Innovative Research Universities

IRU submission

Commonwealth Integrity Commission consultation (CIC Bill exposure draft)

Innovative Research Universities (IRU) is a coalition of seven comprehensive universities committed to innovation and inclusive excellence in teaching, learning and research in Australia.

The membership is Charles Darwin University, Flinders University, Griffith University, James Cook University, La Trobe University, Murdoch University and Western Sydney University.

The members' impact is local and global with a focus on advancing communities through education, resources, opportunities, translational research and enterprise.

Through its members working collectively, the IRU seeks to be at the constructive centre of Australian university policymaking.

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Overview

On 2 November 2020, the Attorney-General published the exposure draft of new legislation to establish a Commonwealth Integrity Commission (CIC), comprising:

- Commonwealth Integrity Commission Bill 2020 (Cth)
- Integrity and Anti-Corruption Legislation Amendment (CIC Establishment and Other Measures) Bill 2020 (Cth)

The IRU thanks the Attorney General's Department for the extensive consultation it has undertaken on this matter, including providing multiple opportunities for IRU members to seek clarification and raise issues of concern.

Following those discussions, the IRU has concerns about the proposals as they apply to universities.

- All IRU members are already subject to anti-corruption and misconduct investigations via existing state or territory bodies with very similar remits to the proposed federal body.
- Including Australian universities in the scope of a federal integrity body is an unnecessary double-up of legislation that risks complicating the process of investigations rather than strengthening them.
- The draft legislation contains a substantial inconsistency in the way staff of various bodies are held to account for alleged misconduct, with staff of higher education providers and research bodies subject to a lower investigation threshold than staff of public sector agencies.

The IRU, therefore, urges the Government to:

1. remove universities from the scope of this legislation; or
2. if it considers that retaining universities in scope is necessary to its broader objectives, amend:
   - the legislation to state that universities are obliged to report suspected corruption to the relevant state and territory integrity body, which will then work with the CIC to agree what action is required and which agency will take responsibility. There would be no further obligation to report the same activity to a parallel federal body;
   - the wording of Section 17 of the primary Bill to ensure university staff are held to the same misconduct standards as staff of public sector agencies.

Overlap with existing state and territory bodies

The IRU's major concern with the draft legislation is the significant overlap the proposed federal body will have with existing state and territory bodies. The Department has contended that the proposed federal body will cover corruption issues not adequately covered by state and territory bodies, such as matters relating to the national interest and foreign interference. In particular, it argues that the national body would be more skilled to investigate those national issues.

State and territory anti-corruption bodies are already empowered to investigate a broad range of suspected corruption issues. Their investigations are not merely limited to breaches of state and territory law but all corrupt conduct.

The IRU has analysed the wording of the existing state and territory legislation to understand what gaps exist in the anti-corruption framework regarding universities. The summary of this analysis can be seen in Table 1 in the Appendix of this submission. The IRU's conclusion is that each of the state and territory integrity bodies is empowered to investigate broad issues of corruption and misconduct. They are not restricted from investigating issues relating to the national interest, foreign interference or any other federal issues.

Therefore the inclusion of universities in this legislation is unnecessary, given they are already subject to existing state-based integrity bodies. There is no compelling reason for a blanket inclusion of universities in this legislation, which would impose yet another layer of bureaucracy onto universities with no discernible benefit to universities or the Government.

Making universities subject to both state/territory and federal anti-corruption bodies does come with potential costs:

- being subject to two parallel bodies increases the potential for miscommunication about roles and responsibilities. It would be very unhelpful, for example, if a misunderstanding or disagreement between state/territory and federal bodies were to hinder the progress of an investigation with universities subject to conflicting instructions from the two bodies; and
- the burden on universities (and other agencies included within the scope of the legislation) if they are required to report suspected corruption to both their existing state or territory anti-corruption body and also to the new federal body.

The IRU's primary position is that universities should be removed in entirety from this legislation.

The Department has argued this apparent overlap is not a problem because the federal CIC will work with state and territory bodies to agree their respective roles in any investigations that have relevance for both bodies. This approach could potentially include joint state-federal investigations. It makes sense for the state or territory body to work together with federal body in that way. However, the the major aspects of the process for doing so should be defined into the legislation, not merely left to backroom discussions after the new federal body is up and running.

The IRU is particularly concerned that, as the legislation stands, reporting entities would have to report issues of suspected corruption and misconduct to both a state/territory integrity body and also to the federal CIC. This double-up would create a lot of additional work for all involved with no discernible benefit.

The IRU's proposed solution, if universities remain in scope, is for the Bill to specify that reports of suspected corruption and misconduct should be made only to a single state or territory integrity agency, with the state or territory body then responsible for agreeing with the federal CIC which agency investigates. That simple change would avoid repetition and create a clear line of accountability, as well as reducing the administrative burden of the new federal CIC.

If universities remain within the scope of the legislation, the IRU urges the Government to amend the legislation to specify that entities should report cases of suspected corruption and misconduct to the most relevant state or territory body which will then decide how to action.

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Lower "corrupt conduct" test for university staff

Section 17 of the primary bill includes a serious inconsistency of process.

- Staff of public sector entities *other than higher education providers or research bodies* are involved in corrupt conduct where they engage in one of the "listed offences" *and* that conduct constitutes an abuse of office or perversion of the course of justice.
- However, for staff of higher education providers and research bodies, there is no requirement the alleged corrupt conduct involves abuse of office or perversion of the course of justice. A breach of one of the listed offences is enough to spark an investigation.

