



# Commonwealth Integrity Commission Bill 2020 - Exposure Draft

ACTU Submission

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# 1 Introduction

## 1.1 About the ACTU

1. Since its formation in 1927, the ACTU has been the peak trade union body in Australia. There is no other national confederation representing unions. For 90 years, the ACTU has played the leading role in advocating in the Fair Work Commission (FWC), and its statutory predecessors, for the improvement of employment conditions of employees. It has consulted with governments in the development of almost every legislative measure concerning employment conditions and trade union regulation over that period.
2. The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 39 ACTU affiliates. They have approximately 1.7 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

## 1.2 The Commonwealth Integrity Commission Bill 2020

3. This submission provides feedback on *the Commonwealth Integrity Commission Bill 2020* Exposure Draft (**CIC Bill**), which was released on 2 November 2020.<sup>1</sup>
4. The ACTU's submission may be summarised as follows:
  - a. We support the establishment of a Commonwealth regulator tasked with investigating and addressing corruption, integrity issues and broader governance concerns in the public sector.
  - b. We are of the view that a good integrity regulator will be one that is:
    - i. Adequately resourced;
    - ii. Capable of investigating and addressing a broad range of matters, including the circumstances, systems and context which give rise to instantiations of corrupt conduct;
    - iii. Able to operate in the most transparent means possible;
    - iv. Vested with the full suite of investigative powers that it needs;

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<sup>1</sup> <https://www.ag.gov.au/integrity/publications/commonwealth-integrity-commission-bill-exposure-draft>

- c. We do not think that the current proposal for a Commonwealth Integrity Commission, as contained in the CIC Bill adequately meets the criteria which we have outlined above.
5. We refer to and repeat our previous submissions on this topic, including:
  - a. Submission to the Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the National Integrity Commission Bill 2018, National Integrity (Parliamentary Standards) Bill 2018, and National Integrity Commission Bill 2018 (No.2);<sup>2</sup> and,
  - b. Submission to the Attorney-General's Department consultation on the Coalition Government's proposed Commonwealth Integrity Commission.<sup>3</sup>

## 2 The problem

6. Transparency and accountability are at the heart of democracy. Each and every failure of integrity erodes public confidence in institutions. This is especially so when the public sees the symptoms of integrity failures, but do not see the rectification of their causes.
7. Examples which raise integrity concerns within our public institutions are unfortunately numerous, and include:
  - a. Staff of a federal Minister being advised of impending police raids on a trade union office and leaking this to the media; following which the Minister gave incorrect information to the parliament and declined to provide a statement to the AFP.<sup>4</sup>
  - b. The purchase of land which was subsequently revalued at one-tenth of the purchase price only eleven months later.<sup>5</sup>,

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<sup>2</sup> ACTU Submission, 23 January 2019 ACTU D No. 01/2019, Submission 16

<sup>3</sup> ACTU Submission, 1 February 2019 ACTU D No. 2/2019

<sup>4</sup> Luke Henriques-Gomes, 'AWU raids: former union watchdog staffer denies tipping off Michaelia Cash's office', *The Guardian* (online, 25 February 2019) <<https://www.theguardian.com/australia-news/2019/feb/25/awu-raids-former-union-watchdog-staffer-denies-tipping-off-michaelia-cashs-office>>; Patrick Durkin, 'Michaelia Cash's chief of staff was 'behind AWU raid leaks' (online, 12 February 2019) <<https://www.afr.com/policy/economy/michaelia-cashs-chief-of-staff-was-behind-awu-raid-leaks-20190212-h1b5do>>

<sup>5</sup> The Auditor-General, *Auditor-General Report No.9 2020-21 Performance Audit*, Australian National Audit Office <<https://www.anao.gov.au/work/performance-audit/purchase-the-leppington-triangle-land-the-future-development-western-sydney-airport>>; Kathleen Calderwood, ABC News, 'Auditor-general says Leppington Triangle airport deal is first he's alerted AFP to since starting in the job' (online, 20 October 2020) <<https://www.abc.net.au/news/2020-10-20/leppington-triangle-deal-auditor-general-first-alert-to-afp/12784116>>

