressed about 'back office' risks posed by staff such as information technology administrators, which the jurisdictional constraints imposed by the LEIC regulations prevent ACLEI from addressing.¹²⁹ ACLEI told the PJCACLEI these back office staff are at risk of corruption because they 'support, or have access to, the agency's law enforcement functions, information, decision-making powers, staff and systems' and 'may be soft targets and are as attractive and vulnerable to subversion or coercion by criminal groups as law enforcement personnel'.¹³⁰

2.113 The PJCACLEI shared this concern, and added that ACLEI's investigations may be artificially constrained by current jurisdictional limitations if an agency is only partially included in its jurisdiction. For this reason, the committee supported ACLEI's call for whole-of-agency coverage and subsequently recommended amendments to the LEIC Act to include Agriculture in ALCEI's jurisdiction in its entirety.

Australian Taxation Office

2.114 The PJCACLEI's consideration of the ATO under ACLEI's jurisdiction continued on from its inquiry into the operation of the LEIC Act. The PJCACLEI noted its earlier recommendation for the ATO to be included in a second tier arrangement; however, it acknowledged that this model had not been adopted by government, and was unlikely to be implemented in the near future. For this reason the PJCACLEI recommended the government 'initiate an independent assessment of

126 PJCACLEI, *Inquiry into the jurisdiction of the ACLEI*, May 2016, p. 11.

127 PJCACLEI, *Inquiry into the jurisdiction of the ACLEI*, May 2016, p. 11.

128 PJCACLEI, *Inquiry into the jurisdiction of the ACLEI*, May 2016, p. 14.

129 PJCACLEI, *Inquiry into the jurisdiction of the ACLEI*, May 2016, p. 14.

130 PJCACLEI, *Inquiry into the jurisdiction of the ACLEI*, May 2016, p. 15.

the [ATO's] corruption risk profile, together with an examination of the feasibility of including the [ATO] within ACLEI's jurisdiction'.¹³¹

Attorney-General's Department and the Australian Securities and Investment Commission

2.115 The committee also considered, and rejected, calls for ACLEI to have oversight of the AGD and the ASIC, arguing both agencies' overall corruption risk remain relatively low.¹³²

2.116 The Integrity Commissioner informed the committee that PCJACLEI's propositions to expand ACLEI's jurisdiction are under consideration by government.¹³³ When asked to reflect upon the evolution of ACLEI's jurisdiction, Mr Griffin said:

If you look at the title of the act and the title of the agency, law enforcement is front and centre there. But that definition has expanded over the 10 years in the three iterations...and I think it is reasonable to conclude that it has moved from the coalface of policing—that is, the AFP and the Crime Commission—into other areas of law enforcement that are equally as important and potentially more susceptible to corruption. That is, these are not people who are trained law enforcement officials in the sense of a police officer and therefore perhaps not as well trained in dealing with the attentions of organised crime and others to corrupt them.¹³⁴

2.117 The Integrity Commissioner agreed that the potential inclusion of the ATO would mean ACLEI would move past the scope of its original Act, and referred to the inclusion in the AFP's FAC of agencies that are not law enforcement agencies, such as the ATO. The Integrity Commissioner stated that such agencies nevertheless 'have at their disposal, in the normal course of their work, information that is of critical importance to government but also extraordinarily valuable in many cases to organised crime'.¹³⁵

Collaboration and co-operation

2.118 The LEIC Act allows ACLEI to work jointly or collaboratively with agencies under its jurisdiction. These activities range:

...from the joint investigation of information and allegations, to sharing expertise in corporate functions and training. Staff exchanges are also essential to the functioning of ACLEI—both to respond to fluctuations in the number and complexity of investigations, and to assist in building a sector-wide, professional cadre of anti-corruption specialists.¹³⁶

131 PJACLEI, *Inquiry into the jurisdiction of the ACLEI*, May 2016, p. 28.

132 PJACLEI, *Inquiry into the jurisdiction of the ACLEI*, May 2016, p. 32.

133 Mr Griffin, ACLEI, *Committee Hansard*, 5 July 2017, p. 41.

134 Mr Griffin, ACLEI, *Committee Hansard*, 5 July 2017, p. 42.

135 Mr Griffin, ACLEI, *Committee Hansard*, 5 July 2017, p. 42.

136 ACLEI, *Submission 12*, p. 7.

2.119 The heads of agencies under ACLEI's jurisdiction are required, by law, to notify the Integrity Commissioner 'of any information or allegation that raises a corruption issue in his or her agency'¹³⁷ and the Integrity Commissioner may disclose information to agency heads if appropriate to do so.¹³⁸ Members of the public, other government agencies and the Minister for Justice may also report allegations of corrupt conduct to ACLEI. Further, corruption issues may be referred to ACLEI if they are revealed through telecommunication interception activities (under the *Telecommunications (Interception and Access) Act 1979*), or by whistleblowers.¹³⁹ The Integrity Commissioner is also exempt from the operation of the *Privacy Act 1988*, which reflects 'the importance of ACLEI's collection and intelligence-sharing role'.¹⁴⁰

2.120 ACLEI also educates agencies about possible systemic vulnerabilities identified through its investigation and intelligence gathering functions. These findings contribute to law enforcement 'agencies' own efforts to manage corruption risks and protect integrity'.¹⁴¹ Agencies may also seek support from ACLEI to design corruption prevention strategies, including risk assessments and control plans, and conducting 'specialised vulnerabilities assessments, which draws together lessons and observations about potential weaknesses in agency operating environments'.¹⁴²

2.121 More broadly, the Integrity Commissioner is of the view that the inflow of work received by ACLEI 'reflects a healthy agency environment where this is a willingness to report corruption'.¹⁴³ During Mr Griffin's tenure as Integrity Commissioner, he has seen a:

...cultural shift in the community and public sector, a heightened awareness of corruption and also a willingness to call it out where it is observed. In the agencies for which I have responsibility and the jurisdiction, what we have seen in that time is a very pronounced emphasis on integrity and corruption, and internal measures to deal with that. That is partly the reason our workload has increased—because the awareness in those agencies of the risk of corruption, the emphasis from strong leadership about calling it out and, also, to a degree, a shift in—I think it is not unreasonable to use the term—what could, once upon a time, have been considered 'you do not dob in your mates in the workplace'. That is the cultural shift that I am observing. We are now seeing an understanding on the part of the people in our jurisdiction that it is not dobbing on your mates but actually protecting the public's interest and protecting the agency's interest. It is a form of self-

137 ACLEI, *Submission 12*, p. 3.

138 ACLEI, *Submission 12*, p. 4.

139 ACLEI, *Submission 12*, p. 4.

140 ACLEI's submission to the PJCACLEI's *Inquiry into jurisdiction of the ACLEI, Submission 1*, p. 2.

141 ALCEI, *Submission 12*, p. 8.

142 ACLEI, *Submission 12*, p. 8.

143 Mr Griffin, ACLEI, *Committee Hansard*, 5 July 2017, p. 43.

defence. I think that accounts for the increase in the material that is coming to us, because the agencies are maturing themselves and are having that leadership and that cultural approach. I think that is reflected in, as you said, the public reaction to corruption as it is perceived. So the public has moved in that way. I think it is happening across the board.¹⁴⁴

2.122 Other collaborative arrangements include ACLEI's educative function with respect to various agencies, as well as engaging with other key agencies, such as the APSC and the AGD, to share insights into what is going on in the public sector environment.¹⁴⁵ Further, ACLEI engages with the state integrity agencies and police forces, through mechanisms such as the Australian Anti-corruption Commissions Forum.¹⁴⁶

Accountability

2.123 ACLEI is held accountable by a number of external bodies, including the judiciary, the Administrative Appeals Tribunal (AAT), the Parliament and the Commonwealth Ombudsman.

2.124 The exercise of some of ACLEI's powers must be approved by a judge, magistrate or designated official from the AAT. A warrant must be sought to: conduct a search; use a surveillance device; intercept telecommunications or access stored communications; order a person to deliver his or her passport; or to arrest an individual. The use of certain powers may also require a report to be submitted to the Attorney-General, the Minister for Justice and in some cases, Parliament.¹⁴⁷

2.125 The Parliament, through the PJCACLEI, also monitors and reviews ACLEI's performance, its annual reports and any special reports released by the Integrity Commissioner.¹⁴⁸ ACLEI's Integrity Commissioner reported to the committee that he had 'very good engagement with the committee:

...so much so that the new members of the committee invited me to travel with them as they went to a number of centres around the country and were briefed on the corruption risk issues in those environments. That provided the committee the opportunity to engage with me and with my senior officers. I think that was a very fruitful exercise because it also gave me the benefit first-hand of understanding what it was that was exercising the minds of the members of the committee. So I think it is a very valuable activity. I am not sure if we are the only agency that is the single client of a particular parliamentary joint committee, but it is a very powerful process. We have a good engagement and I will have the opportunity to brief the

144 Mr Griffin, ACLEI, *Committee Hansard*, 5 July 2017, p. 43.

145 Mr Griffin, ACLEI, *Committee Hansard*, 5 July 2017, p. 44.

146 ACLEI, *Submission 12*, p. 8.

147 ACLEI, *Submission 12*, p. 9.

148 ACLEI, *Submission 12*, p. 10.

members of the committee regularly during the course of the year—or that has been the case to date.¹⁴⁹

2.126 Another accountability mechanism is provided by the Commonwealth Ombudsman's power to investigate concerns or complaints from the public about ACLEI, or the conduct of an ACLEI employee. The Commonwealth Ombudsman may also inspect ACLEI's records of its use of certain covert powers, and is required to report to the relevant minister or to Parliament 'on the comprehensiveness and adequacy of ACLEI's records relating to the use of these powers'.¹⁵⁰

Australian National Audit Office

2.127 The Auditor-General is an independent¹⁵¹ statutory officer of the Parliament, established by the *Auditor-General Act 1997* (AG Act). The Auditor-General's functions include:

- 'auditing the financial statements of Commonwealth entities, Commonwealth companies and their subsidiaries;
- auditing annual performance statements of Commonwealth entities in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act);
- conducting performance audits, assurance reviews, or audits of the performance measures of Commonwealth entities, Commonwealth companies and their subsidiaries;
- conducting performance audits of Commonwealth partners as described in section 18B of the [AG Act];
- providing other audit services as required by other legislation or allowed under section 20 of the [AG Act]; and
- reporting directly to the Parliament on any matter or to a minister on any important matter'.¹⁵²

2.128 Professor Gabrielle Appleby and Dr Grant Hoole regard the ANAO's performance audit powers as having the:

...most robust and flexible capacity to serve as an integrity-promoting institution. The Auditor-General has the broadest jurisdiction of the federal

149 Mr Griffin, ACLEI, *Committee Hansard*, 5 July 2017, p. 45.

150 ACLEI, *Submission 12*, p. 10.

151 Section 8 of the *Auditor-General Act 1997* outlines the independence of the Auditor-General. The Auditor-General has the authority to exercise its functions with complete discretion, and 'is not subject to direction from anyone in relation to: whether or not a particular audit is to be conducted; the way in which a particular audit is to be conducted; or the priority to be given to any particular matter'. The Auditor-General does, however, give consideration to the audit priorities of the Commonwealth Parliament, as determined by the Joint Committee of Public Accounts and Audit. See: Australian National Audit Office (ANAO), *Submission 15*, p. 2.

152 ANAO, *Submission 15*, p. 1–2.

institutions considered thus far, combined with the strongest institutionalised protections for independence and the greatest transparency attaching to its final reports. Its focus on systemic problems, and capacity to examine issues on a cross-sectoral and inter-institutional basis, lends an indispensable element to the Commonwealth integrity framework.¹⁵³

2.129 The ANAO is overseen by the Joint Committee of Public Accounts and Audit (JCPAA). The JCPAA examines the Auditor-General's reports, considers the ANAO's operations and resources, and reports to Parliament on matters relating to the ANAO's functions and powers.¹⁵⁴

2.130 According to the ANAO's corporate plan for 2016–20, its purpose is to:

...drive accountability and transparency in the Australian Government sector through quality evidence based audit services and independent reporting to Parliament, the Executive and the public, with the result of improving public sector performance.¹⁵⁵

2.131 The ANAO, under the AG Act, has the authority to:

- fully and freely access documents or other property;
- to examine, make copies or take extracts from documents;
- direct a person, by written notice, to provide information, attend and give evidence and produce documents in their custody or under their control; and
- order information and answers to be verified or provided under oath or affirmation.¹⁵⁶

2.132 Details of the ANAO's financial statement audits, performance audits and other assurance activities were provided in its submission.

Financial statement audits

2.133 Commonwealth entities are held accountable through the ANAO's annual financial statements audits. Through this auditing process, the ANAO will also consider an entity's governance structures and supporting processes such as audit committees, internal audits and fraud control planning. Approximately 250 financial statement audits are conducted by the ANAO annually, informing future programs and potential performance audits.¹⁵⁷

2.134 In June of each year, the ANAO releases a report entitled *Interim Phase of the Audits of Financial Statements of Major General Government Sector Entities*. This report summarises the interim phase of the audits of portfolio departments and other

153 Gilbert + Tobin Centre of Public Law (Gilbert + Tobin), *Submission 18*, Attachment 1, p. 15.

154 ANAO, *Submission 15*, p. 3.

155 ANAO, *2016–20 Corporate Plan*, <https://www.anao.gov.au/work/corporate/anao-2016-20-corporate-plan> (accessed 25 August 2017).

156 ANAO, *Submission 15*, p. 3.

157 ANAO, *Submission 15*, p. 3.

entities, accounting for a least 95 per cent of revenues and expenses of the general government sector.¹⁵⁸

2.135 In December of each year, the second report entitled *Audits of the Financial Statements of Australian Government Entities* is published, detailing the results of the ANAO's financial statements audits completed across the Australian government sector. This report includes descriptions and the implications of any moderate and high risk audit findings.¹⁵⁹ The Auditor-General referenced the ANAO's most recent controls report, which found 25 of the 'major entities that make up the majority of public sector expenditure' had 'risk plans in place, they were up to date, they were being implemented and none of the agencies were identified as having a high risk of fraudulent activity impacting upon their financial statements'.¹⁶⁰

Performance audits

2.136 The ANAO's performance audits are a:

...review or examination of the operations of an Australian Government sector entity to provide the Parliament with assurance relating to the administration of entities and programs, including where they involve a Commonwealth partner.¹⁶¹

2.137 These performance audits identify issues and promote improved administrative and management practices, by focusing on the entity's:

- economy, such as minimising costs;
- efficiency;
- effectiveness in achieving intended outcomes;
- compliance with legislation and policy; and
- ethical matters.

2.138 Approximately 50 performance audits are conducted each year, across all portfolios of government. These audits include entity-specific audits, broader cross-entity audits, and whole-of-government audits.¹⁶²

2.139 The AG Act specifically excludes persons employed or engaged under the *Members of Parliament (Staff) Act 1984*¹⁶³ being considered as a Commonwealth entity.¹⁶⁴

158 ANAO, *Submission 15*, p. 3.

159 ANAO, *Submission 15*, p. 3.

160 Mr Grant Hehir, Auditor-General, ANAO, *Committee Hansard*, 5 July 2017, p. 1.

161 ANAO, *Submission 15*, p. 4.

162 ANAO, *Submission 15*, p. 4.

163 *Auditor-General Act 1997*, ss. 17(6)(a).

164 ANAO, *Submission 15*, p. 4.

Other assurance activities

2.140 In addition to the above, the ANAO may audit or review a Commonwealth entity if requested by stakeholders, such as parliamentarians, parliamentary committees, community groups and members of the public. The Auditor-General may conduct inquiries into a specific matter, with findings presented in correspondence or a report for tabling in the Parliament.¹⁶⁵

2.141 The committee was informed that a substantive assurance activity undertaken by the ANAO each year is an assurance review of major Defence equipment acquisition projects. The first review of Defence equipment acquisition projects for 2007–08 was published in 2008. The purpose of the review is to improve 'transparency and public accountability in major Defence procurement'.¹⁶⁶ The development of an annual review was driven by the JCPAA's ongoing interest in major Defence acquisitions since March 2006 and its inquiry into financial reporting and equipment acquisition at the Department of Defence and the Defence Material Organisation.¹⁶⁷

Corruption and misconduct

2.142 The ANAO informed the committee that its audits and assurance work will sometimes reveal possible misconduct and/or corruption. In these instances, the ANAO 'will generally bring this evidence to the attention of the responsible investigating authority within the affected entity' and this had been done on matters relating to Defence credit cards and the disposal of specialist military equipment.¹⁶⁸

2.143 Internal investigations may occur based on the outcome of an ANAO audit. This occurred after the ANAO reported on the procurement of garrison support and welfare services for offshore processing centres in Nauru and Papua New Guinea.¹⁶⁹ Finally, the ANAO may also conduct a performance audit specifically focused on agencies' integrity measures. For example, the ANAO is considering a performance audit of the implementation and effectiveness of the DIBP's staff integrity measures to mitigate the risk of fraud and corruption amongst departmental staff.¹⁷⁰

165 ANAO, *Submission 15*, p. 4.

166 ANAO, *Defence Material Organisation Major Projects Report 2007–08*, Report No. 9 2008–09, 27 November 2008, p. 11.

167 Ms Sharon Grierson MP, Chair's tabling speech, *Joint Committee of Public Accounts and Audit's Report 411: Progress on equipment acquisition and financial reporting in Defence* p. 1, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jcpaa/defence/tabling.pdf (accessed 28 June 2017).

168 ANAO, *Submission 15*, p. 5.

169 ANAO, *Submission 15*, p. 5.

170 ANAO, *Performance Audit, Staff Integrity Measures (Potential)*, <https://www.anao.gov.au/work/performance-audit/staff-integrity-measures> (accessed 27 June 2017).

