

A Clayton's Integrity Commission?

By *Ian Cunliffe* in Pearls and Irritations, 4 November 2020

*Some readers will recall the major marketing campaign in the 1970s and 1980s for a **non-alcoholic drink** called Claytons, **which looked like and was packaged to resemble whisky**: “the drink you have when you’re not having a drink” was the slogan. The term Clayton’s caught on to mean any thing which is not the real thing, and that is ineffective.*

Federal Attorney-General, Christian Porter has unveiled his IBAC legislation, which he kept under wraps all year. The body would be called the CIC. Within a day of release, many and varied critics have criticised it trenchantly, suggesting that it would produce a Clayton's Integrity Commission.

Perhaps most memorably, Senator Jacqui Lambie called it a lap dog with dentures. Ms Han Aulby, executive director of the Centre for Public Integrity said it would be the weakest watchdog in the country. Greens leader Adam Bandt called it a “sham” and a “toothless tiger”. Independent MP, Helen Haines said she was “deeply alarmed” at design limitations for the proposed body.

Having taken almost a year to unveil his draft legislation, Porter is now proposing a further six months for consultations and submissions. To those who are used to consultation periods as short as a few weeks over Christmas or Easter, this might suggest that the Federal Government is really not very keen to have an Integrity Commission, even one of its own design. Porter's decision to re-release the draft Bill was likely prompted by the fact that Ms Haines has introduced her own Bill. The Government can be expected to resist hers with the argument that the focus should be on the Government Bill.

The Government is likely hoping that the recent surge in demand for an Integrity Commission will have died down by six months delay.

If Australia needs a Federal Integrity Commission – as I consider it does – the body should be effective to investigate credible indications of possible corruption. It should not simply be window dressing.

Certainly there are decisions to be made about respectively the powers of the body and the protections of the people who might come to its attention.

In the jurisdictions which I know best – Victoria, NSW and Queensland – Integrity Commissions have been effective in exposing very serious corruption. For example, the crimes of former NSW Minister, Eddie Obeid were very serious. In addition, at least in Victoria, NSW and Queensland, there has been a steady stream of exposures of corrupt officials at State and Local Government levels by Integrity Commissions. Looking back to the period before those Commissions were established in the various States, my recollection is that such exposures were a very, very uncommon event.

Concern is rightly expressed that the slur that a person has engaged in corrupt conduct not be publicly made without there being substantial evidence. But that is not to say that the Federal Integrity Commission should be precluded, without the glare of publicity, from investigating credible indications of possible corruption. There has been criticism that Porter's Bill would not allow investigation of how, for example, the Government came to pay ten times the market rate to Liberal Party donors for a bit of land in Leppington, NSW – as uncovered by the Auditor-General. The Federal Integrity Commission should be able to investigate that transaction. The legislation should be drafted so as to make that clear. The exposure draft of the Bill is 347 pages long, and is extremely complicated. It seems to set a much higher threshold on when the Integrity Commission can investigate.

Concern has also been expressed that some exposures of corrupt conduct by Integrity Commissions have not led to convictions. And some convictions have subsequently been overturned. Where should we come out in relation to the fact that Obeid's mate, fellow ex-NSW Minister, Ian Macdonald was convicted after the ICAC inquiry into Obeid, and subsequently won his appeal and is awaiting a retrial? One effect – for better or worse – of the ICAC public hearings into Obeid and Macdonald was to name and shame them. (Their Wikipedia entries fairly summarise the cases against them). Whether or not Macdonald is eventually convicted, I regard those ICAC public hearings as having been entirely appropriate. In particular, they exposed very serious corruption at the very highest level of the NSW Government, and demonstrated that even Ministers who engage in such activities do so at their peril.

Under Porter's Bill, however, no public hearings would be permitted in inquiries into Ministers and most public servants.

According to Michael Bradley writing in *Crikey*, under Porter's Bill the only person who can refer an allegation of corrupt conduct against a member of federal Parliament is *that* member of Parliament. There can be no public hearing, and even the outcome can't be made public. Bradley seems to be correct with that incredible revelation. The Bill seems generally to make it difficult to get an allegation of corrupt conduct investigated.

Under the Bill, the Federal Integrity Commission could not investigate past corrupt conduct – such as whether there was corruption in the Leppington land sale; or in the water buy-backs involving Angus Taylor and Barnaby Joyce.

The Clayton's Integrity Commission does seem an apt name.



Ian Cunliffe
Lawyer, formerly senior federal public servant (CEO Constitutional Commission, CEO Law Reform Commission, Department of PM&C, Protective Security Review and first Royal Commission on Intelligence and Security; High Court Associate (1971) ; partner of major law firms. Awarded Premier's Award (2018) and Law Institute of Victoria's President's Award for pro bono work (2005).