- c. A scheme which relied on automatic calculations to pursue debts against individuals who were then expected to disprove that the money was owed, despite the department being advised that such a scheme was not lawful.<sup>6</sup>
- d. Awarding a \$444 million environmental grant to an organisation with only 6 full-time staff and about \$10 million in annual revenue.<sup>7</sup>
- e. A federal Minister's reliance on a falsified document to criticise a local Mayor.<sup>8</sup>
- f. A federal Minister issuing grants to two councils ahead of a by-election in a highly marginal seat, contrary to the advice of their own department (who also warned that overruling the merit system might draw scrutiny from the ANAO or media) that such grants should not be issued; and also requesting expedited consideration of a grant – which was subsequently issued by the Minister – soon after receiving a political donation from the grant recipient.<sup>9</sup>

### 3 How an Integrity Commission should operate

#### 3.1 Scope

- 8. Corruption occurs within organisational and institutional cultures and systems which allow for it. The focus of a regulator should be broad enough to identify the root causes of corruption and other failures of integrity. While identifying individual misconduct may be necessary to combatting corruption overall, it is not a substitute for identifying why and how corruption occurs.

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<sup>6</sup> Dana McCauley and Rob Harris, *The Sydney Morning Herald*, 'Lawyers warned federal government robodebt scheme was 'unlawful'' (online, 6 February 2020) <<https://www.smh.com.au/politics/federal/not-lawful-lawyers-warned-federal-government-on-robodebt-scheme-20200206-p53ydt.html>>

<sup>7</sup> Michael Slezak, *ABC News*, 'Controversial Great Barrier Reef grant did not comply with transparency rules, National Audit Office says' (online, 17 January 2019) <<https://www.abc.net.au/news/2019-01-16/great-barrier-reef-funding-grant-scrutinised-auditor-general/10720928>>;

<sup>8</sup> Matthew Doran, *ABC News*, 'AFP defends not launching investigation into Angus Taylor, says it did not obtain evidence of allegedly forged document' (online, 12 May 2020) <<https://www.abc.net.au/news/2020-05-12/no-evidence-document-angus-taylor-criticised-clover-moore-over/12239994>>

<sup>9</sup> Paul Farrell and Alex McDonald, *ABC News*, 'Peter Dutton slashed funding for highly regarded community safety projects. Then he selected his own list to fund' (online, 10 February 2021) <<https://www.abc.net.au/news/2021-02-10/peter-dutton-cut-funding-safety-projects-selected-his-own-list/13126834>>; Paul Farrell and Alex McDonald, *ABC News*, 'Peter Dutton's office fast-tracked one-off grant proposal days after donation given to support him' (online, 10 February 2021) <<https://www.abc.net.au/news/2021-02-10/peter-dutton-office-fast-tracked-grant-proposal-after-donation/13126496>>

9. The CIC should be provided with a mandate to investigate a wide range of conduct that does not meet the high standards the public are entitled to expect from public institutions.
10. This includes conduct which might fall outside the CIC's bill's current narrow focus on corruption, such as conflicts of interest or duty, including those that arise out of outsourcing arrangements where consultants are engaged to provide or advise on public services.
11. The CIC bill as it stands currently does not allow adequate scope for the proposed Commonwealth Integrity Commission to address the root causes of corruption, or the wider range of behaviours which might damage confidence in public institutions.
12. In particular, the comparatively narrow scope of the proposed CIC to investigate broader public sector corruption issues, when compared to law enforcement corruption issues, will leave the CIC unable to tackle many issues which the public would reasonably expect to scrutiny of.

### **3.2 Referrals**

13. The CIC bill does not contain adequate provisions for the initiation of an investigation. Instead, the CIC bill is heavily reliant on referrals of matters from individuals who may have a stake in the outcome of the investigation.
14. The CIC bill should be amended to make clear that the CIC's powers of investigation into public sector corruption issues may be triggered by a referral from any source, including the public.

### **3.3 Transparency**

15. The CIC should inspire public confidence by operating as transparently as possible.
16. The CIC bill currently provides that hearings into public sector corruption issues cannot be conducted in public. The CIC bill further provides less transparency (by way of comparison to law enforcement corruption issues) in terms of the reporting requirements following an investigation into a public sector corruption issue.
17. We recommend that the CIC be able to conduct public hearings into public sector corruption where it is not contrary to the public interest to do so, and where it does not infringe on a natural person's rights (for instance where there is a potential for criminal charges to be laid).