2.144 The Auditor-General, Mr Grant Hehir, informed the committee that in each audit, the ANAO will 'undertake a process of reviewing the frameworks and activities and actions of agencies with respect to managing fraud risk'.¹⁷¹ As part of its investigation, the ANAO will look at:

...how effectively the agency implements its fraud prevention framework and...are also looking at what they do when they identify fraud underneath that. It is not just that they have a framework in place, but that they are implementing it and, when they identify potential fraud or actual fraud, that they are taking action to deal with it.¹⁷²

2.145 Misconduct and fraud risks are mostly identified through the ANAO's performance audit work, because it delves deeply into the activity of an agency. If at any point in the investigation, the ANAO identifies something that looks like misconduct or fraud, then the investigation is transferred to an appropriate body, which may be an integrity body in some circumstances.¹⁷³ A potential course of action available to the Auditor-General, under section 36 of the AG Act, is the power to disclose particular information to the AFP 'if the Auditor-General is of the opinion that the disclosure is in the public interest'.¹⁷⁴

2.146 Stakeholders are able to inform the ANAO of any matter relating to an audit. Although rare, the ANAO does receive information from the public on public servants' delivery of services. In these instances, the ANAO would conduct an investigation to determine whether the issues should be passed onto an integrity body. Further:

If it looks quite serious, we would pass it straight to the relevant integrity body. It depends on the nature of how the issue is raised with us. If there is a lot of evidence that they are giving us, we would just pass it straight to the appropriate body.¹⁷⁵

2.147 The committee questioned the ANAO on whether it has identified any gaps or vulnerabilities in the current integrity framework. In response, the Auditor-General explained that he had:

...not seen any area where, when we identify an issue, there is not clearly a body where you can take it to do further work—whether that is the [AFP] or a particular integrity body set up. In defence or security areas or in areas of misconduct it tends to be the accountable authority¹⁷⁶ we would raise it with. In my time in that role when that has happened—and there have only been a handful of times—I have found that we do not have any evidence that issues are not appropriately addressed. What I mean by 'do not have

171 Mr Hehir, ANAO, *Committee Hansard*, 5 July 2017, p. 1.

172 Mr Hehir, ANAO, *Committee Hansard*, 5 July 2017, p. 2.

173 Mr Hehir, ANAO, *Committee Hansard*, 5 July 2017, p. 2.

174 ANAO, *Submission 15*, p. 5.

175 Mr Hehir, ANAO, *Committee Hansard*, 5 July 2017, p. 2.

176 Accountable authorities referenced by the ANAO are the AFP, ACLEI and IGIS.

any evidence', when we deal with accountable authorities they tend to tell us that they did something and what they did to address the concern that we raised. From that point of view, I have not seen a gap.¹⁷⁷

2.148 When asked whether integrity agencies, such as the ANAO, make a difference to the Commonwealth's integrity framework, the Auditor-General responded that there is:

...a fair amount of evidence that the integrity of financial reporting, which is one of our core roles, is substantially enhanced by the oversight provisions that we undertake. The fact that we are there and people know we are there checking and making sure that systems and processes are robust and reporting is accurate, I would argue, does improve the quality of it. On the performance auditing side, the fact that people know that we are going to come in and check on the performance efficiency, effectiveness, economy and ethical activities within agencies is an important component in the framework of providing assurance to parliament of how well government works in those areas.¹⁷⁸

2.149 A limitation of the ANAO identified by Professor Appleby and Dr Hoole is that it:

...is not an intuitive institutional starting-point for investigating corruption and integrity concerns...Its role doesn't include the investigation of complaints, and neither public servants nor individual citizens have standing to raise concerns with the Auditor-General. Moreover, the Auditor-General's contact with integrity and corruption issues is largely incidental to a broader mandate relating to the scrutiny of public sector performance and financial management.¹⁷⁹

2.150 Further, Professor Appleby and Dr Hoole argue that the ANAO lacks:

...the institutional flexibility to address integrity and corruption issues in as nuanced or multifaceted way as the ACLEI or the Commonwealth Ombudsman. The Auditor-General may detect and report maladministration, but does not have a clear institutional mandate to forensically study its cause or to correct misconduct.¹⁸⁰

2.151 Finally, a further criticism of the ANAO's role in the integrity framework is that its identification of corruption is limited to the management of public funds and instances outside of that space may escape the Auditor-General's scrutiny.¹⁸¹

177 Mr Hehir, ANAO, *Committee Hansard*, 5 July 2017, p. 3.

178 Mr Hehir, ANAO, *Committee Hansard*, 5 July 2017, p. 4.

179 Gilbert + Tobin, *Submission 18*, Attachment 1, p. 15.

180 Gilbert + Tobin, *Submission 18*, Attachment 1, p. 16.

181 Gilbert + Tobin, *Submission 18*, Attachment 1, p. 16.

Collaboration and co-operation

2.152 The ANAO noted that it had observed a 'quite active community of practice led in part by the [AGD], which of course has the policy-owner role'.¹⁸² Further to this observation, it has been the ANAO's experience that those agencies actively involved in the 'community of practice...tended to have a more mature internal set of fraud control arrangements'.¹⁸³ In the ANAO's view, a key learning from this observation:

...is to keep abreast of the requirements and the more recent thinking in the community of practice. Compare notes, stay active and keep working the problem continuously. They seem to be the key preconditions for at least having a reasonable prospect of success on the prevention side, because prevention is the thing that is being emphasised more these days around fraud control.¹⁸⁴

Australian Public Service Commission

2.153 The APSC is responsible for 'upholding the standards of integrity and conduct in the [APS]'.¹⁸⁵ The PS Act is a key component to the APS' integrity framework.¹⁸⁶ The PS Act establishes the behaviour obligations of all APS employees and the APSC is responsible for:

- upholding and promoting the APS Values, Employment Principles and the APS Code of Conduct (integrity principles);
- evaluating each agency's compliance with and incorporation of the APS's integrity principles;
- issuing directions to agency heads regarding investigation procedures for determining suspected breaches of the Code of Conduct and relevant sanctions; and
- investigating alleged breaches of the Code of Conduct by an agency head.¹⁸⁷

Australian Public Service Code of Conduct

2.154 The APS Code of Conduct is established under section 13 of the PS Act. Integrity measures found in the code include requirements for APS employees to behave honestly and with integrity, comply with applicable Australian laws, maintain confidentiality about dealings with a minister or ministerial staff, avoid any conflict of interest, and not use insider information to:

182 Dr Tom Ioannou, Group Executive Director, ANAO, *Committee Hansard*, 5 July 2017, p. 4.

183 Dr Ioannou, ANAO, *Committee Hansard*, 5 July 2017, p. 4.

184 Dr Ioannou, ANAO, *Committee Hansard*, 5 July 2017, pp. 4–5.

185 APSC, *Submission 16* [2016], p. 3.

186 APSC, *Submission 16* [2016], p. 3.

187 APSC, *Submission 16* [2016], p. 4.

...gain, or seek to gain, a benefit or an advantage for the employee or any other person, or...cause or seek to cause, detriment to the employee's agency, the Commonwealth or any other person.¹⁸⁸

2.155 According to the APSC, the reporting and investigating of alleged breaches of the Code of Conduct are important elements of the APS integrity framework. It is the responsibility of all APS employees to report suspected misconduct. Agency heads are obliged to:

...investigate alleged misconduct or breaches of the Code of Conduct, and can impose sanctions up to and including termination of employment. In the case of serious misconduct, including genuinely corrupt acts, matters are referred to the relevant law enforcement body.¹⁸⁹

2.156 The APSC also provides APS employees with an ethics advisory service. This service is offered to APS employees who 'wish to discuss and seek advice on ethical issues that occur in the workplace and make sound decisions around these issues'. This service includes advice on:

- the application and interpretation of the APS Values and Code of Conduct (section 10 and 13 of the PS Act);
- ethical decision making in the APS; and
- interpretation of misconduct provisions under the PS Act, as well as advice on related policies and good practice.¹⁹⁰

2.157 The APSC is not able to provide advice¹⁹¹ on:

- the technical and operational aspects of the employment policy of the APS;
- other aspects of APS legislation, policy or management;
- internal agency policies and processes unless a request is submitted by an agency head, a senior executive employee or an agency corporate management area; and
- the merits or outcome of a misconduct case.¹⁹²

188 APSC, *Code of Conduct*, 11 February 2016, <http://www.apsc.gov.au/managing-in-the-aps/your-rights-and-responsibilities-as-an-aps-employee/code-of-conduct> (accessed 26 June 2017).

189 APSC, *Submission 16* [2016], p. 4.

190 APSC, *Ethics Advisory Service*, 11 February 2016, <http://www.apsc.gov.au/working-in-the-aps/your-rights-and-responsibilities-as-an-aps-employee/ethics-advisory-service> (accessed 28 August 2017).

191 The APSC does not: provide counselling or act as an agency's Employee Assistance Programme; undertake case management or provide an advocacy service for APS employees; provide avenue for complain resolution; provide legal advice; and accept whistleblower reports. See APSC, *Ethics Advisory Service*, 11 February 2016, <http://www.apsc.gov.au/working-in-the-aps/your-rights-and-responsibilities-as-an-aps-employee/ethics-advisory-service> (accessed 28 August 2017).

State of the Service report

2.158 The APSC's annual State of the Service reports include data on the number of investigations into misconduct and breaches of the Code of Conduct, including allegations of corrupt conduct. Between 2014 and 2016, there were 1866 investigations into misconduct, with 228 resulting in termination of employment and 888 resulting in employees being reprimanded. In 2015–16, 106 of the 717 finalised investigations were reported to have involved a form of corruption,¹⁹³ with the majority involving 'acts of a less serious nature, such as inappropriate use of flex time or misuse of leave'.¹⁹⁴

2.159 The State of the Service reports include data from APS employee surveys. In these surveys, APS employees are asked whether they had witnessed or reported perceived corruption.¹⁹⁵ The 2016 survey reports that four per cent¹⁹⁶ of respondents 'had witnessed another employee engaging in behaviour they considered' corrupt.¹⁹⁷ Of these respondents:

- 67 per cent reported they had witnessed cronyism;
- 26 per cent reported they had witnessed nepotism;
- 22 per cent reported they had witnessed an APS employee acting, or failing to act, in the presence of undisclosed conflicts of interest; and
- only 33 per cent of those that had witnessed corrupt behaviour had reported it.¹⁹⁸

2.160 The APSC is of the view that the available data suggests¹⁹⁹ corruption in the APS is low and 'APS agencies are dealing with unlawful and corrupt conduct appropriately when it is identified'.²⁰⁰

192 APSC, *Ethics Advisory Service*, 11 February 2016, <http://www.apsc.gov.au/working-in-the-aps/your-rights-and-responsibilities-as-an-aps-employee/ethics-advisory-service> (accessed 28 August 2017).

193 APSC, *Submission 1*, p. 2.

194 APSC, *Submission 16* [2016], p. 3.

195 APSC survey defines corruption as the 'dishonest or biased exercise of a Commonwealth public official's functions. A distinguishing characteristic of corrupt behaviour is that it involves conduct that would usually justify serious penalties, such as termination of employment or criminal prosecution'.

196 This figure was 3.6 per cent in 2014–15. See, APSC, *State of the Service Report 2014–15*, p. 46.

197 APSC, *State of the Service Report 2015–16*, p. 27.

198 APSC, *State of the Service Report 2015–16*, pp. 27–28.

199 On notice, the APSC provided further information about misconduct inquiries undertaken by the APS agencies into alleged corrupt behaviour between 2013 and 2016. See: APSC, answers to questions on notice, 5 July 2017 (received 19 July 2017).

200 APSC, *Submission 16* [2016], p. 1.

Commonwealth Ombudsman

2.161 The Commonwealth Ombudsman has responsibility for and is empowered to investigate and expose instances of 'systemic maladministration that undermines probity and integrity in government'.²⁰¹ According to Professor Appleby and Dr Hoole, the Commonwealth Ombudsman:

...helps to ensure that official powers are exercised in a non-abusive manner conforming to relevant legislation, policies, and standards. It provides an important point of contact for facilitative, confidential reporting of corruption concerns within the Commonwealth public service. The Ombudsman thus lends important values of conciliation, privacy, and problem-solving to the Commonwealth integrity framework.²⁰²

2.162 Other responsibilities of the Ombudsman include:

- the shared administration of the Commonwealth's whistleblower scheme (PID Scheme), under the PID Act;
- reviewing law enforcement agencies' statutory compliance with the use of certain covert and intrusive powers;²⁰³
- the consideration and investigation of complaints from individuals who claim they have been treated unfairly, or unreasonably, by a Commonwealth department or agency or prescribed private sector organisation;
- acting as the ombudsman for private health insurance, overseas students, the Defence Force, law enforcement, the Australian Capital Territory and Norfolk Island;²⁰⁴ and
- oversight of immigration detention through an assessment of the appropriateness of a person being held in detention for more than two years.²⁰⁵

2.163 Powers available under the *Commonwealth Ombudsman Act 1976* (Ombudsman Act) include:

- notices requiring people to give information and produce documents or records (privilege against self-incrimination is abrogated and a use of immunity applies²⁰⁶);²⁰⁷

201 Ms Gibbs, Commonwealth Ombudsman, *Committee Hansard*, 16 June 2017, p. 46.

202 Gilbert + Tobin, *Submission 18*, Attachment 1, p. 10.

203 Ms Gibbs, Commonwealth Ombudsman, *Committee Hansard*, 16 June 2017, p. 46.

204 AGD, *Submission 23* [2016], p. 5.

205 Commonwealth Ombudsman, *Dealing with the Commonwealth Ombudsman's office*, available: <http://www.ombudsman.gov.au/about/what-we-do/information-for-agencies#Jurisdiction> (accessed 26 June 2017).

206 *Commonwealth Ombudsman Act 1976*, ss. 9(4).

207 *Commonwealth Ombudsman Act 1976*, s. 9.

- requiring persons to attend examinations (again, privilege against self-incrimination is abrogated and a use of immunity applies);²⁰⁸ and
- enter the premises occupied by a department or prescribed authority (including contractors) and carrying on an investigation there.²⁰⁹

2.164 The Commonwealth Ombudsman also meets with, and works collaboratively with other integrity agencies, thereby referring matters to other agencies if it is unable to investigate.²¹⁰ These referral powers include referring matters of corruption²¹¹ to ACLEI.²¹²

2.165 The jurisdiction of the Commonwealth Ombudsman²¹³ includes the administrative actions²¹⁴ of most Commonwealth departments, or agencies and prescribed private sector organisations. Its jurisdiction can include the actions of a Commonwealth service provider, such as 'a contractor or subcontractor who provides goods or services for, or on behalf of, an agency to the public'.²¹⁵

2.166 The Commonwealth Ombudsman does not have the jurisdiction to investigate²¹⁶ tax complaints (transferred to the Inspector-General of Taxation), Australian intelligence agencies,²¹⁷ the Commonwealth Grants Commission, the Defence Force Remuneration Tribunal, and the Remuneration Tribunal. Further, the Commonwealth Ombudsman does not have the jurisdiction to review the

208 *Commonwealth Ombudsman Act 1976*, s. 13.

209 *Commonwealth Ombudsman Act 1976*, s. 14.

210 Ms Gibbs, Commonwealth Ombudsman, *Committee Hansard*, 16 June 2017, p. 46.

211 The *Commonwealth Ombudsman Act 1979* distinguishes between a *serious* corruption issue and a corruption issue. If a matter is deemed a corruption issue, than the Commonwealth Ombudsman 'may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to refer the allegation or information to the Integrity Commissioner'. If a matter is considered a serious corruption issue, than the Ombudsman 'must not investigate the complaint' and it must be referred to the Integrity Commissioner (for agencies within ACLEI's jurisdiction). See *Commonwealth Ombudsman Act 1976*, ss. 6(16), ss. 6(17).

212 *Commonwealth Ombudsman Act 1976*, ss. 6(16), ss. 6(17).

213 See *Commonwealth Ombudsman Act 1976*, ss. 5(1).

214 The term 'administrative action' is not defined under the *Commonwealth Ombudsman Act 1976*; instead it is broadly interpreted to include 'policy development, commercial conduct, the exercise of statutory responsibilities law enforcement activities, decisions on application for benefits or concessions, compensation decisions, and decisions on applications made under the Freed of Information Act 1982'. See, Commonwealth Ombudsman, *Dealing with the Commonwealth Ombudsman's office*, <http://www.ombudsman.gov.au/about/what-we-do/information-for-agencies#Jurisdiction> (accessed 26 June 2017).

215 Commonwealth Ombudsman, *Dealing with the Commonwealth Ombudsman's office*, available: <http://www.ombudsman.gov.au/about/what-we-do/information-for-agencies#Jurisdiction> (accessed 26 June 2017).

216 See *Commonwealth Ombudsman Act 1979*, ss. 5(2).

217 See the IGIS for further details (see paragraph 2.174 to 2.179).

administrative actions of the courts or tribunal registries, and the actions and decisions of members of parliament and ministers are outside the Commonwealth Ombudsman's jurisdiction. However, investigations may take place into advice provided to a minister by a Commonwealth agency.²¹⁸

2.167 The committee was informed that in 2015–16 the Commonwealth Ombudsman received 37 790 complaints. Of these complaints:

- 5339 were determined to be out of its jurisdiction;
- 32 451 were in-jurisdiction complaints;
- 3131 (or 9.6 per cent) were investigated.²¹⁹

2.168 Of these investigated:

- 2540 matters were resolved after a single contact with the relevant agency;
- 582 were resolved after two or more substantive contacts with the relevant agency; and
- nine complaints were investigated using the formal use of powers under the Ombudsman Act.²²⁰

2.169 The committee was told that the Commonwealth Ombudsman receives information through a number of different channels, which may lead to an investigation into systemic maladministration. These channels include:

- receiving a large number of complaints about one issue;
- receiving a small number of specific complaints (such as its investigation into health cover of international students); and
- the Commonwealth Ombudsman's interaction with external bodies, such as community based agencies.²²¹

2.170 If a particular agency or matter of interest receives a large volume of complaints, the Commonwealth Ombudsman will establish a strategy branch.²²² These strategy branches assess the complaints received to determine if there is a systemic issue. Further, the branches have regular engagement with the agencies for which they

218 Commonwealth Ombudsman, *Dealing with the Commonwealth Ombudsman's office*, available: <http://www.ombudsman.gov.au/about/what-we-do/information-for-agencies#Jurisdiction> (accessed 26 June 2017).

219 Commonwealth Ombudsman, answers to questions on notice, 16 June 2017 (received 10 July 2017).

220 Commonwealth Ombudsman, answers to questions on notice, 16 June 2017 (received 10 July 2017).

221 Ms Gibbs, Commonwealth Ombudsman, *Committee Hansard*, 16 June 2017, p. 48.

222 Strategy branches include the defence force, immigration, law enforcement, the postal industry and private health insurance.

are responsible, as well as stakeholder engagement to assist those people subject to the administration of those agencies.²²³

2.171 As already noted, the Commonwealth Ombudsman has shared responsibility for the administration of the PID Scheme under the PID Act. The PID Scheme will be discussed in more detail later in this chapter.

