

## Commonwealth Integrity Commission Bill exposure draft

12 February 2021

The Australian Technology Network of Universities (ATN), in collaboration with The University of Newcastle, welcomes the opportunity to provide a submission to the Attorney-General's Department's consultation on the exposure draft of the Commonwealth Integrity Commission Bill.

ATN is the peak body representing Australia's five most innovative and enterprising universities: Curtin University, Deakin University, RMIT University, University of South Australia, and University of Technology Sydney. The University of Newcastle is also an important community institution in the regional gateway city of Newcastle.

Together, we are home to over 300,000 university students and over 23,000 full-time and part-time staff. References to ATN below should be read as representing all six universities.

ATN supports upholding the highest standards of honesty and accountability amongst public organisations and their staff. We respect the Government's authority, exercised on behalf of all Australians, to ensure the proper use of Government funding.

Universities are publicly accountable organisations that highly value their public standing and reputation. As such, universities have well established policies and procedures that hold their staff to the highest standards.

When establishing the Commonwealth Integrity Commission ('the Commission') the Government should incorporate the foundational principles of appropriate sensitivity, confidentiality and procedural fairness for all involved.

As organisations established by state legislation, universities are already within the jurisdiction of state integrity agencies. ATN appreciates that the Government has sought to learn from the experience of those agencies when designing the Commission but notes that universities will still be subject to those state integrity agencies and would counsel against overlap across the jurisdictions.

ATN supports the position outlined in the submissions by University of Technology Sydney and the NSW Vice-Chancellors' Committee. They note that the ten public NSW universities, including UTS, are subject to a comprehensive range of NSW legislation including the *Independent Commission Against Corruption Act 1988* (NSW) and urge the Government to consider excluding NSW universities, and universities in other states with similarly strong regimes.

Notwithstanding that, our recommendations are aimed at improving the interaction and relationships between the Commission and these other entities, clarifying the scope of the Commission, and ensuring there is procedural fairness.

### Recommendations

1. The mechanisms for referral to other integrity agencies or regulatory bodies (whether state or territory or Commonwealth), joint investigations and information sharing should be specified in primary legislation to provide certainty to the respective agencies.
2. If Recommendation 1 is not accepted, the primary legislation should require that the Minister must make rules to such effect after consulting with relevant stakeholders and with regard to the other regulatory and integrity measures in place.

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3. The Integrity Commissioner should have regard to whether the corruption issue has been addressed by other integrity agencies or regulatory bodies (whether state or territory or Commonwealth) before commencing an inquiry.
4. The primary legislation should provide more clarity as to who is a staff member of a higher education provider.
5. There should be an avenue of review on the Minister's direction for the Integrity Commissioner to investigate widespread corruption or integrity issues.

### **Interaction and relationships with other entities**

The Bill covers offences under Acts such as the *Autonomous Sanctions Act 2011*, the *Defence Trade Controls Act 2012*, and the *Foreign Influence Transparency Scheme Act 2018*. Given these other Acts already have appropriate powers of investigation, compliance and prosecution, there needs to be appropriate measures in place to prevent duplication and interference.

The Bill introduces the possibility that the Commission will refer issues to other integrity agencies or regulatory bodies (whether state or territory or Commonwealth), conduct joint investigations, and share information.

We welcome initiatives like this, as any issue should be handled by the agency that is most appropriately equipped and positioned to conduct a thorough and timely inquiry. It also reduces the possibility that the same (or substantially similar issues) will be considered multiple times by different agencies - decreasing the administrative burden of providing information, the reputational risk for participants, and the welfare burden on participants.

The Government has previously committed to data sharing between departments, agencies and regulators so that duplicate information and data requests are not made. For example, the Department of Education, Skills and Employment works closely with the Tertiary Education Quality and Standards Agency. The introduction of a new agency such as the Commonwealth Integrity Commission it is critical that the Government reaffirm this commitment and outline a framework for how they will manage the regulatory and reporting burden.

In order for the Commission to have a secure basis on which to communicate and cooperate with other integrity agencies, the primary legislation should specify the mechanisms for referrals, joint investigations and information sharing. This would provide the proper legislative backing that gives certainty and security to the Commission and other integrity agencies.

**Recommendation 1: The mechanisms for referral to other integrity agencies or regulatory bodies (whether state or territory or Commonwealth), joint investigations and information sharing should be specified in primary legislation to provide certainty to the respective agencies.**

If these mechanisms are not specified in primary legislation, then the primary legislation should specify the process for the Minister to make a legislative instrument that would enable such mechanisms and the criteria it must address.

