



**OPENING
OF THE
NATIONAL ANTI-CORRUPTION COMMISSION**

Room 8.06, Level 8

14 Moore Street, Canberra, ACT

Monday 3 July 2023

Opening Address

The Hon PLG Brereton AM RFD SC

COMMISSIONER:

Acknowledgement of Country

I respectfully acknowledge the traditional custodians of the land on which we here assemble, the Ngunnawal people, and all other First Nations people with connection to these lands. I pay my respects to their Elders past, present and emerging. I acknowledge also the traditional custodians of the various lands from which viewers are joining us virtually, and I extend my respects to all Aboriginal and Torres Strait Islander people participating in this ceremony. I recognise your continuing connection to land, waters, culture, and community.

This, the first week of July, is NAIDOC Week, during which celebrations are held across Australia to recognise and celebrate the cultures, histories, and achievements of Aboriginal and Torres Strait Islander peoples. It is also an opportunity for Australians of all backgrounds to learn about First Nations

cultures and histories, and to participate in the celebrations of the oldest continuous living cultures on earth.

Acknowledgement of distinguished guests

We are honoured by the presence today of the following distinguished guests.

- From the Attorney-General's Department, which has played a major part in the work which has been undertaken to establish the Commission: Secretary Katherine Jones PSM, Deputy Secretary Simon Newnham, and Assistant Secretary Lucinda Atkinson.
- From other Commonwealth integrity agencies, with whom this Commission will have important relationships: Mr Reece Kershaw, Commissioner of the Australian Federal Police; The Hon Christopher Jessup KC, Inspector General of Intelligence and Security; Mr James Gaynor CSC, Inspector General of the Australian Defence Force; and Mr Scott Bruckard PSM, Acting CDPP.
- From the State and Territory Corruption Commissions, with whom we will cooperate and from whom we have much to learn: Ms Judy Lind, CEO representing the Hon Michael Adams Commissioner of the ACT Integrity Commission; and the Hon Peter Johnson SC, Chief Commissioner of the NSW Law Enforcement Conduct Commission; others are participating virtually, including I believe Mr Greg Melick AO SC, Chief Commissioner of the Tasmanian Integrity Commission, who spent last night at Lords.
- Ms Gail Furness SC, the Inspector of the Commission.
- Ms Sue Robertson, Head of the APS Integrity Taskforce in PM&C.
- Mr Ian Temby AO KC, the inaugural commissioner of the NSW ICAC, the first Corruption Commission in this Country. Since it was established 34

years ago, every state and territory has established a similar Commission. The environment we enter is significantly different, due in no small part to his pioneering work. As a result, there will be differences in the nature of our work and the way we go about it; but there is still much to be learned from his experience.

Also present are members of the staff of the Commission; many more around the country are participating virtually; together, today, we introduce to the people of Australia your National Anti-Corruption Commission.

Introduction of Commissioners

Seated with me on the Bench of the Commission are, to my immediate right, Deputy Commissioner Ms Nicole Rose, formerly Chief Executive Officer of Austrac; to my left, Deputy Commissioner Ms Jaala Hinchliffe, formerly the Integrity Commissioner in the Australian Commission for Law Enforcement Integrity; and to my far right, Deputy Commissioner Dr Ben Gauntlett, formerly the Disability Commissioner. Together with the Chief Executive Officer Mr Philip Reed, formerly Chief Executive Officer of the NSW Independent Commission Against Corruption, who is seated on the crossbench, we constitute the statutory officers of the Commission. Each of them is eminently qualified and suited for the large tasks that await us by learning and integrity; together, they bring to the Commission diverse and extensive experience. We have already been working together over the last month or so in anticipation of the Commission's commencement, and I am very grateful and fortunate to have their support.

The realisation of the Commission

Since Saturday 1 July, Australia has had a national anti-corruption agency with general jurisdiction pertaining to the Commonwealth public sector. Today is the

first weekday since the National Anti-Corruption Commission came into existence and commenced operations.

This is an historic moment, representing the convergence of several streams.

First, and foremost, the people of the Commonwealth are no longer prepared to tolerate practices which might once have been the subject of, if not acceptance, at least acquiescence. They have clearly expressed the desire for a Commonwealth anti-corruption agency.

Secondly, a government with a mandate to act on that desire, and with an agenda to strengthen integrity across the Commonwealth public sector, has legislated to establish this independent Commission. In doing so, it has enacted legislation which embodies the best practice principles for Corruption Commissions. These include:

- The ability to consider referrals from anyone
- The ability to commence an investigation on our own motion
- A requirement for the heads of Commonwealth agencies to refer allegations of corruption to us
- The ability to conduct hearings to obtain evidence, including the powers to summons witnesses, to require production of information and documents, and to take evidence under oath or affirmation; the abrogation of the privilege against self-incrimination, but with corresponding use immunity provisions, to ensure that evidence so obtained cannot be used against the witness in a criminal prosecution
- The ability to require the production of information or documents
- The ability to refer matters to a prosecuting authority

- The ability to make recommendations
- The ability to report on investigations and make public statements
- A corruption prevention function
- A sufficient and predictable budget
- Transparency of appointments
- Appropriate oversight

Thirdly, the leadership of the Australian Public Service has adopted the objective of ensuring that the public service embraces a pro-integrity culture.