2.172 Professor Appleby and Dr Hoole identified a number of characteristics of the Commonwealth Ombudsman that they argue are both a source of strength and weakness. The first is the privacy surrounding the work of the Commonwealth Ombudsman, which:

...facilitates candour and provides a secure environment in which a problem may be resolved constructively between a complainant and the relevant Commonwealth agency.²²⁴

2.173 However, as with ACLEI, this level of privacy can limit the public's:

...awareness of the extent to which the Ombudsman succeeds in fostering integrity within the public service, given that public reporting may result in conflict between the Ombudsman and a department. An emphasis on privacy and 'soft power' may diminish the Ombudsman's capacity to deter the worst instances of corruption. Finally, some features of the Ombudsman's procedural flexibility diminish at least the appearance of independence. This is the case in respect of the Ombudsman's duty to consult a Minister before including findings that are critical of government in a public report.²²⁵

Inspector-General of Intelligence and Security

2.174 The IGIS is an independent statutory officer who is responsible for reviewing the activities of Australia's intelligence agencies. The agencies under the IGIS's jurisdiction are:

- ASIO;
- the Australian Secret Intelligence Service;
- ASD;
- Australian Geospatial-Intelligence Organisation;
- Defence Intelligence Organisation; and the
- ONA.²²⁶

2.175 The purpose of IGIS is to 'provide assurance that each intelligence agency acts legally and with propriety, complies with ministerial guidelines and directives,

223 Ms Gibbs, Commonwealth Ombudsman, *Committee Hansard*, 16 June 2017, p. 48.

224 Gilbert + Tobin, *Submission 18*, Attachment 1, p. 15.

225 Gilbert + Tobin, *Submission 18*, Attachment 1, p. 15.

226 IGIS, *Submission 10*, p. 2.

and acts consistently with human rights'.²²⁷ It achieves this by conducting inspections of operational activities of Australia's intelligence agencies. IGIS is also empowered to conduct a private inquiry and order a person to produce documents and provide information to assist with its investigation.²²⁸ IGIS informed the committee that inquiries have been conducted into:

- allegations of inappropriate security vetting practices (2011);
- possible compromise of a compliance test (2010); and
- an allegation that the ASD had spied on the Defence Minister (2009).²²⁹

2.176 The activities of Australia's intelligence agencies cannot be disclosed publicly, and for this reason, IGIS is equipped to have oversight of and manage highly classified information. IGIS staff are required to obtain top secret positive vetting clearances.²³⁰ Information obtained through its investigations is dealt with in accordance with IGIS's security requirements and the secrecy provisions found in the *Inspector-General of Intelligence and Security Act 1986* (IGIS Act). Procedures are also in place to protect the identity of former staff or agents of intelligence agencies.²³¹

2.177 IGIS informed the committee that Australia's intelligence agencies have internal mechanisms in place to detect and deter misconduct and corruption. In addition to these internal mechanisms, the security clearance and vetting processes covering intelligence agency staff provide an 'additional layer of scrutiny'.²³² Any individual misconduct may result in a loss of a security clearance, and subsequently an officer's job.²³³ It is the role of IGIS to 'oversee the mechanisms in place in the agencies and [IGIS] is an avenue for staff to complain if they consider there has been maladministration or corruption'.²³⁴

2.178 IGIS expressed the view that corruption and misconduct in Australia's intelligence agencies is very low, and that existing mechanisms in place are sufficient to detect and deter those behaviours. IGIS identified the security vetting processes as a possible reason for the low level of corruption and misconduct.²³⁵

2.179 IGIS also shares responsibility under the PID Act for matters that relate to intelligence agencies. Since the introduction of the PID Act, IGIS has received a

227 IGIS, *Submission 10*, p. 2.

228 IGIS, *Submission 10*, p. 2.

229 IGIS, *Submission 10*, p. 4.

230 Ms Stone, IGIS, *Committee Hansard*, 16 June 2017, p. 46.

231 IGIS, *Submission 10*, p. 3.

232 IGIS, *Submission 10*, p. 3.

233 IGIS, *Submission 10*, p. 3.

234 IGIS, *Submission 10*, p. 3.

235 IGIS, *Submission 10*, p. 4.

'small number of disclosures concerning alleged misconduct in procurement and has received a number of disclosures alleging maladministration in staffing matters'.²³⁶ Investigations into these allegations have identified areas for improvement, but have not been considered cases of widespread misconduct or corruption. IGIS believes it has sufficient powers under the IGIS Act and the PID Act to conduct an inquiry into these matters.²³⁷

Australian Electoral Commission

2.180 The AEC is responsible for the integrity of Australia's elections. According to evidence provided by the AEC, there are three major areas in which a 'perception of misconduct' may arise.²³⁸ These areas are:

- political party donations and disclosures;
- the integrity of the electoral role; and
- the handling of electoral offences.²³⁹

Political party donations and disclosures

2.181 In 1983, the Commonwealth funding and disclosure scheme (disclosure scheme) was established under the *Commonwealth Electoral Act 1918* (Electoral Act) to 'increase the overall transparency and inform the public about the financial dealings of political parties, candidates and others involved in the electoral process'.²⁴⁰ According to the AEC, the:

...broad aim of the scheme to provide political parties and candidates with public funding to reduce reliance on private funding and requiring the disclosure of campaign related transactions in the interests of transparency and thereby reducing the risk of corruption.²⁴¹

2.182 Under the disclosure scheme:

...candidates, registered political parties and their state branches, local branches and sub party units and their associated entities, donors, and other participants in the electoral process, are required to lodge annual or electoral period financial returns with the AEC.²⁴²

2.183 These financial returns must show:

236 IGIS, *Submission 10*, p. 4.

237 IGIS, *Submission 10*, p. 4.

238 Mr Tom Rogers, Electoral Commissioner, AEC, *Committee Hansard*, 16 June 2017, p. 35.

239 Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 35.

240 AEC, *Financial Disclosure*, 1 February 2017, available: http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/ (accessed 28 June 2017).

241 Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 35.

242 AEC, *Financial Disclosure*, 1 February 2017, http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/ (accessed 28 June 2017).

- the total value of receipts received;
- details of the amounts received that are above the disclosure threshold (from 1 July 2017 to 30 June 2018, the disclosure threshold is \$13,200);²⁴³
- the total value of payment received;
- the total value of debts as at 30 June; and
- details of debts outstanding as at 30 June that are more than the disclosure threshold.²⁴⁴

2.184 Other details to be included if a total is above the disclosable amount include the name of the person or organisation making the donation, the sum of the amount received, and whether the receipt is a 'donation' or 'other receipt'.²⁴⁵

2.185 Once submitted to the AEC, the disclosure returns are made available for the public's inspection.²⁴⁶

2.186 Breaches of the disclosure scheme are contained in the Electoral Act. It requires the AEC to refer any breaches to the CDPP, and 'combines relatively low penalties—\$100 for some minor offences—with potentially high thresholds for establishing an offence'.²⁴⁷ The AEC reassured the committee that it is:

...extremely active in ensuring that all the strictures of the act are met. To that end, we work collaboratively with the various participants in the process, we conduct an active annual regime of compliance reviews and we refer specific cases of non-compliance to relevant Commonwealth agencies for further action where necessary.²⁴⁸

Integrity of the electoral roll

2.187 In 2014, the AEC established an electoral integrity unit (EIU) to 'inquire into and strengthen the integrity of the AEC's electoral processes'.²⁴⁹ The EIU's remit is to 'examine enrolment in election matters to identify and report on issues affecting the

243 AEC, *Disclosure threshold*, 19 May 2016, http://www.aec.gov.au/Parties_and_Representatives/public_funding/threshold.htm (accessed 28 June 2017).

244 AEC, *Financial Disclosure*, 1 February 2017, http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/ (accessed 28 June 2017).

245 AEC, *Financial Disclosure*, 1 February 2017, http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/ (accessed 28 June 2017).

246 AEC, *Financial Disclosure*, 1 February 2017, http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/ (accessed 28 June 2017).

247 Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 35.

248 Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 35.

249 Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 35.

integrity of the processes', including the 'examination of electoral fraud and reports its findings to the AEC's fraud control manager in accordance with the AEC's fraud control plan'.²⁵⁰ If the EIU identifies an issue, it will provide a recommendation on whether the matter warrants being referred to the AFP for further investigation.²⁵¹

2.188 The creation of the EIU led to the development of the Electoral Integrity Framework. This framework supports the EIU's work by identifying opportunities to enhance its integrity measures by ensuring the electoral system adheres to the:

...provisions contained in the [Electoral Act], following AEC policies and procedures, and administering an electoral system where eligible electors cast votes which are counted accurately and promptly.

The framework is focused on AEC processes and procedures and does not comment on the underlying integrity of the legislated systems of enrolment and elections in Australia's electoral system. The framework currently applies to enrolment and elections, and may, in time, apply to other areas of the AEC's work, such as funding and disclosure or industrial and commercial elections.²⁵²

Handling of electoral offences

2.189 Part 21 of the Electoral Act lists a number of specific electoral offences, including bribery, polling place offences and a range of other campaign-related offences. The AEC is required to uphold the compulsory voting system, and the principle of 'one person, one vote'.²⁵³

2.190 The AEC reiterated its commitment to address instances of alleged multiple voting, stating section 339 of the Electoral Act 'provides that a person is guilty of an offence if that person votes more than once in the same election but does not have:

...the authority to prosecute multiple voting offences, but we cooperate with the AFP and the Commonwealth Director of Public Prosecutions on cases of possible multiple voting. Following the most recent election in 2016, the AEC and the AFP worked closely to institute a process for managing the referral, by the AEC to the AFP, of apparent multiple voting cases.²⁵⁴

Administrative and enforcement powers

2.191 In her evidence, Professor Anne Twomey suggested that a problem for electoral commissions is whether they are administrative agencies, or enforcement agencies. Professor Twomey argued that there is a difficulty with a single agency

250 Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 35.

251 Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 35.

252 AEC, *Electoral Integrity Framework*, http://www.aec.gov.au/About_AEC/Publications/electoral-integrity-framework/framework.htm (accessed 28 June 2017).

253 Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 35.

254 Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 35.

having both roles, and electoral commissions are not adequately funded to conduct investigations.²⁵⁵

2.192 In response, the AEC acknowledged this is an issue other electoral commissions have previously tried to resolve.²⁵⁶ In the case of the AEC, the committee was assured that it has a number of internal checks and balances that it uses to consider various issues, and ultimately:

There will be a point when—as we always do with matters that are either under review or investigation and we think sufficient evidence points to the need for further action, and that action is not within our power under the Electoral Act—we refer that for further action to either the AFP or the DPP, depending on the issue.²⁵⁷

2.193 It is at this point in the investigation that the AEC will transfer responsibility and it is up to the AFP or CDPP whether to take the investigation forward. This transferral of responsibility is because:

...the AFP and the CDPP are both bound by the prosecution policy of the Commonwealth. They make their own decisions about whether they can pursue a particular issue, but we are not bound by that. We simply administer the act and the provisions of the act. Where we believe there is an issue, we will refer that on regardless of the prosecution policy of the Commonwealth.²⁵⁸

2.194 The AEC used as an example an enrolment issue in the seat of Indi during the 2013 election. The AEC's preliminary investigation indicated that an offence may have occurred, and it was subsequently referred to the AFP.²⁵⁹

2.195 The separation of powers, in the AEC view, is important because it puts it, 'to a certain extent, at arm's length so that we are seen as not being politically partisan and we are continuing our role as being neutral in the political sphere'.²⁶⁰ The AEC is, however, able to prosecute for non-voting offences,²⁶¹ and it possesses coercive powers, under section 316 of the Electoral Act, such as the power to ask questions and

255 Professor Anne Twomey, *Committee Hansard*, 12 May 2017, p. 13.

256 One example the AEC provided was in New South Wales, which had established a 'separate Electoral Funding Authority that was connected to but separate from the New South Wales Electoral Commission'. The outcome of this authority was not optimal, and was subsequently reverted to a single NSW Electoral Commission. See, Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 36.

257 Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 36.

258 Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 36.

259 Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 36.

260 Mr Paul Pirani, Chief Legal Officer, AEC, *Committee Hansard*, 16 June 2017, p. 37.

261 Mr Pirani, AEC, *Committee Hansard*, 16 June 2017, p. 36.

seek documentation to determine 'whether a person has complied with the disclosure obligation[s]'.²⁶²

2.196 The AFP, on notice, informed the committee that it provides an investigative service to the AEC 'in accordance with a memorandum of understanding on investigation of Commonwealth offences'.²⁶³

2.197 However, the AFP noted it:

...does not have a view on whether criminal legislation is required that specifies with certainty how political parties can and cannot spend public funding received as part of an election...Where a political party has received public funding as a result of an election and where the party spends the public funding in contravention of its party constitution and where it may constitute a criminal offence, the political party or other may refer to the AFP the matter for investigation. The AFP may evaluate the referral and determine if there has been any breach of Commonwealth offences.²⁶⁴

2.198 The AFP concluded that it does not require any 'additional powers when investigating matters of this nature'.²⁶⁵

Comparison with other jurisdictions

2.199 The committee asked the AEC how Australia's electoral system compares with other jurisdictions. In response, the AEC informed the committee of its regular engagement with the United Kingdom, Canada and New Zealand, and the shared view that:

...it is remarkable just how much respect the various political players in the process have for the process itself. It is very rare that there are parties, candidates or MPs who actually try to do the wrong thing. In our democracy there is a great respect for the process and for citizens as well.²⁶⁶

2.200 The AEC referred to the ongoing project called the Electoral Integrity Project, which produces a global survey each year that rates democracies. In May 2017, up to 3000 electoral integrity experts evaluated Australia's 2016 federal election and concluded that it had 'very high integrity'. That said, the AEC notes that there are always issues, including:

...a general decline in those democracies for people's trust in democracy over many years. The AEC's rating has still gone down with everybody else's, but has remained relatively buoyant. More Australians than not believe in and trust in the outcome of elections. Without going too far down

262 Mr Pirani, AEC, *Committee Hansard*, 16 June 2017, p. 37.

263 AFP, answers to questions on notice, 5 July 2017 (received 16 August 2017).

264 AFP, answers to questions on notice, 5 July 2017 (received 16 August 2017).

265 AFP, answers to questions on notice, 5 July 2017 (received 16 August 2017).

266 Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 40.

that path, there are, however, a minority of Australians that believe that fraud does occur during Australian elections.²⁶⁷

2.201 On the matter of donation laws, the committee compared the Commonwealth's disclosure threshold to the recent changes to New South Wales and Queensland's donations threshold laws that now require the disclosure of donations above \$1000. When this measure was introduced in Queensland, the Premier said the changes would reduce the prospect of corruption.²⁶⁸ In response, the AEC said it did not have a view on this matter; its role is to administer the Electoral Act.²⁶⁹

Australian Securities and Investment Commission

2.202 ASIC 'is Australia's corporate, markets and financial services regulator', established pursuant to the *Australian Securities and Investments Commission Act 2001*.²⁷⁰ It is overseen by the Parliamentary Joint Committee on Corporations and Financial Services²⁷¹ and:

...investigates breaches of the [Corporations Act] and takes criminal, civil and administrative action in cases of corporate misconduct. Within ASIC, the Office of the Whistleblower monitors the handling of whistleblower reports.²⁷²

2.203 In order to perform its functions, ASIC has investigation²⁷³ and prosecution²⁷⁴ powers. ASIC explained how these powers intersect with issues of corruption in its 2014 submission to PJCACLEI in respect of its inquiry into the jurisdiction of the ACLEI:

The corruption risks present within ASIC arise from our role as a regulator. Potential corruptors may stand to make a financial profit, or otherwise enhance their commercial interests, by obtaining access to the information and intelligence that ASIC collects as a result of ASIC's regulatory functions. Alternatively, potential corruptors may seek to benefit from favourable treatment such as the imposition of lower penalties, improper determinations of relief applications, or other biased decisions.²⁷⁵

267 Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 40.

268 Felicity Caldwell, "'Real time' political donations reports to have seven-day delay', *Brisbane Times*, 23 February 2017, <http://www.brisbanetimes.com.au/queensland/real-time-political-donations-reports-to-have-sevenday-delay-20170223-gujcom.html> (accessed 31 May 2017).

269 Mr Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 40.

270 ASIC, *Our role*, <http://asic.gov.au/about-asic/what-we-do/our-role/> (accessed 24 August 2017).

271 *Australian Securities and Investments Commission Act 2001*, s. 243.

272 AGD, *Submission 23* [2016], p. 5.

273 *Australian Securities and Investments Commission Act 2001*, s. 13.

274 *Australian Securities and Investments Commission Act 2001*, s. 63–s. 67.

275 ASIC, *Submission to the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity*, p. 6.

2.204 The submission noted that, as a result of these potential motives for corruption, there exists:

...a risk that ASIC staff may seek to gain a profit or benefit for themselves or others..., may use ASIC powers and discretions for an improper purpose, and may protect unlawful activity by diverting attention or otherwise manipulating surveillance and investigations.²⁷⁶

2.205 In examining ASIC's evidence, PJACLEI noted in its May 2016 report that:

...the former acting Integrity Commissioner, Mr Robert Cornall, observed that ASIC's written submission and ASIC officers' oral evidence 'supported the position that [ASIC is] not in a high-risk environment'.²⁷⁷

2.206 In contrast to this evidence to the PJACLEI, the committee received evidence that ASIC's budget is not sufficient to carry out its functions in respect of corruption, as:

ASIC, which should have a major role in supervision of this area, had its budget cut by \$120 million over four years, by this government's first budget. ASIC itself submitted to a Senate inquiry into ASIC's handling of financial scandals that it lacked the weapons to deal with bank misbehaviour, and that penalties for misbehaviour are inadequate.²⁷⁸

2.207 This comment about the lack of resources was echoed by Mr Trevor Clarke of the Australian Council for Trade Unions, who asserted that the current environment ASIC works in 'is not the ideal environment to take a step back and conceive of yourself as an agency that is about preventing corrupt behaviour in all of its forms', as ASIC is:

...a compliance body that would receive goodness knows how many hundreds of thousands of forms every day of the week, and are expected to make some conclusions or direct investigative activities about compliance based on this enormous volume of information that they get every day of the week.²⁷⁹

2.208 However, in respect of ASIC's resourcing constraints, the AGD informed the committee that:

In July 2015, the Government announced \$127.6 million funding over four years for a Serious Financial Crime Taskforce, which sits within the FAC Centre. In April 2016, the Government announced that it would invest an additional \$14.7 million to expand the investigative capability of the FAC Centre and bolster Australia's capability to respond to foreign bribery,

276 ASIC, *Submission to the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity*, p. 6 (citations omitted).

277 PJACLEI, *Inquiry into the jurisdiction of the Australian Commission for Law Enforcement Integrity*, May 2016, p. 30.