### **3.4 Whistleblower protections**



18. A system of integrity regulation requires strong supporting provisions – such as “whistleblower” protections – to support its effectiveness. It is vital that these provisions be examined in order to ensure that they are offering the best foundation possible. No worker should be victimised because they raise an integrity concern.

## 4 How other regulators operate

19. Trade unions are highly regulated entities which attract a great deal of scrutiny from the public and from Government. It is therefore illuminative to look at how trade unions are regulated as a result of decisions made by Governments, as a comparator to how Government seeks to regulate itself.

20. Trade union regulators, such as the Registered Organisations Commission and the Australian Building and Construction Commission are enabled by legislation to investigate a wide range of matters on their own motion. By contrast, the architecture of the proposed CIC is heavily dependant on referrals from internal parties. A comparable situation in which the present Government legislated such that the ROC or the ABCC would only be inclined to commence an investigation on request by the National Secretary of an Australian Union is difficult to imagine.

21. Regulators such as the ACCC and APRA, as well as those who regulate trade unions such as the ROC, FWO and ABCC, are all able to (and do) commence litigation as part of their regulatory activities. While these regulators have a different function to the proposed CIC (and we do not necessarily suggest that the CIC regulate conduct by way of litigation), it is nevertheless a significant point of difference that these regulators are able to exercise their functions publicly whereas the proposed CIC is limited in its ability to do so.

22. The public conduct of litigation by regulators is considered to be necessary from a public policy perspective in order to ensure that conduct which attracts the public gaze is brought into the public view, as well as to ensure that the regulator itself operates in the open. The proposed CIC, in terms of public sector corruption, will not have the ability to conduct public hearings. This will mean reduce transparency and public scrutiny of its operations and does not assist public confidence in institutions or the regulator.

## 5 Examples

23. A public service corruption issue must constitute a listed offence and involve either an abuse of position or a perversion of justice. This narrow definition would mean that

despite the much-publicised “Robo-debt” scheme being admittedly unlawful,<sup>10</sup> the circumstances leading to would be unlikely to be investigated by the proposed CIC. This is concerning, because a failure of this scale should be one that can be learnt from and avoided in the future. The CIC should be able to examine instances of conduct which fall short of community expectation, even where it is unclear at the outset that a specific individual (or which specific individual) has abused their position, perverted justice or committed a listed offence.

24. The issues involving Ministers and their offices which are referred to above would be equally unlikely to ever come before the proposed CIC. This is largely because the main way in which such a matter would be referred to the CIC is by the parliamentarian themselves, and it is difficult to contemplate such a referral being forthcoming.
25. The Leppington land triangle purchase and the Great Barrier Reef Foundation grant both involve the flow of significant Commonwealth funds to a third party. Neither appear to have been conducted subject to appropriate due diligence measures. Whether or not there was any improper purpose associated with the transactions, or what may have otherwise motivated them is a significant question of public concern which the public ought to be able to see investigated properly. At any rate, the failures which lead to these transactions are worthy of the public eye. The current mandate of the CIC would make such as investigation particularly unlikely.

## 6 Resourcing

26. We support the submission of our affiliate, the CPSU, that the proposed CIC should be appropriately resourced, funded and staffed. The proposed funding and staffing arrangements fall short of the funding and staffing recommended by the CPSU members who actually perform the work of monitoring and promoting integrity across the public sector and have, with respect, greater knowledge of operational requirements than legislators.
27. A price cannot be put on integrity in Government. However, this does not make the investment incalculable. On the contrary, investing the resources, funding and staffing into an integrity regulator is likely to return many times more in terms of the savings that flow from avoiding corruption and other integrity issues.

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<sup>10</sup> Victorian Legal Aid, “I hope everyone gets the opportunity for justice” – a win for Deanna Amato in her robo-debt test case’ (online, 27 November 2019) <<https://www.legalaid.vic.gov.au/about-us/news/i-hope-everyone-gets-opportunity-for-justice-win-for-deanna-amato-in-her-robo-debt-test-case>>



## 7 Conclusion

28. The Australian public expect and deserve no less than transparency and accountability from their Government. It is not an unreasonable expectation, yet the public are confronted regularly with examples of Government failing to deliver integrity.
29. A well-resourced integrity regulator is needed, with a wide enough operational scope to address the broad range of integrity issues both as they arise and in a preventative manner. The proposed CIC does not fit this bill. The investigative and operational scope, needs to be enhanced from the current proposal, and the funding model improved.

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