This confluence makes this potentially an inflexion moment, when we can make an enduring difference in the ethics and integrity of the governance of the Commonwealth. Above all, this Commission is the realisation of an aspiration of the people of the Commonwealth; we know that you are watching, expectantly; and we are very conscious that it is in your interests and for your benefit that we must exercise our functions.

What has been done and where we are at

We commence operations today with the statutory officers I have mentioned having been selected and appointed; with an organisational structure in place, populated with 180 staff already recruited, to grow over the next two years to 260. We operate from existing premises in Canberra, Sydney, and Melbourne; and in the next few months this will extend to Brisbane and Perth, where premises have already been secured. Also in the next few months, our Canberra offices will move to a new purpose-designed facility, which is currently being fitted out, including a public hearing room. We have designed and implemented processes for receiving and assessing referrals; by 5.00pm yesterday we had received 44

referrals on-line and 5 telephone requests for call-backs, which will happen today. This morning, I signed instruments of delegation and authorisation so that decisions can be made and the powers vested in the Commission exercised by appropriate officers of the Commission.

That we can begin operations in this way on the day we come into existence is due to the diligent work of a joint project team of the Attorney-General's Department and ACLEI, and I pay tribute to their enormous efforts, which have set the conditions for us to commence our work immediately.

The new Commission absorbs the former ACLEI. It has become very evident to me that in recent years, under the leadership of now DC Hinchcliffe, ACLEI has undertaken much high quality but low visibility work of great importance, some of the fruits of which are yet to be seen in public. The work and heritage of ACLEI will live on in the new Commission. Current ACLEI investigations will continue in the new Commission, and the staff of ACLEI are now staff of the Commission. I have met many of them already, and am struck by their enthusiasm and their professionalism, and their commitment to the new Commission. To our staff, I promise that the Commission will be a respectful, diverse, inclusive workplace. Naturally, as an Anti-Corruption Commission, integrity will be at the forefront of our values.

Our mission and functions

The mission of the National Anti-Corruption 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.

The Commission's jurisdiction is concerned with corrupt conduct that involves Commonwealth public officials. Much of the public debate has been concerned

with parliamentarians, but the Commission will also be concerned with corrupt conduct involving public servants, individuals engaged in assisting Commonwealth agencies, consultants, and contracted service providers under Commonwealth contracts.

Commonwealth public officials wield great power that can massively impact, for better or worse, the lives of individuals and communities. They determine visa applications, distribute grants, acquire land for Commonwealth purposes, procure equipment and services, make decisions about pensions and other benefits, and deliver services on behalf of Government.

Integrity in governance is fundamental to ensuring that decisions such as these are made in the public interest, unaffected by private interest; and that resources are applied for the benefit of the people for whom they are intended, and not eroded or diverted. Integrity involves making decisions and giving advice *honestly* and *impartially*, on the *evidence* and the *merits*, in the *public interest* and without regard to *personal interest*; accepting responsibility for it, including for mistakes; and reporting honestly.

Corruption is essentially about the misuse of public power, position, or property, usually for private purposes. Corruption diverts government resources, which means there is less available to provide the services and benefits those resources are intended to deliver. Corruption erodes public trust in government and the institutions of state, and undermines democracy. This is equally so, whether it is done by those who are popular or those who are unpopular, those who are in government or those in opposition, by public servants or by consultants.

A primary function of the Commission is the investigation of conduct that could involve serious and systemic corruption. It is through detection, investigation and reporting that corrupt conduct is exposed, and through the risk of such exposure that more corrupt conduct is deterred.

Anyone can refer a question of whether there has been corrupt conduct involving a public official to us – preferably by our on-line webform, or by telephone. We will listen to you. In my experience, most apparently querulous complaints have their seed in a legitimate grievance that was not properly addressed at the outset. We will assess every matter that is referred to us, to see whether it is within jurisdiction (that is, that a Commonwealth public official is involved), whether the conduct alleged could amount to corrupt conduct, and whether it should be investigated.

That does not mean that we will investigate every matter that is referred to us. It is important to appreciate that mere mistakes and even negligent maladministration are not in themselves corruption. We cannot resolve disputes, nor review decisions. The experience of other Corruption Commissions is that only a very small proportion of matters referred ultimately reach the stage of full investigation. In deciding whether and if so how to deal with a matter, we will consider the seriousness and scale of the conduct, whether there is a realistic prospect of finding corrupt conduct, whether there have been other investigations of it, and whether it is preferable that another agency investigate it. Above all, we will be concerned with whether and to what extent a corruption investigation by the Commission is likely to add value in the public interest.

Our focus will be on issues of corruption that are potentially serious or systemic. “Serious” requires something that is significant; it involves something more than “negligible” or “trivial”, but it does not have to be “severe” or “grave”. “Systemic” means something that is more than an isolated case; it involves a pattern of behaviour, or something that affects or is embedded in a system.