278 Accountability Round Table, *Submission 31* [2016], p. 3.

279 Mr Trevor Clarke, Director of Industrial and Legal Policy, Australian Council of Trade Unions, *Committee Hansard*, 17 May 2017, p. 26.

alongside an additional \$127.2 million over four years to strengthen the investigative capacity of ASIC.²⁸⁰

2.209 Further, AGD noted that a taskforce has been established to review ASIC's enforcement regime, which will 'undertake extensive consultation before submitting a final report to Government in September 2017':

The ASIC enforcement review will assess the suitability of the existing regulatory tools available to ASIC and whether there is a need to strengthen ASIC's toolkit. Relevantly, the Review's terms of reference include an examination of legislation dealing with corporations, financial services, credit, and insurance as to:

- the adequacy of civil and criminal penalties relating to the financial system, including corporate fraud
- the need for alternative enforcement mechanisms
- the adequacy of existing penalties for serious contraventions
- the adequacy of ASIC's information gathering powers, and
- any other matters which arise during the course of the Taskforce's review, which appear necessary to address any deficiencies in ASIC's regulatory toolset.²⁸¹

Australian Transaction Reports and Analysis Centre

2.210 As set out in the AGD's 2016 submission, AUSTRAC—'Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regulator and specialist Financial Intelligence Unit [(FIU)]'—has the responsibility of:

...collecting, analysing and disseminating financial intelligence to its designated law enforcement, national security, revenue collection and social welfare partner agencies. As part of this role, AUSTRAC allows domestic partner agencies (for example the [Australian Taxation Office], ASIC, the ACC and the AFP) on-line access to the AUSTRAC database of financial transaction reports information.

AUSTRAC also has an extensive international network of ties with more than 80 foreign FIUs, which enables AUSTRAC to facilitate the exchange of financial and other intelligence between Australian agencies and overseas counterparts. AUSTRAC also provides on-site training and analytical assistance to those domestic agencies to assist their efforts in combating crime and corruption, revenue evasion, the funding of terrorism and major fraud.

Under the AML/CTF regulatory framework AUSTRAC supervises compliance and transaction reporting obligations of more than 14,000 entities in the banking and finance, gambling, remittance and bullion sectors. The AML/CTF framework provides these regulated entities with the toolkit to identify and combat corruption. The framework obliges

280 AGD, *Submission 11*, p. 4.

281 AGD, *Submission 11*, p. 5.

regulated entities to identify and verify customers, assess beneficial ownership and control and the source of the customer's funds and identify whether the customer is a politically exposed person. Where a regulated entity identifies any suspicious activity relating to a customer's behaviour or transaction activity, it must be reported to AUSTRAC.²⁸²

2.211 The AGD subsequently provided the committee with an update on AUSTRAC's work:

In March 2017, AUSTRAC established the Fintel Alliance, a centre of excellence for financial intelligence. The Fintel Alliance brings together government, industry, and international partners to take a collaborative approach to combating money laundering, terrorism financing, and other financial crimes. It will optimise the use of over 100 million reports from industry each year to produce powerful financial intelligence to target Australia's high money laundering and terrorism financing risks.²⁸³

Other agencies/contributors to the multi-agency approach

2.212 According to the AGD's submissions, other agencies with responsibilities under the multi-agency integrity framework include the:

- **ACIC**, and its powers to conduct operations against serious and organised crime. It possesses coercive powers to conduct 'special operations and investigations to obtain information where traditional law enforcement methods are unlikely to be successful'.²⁸⁴
- **DIBP** and its responsibility to screen non-citizens' risk profile and determine whether a person has 'either alleged or have engaged in corrupt conduct, or have actually been charged with or convicted of corruption offences' and in these instances, the 'non-citizen will have their visa application assessed for refusal on character grounds or, if they are already a visa holder, they will be assessed for possible visa cancellation'.²⁸⁵
- **Department of Prime Minister and Cabinet (DPMC)** through its work on the OGP and its responsibility to apply the Ministerial Code of Conduct and the Lobbying Code of Conduct (these are discussed in greater detail later in this chapter).²⁸⁶
- **CDPP** that prosecutes crimes against Commonwealth law on matters relating to corruption, fraud, money laundering and commercial offences.²⁸⁷

282 AGD, *Submission 23* [2016], p. 4.

283 AGD, *Submission 11*, p. 4.

284 AGD, *Submission 23* [2016], p. 3.

285 AGD, *Submission 23* [2016], p. 4.

286 AGD, *Submission 23* [2016], p. 5.

287 AGD, *Submission 23* [2016], p. 5.

2.213 Finally, another important component to Australia's integrity system is the judicial system. The AGD submitted:

Australia's independent and impartial judicial system protects against corruption. Judicial officers act independently of the parliament and the executive. Constitutional guarantees of tenure and remuneration assist in securing judicial independence and impartiality.²⁸⁸

2.214 Other agencies noted for having a role in 'safeguarding the integrity of government administration' include the:

- Australian Prudential Regulation Authority (APRA);
- Department of Human Services;
- Department of Defence;
- Department of Foreign Affairs and Trade (DFAT);
- Treasury;
- ATO;
- Fair Work Ombudsman;
- Australian Competition and Consumer Commission (ACCC);
- Department of Finance;
- ONA; and the
- Parliamentary Services Commissioner.

2.215 The AGD advised that each agency is required to implement its own 'internal policies to prevent, detect, investigate and respond to corruption and misconduct as required under the Commonwealth fraud control policy, APS Values, APS Code of Conduct and the PS Act'.²⁸⁹

2.216 Further consideration of the multi-agency framework is found in chapter 4. The committee's analysis includes considerations of gaps and vulnerabilities in the multi-agency framework, along with arguments for and against establishing a national integrity commission.

Interaction between federal and state integrity agencies

2.217 The committee received evidence about the interaction between the existing Commonwealth integrity agencies and their state counterparts.

2.218 For example, in its submission to the committee ACLEI noted that it 'has much to gain by working closely with state agency counterparts and with state police forces', and provided the following example:

...ACLEI's strategy of sensitising state agencies to the likelihood that their criminal intelligence records and investigations will hold incidental insights

288 AGD, *Submission 23* [2016], p. 1.

289 AGD, *Submission 23* [2016], p. 6.

about the possible compromise of high-risk Commonwealth law enforcement activities is bringing actionable information to light. The longer-term benefit is that pathways will be established that will uncover new information about corruption and play a role in strengthening Australia's integrity arrangements more generally.²⁹⁰

2.219 It was also stated that:

ACLEI conducts its formal relationships with state integrity counterparts under the framework of the Australian Anti-corruption Commissions Forum (AACF)—a regular summit meeting of anti-corruption agencies throughout Australia. ACLEI representatives also participate in the AACF sub-groups—including: the Executive Co-ordination Group (comprising senior executives), the Legal Forum (comprising legal officers) and the Corruption Prevention Practitioners Forum (consisting of corruption prevention experts).²⁹¹

2.220 In his evidence to the committee, the Integrity Commissioner noted that 'we are constantly in engagement with the state agencies on all issues relating to the integrity and anticorruption space that I work in and that they work in'.²⁹²

2.221 In response to a question on notice from the committee, the Queensland Crime and Corruption Commission (Qld CCC) informed the committee about the particulars of an Memorandum of Understanding (MOU) between the Qld CCC; the South Australian Independent Commission Against Corruption (SA ICAC); the Western Australian Corruption and Crime Commission; the New South Wales Independent Commission Against Corruption (NSW ICAC); the Tasmanian Integrity Commission; the Victorian Independent Broad-based Anti-corruption Commission (IBAC); and ACLEI.²⁹³

2.222 The Qld CCC stated:

The MOU was not a general commitment to cooperating with one another. Rather the agency heads agreed to provide staff to a requesting agency to investigate allegations of misconduct by staff members in the requesting agency.

I can say that there are good levels of cooperation between agencies. A very good example is the Australian Public Sector Anti-corruption Conference which is jointly hosted by a number of agencies every two years.²⁹⁴

290 ACLEI, *Submission 12*, p. 8.

291 ACLEI, *Submission 12*, p. 8.

292 Mr Griffin, ACLEI, *Committee Hansard*, 5 July 2017, p. 52.

293 Mr Forbes Smith, Chief Executive Officer, Crime and Corruption Commission (Qld CCC), answers to questions on notice, 15 May 2017 (received 23 May 2017), p. 1.

294 Mr Smith, Qld CCC, answers to questions on notice, 15 May 2017 (received 23 May 2017), p. 1.

Other integrity measures

2.223 In addition to the integrity agencies discussed above, there exist a number of legislative instruments and other mechanisms that contribute to the Commonwealth integrity framework.

2.224 For example, in its 2016 submission, the APSC noted that the PID Act, the PGPA Act and the *Commonwealth Fraud Control Framework 2014* (the framework) underpin the APS integrity framework.²⁹⁵

2.225 In its 2016 submission, the AGD identified the following Acts that comprise the government's anti-corruption framework:

- the Criminal Code;
- the *Crimes (Superannuation Benefits) Act 1992*;
- the Corporations Act;
- the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML Act);
- the LEIC Act;
- the PGPA Act;
- the PID Act; and
- the PS Act.²⁹⁶

2.226 The AGD also noted that the Fraud Rule—section 10 of the Public Governance, Performance and Accountability Rule 2014—'sets out the key principles of fraud control under the PGPA Act framework and binds all entities'.

2.227 In its 2016 submission, the Law Council of Australia identified that the following acts 'may also be used in pursuing corrupt conduct':

- the AML Act;
- the *Proceeds of Crime Act 2002*;
- the PGPA Act;
- the Corporations Act;
- the LEIC Act;
- the *Australian Border Force Act 2015*; and the
- AFP Act.²⁹⁷

2.228 The following sections examine some of these Acts and mechanisms, as well as others that have come to the committee's attention, in greater detail.

295 APSC, *Submission 16* [2016], p. 3.

296 AGD, *Submission 23* [2016], p. 6.

297 Law Council of Australia, *Submission 18* [2016], p. 6.

Public Interest Disclosure Scheme (whistleblower protections)

2.229 The PID Scheme was established in 2013 and commenced operation on 15 January 2014²⁹⁸ as a means to promote integrity and accountability in the Commonwealth public sector. The PID Scheme, according to the then Attorney-General, the Hon. Mark Dreyfus MP, was intended to:

...establish clear procedures for allegations of wrongdoing to be reported by public officials and for findings of wrongdoing to be rectified. The emphasis on the scheme is on the disclosure of wrongdoing being reported to and investigated within government. To this end, the bill places obligations on principal officers of agencies to ensure that public interest disclosures are properly investigated and that appropriate action is taken to deal with recommendations relating to their agency. In short, these are obligations to act on disclosures of wrongdoing and to fix wrongdoing where it is found. A well-implemented and comprehensive scheme should lead to a discloser having confidence in the system, and remove incentive for the discloser to make public information to parties outside government.²⁹⁹

2.230 Under the PID Act, public officials are protected from reprisal action for 'disclosing suspected illegal conduct, corruption, maladministration, abuses of public trust, deception relating to scientific research, wastage of public money, unreasonable danger to health or safety, danger to the environment or abuse of position or conduct which may be grounds for disciplinary action'.³⁰⁰

2.231 The Commonwealth Ombudsman and the IGIS³⁰¹ are the statutory authorities responsible for the promotion of the PID Act, as well as the monitoring and reporting of its operation. The Commonwealth Ombudsman informed the committee that a PID can be either made to an agency itself, or the Commonwealth Ombudsman. If made to the Commonwealth Ombudsman:

...by and large, [the disclosure] is referred back to the agency. In unique circumstances it is investigated by our office. In relation to corruption, agencies have internal fraud, corruption and compliance mechanisms which they would use for their investigations, and we also have the capacity to refer matters to the policing authorities.³⁰²

2.232 The committee asked the Commonwealth Ombudsman whether individuals making a PID express reluctance to raise their complaint with the agency concerned.

298 Commonwealth Ombudsman, *Annual report 2013–14*, p. 66.

299 The Hon. Mark Dreyfus MP, *House of Representatives Hansard*, 19 June 2013, p. 6407.

300 Commonwealth Ombudsman, *Public Interest Disclosure*, <http://www.ombudsman.gov.au/about/making-a-disclosure> (accessed 29 June 2017).

301 IGIS is responsible for those intelligence agencies under its jurisdiction.

302 Ms Brigid Simpson, Acting Director, Public Interest Disclosure Team, Commonwealth Ombudsman, *Committee Hansard*, 16 June 2017, p. 49.

The Commonwealth Ombudsman responded that the PID Act is still in its first iteration, and for that reason the office is:

...going through an educative phase where we are promoting awareness and a pro-disclosure culture across the Commonwealth. A large portion of the Ombudsman's role is actually in educating public servants, current and former, and contracted service providers about the PID scheme. We do get a lot of informal correspondence and telephone calls from public servants who are interested in knowing a bit more about the scheme and potentially where to go. We do often recommend that they go internally to an agency first, but obviously they are able to make a complaint or a disclosure directly to our office.³⁰³

2.233 More specifically, the Commonwealth Ombudsman provides support by detailing the rules and the levels of protection available to a person once a disclosure is made.³⁰⁴ Further:

It is not unforeseeable that individuals would rather not approach the agency at first instance, disclose who they are and then make a decision about whether they are going to proceed or not. We would almost be used as an informational triage point to give some assurance that the mechanisms are in place, that the agency is there to deal with the matter appropriately, and that our office is there to deal with matters if they are not being dealt with appropriately by the agency.³⁰⁵

2.234 A part of the Commonwealth Ombudsman's educational responsibilities under the PID Scheme is to seek assurance that agencies conduct a risk assessment for those people who have made a disclosure, and ensure they are looked after internally. If an individual does not think they have been treated appropriately, then he or she may submit a PID complaint.³⁰⁶ In these instances:

If a discloser is dissatisfied with the outcome of an investigation, it is open to them to complain to our office. We are able to investigate and provide advice to that agency on administrative best practice. It is quite a positive process that the Ombudsman is involved in where we can give agencies guidance on how to better conduct processes in future. There are also legal avenues under the act for a discloser to access.³⁰⁷

2.235 On 15 July 2016, the government released a statutory review of the effectiveness and operation of the PID Act. The report found the experience of whistleblowers under the PID Act was 'not a happy one' and that '[f]ew individuals who made PIDs reported that they felt supported':

303 Ms Simpson, Commonwealth Ombudsman, *Committee Hansard*, 16 June 2017, p. 49.

304 Mr Rodney Lee Walsh, Acting Deputy Ombudsman, Commonwealth Ombudsman, *Committee Hansard*, 16 June 2017, p. 49.

305 Mr Walsh, Commonwealth Ombudsman, *Committee Hansard*, 16 June 2017, p. 49.

306 Ms Doris Gibb, Commonwealth Ombudsman, *Committee Hansard*, 16 June 2017, p. 46.

307 Ms Simpson, Commonwealth Ombudsman, *Committee Hansard*, 16 June 2017, p. 49.

Some felt that their disclosure had not been adequately investigated or that their agency had not adequately addressed the conduct reported. Many disclosers reported experiencing reprisal as a result of bringing forward their concerns.³⁰⁸

2.236 The report found the experience of the agencies showed difficulties applying the PID Act, noting the bulk of the disclosures received 'related to personal employment-related grievances and were better addressed through other processes' and 'the PID Act's procedures and mandatory obligations upon individuals are ill-adapted to addressing such disclosures'.³⁰⁹

2.237 The AGD stated that the 33 recommendations found in the report will be considered alongside any findings made by the Parliamentary Joint Committee on Corporations and Financial Services (PJCCFS) in respect of its inquiry into whistleblower protections in the corporate, public and not-for-profit sectors.³¹⁰

2.238 In the 2016–17 federal budget, the government announced the introduction of new arrangements to better protect tax whistleblowers to further tackle tax misconduct. A consultation paper was also released by the Treasury on 20 December 2016, seeking public comment on a review of Australia's tax and corporate whistleblower protections. In particular, the paper 'sought comment on whether corporate sector protections and similar provisions under financial system legislation should be harmonised with whistleblower protections in the public sector'.³¹¹ The evidence available in the paper was also intended to inform the inquiry by the PJCCFS into whistleblower protections.³¹² Submissions to the consultation paper closed on 10 February 2017.

Inquiry into whistleblower protections in the corporate, public and not-for-profit sectors

2.239 At the time of the committee's inquiry into an NIC, the PJCCFS was simultaneously conducting an inquiry into whistleblower protections in the corporate, public and not-for-profit sectors.

2.240 The PJCCFS was scheduled to table its report on 17 August 2017, but on 15 August 2017 was granted an extension of this reporting date to 14 September 2017. For this reason, the committee has decided against considering in further detail the PID Scheme. However, the committee notes that, if an NIC is established, consideration will need to be given to the impact of the NIC on the PID Scheme.

308 Mr Philip Moss AM, *Review of the Public Interest Disclosure Act 2013*, p. 6.

309 Mr Moss, *Review of the Public Interest Disclosure Act 2013*, p. 6.

310 AGD, *Submission 11*, p. 6.

311 AGD, *Submission 11*, p. 5.

312 AGD, *Submission 11*, p. 6.

Jurisdiction of the PID Act

2.241 Initially, the PID Act's jurisdiction applied to 191 agencies and prescribed authorities.³¹³ The Act also applied to 'small authorities, committees and Commonwealth companies' with 'a separate legal identity' that sourced most of their resources from larger agencies.³¹⁴

2.242 In the first of the Commonwealth Ombudsman's annual reports that discussed the new scheme, it was stated that principal officers of an agency are required to foster an environment that encourages public officials to disclose suspected wrongdoing, as '[i]t is only through strong agency commitment that public officials will have the confidence to trust and use the scheme and make disclosures'.³¹⁵

2.243 The most recent annual report of the Commonwealth Ombudsman states that the PID Act applies to 175 agencies, and is 'increasingly being used by contracted service providers'.³¹⁶

2.244 The following table provides further statistical information about the use of PIDs from their first introduction to 2015–16.

313 Commonwealth Ombudsman, *Annual report 2013–14*, p. 68.

314 Commonwealth Ombudsman, *Annual report 2013–14*, p. 69.

315 Commonwealth Ombudsman, *Annual report 2013–14*, p. 68.

316 Commonwealth Ombudsman, *Annual report 2015–16*, p. 72.

Table 1: statistical data on the use of PIDs

Year	
2013–14	Number of agencies that made a disclosure: 48 (out of 191 agencies)
2014–15	Number of agencies that made a disclosure: 58 (out of 185 agencies) Number of PIDs made: 639. Agencies identified 707 kinds of disclosable conduct. Conduct engaged in for the purpose of corruption: 25 out of 707 (4 per cent)
2015–16	Number of agencies that made a disclosure: 69 (out of 175 agencies). Number of PIDs made: 612. Agencies identified 707 kinds of disclosable conduct. Conduct engaged in for the purpose of corruption: 25 out of 707 (4 per cent)

Public Governance, Performance and Accountability Act 2013

2.245 The PGPA Act came into force on 1 July 2014, replacing the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997*.³¹⁷

2.246 The objects of the PGPA Act are:

- (a) to establish a coherent system of governance and accountability across Commonwealth entities; and
- (b) to establish a performance framework across Commonwealth entities; and
- (c) to require the Commonwealth and Commonwealth entities:
 - (i) to meet high standards of governance, performance and accountability; and
 - (ii) to provide meaningful information to the Parliament and the public; and

317 Department of Finance, *Transitional arrangements*, <http://www.finance.gov.au/resource-management/pgpa-legislation/transition/> (accessed 23 August 2017).

