



post thumbnail image not found or type unknown

Integrity Body Has Limited Power Now But Just Watch This Space

Publish Date:

December 2018

The only way to ensure vested interests in the federal government don't misuse their power is to ensure the federal government doesn't wield so much power in the first place.

The Morrison government's proposed Commonwealth Integrity Commission, designed to sit above the multitude of other special purpose integrity oversight agencies, is a repudiation of bedrock principles of the English legal system.

Wide-ranging anti-corruption agencies too often turn into kangaroo courts. Tackling corruption is on its face a highly virtuous mission, and agencies committed to this are always under threat of elevating this mission above inconveniences such as complying with the rule of law and respecting the legal rights of individuals caught up in their investigations.

In NSW, the Independent Commission Against Corruption has left a trail of destruction in its wake since its establishment in 1988. It has proven much better at destroying lives and careers than it has at tackling real criminality.

Its pursuit of Australian Water Holdings in 2014 ended the political career of then premier Barry O'Farrell for failing to remember receiving a bottle of wine.

A magistrate in 2016 dismissed allegations of misconduct against former emergency services commissioner Murray Kear from an incident in 2013.

ICAC also has displayed a tendency to exceed its defined authority, as the High Court found in the commission's pursuits of former NSW premier Nick Greiner in 1994 and former crown prosecutor Margaret Cunneen in 2015.

To its credit, the federal government is trying to avoid the excesses of NSW's ICAC by limiting its power and scope. It may not realise how vulnerable those designs are: Bill Shorten immediately responded yesterday by calling for a federal ICAC to have more power and a wider scope. The Coalition has given it the keys to do this.

The proposed Commonwealth Integrity Commission is a new bureaucracy, and the nature of bureaucracies is to grow in size and power across time. Members of a bureaucracy are, just like people in other sectors of the economy, motivated by increased job and financial security.

As US economist William Niskanen once observed, the bureaucrat is "not entirely motivated by the general welfare or the interests of the state". In other words, a bureaucrat working at a federal



ICAC will have a natural incentive to increase the size and prestige of ICAC, and to justify its existence by pursuing cases that don't necessarily merit the attention in the first place. As former High Court justice Dyson Heydon noted in a 2010 case, special purpose quasi-judicial bodies tend to "lose touch with the traditions, standards and mores of the wider profession and judiciary" while becoming "overenthusiastic about vindicating the purposes for which they were set up".

On the other hand, the incentive for politicians is never to criticise ICAC lest they be criticised as weak on corruption.

When the High Court in 2015 ruled the NSW ICAC had gone too far with its powers, the state rewarded ICAC with retrospective statutory validation for past investigations.

When a government passes laws to approve its past mistake, is it any wonder that Australians have had a gutful of politics as usual? Just 46 per cent of Australians have trust and confidence in the federal government, down from 82 per cent in 2008, according to recent research published by Griffith University and Transparency International.

Less than 50 per cent of Australians aged between 18 and 44 believe democracy is preferable to any other form of government, according to the Lowy Institute. Meanwhile, voters increasingly are rejecting the major parties in elections across the country.

What is at issue is that an out-of-touch governing elite has effectively rigged the political and economic system for its own benefit.

This elite does not necessarily break any laws but acts as a successful business model that confers more power on itself at the expense of tax-paying Australians.

These vested interests permit only the policies that support their interests, usually characterised by a greater role for regulators in the economic life of Australians.

This is why Australia's red-tape burden is equal to about 11 per cent of its GDP, or why the federal parliament has passed more than 5000 new pages of legislation this year, or why the number of provisions that undermine fundamental legal rights such as the presumption of innocence or the right to silence are persistently increasing.

Another layer of bureaucracy within the federal government will only add to this problem.

The federal government's decision to capitulate on a federal ICAC is a signal it has accepted the size and scope of the state must always increase. The result is domineering government and a populace that enjoys shrinking freedoms.

This article originally appeared in The Australian