We will more likely be interested in investigating matters that have current practical relevance, rather than those that are historic.

Not only can anyone refer corruption issues to the Commission, we can also investigate matters of our own motion. The Commission is obviously aware of a number of matters which have been mentioned in the media and elsewhere as potential subjects for investigation. We will assess all the matters of which we are aware, to decide whether they should be investigated. Again, relevant considerations include above all whether a corruption investigation by the Commission would add value in the public interest, especially in the light of any other inquiries or investigations that are happening, and whether there is any real prospect of a finding of corrupt conduct. Again, we may decide to investigate some of these matters in order to clear the air, even if there does not appear to be a significant prospect of a finding of corrupt conduct.

We conduct corruption investigations, not criminal investigations. There are other agencies for criminal investigations. If as a result of a corruption investigation we are satisfied there has been corrupt conduct, we will issue a report with a finding to that effect. Such a finding is a serious one, not lightly to be made. But it is important to recognise that conduct can be corrupt without being criminal, and that we do not make findings of criminal guilt, to which different rules of evidence and proof apply. If there is evidence of criminal conduct, we may refer it to a prosecuting agency. But it is precisely in the area where it may not be possible to establish criminal conduct to the high criminal standard of proof that the Commission's work can be most important in enhancing integrity by investigating and exposing corrupt conduct, even where it cannot be prosecuted in a criminal court.

It is important to appreciate that the fact that we decide to commence an investigation does not imply that there is necessarily corrupt conduct. It may sometimes be in the public interest that we open an investigation to 'clear the air', and I will use the power to make public statements about corruption issues to do so. Should it be sought to "weaponise" the Commission through inappropriate or

unfounded referrals, I will not hesitate to use the power to make public statements, if necessary, to avoid unfair damage to reputations and to say that the referral was inappropriate.

The Commission recognises the importance of exposing corrupt conduct to the public, and of making the public aware of corrupt conduct. We are also conscious that our work should be subject to public scrutiny. And so we will operate with as much transparency as we properly can. However, there are necessarily constraints on what can permissibly be done openly. Generally, it will not be appropriate for the Commission to comment on a corruption issue being assessed for investigation, or on the progress of an investigation; to do so could compromise the integrity of the investigation, and risk unfair harm to persons involved. We will conduct public hearings in accordance with the legislation, when the circumstances and the public interest justify an exception to the general rule that they be held in private. On the one hand, it is not in the public interest to have the reputations of people damaged by allegations which might turn out to be baseless; on the other, there is public interest in being informed of evidence of corrupt conduct by or affecting public officials, government departments, and politicians; and in public scrutiny of the Commission's activities. The main considerations will be the significance of the alleged corrupt conduct, the desirability of exposing evidence of it, and the appropriateness of public scrutiny of the Commission's activities; weighed against any *unfair* prejudice to a person's reputation, privacy, safety, or wellbeing that might be caused if the hearing were held in public.

We aim to complete 90% of investigations within 12 months; we expect there will be some more complex investigations in which it will take longer to elicit and establish the truth.

Education

Our work will involve not only the detection and investigation of corrupt conduct, but also its prevention through educating the public sector (and the public) about corruption. The Commission will provide guidance and information to help public officials understand and address vulnerabilities to corruption. By enhancing a culture of transparency and integrity, we will harden the Commonwealth public sector against corruption, and support the APS-wide integrity reform agenda. We can help agencies and Governments avoid falling off the integrity track, and I see that as a very important aspect of our role.

One thing we *will* do in public is to conduct inquiries into corruption risks and vulnerabilities, and measures to prevent corruption, in Commonwealth agencies and in Commonwealth programs. For example, we may conduct a public inquiry into risks and vulnerabilities, not involving a specific allegation of corruption, in a program in which contractors are used by a government agency to deliver benefits intended for members of the public.

Conclusion

The prevention of corruption is critical to ensuring that public power is exercised honestly, impartially and in the public interest, and that programmes intended to deliver benefits to the people do so, without their potential benefits being eroded by the improper diversion of resources along the way. The greater the integrity in the Commonwealth public sector, the greater the trust of the people in our democracy.

My aspiration is that this Commission become and be a respected part of the machinery of our democracy. I want the Commission to have the reputation of being fearless but fair, independent, and impartial. While the legislation gives us great powers, with that comes great responsibility. The legislation has inbuilt

guarantees of procedural fairness, and other oversight mechanisms, including the Inspector and the Parliamentary Joint Committee, to ensure that we use those powers responsibly and fairly. Our independence supports us to be fearless. The Commission is impartial and independent from government. I have been appointed for a fixed term of five years, without any possibility of reappointment; I cannot be dismissed, except for proved misbehaviour or incompetence, and I cannot be reappointed. I have nothing to gain from favouring, and nothing to lose from offending, any government of the day, present or future. I undertake to you, the people of the Commonwealth, that I will to the best of my ability fearlessly, fairly, and impartially discharge the duties of this office.

And now there is work to be done. The Commission will now adjourn. Distinguished guests are invited to join us in the adjacent room for light refreshments; the staff will show you the way.