(iii) to use and manage public resources properly; and

(iv) to work cooperatively with others to achieve common objectives, where practicable; and

(d) to require Commonwealth companies to meet high standards of governance, performance and accountability.³¹⁸

2.247 The PGPA Act 'establishes a coherent system of governance and accountability for public resources, with an emphasis on planning, performance and reporting' and 'applies to all Commonwealth entities and Commonwealth companies'.³¹⁹

Commonwealth Fraud Control Framework

2.248 The AGD's 2016 submission discussed in detail the Commonwealth Fraud Control Framework. It was stated that the framework consists of three key documents, as follows:

- the Fraud Rule, which 'sets out the key principles of fraud control for all entities under the PGPA Act framework' and requires entities to conduct risk assessments and identify fraud risks;
- the *Commonwealth Fraud Control Policy*, which 'binds non-corporate Commonwealth entities and sets out key procedural requirements for fraud training, investigation, response and reporting'; and
- the *Fraud Guidance*, which 'provides better practice advice on fraud control arrangements'.³²⁰

2.249 The framework's fraud policy identifies the AFP as the primary law enforcement agency responsible for the investigation of serious or complex fraud against the Commonwealth. Agencies and entities under the Commonwealth:

...must refer all instances of potential serious or complex fraud offences to the AFP in accord with the [Attorney-General's Information Service (AGIS)] and AFP referral process, except in the following circumstances:

- a) entities that have the capacity and the appropriate skills and resources needed to investigate potential criminal matters and meet the requirements of the...CDPP in preparing briefs of evidence and the AGIS for gathering evidence, or
- b) where legislation sets out specific alternative arrangements.³²¹

2.250 Information was also provided about how the framework operates:

318 *Public Governance, Performance and Accountability Act 2013*, s. 5.

319 Department of Finance, *PGPA Act 2013*, <http://www.finance.gov.au/resource-management/pgpa-act/> (accessed 23 August 2017).

320 AGD, *Submission 23* [2016], pp. 7–8.

321 AGD, *Commonwealth Fraud Control Framework*, 2014, <https://www.ag.gov.au/CrimeAndCorruption/FraudControl/Documents/CommonwealthFraudControlFramework2014-NotAccessible.pdf> (accessed 28 August 2017), pp. B2–B3

Under the Framework, each entity is responsible for its own fraud control arrangements, including investigating and responding to fraud incidents that are not handled by law enforcement agencies. Each entity is also responsible for its own fraud control arrangements, with oversight provided by the Independent Audit Committees, annual reporting and certification requirements under the PGPA Act, and independent audits conducted by the ANAO. The Framework covers a range of incidents considered to be corruption.³²²

2.251 The AGD did not refer to the framework in its 2017 submission, or discuss the framework during its appearance before the committee.

Open Government Partnership

2.252 Australia has been a member of the OGP since 2015.³²³ The OGP requires its 70 member countries to engage with civil society³²⁴ to 'co-create a National Action Plan [NAP] every two years, with independent reporting on progress'. These plans aim to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.³²⁵

2.253 In December 2016, the government released the first NAP under the OGP. Ms Nicole Rose PSM of AGD, provided the committee with the following background to the NAP:

In December 2016, the government released Australia's first national action plan under the Open Government Partnership. This plan includes 15 commitments to enhance public sector integrity and transparency. This is a considerable development and represents a significant commitment by government to promote open, transparent and accountable government. The department is responsible for relevant commitments under the plan, relating to combating corporate crime and a national integrity framework. Under the first, the government is actively exploring reforms to help improve our approach to corporate corruption, including a proposed model for deferred prosecution agreements and reforms to our foreign bribery offence to remove unnecessary impediments to successful prosecution. Some of the staff here today are experts in that area.³²⁶

2.254 As noted by Ms Rose, the NAP makes a number of commitments relevant to matters of integrity. These include:

- improving whistleblower protections in the tax and corporate sectors;

322 *Submission 23* [2016], p. 8.

323 Department of Prime Minister and Cabinet (DPMC), *Open Government Partnership – Australia*, available: <http://ogpau.pmc.gov.au/australias-first-open-government-national-action-plan-2016-18/introduction> (accessed 30 June 2017).

324 Civil society refers to people and organisations outside of government, including non-government organisations, businesses, academia, community groups and the public.

325 AGD, *Submission 11*, p. 4.

326 Ms Rose, AGD, *Committee Hansard*, 5 July 2017, p. 25.

- improving transparency of beneficial ownership;
- enhance disclosure of extractive industry payments and government revenue from oil, gas and mining sectors;
- strengthening Australia's ability to prevent, detect and respond to corporate crime, bribery of foreign officials, money laundering and terrorism financing;
- enhancing the integrity of the electoral system by working with Parliament and the public to investigate the 2016 election, utilise technology in elections and consider the framework of donations to political parties and other political entities;
- develop a national integrity framework aimed at preventing, detecting and responding to corruption in the public sector through the Government Business Roundtable on Anti-corruption (held on 31 March 2016)³²⁷ and reviewing the jurisdiction and capabilities of the AFP and the ACLEI; and
- review the Commonwealth's compliance with the Open Contracting Data Standard.³²⁸

2.255 The DPMC coordinates Australia's involvement in, overall delivery of and reporting for the OGP. As of July 2017, the interim working group had been provided with reporting on each of the OGP's commitments. The DPMC is also currently in the process of developing a website to include a dashboard with the most up-to-date information on the delivery of the OGP.³²⁹

2.256 To monitor and drive the implementation of the NAP, the DPMC informed the committee that the government will establish an Open Government Forum, comprising both government and civil society representatives.³³⁰ This forum will replace the interim working group³³¹ and will drive the delivery of the OGP's commitments, develop the next NAP and raise awareness of open government more

327 The Government Business Roundtable on Anti-corruption was held on 31 March 2016. This roundtable brought together representatives from government and business to consider the cooperation and consultation on anti-corruption work, including discussion about steps to be taken to better protect Australian businesses from corruption. See, AGD, *Submission 11*, p. 5.

328 DPMC, *Australia's first Open Government National Action Plan 2016–18*, <http://ogpau.pmc.gov.au/australias-first-open-government-national-action-plan-2016-18> (accessed 30 June 2017).

329 Mr William Story, Assistant Secretary, Strategic Coordination Unit, DPMC, *Committee Hansard*, 5 July 2017, p. 6.

330 Civil society representatives are from groups interested in open data, anti-corruption, integrity measures and accountability, expertise in international matters and legal groups. See, Mr Story, DPMC, *Committee Hansard*, 5 July 2017, p. 7.

331 DPMC, *Join Australia's first Open Government Forum*, <http://ogpau.pmc.gov.au/2017/06/08/join-australias-first-open-government-forum> (accessed 30 June 2017).

generally.³³² The forum will also provide feedback on any improvements to the DPMC's reporting of the OGP.³³³

2.257 The committee was informed that a review of the jurisdiction and capabilities of ACLEI and the AFP's FAC are planned under the NAP. This review will 'occur in the context of public consultations to develop Australia's second NAP', scheduled to be completed by 30 June 2018.³³⁴

2.258 The committee queried DPMC about the Open Government Forum and whether it will be tasked with informing the public about the Commonwealth's multi-agency approach to corruption, integrity and maladministration. In response, DPMC said it was recommended:

...that the forum have a role in increasing awareness of open government. The forum, when it first meets, will need to consider how it does that. I only make the general comment, which may be most helpful, that I would expect that its work in that respect will be focused on both current commitments and broader aspirations around opportunities for more open government.³³⁵

2.259 Two key aspects of the NAP are the foreign bribery reforms and the creation of a deferred prosecution agreement scheme.

Foreign bribery reforms

2.260 The AGD outlined the government's reform agenda to improve the effectiveness of offences in the Criminal Code to address foreign bribery and remove possible impediments to successful prosecution.

2.261 To assist with the government's reforms, a consultation paper was released on 4 April 2017, which 'sought comment on possible new offences of recklessly bribing a foreign public official and failure to prevent foreign bribery'.³³⁶

2.262 The AGD, AFP and the CDPP contributed to the consultation paper. These three agencies looked at the formulation of Australia's foreign bribery offences, including the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*,³³⁷ and through this process identified:

...potential issues with the offence that may be difficult to prove beyond a reasonable doubt to that criminal standard. So, essentially, the reforms that we laid out in the discussion paper look at both possible amendments to the

332 Mr Story, DPMC, *Committee Hansard*, 5 July 2017, p. 7.

333 Mr Story, DPMC, *Committee Hansard*, 5 July 2017, p. 6.

334 AGD, answers to questions on notice, 5 July 2017 (received 28 July 2017).

335 Mr Story, DPMC, *Committee Hansard*, 5 July 2017, p. 8.

336 AGD, *Proposed amendments to the foreign bribery offence in the Criminal Code Act 1995*, <https://www.ag.gov.au/Consultations/Pages/Proposed-amendments-to-the-foreign-bribery-offence-in-the-criminal-code-act-1995.aspx> (accessed 22 August 2017).

337 *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, Paris, 17 December 1997, entry into force 17 December 1999, [1999] ATS 21.

existing offence in section 70.2 of the Criminal Code and, also, possible new offences that could be introduced to assist with enforcing our foreign bribery offence.³³⁸

2.263 The AGD website notes that submissions to the consultation paper closed on 1 May 2017, and publishes the 16 submissions received.³³⁹ Ms Rose informed the committee of the status of these reforms, noting that the AGD has publicly consulted on a number of reforms, including those in respect of foreign bribery, and that it is 'working on those as we speak'.³⁴⁰

Deferred Prosecution Agreement Scheme

2.264 The government is also currently considering a Deferred Prosecution Agreement Scheme (DPA scheme). Under the proposed DPA scheme, if a company 'has engaged in a serious corporate crime, prosecutors would have the option to invite the company to negotiate an agreement to comply with a range of specified conditions'.³⁴¹ Conditions of the DPA scheme are likely to include:

- the requirement that companies cooperate with any investigation;
- paying a financial penalty;
- admitting to agreed facts; and
- implementing a program to improve the company's future compliance.³⁴²

2.265 If an agreement is reached and a company fulfils its obligations under the agreement, a company would not be prosecuted for its actions.³⁴³

2.266 On 31 March 2017, the government released a consultation paper outlining the proposed model of the DPA scheme. The AGD received 18 responses to the

338 Mr Tom Sharp, Acting Director, Criminal Law Reform Section, AGD, *Committee Hansard*, 5 July 2017, p. 27.

339 AGD, *Proposed amendments to the foreign bribery offence in the Criminal Code Act 1995*, <https://www.ag.gov.au/Consultations/Pages/Proposed-amendments-to-the-foreign-bribery-offence-in-the-criminal-code-act-1995.aspx> (accessed 22 August 2017).

340 Ms Rose, AGD, *Committee Hansard*, 5 July 2017, p. 26.

341 AGD, *Proposed model for a deferred prosecution agreement scheme in Australia*, <https://www.ag.gov.au/Consultations/Pages/Proposed-model-for-a-deferred-prosecution-agreement-scheme-in-australia.aspx> (accessed 30 June 2017).

342 AGD, *Proposed model for a deferred prosecution agreement scheme in Australia*, <https://www.ag.gov.au/Consultations/Pages/Proposed-model-for-a-deferred-prosecution-agreement-scheme-in-australia.aspx> (accessed 30 June 2017).

343 AGD, *Proposed model for a deferred prosecution agreement scheme in Australia*, <https://www.ag.gov.au/Consultations/Pages/Proposed-model-for-a-deferred-prosecution-agreement-scheme-in-australia.aspx> (accessed 30 June 2017).

consultation paper.³⁴⁴ As with the foreign bribery reforms, Ms Rose commented that AGD is working on the DPA scheme.³⁴⁵

Register of beneficial ownership

2.267 The AGD submission noted that, on 13 February 2017, a public consultation paper was released by Treasury 'seeking views on options to increase transparency of the beneficial ownership of companies', including 'views on the details, scope, and implementation of a beneficial ownership register for companies'.³⁴⁶ This was '[a] key milestone' for the government's commitment 'to improve transparency of information on beneficial ownership and control of companies available to relevant authorities' under the new NAP.³⁴⁷

2.268 The AGD stated that:

The consultation delivers on commitments made by Australia at the UK Anti-Corruption Summit in May 2016 and in the National Action Plan. Additionally, at the G20 Leaders' Summit in September 2016, Australia agreed to the G20 2017-2018 Anti-Corruption Action Plan, which stated that transparency over beneficial ownership is critical to preventing and exposing corruption and illicit finance.³⁴⁸

2.269 No further updates were provided in evidence to the committee at its hearings, and no other submitters or witnesses commented on this register.

AusTender reporting

2.270 The AGD's 2016 submission set out the following information in respect of procurement rules and AusTender:

The Department of Finance is responsible for the 2014 Commonwealth Procurement Rules (CPRs) which bind non-corporate Commonwealth entities and prescribed corporate Commonwealth entities. The CPRs combine both Australia's international obligations and good practice, and represent the framework under which entities govern and undertake their own procurement. The CPRs enable agencies to design processes that are robust, transparent and instil confidence in government procurement. The CPRs also require that entities subject to the PGPA Act report their procurement contracts on AusTender, the Australian Government's procurement information system.³⁴⁹

344 AGD, *Proposed model for a deferred prosecution agreement scheme in Australia*, <https://www.ag.gov.au/Consultations/Pages/Proposed-model-for-a-deferred-prosecution-agreement-scheme-in-australia.aspx> (accessed 30 June 2017).

345 Ms Rose, AGD, *Committee Hansard*, 5 July 2017, p. 26.

346 AGD, *Submission 11*, p. 7.

347 The Treasury, *Increasing transparency of the beneficial ownership of companies*, <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2017/Beneficial-ownership-of-companies> (accessed 22 August 2017).

348 AGD, *Submission 11*, p. 7.

349 AGD, *Submission 23* [2016], p. 8.

2.271 The AGD's 2017 submission referred to this earlier information, and also provided the following additional information:

The CPRs require entities subject to the [PGPA Act] to report their procurement contracts valued at \$10,000 and above on AusTender, the Australian Government's procurement information system. Finance is currently undertaking a review of Austender reporting's compliance with the Open Contracting Data Standard. The review is a commitment under the Open Government National Action Plan.³⁵⁰

2.272 No further information was provided in evidence to the committee at its hearings, and no other submitters or witnesses commented on AusTender.

The role of the Australian Parliament

2.273 The Australian Parliament plays an important role in the Commonwealth integrity framework. The Parliament facilitates oversight of Commonwealth departments and agencies, as well as parliamentarians themselves. For example, departments and agencies are subjected to scrutiny via a range of parliamentary mechanisms such as the Senate estimates process, the Joint Committee of Public Accounts and Audits (JCPAA), other committee inquiries, questions to ministers, and orders for the production of documents.

2.274 The integrity of parliamentarians themselves is subjected to scrutiny via mechanisms such as the Committees of Privileges and Senators' or Members' Interests.

Senate estimates

2.275 In accordance with Senate standing orders, 'annual and additional estimates, contained in the documents presenting the particulars of proposed expenditure and additional expenditure' are referred to Senate legislative and general purpose committees for examination and report.³⁵¹ These committees also have the power to inquire into and report on annual reports and the performance of departments and agencies allocated to them.³⁵² The examination of annual reports often occurs in conjunction with consideration of estimates; however, separate reports are presented.

2.276 *Odgers' Australian Senate Practice* describes estimates as:

...a key element of the Senate's role as a check on government. The estimates process provides the major opportunity for the Senate to assess the performance of the public service and its administration of government policy and programs. It has evolved from early efforts by senators to elicit basic information about government expenditure to inform their decisions about appropriation bills, to a wide-ranging examination of expenditure with an increasing focus on performance. Its effect is cumulative, in that an

350 AGD, *Submission 11*, p. 8.

351 The Senate, *Standing Orders and other orders of the Senate*, August 2015, SO 26.

352 The Senate, *Standing Orders and other orders of the Senate*, August 2015, SO 25(2)(a) and 25(20).

individual question may not have significant impact, but the sum of questions and the process as a whole, as it has developed, help to keep executive government accountable and place a great deal of information on the public record on which judgments may be based.³⁵³

2.277 A particular feature of Senate estimates, in contrast with other inquiries by Senate legislative and general purpose committees, is the requirement that estimates—both hearings and written answers to questions taken on notice—must be in public: there is no capacity for estimates committees to receive confidential material (in the absence of a specific resolution of the Senate to that effect). This, combined with the broad scope of Senate estimates ('there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the Parliament or its committees unless the Parliament has expressly provided otherwise'³⁵⁴), mean that senators are empowered to question Commonwealth departments and agencies on virtually all aspects of public administration.

2.278 The estimates process also serves to highlight the importance and role of other agencies that form the national integrity framework. For example, reports by the ANAO are sometimes relied upon during questioning of agencies in relation to their financial and governance arrangements:

Senator JOHNSTON: Is it fair to say that this new contract is for garrison health services?

Rear Adm. Walker: Yes.

Senator JOHNSTON: In paragraph 23 of the ANAO report of 2010 said that they thought the real cost of delivering garrison health services was somewhere between—and this is the cause of a little consternation—\$455 million and \$654 million per annum. Defence's figures were down as low as \$293 million. They questioned the reliability of those figures given the growth rate in the community as opposed to the cost growth rates inside Defence, which they saw as much less than the community average, which they did not accept.

I want to come back to my original question. This new contract is very interesting. I think the jury is still a little out on it, if I can be so bold. What are the savings to Defence? I then want to talk to you about the delivery of service and the maintenance of service to service personnel. What other savings to Defence do you perceive in the budget with this contract for \$1.3 billion over four years?

Rear Adm. Walker: It is not really a question of savings. We know that the cost of the increase of the cost of health care in the civilian community, within the Australian community, is significantly above the CPI historically, so we know the cost of health care continues to rise as people's

353 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, 2016, p. 478.

354 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, 2016, p. 655.

expectations of health care and their requirements rise. This is not about cost savings because we will still provide the full range of health care, the quality of health care. But if we can do it a little more efficiently, it means I have more money in the budget to apply to healthcare delivery and that helps to mediate some of those increases in healthcare delivery that we know occur. But it is also that, if I do it more efficiently, then I can potentially either have more staff which can reduce waiting times or I can provide different health promotion type activities.

Senator JOHNSTON: So you think it will be better.

Rear Adm. Walker: We would not be doing it if we did not think it was going to be better.

Senator JOHNSTON: That is given. How do you propose to measure and gauge whether it is in fact better?