The process should require the Minister to consult with relevant stakeholders and take into account the other regulatory and integrity measures in place. The criteria should require that the legislative instruments specify what types of referral, joint investigations and information sharing is permissible and under what circumstances these activities can be conducted.

**Recommendation 2: If Recommendation 1 is not accepted, the primary legislation should require that the Minister must make rules to such effect after consulting with relevant stakeholders and with regard to the other regulatory and integrity measures in place.**

Universities are currently subject to other integrity agencies and regulatory bodies, including:

- Obligations to state-based integrity agencies
- Financial reporting to and funding agreements with the Department of Education, Skills and Employment
- Reporting on the use of Commonwealth grant funding to the Australian Research Council and National Health and Medical Research Council
- Compliance with the Threshold Standards to the Tertiary Education Quality and Standards Agency (including the new TEQSA Higher Education Integrity Unit)
- Financial management and governance to state-based Auditors-General.

There are existing statutory obligations to report misconduct or corruption on grounds of reasonable suspicion to state-based integrity agencies, that may overlap with the obligations to report to the Commission. Other integrity agencies or regulatory bodies may have already considered the issue and decided to investigate or determined that the universities' response had addressed the issue.

In order to prevent unnecessary duplication of investigations, the Commissioner should consult with other integrity agencies and regulatory bodies (such as those listed above) to discover what investigations have already been conducted and what information is already held.

Specifying the mechanisms for referrals, joint investigations and information sharing (as suggested in Recommendation 1) would assist the Commissioner in establishing and maintaining functional partnerships with these other agencies. Rather than operating as independent units, these agencies could function more effectively as a network and produce better public accountability outcomes.

**Recommendation 3: The Integrity Commissioner should have regard to whether the corruption issue has been addressed by other integrity agencies or regulatory bodies (whether state or territory or Commonwealth) before commencing an inquiry.**

### **Clarifying the scope**

In the case of higher education providers, corrupt conduct “need only constitute a listed offence” in contrast to other organisations where the conduct needs to also involve abuse of office or perverting the course of justice. It is not clear why this distinction has been made.

As currently defined, staff members of a higher education provider include:

- a. the head of the provider;
- b. an officer or employee;
- c. a person who performs services for or on behalf of the provider;
- d. a secondee;
- e. a partner in a partnership

More clarity on the meaning and practical application of “a person who performs services for or on behalf of the provider” would help those responsible for reporting suspicions of corruption. If the definition is as clear as possible, then those responsible will better understand the depth and breadth of their responsibilities.

Higher education providers have thousands of formal and informal relationships, which can range from informal relationships between individual academics at different institutions, to extensive multi-lateral partnerships (e.g. joint research centres or jointly accredited courses). From a risk-based and proportionate point-of-view, these relationships vary greatly in their potential for corruption and impact.

The services that are provided may range in formality and intensity from volunteers at campus open days or university galleries, to long-term agreements for the provision of information technology platforms.

The scope should be clarified to only include services that meet a certain threshold, for example a “person who is engaged by the provider for valuable consideration to perform services to the public for or on behalf of the provider.” This would provide a balance between the risk and potential impact of corruption issues and the administrative and legal burden placed on providers and their associates. Once the Commission is established and the systems are more mature, the scope can be reconsidered.

In the definition of secondee it would also be best to reference the similarities to employment (e.g. a person is a secondee if they act as if they were an employee or office holder of the provider but are not). The definition as it stands may be construed to include all persons who deliver to or on behalf of the university.

**Recommendation 4: The primary legislation should provide more clarity as to who is a staff member of a higher education provider.**

### **Ensuring procedural fairness**

The responsible Minister may refer to the Commissioner an allegation, or information, that raises a corruption issue that relates to a higher education provider. However, the allegation or information can only be referred if the Minister reasonably suspects that the offence to which the issue relates has been, or is being, committed.

However, there is no such restriction on the responsible Minister directing the Commissioner to conduct an inquiry into either an issue of corruption or integrity of staff members. The Commissioner must conduct an inquiry in accordance with the direction and the direction is not a legislative instrument.

In order to ensure procedural fairness, given that this inquiry may apply to a single provider (although not a single individual), there should be a mechanism for the review of this direction. The responsible Minister should be answerable to the Parliament, so this direction should be a disallowable legislative instrument.

**Recommendation 5: There should be an avenue of review on the Minister’s direction for the Integrity Commissioner to investigate widespread corruption or integrity issues.**

**Further enquiries should be made to:**

#### **Executive Director**

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