

# Governance Institute of Australia National Public Sector Governance Forum, Adelaide

Tuesday, 21 November 2023

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## The National Anti-Corruption Commission

The National Anti-Corruption Commission commenced on 1 July 2023, subsuming the former Australian Commission for Law Enforcement Integrity (ACLEI).

The mission of the Commission is to enhance integrity in the Commonwealth public sector, by deterring, detecting and preventing corrupt conduct involving Commonwealth public officials, through education, monitoring, investigation, reporting and referral.

As a creature of the Commonwealth, our jurisdiction depends on a sufficient constitutional basis. For us, the touchstone is conduct by, or affecting, a Commonwealth public official. That term includes Parliamentarians, and staff members of Commonwealth agencies. In turn, the definition of staff member of a Commonwealth agency includes not only employees, but also persons engaged in any way in assisting the agency, and individuals responsible for the delivery of services or the provision of goods to or on behalf of the Commonwealth under a Commonwealth contract, including subcontractors.

## Corrupt Conduct

Corrupt conduct under our Act is constituted by:

* Breach by a public official of the public trust;
* Abuse by a public official of their office;
* Misuse by a public official of official information; or
* Conduct by any person – not limited to public officials – which could affect a public official’s honest and impartial discharge of their duties.

The concept of the public trust which lies at its heart recognises that public powers are conferred on public officials for the public benefit. It will be a breach of that trust – within the definition of corrupt conduct – if a power is not exercised honestly for the purpose for which it is conferred.

Anyone can refer a matter to us, and enjoy whistleblower protections which are world’s best practice. A person who refers, provides information, or gives evidence to the Commission about a corruption issue, cannot be subject to any civil, criminal or administrative liability (including disciplinary action) for doing so, and no contractual or other right or remedy can be enforced against them.

Recent events have given prominence to integrity issues arising at the interface of the public service with government. Difficult questions arise where the duty of the public servant to implement the will of the elected government of the day may conflict with the imperatives of integrity. I think we should be slow to stigmatise as corrupt the conduct of an official who makes an error of judgment in that respect. There is a grey area, short of absolute integrity but not qualifying as corrupt, into which such conduct may fall.

## Priorities

We cannot and will not investigate every corruption issue that is referred to us, even every serious one. Our priorities are directed to matters in which a corruption investigation by the Commission will add value in the public interest. That means we are more likely to be interested in matters involving senior public officials; that have a significant impact, financial or otherwise, on the public interest; or that involve potentially systemic corrupt conduct. We won’t necessarily be disposed to reinvestigate matters that have already been thoroughly investigated, simply to characterise them as corrupt, when that won’t add value in the public interest. On the other hand, sometimes, the value may lie in “clearing the air” and restoring public confidence where there has been speculation. An important corollary of this is that the fact that we open an investigation does not mean that we necessarily think there is corruption to be found.

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**Question: What are the defining features of an ethical public service culture, and what are the challenges to establishing it?**

People must be and feel free to:

* make decisions and give advice on the evidence and merits, honestly and impartially, in the public interest and without regard to private interests; and to do so fearlessly even when they know it may be unpopular;
* report honestly and accurately, without embellishment or exception;
* acknowledge their inevitable mistakes, rather than denying or covering them up, treat them learning opportunities so as to avoid repeating them, and can be put right.

The challenges are really human nature – self-interest and self-protection. People are naturally disinclined to take steps which might be injurious to what they might perceive to be their reputation or their own interests, or to accept fault. The consequences of being the harbinger of bad news have been around as long as Mercury — the practice of shooting the messenger goes back a long, long way. What I think is really critical in overcoming that is that the careers of people who do the right thing, particularly who do the right thing when it is unpopular to do so, must be seen to prosper, not to perish on the way.

This is reinforced by a “blame culture”, in which someone has to be seen to be punished for a mistake. This deters people from owning and dealing constructively with mistakes. I don't want to get into particular events, but who is going to benefit from the resignation of Optus's chief executive? I don't see that Optus is going to benefit in any operational sense. Reputationally, there's been a sacrifice to the gods if you like, but that's about all there is to it. If we recognise that mistakes will happen, accept responsibility for them, and put things right, rather than just seeking a scapegoat, we will do a lot to improve culture in the public service.

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**Question: As a Commonwealth agency, how will the Commission engage with external organisations?**

The principal external organisations of relevance to the Commission are consultants and contractors. Consultants, who include persons engaged to assist an agency, have access to information and the ability to misuse the information that they access, for their own benefit or for the benefit of other clients. Contractors can see government sources as an easy means to make money — this has been going on since pink batts, at least, and probably long before that. I've just read in this morning's paper an account of a person who applied to the NDIS, to discover an item which retailed for $50 was being provided by the NDIS provider at a cost of $300. These are areas in which government can be treated as a milch cow, and in which resources that are intended for the beneficiaries of the scheme are effectively diverted for the benefit of the contracted service provider.

Given the extent to which government has, in recent decades, engaged consultants in place of public servants, and has outsourced the provision of government services to contracted service providers, they are now very large areas, and they are areas that are of great interest for the Commission.

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