Rear Adm. Walker: I think, as I said in my opening remarks, that in our previous contracts we have never had really any good quality key performance indicators and for me it is about the delivery of quality health care. Under the new contractual arrangements, there is a requirement for our contractors to participate in what we call clinic and governance activities, clinical reviews. This is about where we measure what health care we are providing, how we measure complaints, how we address complaints, how we look at if there are issues and about the performance. We have never had that before and we have now improved our own clinical governance regime...³⁵⁵

2.279 Integrity matters can and do arise in Senate estimates hearings. For example, in 2014, the Secretary of the DIBP made the following statement to the Senate Legal and Constitutional Affairs Legislation Committee during supplementary budget estimates:

On indulgence, this is a rather unusual circumstance that I need to advise the committee of. When I last appeared before you I was in the role of chief executive. I had been providing, as you would be well aware, periodic updates on matters pertaining to integrity and corruption within our service. When we met on 26 May, I was not in a position to disclose—largely because I did not know, for reasons I am about to disclose—the circumstances pertaining to the prosecution of my brother, Mr Fabio Pezzullo, who was a former officer of the Customs and Border Protection Service. I had intended at that time to include whatever updates there were pertaining to that matter once the court proceedings pertaining to that matter had been concluded. That occurred in June, when I was still the chief executive. I issued an all staff message to explain the circumstances in the highly unusual circumstance where the head of an agency was in a direct sibling relationship with a former officer who was the subject of criminal proceedings. I advised my then staff on 12 June about those circumstances.

355 Senator the Hon. David Johnston and Rear Admiral Robyn Walker AM, Commander Joint Health Command, Department of Defence, Senate Foreign Affairs, Defence and Trade Legislation Committee, *Committee Hansard*, 17 October 2012, pp. 31–32.

With your permission, Chair, I would like to read out relevant extracts from that all staff message and then, subject to your review of the relevant document, I would like to table that document. This is a document that is dated 12 June, so please bear with me and understand that it is contemporaneous to that period:

With the conclusion of his trial, I am now able to make a few brief remarks about the situation regarding my brother, the former Customs and Border Protection officer Mr Fabio Pezzullo. Now that these matters have been heard in court and are likely to be resolved before the next meeting of the Senate estimates committee—which of course is tonight—I intend to include an appropriate public summary of these matters in any future updates on integrity I provide to the Senate.

Since that time, I was elevated to the secretaryship, so this is really my only opportunity to discharge that commitment.

For obvious reasons to do with preventing any conflict of interest or perceived conflict of interest, I have been kept at arm's length from this matter both as Chief Operating Officer prior to September 2012, as the acting CEO of the service from September 2012 to February 2013 and as CEO since February 2013. Successive ministers have been briefed on this matter and arrangements were put in place when I became the CEO to ensure that I was shielded from relevant information concerning the case and would not be placed in a position of having to make any decisions regarding former officer Pezzullo should it have ever come to that. The fact that such arrangements were to be put in place was advised to the relevant Senate estimates committee in February 2013 in public evidence given by the then Secretary of the [AGD], Mr Wilkins.

The all staff message then goes on to talk about the highly unusual circumstance that this gave rise to and the need for such separation to be put in place. It concluded with the following statement:

This case, involving my brother, shows that no-one is above the law and the matter has been dealt with in accordance with the law, as should always be the case.

I am now in a position to advise the committee that there are no further proceedings pending. When we last met, the matter was sub judice. I would like to consider the matter closed.³⁵⁶

2.280 While in this instance the integrity matter was not first uncovered during an estimates hearing, it serves to demonstrate that Commonwealth public servants and senators alike view estimates as a forum in which it is appropriate to disclose and discuss such matters. More broadly, and as already highlighted, Senate estimates hold Commonwealth public sector agencies to account and require them to assess and explain their performance, including their integrity.

Joint Committee of Public Accounts and Audit

2.281 The JCPAA is one of the Parliament's longest standing committees, having been established in 1913.³⁵⁷ The JCPAA is established by the *Public Accounts and*

356 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection (DIBP), *Committee Hansard*, 20 October 2014, pp. 142–143.

Audit Committee Act 1951 and is required, among other matters, to examine the accounts of the Commonwealth, examine the financial affairs of Commonwealth authorities, and examine all reports of the Auditor-General. The JCPAA also oversees the ANAO itself.³⁵⁸

2.282 The JCPAA's role in examining all reports of the Auditor-General mean it regularly undertakes detailed scrutiny of and makes recommendations on the administration of commonwealth agencies and the expenditure of public funds. For example, the JCPAA recently examined two reports of the Auditor-General on Commonwealth infrastructure spending in relation to the East West Link Project in Melbourne and the WestConnex Project in Sydney and made a series of recommendations about the Department of Infrastructure and Regional Development's administration of this expenditure.³⁵⁹

Committee inquiries

2.283 Senate and House Standing Committees, as well as Joint Parliamentary Committees, inquire into matters referred to them by Parliament and, in the case of House committees, a minister, and in the case of certain joint committees, may self-refer matters for inquiry and report.

2.284 Committees largely give consideration to 'proposed laws, the scrutiny of the conduct of public administration and consideration of policy issues'³⁶⁰ and the role of committees in allowing 'citizens to air grievances about government and bring to light mistreatment of citizens by government'³⁶¹ is well recognised.

2.285 For example, in 2012 the House Standing Committee on Economics undertook detailed scrutiny of the knowledge and actions of the board of the Reserve Bank of Australia (RBA) with respect to foreign bribery allegations involving its subsidiaries, Note Printing Australia and Securrency International. The committee undertook this scrutiny by way of its regular examination of the RBA's annual report, rather than a specific reference.³⁶²

2.286 The PJCACLEI reported in 2013 on its examination of the integrity of overseas Commonwealth law enforcement operations. This report also addressed the

357 Parliament of Australia, *Joint Standing Committee on Public Accounts and Audit—Role of the Committee*, http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Accounts_and_Audit/Role_of_the_Committee#history (accessed 29 August 2017).

358 *Public Accounts and Audit Committee Act 1951*, ss. 8(1).

359 Joint Parliamentary Committee on Public Accounts and Audit, *Report 462: Commonwealth Infrastructure Spending*, June 2017.

360 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, 2016, p. 461.

361 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, 2016, p. 462.

362 House of Representatives Standing Committee on Economics, *Review of the Reserve Bank of Australia Annual Report 2011 (Second Report)*, October 2012, pp. 16–20.

Securrency International and Note Printing Australia allegations, as well as the Commonwealth's integrity system more generally.³⁶³

2.287 The Senate Rural and Regional Affairs and Transport References Committee has recently been tasked with inquiring into the integrity of the water market in the Murray-Darling, following allegations that Commonwealth-owned environmental water had, in effect, been stolen and used for irrigation purposes.³⁶⁴

2.288 The PJSCM recently tabled a report on foreign donations as part of its broader inquiry into the conduct of the 2016 federal election. This report was a response to 'ongoing community concern that there is potential for foreign actors to use donations to influence domestic policy decision making and electoral outcomes', and recommended, among other matters, 'a prohibition on donations from foreign citizens and foreign entities to Australian registered political parties, associated entities and third parties'.³⁶⁵ The closely related matter of how influential political donations are on public policy decision making will be further examined by the recently established Senate Select Committee into the Political Influence of Donations.³⁶⁶

Questions to ministers

2.289 The Senate makes provisions for questions to be asked of ministers in a number of ways: as discussed earlier, questions are put to ministers and public officials during the Senate estimates process; questions without notice may be put to ministers on public affairs during question time on each sitting day; and questions may also be provided on notice to the Clerk of the Senate.

2.290 Whilst senators are able to ask questions of ministers during question time, there is no obligation for ministers to provide an answer.³⁶⁷ However, rulings on this matter relate to the 'conduct of question time and do not preclude the Senate taking some separate action to obtain the required information'.³⁶⁸

2.291 Senators may submit questions on notice to the Clerk of the Senate. These questions are placed on the Notice Paper. According to *Odgers'* '[a] senator who asks a question on notice and does not receive an answer within 30 days may seek an explanation and take certain other actions'.³⁶⁹ Other actions include:

363 PJCACLEI, *Integrity of overseas Commonwealth law enforcement operations*, June 2013.

364 *Journals of the Senate*, 16 August 2017, p. 1733.

365 Joint Standing Committee on Electoral Matters, *Second interim report on the inquiry into the conduct of the 2016 federal election: Foreign Donations*, March 2017, pp. xii–xiv.

366 *Journals of the Senate*, 17 August 2017, p. 1760.

367 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, p. 620.

368 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, p. 620.

369 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, p. 623.

- the senator may ask the relevant minister for an explanation;
- at the conclusion of the explanation, the senator may move without notice 'that the Senate take note of the explanation'; or
- 'in the event that the minister does not provide an explanation, the senator may, without notice, move a motion with regard to the minister's failure to provide either an answer or an explanation'.³⁷⁰

Orders for the production of documents

2.292 Under standing order 164, the Senate may make an order for the production of documents.³⁷¹ The Senate uses orders for documents to obtain information about matters of concern to the Senate. These orders:

...usually relate to documents in the control of a minister, but may refer to documents controlled by other persons. Documents called for are often the subject of some political controversy, but may simply relate to useful information not available elsewhere.³⁷²

2.293 An order for the production of documents may be directed to a person or body in possession of documents, or a person or body having the information to compile documents. The Senate has the power to order the production of documents on a permanent basis, requiring periodic production of documents for an indefinite period.³⁷³

2.294 *Odgers'* notes the importance of this power:

Orders for production of documents are among the most significant procedures available to the Senate to deal with matters of public interest giving rise to questions of ministerial accountability or the accountability of statutory bodies or officers.³⁷⁴

2.295 A refusal by government to comply with an order for documents is commonly based on an argument that to produce the document would not be in the public interest.³⁷⁵

370 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, p. 623.

371 The Senate, *Standing Orders and other order of the Senate*, August 2015, SO 164.

372 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, p. 581.

373 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, p. 582.

374 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, p. 588

375 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, p. 586

2.296 A refusal to comply with such an order may result in the Senate treating the refusal as a contempt of the Senate. However, in cases of government refusal without due cause, the Senate:

...has preferred political remedies. In extreme cases the Senate, to punish the government for not producing a document, could resort to more drastic measures than censure of the government, such as refusing to consider government legislation.³⁷⁶

Committees of Privileges and Senators' and Members' Interests

2.297 The Committees of Privileges and Senators' and Members' Interests play important roles in maintaining the integrity of the parliamentary process and also the integrity of senators and members by requiring them to declare financial interests.

2.298 The Privileges Committees inquire into privilege matters referred to them by their respective Houses; these privilege matters largely relate to cases of alleged interference with senators or members and committees, as well as responses by persons to statements made about them in the Senate or the House. Privilege matters also include those where it is alleged that a senator or member may have acted contrary to parliamentary privilege, for example by misleading a House.³⁷⁷

2.299 The Senators' Interests Committee was first established on 17 March 1994 as a commitment given by the government as part of a package of accountability measures in the wake of the forced resignation of the Minister for Environment, Sport and Territories over the alleged misallocation of certain cultural and sporting grants. The House of Representatives has a single Committee of Privileges and Members' Interests.

2.300 Resolutions of the Senate and the House of Representatives require senators and members to declare specified interests both for themselves and also interests of their partner and dependent children of which they are aware. In relation to senators, the register of senators' interests is publicly available; that relating to partners and dependent children is not. The Register of Members' Interests makes publicly available interests of members and their partner and dependent children.

2.301 A registrable interest is:

- a shareholding in public and private companies;
- family and business trusts and nominee companies in which a beneficial interest is held and in which the senator or member, senator's or member's spouse or partner, or a dependent child is a trustee;
- real estate;

376 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th Edition, Department of the Senate, p. 588.

377 See for example the House of Representatives Standing Committee on Privileges and Members' Interests, *Report into whether the former Member for Dobell, Mr Craig Thomson, in a statement to the House on 21 May 2012 deliberately misled the House*, March 2016.

- registered directorships of companies;
- partnerships;
- liabilities;
- the nature of bonds, debentures and like investments;
- saving or investment accounts;
- any other assets (excluding household and personal effects) each valued at more than \$7500;
- the nature of any other substantial sources of income;
- gifts valued at more than \$750 received from official sources or at more than \$300 or more where received from other than official sources;
- any sponsored travel or hospitality received where the value of the sponsorship or hospitality exceeds \$300;
- being an officeholder of or a financial contributor donating \$300 or more in any single calendar year to any organisation; and
- any other interests where a conflict of interest with a senator's public duties could foreseeably arise or be seen to arise.

2.302 The Senate requires senators to provide a statement of registrable interests:

Within:

(a) 28 days after the first meeting of the Senate after 1 July first occurring after a general election; and

(b) 28 days after the first meeting of the Senate after a simultaneous dissolution of the Senate and the House of Representatives; and

(c) 28 days after making and subscribing an oath or affirmation of allegiance as a senator for a Territory or appointed or chosen to fill a vacancy in the Senate...³⁷⁸

2.303 The House requires members to provide a statement of registrable interests within 28 days of making and subscribing an oath or affirmation as a member of the House of Representatives.³⁷⁹

2.304 Both houses require senators and members to update their statement where changes occur to their registrable interests: the Senate within 35 days of the change and the House within 28 days.

2.305 Senators and members who knowingly fail to provide, fail to provide within specified time frames and/or provide a false or misleading declaration are guilty of a contempt and are to be dealt with by the Senate or the House accordingly.

378 The Senate, *Registration and declaration of senators' interests*, 17 March 1994.

379 The House of Representatives, *Registration of Members' interests*, 9 October 1984.

Oversight of parliamentarians' conduct by Privileges Committees

2.306 As stated above, the Privileges Committees are able to examine the conduct of members of their respective houses where that conduct may have interfered with the proceedings of either house or with the performance by a member of their duties. The ability of the Senate and the House of Representatives to make findings of contempt, generally following a recommendation of their respective Privileges Committees, is subject to a statutory test established by section 4 of the *Parliamentary Privileges Act 1987*,³⁸⁰ which specifies that:

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

2.307 As part of a series of resolutions concerning parliamentary privilege agreed to on 25 February 1988, the Senate established criteria to be taken into account by the Committee of Privileges when examining possible contempts³⁸¹ and identified a number of matters that may be treated as contempts of the Senate. These matters include activities that go to the integrity of senators in the performance of their duties, including the following:

Improper influence of senators

- (2) A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence a senator in the senator's conduct as a senator or induce a senator to be absent from the Senate or a committee.

Senators seeking benefits etc.

- (3) A senator shall not ask for, receive or obtain, any property or benefit for the senator, or another person, on any understanding that the senator will be influenced in the discharge of the senator's duties, or enter into any contract, understanding or arrangement having the effect, or which may have the effect, of controlling or limiting the Senator's independence or freedom of action as a senator, or pursuant to which the senator is in any way to act as the representative of any outside body in the discharge of the senator's duties.³⁸²

2.308 The *House of Representatives Practice* also identifies several relevant categories of behaviour that could be punished as contempts by the House, including

380 For a discussion of this statutory test, see Senate Standing Committee of Privileges, *162nd Report: Inquiry into possible false or misleading evidence given to the former Nauru select committee*, May 2016, pp. 2–3.

381 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th edition, Department of the Senate, 2016, p. 789.

382 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th edition, Department of the Senate, 2016, pp. 791–792.

'[c]orruption in the execution of their office as Members' and '[l]obbying for reward or consideration'.³⁸³ These specific categories of behaviour are further outlined below in the discussion regarding the former Member for Dunkley, the Hon. Bruce Billson.

2.309 The following sections briefly describe instances where the Privileges Committees have received references that broadly concern the integrity of parliamentarians. While the following examples are drawn from the federal Parliament, the committee notes that the privileges committees of state parliaments play similar roles in examining the conduct of parliamentarians and that further examples can be drawn from these jurisdictions.³⁸⁴

Senate Standing Committee of Privileges—150th and 142nd reports

2.310 The Senate Standing Committee of Privileges dealt with allegations concerning the integrity of senators' conduct in its 150th and 142nd reports. The following matter was the subject of its 150th report:

Having regard to matters raised by Senator Kroger relating to political donations made by Mr Graeme Wood, arrangements surrounding the sale of the Triabunna woodchip mill by Gunns Ltd and questions without notice asked by Senator Bob Brown and Senator Milne:

- (a) whether any person, by the offer or promise of an inducement or benefit, or by other improper means, attempted to influence a senator in the senator's conduct as a senator, and whether any contempt was committed in that regard; and
- (b) whether Senator Bob Brown received any benefit for himself or another person on the understanding that he would be influenced in the discharge of his duties as a senator, or whether he entered into any contract, understanding or arrangement having the effect, or possibly having the effect, of controlling or limiting his independence or freedom of action as a senator or pursuant to which he or any other senator acted as the representative of an outside body in the discharge of their duties as senators, and whether any contempt was committed in those regards.³⁸⁵

2.311 The President of the Senate summarised the matter and the seriousness of the allegations in a statement to the Senate on 23 November 2011:

The matter concerns a possible relationship between Senator Bob Brown and Mr Graham Wood and whether, on the one hand, Senator Brown sought a benefit from Mr Wood in the form of political donations on the

383 Bernard Wright, ed, *House of Representatives Practice*, 6th edition, Department of the House of Representatives, 2012, pp. 752–753.

384 See, for example: Queensland Parliament, Ethics Committee, Report No. 155, *Matter of privilege referred by the Speaker on 20 May 2014 relating to an alleged inducement offered to a member and associated matters*, June 2015; Queensland Parliament, Ethics Committee, Report No. 172, *Matter of privilege referred by the Speaker on 15 September 2016 relating to an alleged deliberate misleading of the Parliament*, December 2016.

385 *Journals of the Senate*, No. 71, 24 November 2011, p. 1945.

understanding that he would act in Mr Wood's interests in the Senate or, on the other hand, whether Mr Wood, through large political donations, improperly influenced Senator Brown and other Australian Greens senators, including Senator Milne, in the discharge of their duties as senators, including by the asking of questions without notice.

...there is no question that the matters raised by Senator Kroger are very serious ones. The freedom of individual members of parliament to perform their duties on behalf of the people they represent and the need for them to be seen to be free of any improper external influence are of fundamental importance. Matters such as these go directly to the central purpose of the law of parliamentary privilege, which is to protect the integrity of proceedings in parliament.³⁸⁶

2.312 The Committee of Privileges agreed the allegations were serious and also noted that they centred on forms of contempt that it had not previously dealt with. Specifically, the allegations went to the improper influence of senators 'by the offer or promise of any inducement or benefit' and to senators seeking benefits, as set out in privilege resolutions 6(2) and 6(3).³⁸⁷

2.313 At the conclusion of its inquiry into this matter, having considered submissions from senators Brown and Milne and from Mr Wood in addition to the material supplied by Senator Kroger to support the reference, the Committee of Privileges came to the following conclusion:

Given that the committee has found that the evidence before it did not support the contentions in either paragraph of the terms of reference, the committee **concludes** that **no question of contempt arises** in regard to the matter referred.³⁸⁸

2.314 The 142nd report of the Committee of Privileges dealt with two references arising from the Senate Economics Legislation Committee hearing on 19 June 2009. The report includes the following summary of the complex background to these two references:

Late in 2008, as the global financial crisis took hold, two major providers of wholesale floorplan finance to car dealers announced that they would be quitting the Australian market. This action was expected to have a major impact on car dealers who could struggle to secure alternative finance to fund their showroom vehicles. On 5 December 2008, the Prime Minister and Treasurer announced that a Special Purpose Vehicle, also known as

386 The Hon. John Hogg, President of the Senate, *Senate Hansard*, 23 November 2011, p. 9380.

387 Senate Standing Committee of Privileges, *150th Report: Whether there was any improper influence in relation to political donations made by Mr Graeme Wood and questions without notice asked by Senator Bob Brown and Senator Milne*, March 2012, pp. 4–5. The relevant parts of Privilege Resolution 6 are quoted above at paragraph 3.308.