For law enforcement entities the "corrupt conduct" test is different again, constituting either an abuse of office, perversion of the course of justice, or corruption of any other kind.

This disparity is made clear in Section 3 of the primary Bill ("Simplified outline of this Act"):

> *For staff members of law enforcement agencies, corrupt conduct by a person must involve abuse of office, perverting the course of justice or other conduct that, having regard to the person's duties and powers, involves, or is engaged in for the purpose of, corruption of any other kind.*
>
> *For parliamentarians and staff members of public sector agencies or offices of parliamentarians, corrupt conduct by a person must involve abuse of office or perverting the course of justice. The conduct must also constitute a listed offence against a law of the Commonwealth.*
>
> ***For staff members of higher education providers and research bodies, corrupt conduct need only constitute a listed offence.*** [emphasis added]

Therefore, the "corrupt conduct" test for higher education providers and research bodies has been set at a lower bar than for other public sector entities, with staff of higher education providers and research bodies liable to be investigated for conduct that would not trigger an investigation into non-higher education public entities.

The Department has suggested this mismatch is due to the terms "abuse of office" and "perversion of the course of justice" having particular and well-established meaning for public office holders which may not transfer to university and research agency staff. This is a drafting challenge, not a reason to expose university staff to an unreasonable test of corrupt activity. University staff should not be subject to investigation for activity that would not prompt an investigation for a public servant or a police officer.

The IRU urges the Government to amend the wording of Section 17 of the primary Bill to fix this disparity and hold university staff to the same misconduct standards as staff of public sector agencies and offices of members of parliament.

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Appendix

Remits of existing state and territory bodies

As discussed in the main submission above, the IRU believes all its members are already adequately covered by existing state and territory anti-corruption bodies. Table 1 summarises the remit of each of the state and territory bodies. While the IRU accepts that a like-for-like comparison is difficult due to the variance in the way the respective laws have been drafted, this analysis is intended as a snapshot comparison across the various jurisdictions.

It is clear from the comparison that state and territory bodies are not restricted in their remits from investigating alleged corruption and misconduct relating to federal matters, nor from investigating alleged corruption and misconduct that occur outside their own state or territory.

Table 1: Investigative remits of existing state and territory anti-corruption bodies

State or territory body	**Remit of body**	**Source**
Crime and Corruption Commission (Qld)	"Conduct may be corrupt conduct regardless of— (a) where the conduct happens; or (b) whether the law relevant to the conduct is a law of Queensland or of another jurisdiction"	*Section 17 of Crime and Corruption Act 2001 (Qld)*
Independent Commission Against Corruption (NSW)	"Corrupt conduct is— (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.	Section 8 of *Independent Commission Against Corruption Act 1988 (NSW)*
ACT Integrity Commission	"[C]orrupt conduct is conduct— (a) that could— (i) constitute a criminal offence; or	Section 9 of *Integrity Commission Act 2018 (ACT)*

	(ii) constitute a serious disciplinary offence; or (iii) constitute reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of, a public official… " "[I]t does not matter if… the conduct happened outside the Territory" [The Integrity Commission Act does not apply to public sector entities from the Commonwealth or state or territory jurisdictions other than the ACT]	
Independent Broad-based Anti-Corruption Commission (VIC)	"Conduct may be corrupt conduct for the purposes of this Act if— (a) all or any part of the conduct occurs outside Victoria, including outside Australia; and (b) the conduct would be corrupt conduct if it occurred in Victoria."	*Section 4 of* *Independent Broad-Based Anti-Corruption Commission Act 2011 (Vic)*
Integrity Commission Tasmania (TAS)	"misconduct means – (a) conduct, or an attempt to engage in conduct, of or by a public officer that is or involves – (i) a breach of a code of conduct applicable to the public officer; or (ii) the performance of the public officer's functions or the exercise of the public officer's powers, in a way that is dishonest or improper; or (iii) a misuse of information or material acquired in or in connection with the performance of the public officer's functions or exercise of the public officer's powers; or (iv) a misuse of public resources in connection with the performance of the public officer's functions or the exercise of the public officer's powers; or (b) conduct, or an attempt to engage in conduct, of or by any public officer that adversely affects, or could adversely affect, directly or indirectly, the honest and proper performance of functions or exercise of powers of another public officer…"	Section 4 of *Integrity Commission Act 2009 (Tas)*
Independent Commissioner Against Corruption (SA)	"Corruption in public administration means conduct that constitutes [various listed offences and] any other offence … committed by a public officer while acting in his or her capacity as a public officer or by a former public officer and related to his or her former capacity as a public officer, or by a person before becoming a public officer and related to his or her capacity as a public officer, or an attempt to commit such an offence" [including conduct that occurs outside the State].	Section 5 of *Independent Commissioner Against Corruption Act 2012 (SA)*

Crime and Corruption Commission (WA)	"Misconduct occurs if — (a) a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment; or (b) a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person; or (c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment; or (d) a public officer engages in conduct that — (i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct; or (ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial; or (iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or (iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person…"	Section 4 of *Corruption, Crime and Misconduct Act 2003 (WA)*
Office of the Independent Commissioner Against Corruption (NT)	"Conduct is corrupt conduct if it is conduct engaged in by a public officer (whether or not the identity of the public officer is known) or by a public body: (a) that constitutes an offence, whether in the Territory or elsewhere, for which the maximum penalty is imprisonment for a term of at least 2 years, with or without a fine; and (b) that is connected to public affairs." [Additional grounds for corrupt conduct also provided in this section of the Act]	Section 10 of *Independent Commissioner Against Corruption Act 2017 (NT)*