388 Senate Standing Committee of Privileges, *150th Report: Whether there was any improper influence in relation to political donations made by Mr Graeme Wood and questions without notice asked by Senator Bob Brown and Senator Milne*, March 2012, p. 12 (emphasis in original).

OzCar, would be established to assist in restoring confidence to the market. A trust was created in January 2009 and a program manager selected to administer funds provided by the four major banks from the issuing of securities. The Commonwealth Government would provide a guarantee to securities issued by the scheme with less than a AAA credit rating. A bill, the Car Dealership Financing Guarantee Appropriation Bill 2009, was drafted to appropriate money to fund any claims made on the government's guarantee.⁹ Mr Godwin Grech was the Treasury official chosen to oversee the implementation of the policy. He reported to his senior officers in Treasury, Mr David Martine and Mr Jim Murphy.

Mr Grech subsequently alleged that the Prime Minister and the Treasurer (or their offices) had made representations on behalf of a particular car dealer in Queensland who had lent the Prime Minister an ageing utility to use for electorate business. Thus the affair became known in the media as 'Utegate' and the Opposition pursued the Prime Minister and Treasurer over allegations of political interference and of misleading Parliament, some of the most serious allegations that can be made against ministers. It later emerged that Mr Grech had provided information to Mr Turnbull and Senator Abetz and had shown them a copy of an email which was subsequently revealed to be fabricated. There is no suggestion that any one other than Mr Grech was aware of this fact at the time. The information was used in questions in the House and in Senate committee hearings. Mr Turnbull and Senator Abetz subsequently admitted to having been misled by Mr Grech.³⁸⁹

2.315 The first reference to the Committee of Privileges was initiated by Senator Bill Heffernan and concerned possible adverse actions taken against a witness, in this case Mr Grech, as a consequence of his evidence. The alleged adverse actions included threats, public and private intimidation, 'political backgrounding in the media', and the AFP conducting a search of Mr Grech's house.³⁹⁰ In respect of this element of its inquiry, the committee found that no contempt was committed.³⁹¹

2.316 The second reference, which goes more directly to the integrity of parliamentarians, was initiated by Senator Chris Evans and concerned the possible provision of false or misleading evidence to a committee, or the improper interference with a committee hearing. The reference was made in the following terms:

In relation to the hearing of the Economics Legislation Committee on 19 June 2009 on the OzCar Program:

389 Senate Standing Committee of Privileges, *142nd Report: Matters arising from the Economics Legislation Committee Hearing on 19 June 2009 (referred 24 June and 12 August 2009)*, November 2009, pp. 3–4.

390 Senate Standing Committee of Privileges, *142nd Report: Matters arising from the Economics Legislation Committee Hearing on 19 June 2009 (referred 24 June and 12 August 2009)*, November 2009, pp. 1–2.

391 Senate Standing Committee of Privileges, *142nd Report: Matters arising from the Economics Legislation Committee Hearing on 19 June 2009 (referred 24 June and 12 August 2009)*, November 2009, p. 99.

- (a) whether there was any false or misleading evidence given, particularly by reference to a document that was later admitted to be false;
- (b) whether there was any improper interference with the hearing, particularly by any collusive prearrangement of the questions to be asked and the answers to be given for an undisclosed purpose, and, if so, whether any contempt was committed in that regard.³⁹²

2.317 With respect to the first element of this reference, the Committee of Privileges found that there was evidence that the 'the Economics Legislation Committee was misled by the references to a document later admitted to be false'.³⁹³ The committee also determined that:

Senator Abetz did not give false or misleading evidence to, or cause any improper interference with, the hearing of the Economics Legislation Committee. He did not know at the time that it was a false document. The committee does not dispute that Senator Abetz was acting in good faith in using material supplied by a source he did not doubt.³⁹⁴

2.318 With respect to the second element of the reference, the committee stated:

- There was no inappropriate pre-arrangement by Senator Abetz of questions and answers for the hearing of the Economics Legislation Committee.
- Questions which may have a political motive are a commonplace and unremarkable part of the processes employed by senators for holding governments to account.³⁹⁵

2.2 The Committee of Privileges determined Mr Grech's evidence to the Economics Legislation Committee was 'objectively false and misleading', and that the committee was 'also misled by references to an email later revealed to have been fabricated by Mr Grech'.³⁹⁶ However, the Committee of Privileges was not able to make findings about Mr Grech's state of mind at the time of these events and was therefore unable to make a finding of contempt by misleading the Senate against him

392 *Journals of the Senate*, No. 79, 12 August 2009, pp 2278–79.

393 Senate Standing Committee of Privileges, *142nd Report: Matters arising from the Economics Legislation Committee Hearing on 19 June 2009 (referred 24 June and 12 August 2009)*, November 2009, p. 100.

394 Senate Standing Committee of Privileges, *142nd Report: Matters arising from the Economics Legislation Committee Hearing on 19 June 2009 (referred 24 June and 12 August 2009)*, November 2009, p. 100.

395 Senate Standing Committee of Privileges, *142nd Report: Matters arising from the Economics Legislation Committee Hearing on 19 June 2009 (referred 24 June and 12 August 2009)*, November 2009, p. 101.

396 Senate Standing Committee of Privileges, *142nd Report: Matters arising from the Economics Legislation Committee Hearing on 19 June 2009 (referred 24 June and 12 August 2009)*, November 2009, p. 102.

as such a finding depends on establishing the existence of a subjective intention to mislead the Senate.³⁹⁷

The Thomson matter

2.319 On 24 November 2014, the House of Representatives referred the following matter to the House Committee of Privileges and Members' Interests:

Whether, in the course of his statement to the House on 21 May 2012, and having regard to the findings of the Melbourne Magistrates Court on 18 February 2014 in relation to Mr Thomson, the former Member for Dobell, Mr Craig Thomson, deliberately misled the House.³⁹⁸

2.320 The statement in question was made by Mr Thomson in response to a report of Fair Work Australia addressing his conduct as the national secretary of the Health Services Union (HSU) prior to entering Parliament.³⁹⁹ Mr Thomson criticised the process employed by Fair Work Australia and denied any wrongdoing in relation to his expenditure of HSU funds. Mr Thomson's use of a HSU credit card was then the subject of legal proceedings and he was eventually found guilty by the County Court of Victoria with respect to 13 charges of theft.⁴⁰⁰

2.321 The Committee of Privileges and Members' Interests examined the circumstances of Mr Thomson's statement and came to the following conclusion in its report of March 2016:

The committee could find no evidence to support Mr Thomson's version of what took place in relation to himself or of his claims about the truth of his statement, and finds the explanation in the statement to be implausible. From all the circumstances, the committee believes it can draw the inference that Mr Thomson, the then Member for Dobell, in the course of his statement to the House on 21 May 2012, deliberately misled the House.⁴⁰¹

2.322 The committee also found:

...the deliberate misleading of the House in the circumstances of this case would be likely to amount to an improper interference with the free exercise

397 Senate Standing Committee of Privileges, *142nd Report: Matters arising from the Economics Legislation Committee Hearing on 19 June 2009 (referred 24 June and 12 August 2009)*, November 2009, p. 102.

398 *House of Representatives Votes and Proceedings*, No. 19, 24 February 2014, p. 311.

399 House of Representatives Standing Committee of Privileges and Members' Interests, *Report into whether the former Member for Dobell, Mr Craig Thomson, in a statement to the House on 21 May 2012 deliberately misled the House*, March 2016, p. 8; *House of Representatives Hansard*, 21 May 2012, pp. 4715–4728.

400 House of Representatives Standing Committee of Privileges and Members' Interests, *Report into whether the former Member for Dobell, Mr Craig Thomson, in a statement to the House on 21 May 2012 deliberately misled the House*, March 2016, pp. 9–10.

401 House of Representatives Standing Committee of Privileges and Members' Interests, *Report into whether the former Member for Dobell, Mr Craig Thomson, in a statement to the House on 21 May 2012 deliberately misled the House*, March 2016, pp. 17–18.

by the House of its authority or functions, and finds Mr Thomson's conduct in deliberately misleading the House constitutes a contempt of the House.⁴⁰²

2.323 While noting that the imposition of a punishment for a contempt of the House is a matter to be determined by the House, the committee recommended that an appropriate penalty in this instance would be for the House to reprimand Mr Thomson. The House agreed to the proposed punishment on 4 May 2016.⁴⁰³

The Billson matter

2.324 On 15 August 2017, the Manager of Opposition Business in the House of Representatives, the Hon. Tony Burke MP, raised as a matter of privilege media reports that the former Member for Dunkley, the Hon. Bruce Billson, was appointed as director of the Franchise Council of Australia whilst still a member of the House of Representatives (the Billson matter).⁴⁰⁴ Upon becoming the director, Mr Billson reportedly began receiving a salary of \$75 000 per year. Mr Burke raised a number of concerns, including, but not limited to:

... whether his conduct as a member of the House both in and outside of the chamber was influenced by the payments he received from the Franchise Council of Australia, including whether any contributions he made in debates in the House may have matched public positions held by the Franchise Council of Australia; whether Mr Billson advocated for, or sought to advance, the interests of the Franchise Council of Australia while a member of the House, owing to the payments he received from the Franchise Council of Australia; whether Mr Billson sought to influence the conduct of other members or ministers to benefit the Franchise Council of Australia, owing to the payments he received from this lobby group; and whether the Franchise Council of Australia, through its payments, sought to influence Mr Billson in his conduct as a member of the House both in and outside of the chamber.⁴⁰⁵

2.325 Mr Burke tabled documents, which in the Opposition's view were evidence of Mr Billson's advocacy for the interests of the Franchise Council of Australia whilst he was in office (in particular, Mr Billson's commentary about amendments to section 46

402 House of Representatives Standing Committee of Privileges and Members' Interests, *Report into whether the former Member for Dobell, Mr Craig Thomson, in a statement to the House on 21 May 2012 deliberately misled the House*, March 2016, p. 18.

403 *House of Representatives Votes and Proceedings*, No. 5, 4 May 2016, p. 75.

404 The Hon. Tony Burke MP, Manager of Opposition Business, *House of Representatives Hansard*, 15 August 2017, p. 34.

405 The Hon. Tony Burke MP, Manager of Opposition Business, *House of Representatives Hansard*, 15 August 2017, p. 34.

of the *Competition and Consumer Act 2010*⁴⁰⁶ and his advocacy for a Small Business and Family Enterprise Ombudsman).⁴⁰⁷

2.326 Mr Burke also questioned whether Mr Billson 'sought to influence other members of parliament to advance the interests of the Franchise Council of Australia', stating:

These matters raise serious concerns about the motivation for every action Mr Billson took as a member of parliament while he was reportedly being secretly paid by the Franchise Council of Australia. I also note that, contrary to the House resolution on the registration of members' interests, it is reported that Mr Billson failed to declare both his new position and the income he received in respect of this employment. It is not clear whether this apparent non-disclosure was knowing or unknowing. In relation to this matter, I understand the shadow Attorney-General has, in accordance with practice, written directly to the Committee of Privileges and Members' Interests.⁴⁰⁸

2.327 On 4 September 2017, the Speaker of the House of Representatives further considered the Billson matter. The Speaker, referring to *House of Representatives Practice*, provided two relevant matters that could be considered as contempts. The first, quoting directly from *Erskine May's treatise on the law, privileges, proceedings and the usage of Parliament*, was corruption in the execution of a member's office as a member:

The acceptance by a Member of either House of a bribe to influence him in his conduct as a Member, or of any fee, compensation or reward in connection with the promotion of or opposition to any bill, resolution, matter or thing submitted or intended to be submitted to either House, or to a committee is a contempt.⁴⁰⁹

2.328 With regard to the second, lobbying for reward or consideration, the Speaker said:

No Members of the House shall, in consideration of any remuneration, fee, payment, reward or benefit in kind, direct or indirect, ...advocate or initiate any cause or matter on behalf of any outside body or individual; or urge any Member of either House of Parliament, including Ministers, to do so, by

406 The Hon. Tony Burke MP, Manager of Opposition Business, *House of Representatives Hansard*, 15 August 2017, p. 34.

407 The Hon. Tony Burke MP, Manager of Opposition Business, *House of Representatives Hansard*, 15 August 2017, p. 35.

408 The Hon. Tony Burke MP, Manager of Opposition Business, *House of Representatives Hansard*, 15 August 2017, p. 35.

409 The Hon. Tony Smith MP, Speaker, *House of Representatives Hansard*, 4 September 2017, p. 20.

means of any speech, Question, Motion, introduction of a bill, or amendment to a Motion or Bill.⁴¹⁰

2.329 The Speaker commented that 'these matters are not unrelated and there could be a fine distinction between them' and concluded that he was not in a 'position to determine the nature of any connection between the appointment of Mr Billson to the Franchise Council and his subsequent statements and actions'.⁴¹¹ The Speaker added that the question of these matters being a contempt must meet the test found under section 4 of the *Parliamentary Privileges Act 1987*, conduct that is 'intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions'.⁴¹²

2.330 The Speaker continued that he was not in a position to determine whether there is a *prima facie* case. However, the Speaker reflected upon the existence of a House of Commons' Code of Conduct, and the absence thereof in the House of Representatives:

...in the United Kingdom, matters to do with lobbying for reward or consideration would now generally be dealt with as matters of conduct under the House of Commons' Code of Conduct. The House of Representatives does not have a similar code for members, even though a case such as this raises matters that may, potentially, be more to do with appropriate conduct than contempt. In this regard, I note that the Committee of Privileges and Members' Interests has responsibility under the standing orders for questions about a code of conduct for members. I am willing to give precedence to a motion for matters to do with contempt or conduct in relation to the circumstances raised by the Manager of Opposition Business to be referred to the Committee of Privileges and Members' Interests. In doing so, I reiterate that I have not made a determination that there is a *prima facie* case, but I'm sufficiently concerned by the matters raised to consider that they should be examined by the committee.⁴¹³

2.331 The House of Representatives subsequently agreed to refer the Billson matter to the Committee of Privileges and Members' Interests. The committee will examine the conduct of Mr Billson and the Franchise Council of Australia during the time Mr Billson was in Parliament, and whether this:

...amounts to corruption in the execution of his office as a member of the House such as to constitute a contempt of the House, and whether his conduct amounts to lobbying for reward or consideration such as to constitute a contempt of the House and whether the Franchise Council, or

410 The Hon. Tony Smith MP, Speaker, *House of Representatives Hansard*, 4 September 2017, p. 20.

411 The Hon. Tony Smith MP, Speaker, *House of Representatives Hansard*, 4 September 2017, p. 20.

412 The Hon. Tony Smith MP, Speaker, *House of Representatives Hansard*, 4 September 2017, p. 20.

413 The Hon. Tony Smith MP, Speaker, *House of Representatives Hansard*, 4 September 2017, pp. 20–21.

any of its staff or directors, has by appointing and paying Mr Billson as a director of that lobby group while he was still a member of the House, sought to bribe, or has bribed a member of the House, such as to constitute a contempt of the House.⁴¹⁴

A parliamentary code of conduct

2.332 Both the House of Representatives and the Senate have previously considered the merits of a parliamentary code of conduct.

2.333 In 2011, the House of Representatives Committee of Privileges and Members' Interests released a discussion paper considering a draft code of conduct for Members. The House committee preferred 'a code of conduct based on aspirational principles and values' but ultimately 'decided not to reach a concluded view on the merits of adopting a code of conduct'.⁴¹⁵ It acknowledged a code of conduct would make a modest contribution to improve the perception of Parliament and parliamentarians in the community; however, argued that a code would not 'guarantee against the behaviour of members being found to fall short of the standard set by the code'.⁴¹⁶ With reference to 'recent scandals at Westminster', the committee remarked:

...that mistakes can be made and misconduct can occur even when a code of conduct for members is in place. The Committee notes also that the number of cases of proven misconduct was relatively small although the media reports might lead to a different impression. When these events were revealed the individual Members could be and were measured against the code and this provided certainty.⁴¹⁷

2.334 In 2012, the Committee of Senators' Interests inquired into the development of a code of conduct for senators, including the House committee's discussion paper.⁴¹⁸ The Senate committee stated that it was:

not convinced that there is any objective evidence showing that the adoption of an aspirational, principles-based code has improved the

414 The Hon. Tony Burke MP, Manager of Opposition Business, *House of Representatives Hansard*, 4 September 2017, p. 21.

415 Standing Committee of Privileges and Members' Interests, *Draft Code of Conduct for Members of Parliament*, Discussion Paper, November 2011, http://www.aph.gov.au/Parliamentary_Business/Committees/House/Privileges_and_Members_Interests/Completed_inquiries/43/Code_of_Conduct (accessed 6 September 2017), p. 5.

416 Standing Committee of Privileges and Members' Interests, *Draft Code of Conduct for Members of Parliament*, Discussion Paper, November 2011, http://www.aph.gov.au/Parliamentary_Business/Committees/House/Privileges_and_Members_Interests/Completed_inquiries/43/Code_of_Conduct, (accessed 6 September 2017), p. 27.

417 Standing Committee of Privileges and Members' Interests, *Draft Code of Conduct for Members of Parliament*, Discussion Paper, November 2011, http://www.aph.gov.au/Parliamentary_Business/Committees/House/Privileges_and_Members_Interests/Completed_inquiries/43/Code_of_Conduct, (accessed 6 September 2017), p. 27.

418 Committee of Senators' Interests, *Code of Conduct Inquiry*, Report 2/2012, November 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Senators_Interests/reports, (accessed 6 September 2017), p. 1.

perceptions of parliaments and parliamentarians in other jurisdictions. Accordingly, the committee does not recommend that the Senate go down that path.⁴¹⁹

2.335 The Senate committee continued:

the committee does not consider it necessary to put in place a formal code in order to better articulate the standards expected of parliamentarians. The committee sees value in bringing together the raft of existing provisions relating to the conduct of senators and related obligations.

The areas covered by existing regimes would continue to contain specific, enforceable provisions; whereas the general principles would provide a frame of reference against which anyone may make their own judgements about how well parliamentarians are meeting these requirements.

...

If the aim is an improvement in standards, the approach that has been shown to work is to identify particular concerns and devise systems of regulation that are appropriate to address them. An advantage of bringing these provisions together in a structured way is the opportunity to identify whether there are any gaps in the coverage of that framework, and then to make decisions about how to properly address those gaps, with targeted measures, rather than with a generic and largely unenforceable code.⁴²⁰

2.336 The Senate committee concluded that the Senate should not adopt a code of conduct 'unless it is meaningful, workable and reasonable likely to be effective' nor should it adopt the code contained in the House committee's discussion paper.⁴²¹ Instead, the Senate committee argued a better approach would be to improve existing parliamentary standards by:

- consolidating the numerous provisions which regulate the conduct of senators;
- identifying existing gaps in conduct or ethical matters; and
- implementing specific measures to address those gaps.⁴²²

419 Committee of Senators' Interests, *Code of Conduct Inquiry*, Report 2/2012, November 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Senators_Interests/reports (accessed 6 September 2017), p. 16.

420 Committee of Senators' Interests, *Code of Conduct Inquiry*, Report 2/2012, November 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Senators_Interests/reports (accessed 6 September 2017), p. 17.

421 Committee of Senators' Interests, *Code of Conduct Inquiry*, Report 2/2012, November 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Senators_Interests/reports (accessed 6 September 2017), p. 18.

422 Committee of Senators' Interests, *Code of Conduct Inquiry*, Report 2/2012, November 2012, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Senators_Interests/reports, (accessed 6 September 2017), p. 18.

Other integrity measures concerning parliamentarians and the ministry

2.337 The following measures concern the oversight of Commonwealth parliamentarians with respect to their work expenses, as well as standards of ministerial and ministerial staff behaviour.

Independent Parliamentary Expenses Authority

2.338 On 13 January 2014, Prime Minister Malcolm Turnbull announced changes to the administration of parliamentarians' work expenses, which included the establishment of the Independent Parliamentary Expenses Authority (IPEA).⁴²³

2.339 The IPEA was established with the passage of the *Independent Parliamentary Expenses Authority Act 2017* (IPEA Act). The IPEA was initially established as an executive agency under the PS Act,⁴²⁴ and commenced operation as an independent statutory body on 1 July 2017.⁴²⁵

2.340 IPEA's core functions include:

- Giving advice to parliamentarians and [*Members of Parliament (Staff) Act 1984* (MOP(S) Act)] staff about travel expenses and travel allowances.
- Monitoring the travel expenses and travel allowances of parliamentarian and MOP(S) Act staff.
- Preparing regular reports relating to:
 - all work expenses, travel expenses and travel allowances claimed by parliamentarians
 - travel expenses and travel allowances claimed by MOP(S) Act staff.
- Conducting audits relating to:
 - all work expenses, travel expenses and travel allowances claimed by parliamentarians
 - travel expenses and travel allowances claimed by MOP(S) Act staff.
- Processing claims relating to travel expenses and travel allowances of parliamentarians and their staff.⁴²⁶

2.341 Originally, reports on parliamentarians' expenditure were done through the Department of Finance and released every six months. The IPEA will now initially report on a quarterly basis, and progressively move towards a monthly reporting

423 Senator the Hon. Scott Ryan, Special Minister of State, 'Establishment of the Independent Parliamentary Expenses Authority and abolition of the Life Gold Pass', *Media release*, 7 February 2017.

424 AGD, *Submission 11*, p. 3.

425 Independent Parliamentary Expense Authority (IPEA), *Home*, <http://www.ipea.gov.au/> (accessed 30 June 2017).

426 IPEA, *IPEA Functions*, <http://www.ipea.gov.au/about/ipea-functions.html> (accessed 30 June 2017)

regime 'to improve transparency and accountability for both parliamentarians' and MOP(S) Act staff work expenses'.⁴²⁷

2.342 With respect to the establishment of the IPEA, Professor John McMillan, the Acting New South Wales Ombudsman, stated that its creation 'has taken away quite a bit of the ground of difficulty, it seems to me, in getting adoption of an anticorruption body with jurisdiction over the parliament as well'.⁴²⁸

2.343 Professor A.J. Brown of Griffith University also spoke in favour of the establishment of the IPEA, expressing his opinion that 'it is a very significant development'.⁴²⁹

Statement of Ministerial Standards

2.344 The Statement of Ministerial Standards is a set of standards that ministers and assistant ministers are expected to follow to 'ensure public confidence in them and in the government'.⁴³⁰ The principles provided in the document include how ministers and assistant ministers are to carry out their duties. In general terms these include:

- acting with integrity through lawful and disinterested exercise of the statutory and other powers available to them and their office;
- observing fairness in making official decisions;
- accepting accountability for the exercise of their powers and functions of their office; and
- accepting the full implications of the principle of ministerial responsibility.⁴³¹

2.345 The statement specifies that ministers are not to use public office for private purposes and must not use 'information that they gain in the course of their official duties, including in the course of Cabinet discussions, for personal gain or the benefit of any other person'.⁴³²

2.346 Further, ministers must declare and register their personal interests, and notify the Prime Minister within 28 days if there is any significant change in their private interests. A failure to do so is considered a breach of these standards.⁴³³

2.347 The committee heard that there is capacity for the Prime Minister to seek advice from the head of the DPMC as to whether a matter might be a perceived conflict of interest. If a minister is seeking advice, then DPMC said:

427 IPEA, *Reporting*, <http://www.ipea.gov.au/reporting/index.html> (accessed 30 June 2017).

428 Professor John McMillan, Acting New South Wales Ombudsman, New South Wales Ombudsman, *Committee Hansard*, 12 May 2017, p. 3.

429 Professor A.J. Brown, Program Leader, Centre for Governance and Public Policy, Griffith University, *Committee Hansard*, 15 May 2017, pp. 3–4.

430 Commonwealth of Australia, *Statement of Ministerial Standards*, September 2015, p. ii.

431 Commonwealth of Australia, *Statement of Ministerial Standards*, September 2015, p. 2.

432 Commonwealth of Australia, *Statement of Ministerial Standards*, September 2015, p. 3.

433 Commonwealth of Australia, *Statement of Ministerial Standards*, September 2015, p. 3.

...it would normally be through the Prime Minister, but I would not want to rule out the possibility that ministers might seek advice outside. But the statement of standards refers to advice being sought and the Prime Minister being able to seek advice. It might be possible that ministers seek advice in other circumstances; you just would not necessarily know.⁴³⁴

2.348 The ministerial standards do not set out particular sanctions if a minister is in breach of any of the standards outlined in the document.⁴³⁵ The DPMC did not confirm that these ministerial standards are a component of the Commonwealth's integrity framework, but did argue that 'it certainly goes to expectations...[with] references in there to standards of integrity and expectations of the ministry'.⁴³⁶

Statement of Standards for Ministerial Staff

2.349 Ministerial staff, including the staff of Parliamentary Secretaries, are bound by the Statement of Standards for Ministerial Staff which 'sets out the standards that Ministerial staff are expected to meet in the performance of their duties'.⁴³⁷ For example, ministerial staff must:

8. Make themselves aware of the Values and Code of Conduct which bind [APS] and Parliamentary Service employees.'

...

19. Comply with all applicable Australian laws.

20. Comply with all applicable codes of conduct, including the Lobbying Code of Conduct.⁴³⁸

2.350 Ministerial staff are employed pursuant to the MOP(S) Act; however, this act does not impose any specific requirements on staff with respect to their conduct, and no delegated legislation is currently in force.⁴³⁹

Lobbying Code of Conduct and Register of Lobbyists

2.351 The Lobbying Code of Conduct and the Register of Lobbyists (the register) serves as a means to monitor the contact between representatives of the Australian

434 Ms Philippa Lynch, First Assistant Secretary, Government Division, DPMC, *Committee Hansard*, 5 July 2017, p. 6.

435 Ms Lynch, DPMC, *Committee Hansard*, 5 July 2017, p. 10.

436 Ms Lynch, DPMC, *Committee Hansard*, 5 July 2017, p. 10.

437 Senator the Hon. Scott Ryan, Special Minister of State, *Statement of Standards for Ministerial Staff*, available: <http://www.smos.gov.au/resources/statement-of-standards.html> (accessed 22 August 2017).

438 Senator the Hon. Scott Ryan, Special Minister of State, *Statement of Standards for Ministerial Staff*, available: <http://www.smos.gov.au/resources/statement-of-standards.html> (accessed 22 August 2017).

439 Section 33 of the *Members of Parliament (Staff) Act 1984* empowers the Governor-General to make regulations, consistent with the act, in respect of matters required or permitted by the act to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to the act.

government and lobbyists, and ensure contact is in accordance with 'public expectations of transparency, integrity, and honesty'.⁴⁴⁰

2.352 The Lobbyist Code of Conduct provides details of:

- what constitutes a lobbyist and lobbyist activities;
- the principles that lobbyist will observe when engaging with a government representative;
- rules that prohibit contact between government representatives and an unregistered lobbyist;
- rules that prohibit ministers and parliamentary secretaries from becoming a lobbyist for a period of 18 months after they cease to hold office; and
- the requirement that government representatives report breaches of the code to the secretary of the DPMC.⁴⁴¹

2.353 The Lobbying Code of Conduct and the register are administered by the DPMC.

Role of the media

2.354 An integral part of the current integrity framework is the role of the media, or 'fourth estate'. The committee heard evidence that highlighted the importance of the media's part in conducting investigations and holding public officials, including parliamentarians, to account. Further, the committee discussed interactions between the media and state integrity commissions.

2.355 The AGD's submission identified Australia's free and open media as playing an integral part 'in protecting against corruption by enabling scrutiny of both the public and private sectors'.⁴⁴²

2.356 The importance of the media, particularly in the scrutiny of politicians and their expenses, was also noted by the Clerk of the House of Representatives, Mr David Elder. Mr Elder said the media plays a very important role in the protective regime, and:

I am sure senators are very much aware of the scrutiny the media give to all those returns that are made by individual members and senators. They are now connecting declaration of interest statements with travel arrangements and making some interesting connections as a result. Members and senators are feeling the impact of that. That enormous amount of transparency—I think we need to recognise just how significant it is and therefore the degree of scrutiny that is available of individual activities, of individual

440 AGD, *Submission 23* [2016], p. 7.

441 DPMC, *Lobbying Code of Conduct*, available: http://lobbyists.pmc.gov.au/conduct_code.cfm (accessed 30 June 2017).

442 AGD, *Submission 23* [2016], p. 1.

members and senators, as a result of what is available already in the system.⁴⁴³

2.357 Other witnesses highlighted the importance of the federal media and its scrutiny of political expenses. Professor McMillan said '[t]here is no doubt, too, that at the national level the media is much more zealous in uncovering defaults by parliamentarians than perhaps at state level'.⁴⁴⁴

2.358 The Hon. Dr Peter Phelps MLC made a comparison between media coverage and investigative powers of the Commonwealth press gallery versus the NSW press gallery:

And you have a great press gallery. Why does corruption flourish at a local government level? Because there is very little press coverage of it. There is press coverage of the state gallery and the federal gallery. If you were an official and you were to call up Kylar Loussikian or Sharri Markson and Bevan Shields say, 'Mate, have I got a yarn for you,' you have also got that outlet. You have a very professional—not that the New South Wales press gallery is not professional, but it is small and it is overworked. The federal press gallery is large, and it is also overworked, but it has a greater capacity to do that sort of investigative journalism. Why is there so much corruption in the local government? Because it is done in the dark. No-one pays too much account to it, especially in the media.⁴⁴⁵

2.359 The AEC and Commonwealth Ombudsman also referred to the role the media has in informing their activities. The AEC said allegations of corruption may be reported by the media and in these cases the AEC would look at the material to evaluate the situation.⁴⁴⁶ The Commonwealth Ombudsman noted the 'media will sometimes draw attention to things, so we are very astute to what is happening in there'.⁴⁴⁷

2.360 Despite the role and success of the media in identifying and reporting on corruption and misconduct, Mr Nick McKenzie from Fairfax noted the media's limitations. When discussing the investigation into Eddie Obied, Mr McKenzie said that without the NSW ICAC:

...there would have been no exposure of Eddie Obeid. The media played a small but important role in putting some of Eddie Obeid's conduct on the public record but, without ICAC's extraordinary powers of exposure, the depth of his corruption and the way it stained and infiltrated much of the New South Wales political system would not have been exposed.⁴⁴⁸

443 Mr David Elder, Clerk of the House of Representatives, *Committee Hansard*, 16 June 2017, p. 21.

444 Professor McMillan, Acting NSW Ombudsman, *Committee Hansard*, 12 May 2017, p. 4.

445 The Hon. Dr Peter Phelps MLC, *Committee Hansard*, 16 June 2017, p. 17.

446 Mr Tom Rogers, AEC, *Committee Hansard*, 16 June 2017, p. 42.

447 Ms Gibbs, Commonwealth Ombudsman, *Committee Hansard*, 16 June 2017, p. 48.

448 Mr Nick McKenzie, Journalist, Fairfax Media, *Committee Hansard*, 12 May 2017, p. 23.

Audit of the existing Commonwealth integrity framework

2.361 As noted in chapter 1, a partnership—between Griffith University, Flinders University, the University of the Sunshine Coast, TIA, the New South Wales Ombudsman, the Queensland Integrity Commissioner and the Crime and Corruption Commission, Queensland—is currently reviewing the national integrity system. This project, funded through the Australian Research Council (ARC) Linkage Project, is titled *Strengthening Australia's National Integrity System: Priorities for Reform* and its purpose is to assist the debate on 'key issues and options for the strengthening of Australia's system of integrity, accountability and anti-corruption'.⁴⁴⁹

2.362 The first discussion paper, titled *A Federal Anti-Corruption Agency for Australia* was released in March 2017. This discussion paper's opening chapter outlines TIA's support for a broad-based federal anti-corruption agency 'to ensure a comprehensive approach to corruption risks beyond the criminal investigation system, and support stronger parliamentary integrity'.⁴⁵⁰ A number of gaps and weaknesses are identified, including:

- current federal agencies' anti-corruption efforts are unsupervised (other than criminal conduct reported to the AFP) and approximately half of the total federal public sector are not in the jurisdiction of the APSC;
- limited independent oversight exists to support federal parliamentary integrity, other than AFP investigations into criminal conduct and the IPEA;
- prevention, risk assessment and the monitoring of activities are uncoordinated; and
- the AFP's criminal law enforcement prioritises foreign bribery, anti-money laundering and other crimes, with limited capacity to investigate 'soft' or 'grey area' corruption across the federal sector.⁴⁵¹

2.363 The opening chapter also notes that a:

...federal anti-corruption agency will not provide solutions to these gaps, unless it—or alternative strategies—are well designed to achieve the intended purpose.⁴⁵²

2.364 A further issue identified in the opening chapter is TIA's view that there is no clear understanding of 'best practice' principles for the design and implementation of anti-corruption agencies in Australia. Further, TIA argues that governments in all jurisdictions 'need to agree on, and implement, best practice principles for the powers

449 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017.

450 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017, p. 4.

451 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017, p. 4.

452 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017, p. 4.

and accountabilities of their' anti-corruption agencies.⁴⁵³ The authors refer to the Council of Australian Government's Law, Crime and Community Safety Council as a possible forum to address this matter.⁴⁵⁴

2.365 The second chapter comprises a research paper by Professor Appleby and Dr Hoole titled *Integrity of Purpose: Designing a Federal Anti-Corruption Commission*.

2.366 Broadly, in their research paper Professor Appleby and Dr Hoole consider an integrity of purpose theory that provides a 'vision of how accountability institutions can be designed'. This is followed by the application of this theory to the 'design of a prospective federal anti-corruption commission in Australia'.⁴⁵⁵

2.367 The paper supports the establishment of a national integrity commission, but the authors caution against rushing to introduce such a body. Professor Appleby and Dr Hoole highlight the importance of 'considering fundamental questions of design in a coherent and principled fashion'.⁴⁵⁶

2.368 The authors address a number of key design elements for a federal anti-corruption agency. These include surveying the current federal integrity landscape with the goal of identifying vulnerabilities and gaps within the existing framework. This survey would then inform the conceptualisation of a new anti-corruption body's functions and how they should be performed. Professor Appleby and Dr Hoole provide a brief overview of the key Commonwealth integrity agencies.⁴⁵⁷

2.369 The paper considers a number of vulnerabilities and gaps in the current integrity framework. The gaps noted are:

- the capacity to scrutinise the conduct of ministers and parliamentarians;⁴⁵⁸
- the limited ability to investigate government agencies through the convening of hearings—whether in public or in private—outside the law enforcement context'.⁴⁵⁹ and

453 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017, p. 4.

454 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017, p. 4.

455 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017, p. 7.

456 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017, p. 33.

457 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017, p. 14.

458 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017, p. 16.

459 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017, p. 17.

- the lack of coherence across the Commonwealth's integrity landscape as a whole.⁴⁶⁰

2.370 Professor Appleby and Dr Hoole then consider these gaps and vulnerabilities 'to sketch a possible legislative statement of purpose for a new federal anti-corruption commission'. The legislative statement provided is:

The object of this Act is to suppress corruption and foster public confidence in the integrity of the Commonwealth government by empowering an independent commission with authority to investigate Commonwealth government activities, including through consideration of public complaints, with the goal of identifying and reporting instances of serious or systemic corruption.⁴⁶¹

2.371 They argue for a commission with broad oversight, including oversight of elected officials 'for the purpose of suppressing corruption and fostering public confidence in the integrity of the Commonwealth government'.⁴⁶² Consideration is also given to 'expanding the availability of strong investigative and hearing powers to seeing where those are desirable but currently lacking' and 'introduce a high profile and accessible venue for citizens and public servants to report corruption concerns, bringing greater coherence and simplicity to the integrity landscape'.⁴⁶³

2.372 This discussion paper also considers the model of an anti-corruption commission, its jurisdiction, and the agencies and individuals subject to its jurisdiction. Finally, the authors consider how integrity of purpose would inform the commission's power to hold hearings and require a prohibition on the commission making findings of guilt or initiating prosecutions.⁴⁶⁴

2.373 As noted in chapter 1, a further three discussion papers are scheduled as part of this project. These papers are titled:

- *Strategic approaches to corruption prevention;*
- *Measuring anti-corruption effectiveness; and*
- *Australia's integrity system: more than just a sum of its parts?*⁴⁶⁵

460 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017, p. 17.

461 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017, p. 19.

462 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017, p. 17.

463 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017, p. 17.

464 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017, pp. 20–33.

465 Australian Research Council Linkage Project, *Discussion Paper #1: Strengthening Australia's National Integrity System: Priorities for Reform*, March 2017.

