Australian Government
Attorney-General's Department

Submission

Consultation, reform or review details

Title: Commonwealth Integrity Commission Exposure Draft

Your details

Organisation: The University of Sydney

If you are providing a submission on behalf of an organisation, please provide the name of a contact person.

Full name: Professor Stephen Garton AM, Vice-Chancellor and Principal

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- Rich Text Format (RTF)
- txt format.

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Your submission:

Please see attached letter.

THE UNIVERSITY OF SYDNEY

Professor Stephen Garton AM
Vice-Chancellor and Principal

12 February 2021

The Hon Christian Porter MP
Attorney-General

Via email: cic.consultation@ag.gov.au

Dear Attorney-General,

Commonwealth Integrity Commission Bill Consultation Draft

The University of Sydney is grateful to have the opportunity to provide feedback on the exposure draft of the *Commonwealth Integrity Commission Bill* (CIC Bill) and the accompanying draft *Integrity and Anti-Corruption Legislation Amendment (CIC Establishment and Other Measures) Bill*. We do so to support and complement the more detailed submissions made by Universities Australia and the Group of Eight universities, as well as the expert analysis and advice on the drafts that have been provided by academic legal experts including Anne Twomey, Professor in Constitutional Law at the University of Sydney Law School.

We share the serious concerns our peak bodies, Professor Twomey and others have raised with your department and publicly since the release of the exposure drafts, and in their submissions. We have noted, and are rather mystified by, the nature and extent of the conceptual, design, drafting and definitional problems Professor Twomey has highlighted so clearly in her submission. If the CIC Bill is as flawed as Professor Twomey's assessment suggests it is, there would seem to be no alternative but for the Government to make major amendments, if not go back to the drawing board to start the legislative design and drafting process from scratch.

Beyond the fundamental conceptual and structural problems with the proposed legislation, our key concerns relate to the CIC scheme's proposed application to public universities, including the University of Sydney, which are statutory entities established by Acts of State parliaments.

We have summarised our key concerns below.

1. The unnecessary duplication and intersection with the effective State-based anti-corruption regimes that already apply to most Australian public universities

Public universities established as statutory authorities by State parliaments are already subject to rigorous anti-corruption and public interest disclosure laws in most jurisdictions, including in NSW under the *Independent Commission Against Corruption Act 1988* and the *Government Information (Public Access) Act 2009.* The Australian Government's desire to ensure that the chief executive officers and staff of higher education providers are subjected to strong anti-corruption laws and penalties is fully supported. However, we do not believe that a compelling case has been provided as to why state-based public universities need to be subjected to two sets of anti-corruption laws. If both regimes are to apply to public universities, this will inevitably lead to confusion, arguments over interpretation and potentially costly litigation to clarify inconsistencies between the States' and Commonwealth's regimes.

2. The different standards proposed for staff of higher education providers

As Professor Twomey explains in her submission, the CIC Bill treats employees of higher education providers differently from parliamentarians, their staff and employees of public sector agencies:

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> "For public servants, parliamentarians or their staff to commit corrupt conduct, they must have abused their office or perverted the course of justice, **and** this conduct must also have constituted an offence against a listed Commonwealth law. In contrast, staff members of higher education providers and research bodies commit corrupt conduct if they simply breach one of the listed laws, regardless of whether it involved an abuse of their office, or perversion of the course of justice, or indeed anything vaguely resembling corruption. For example, if a staff member of a university was travelling on university business, returning from an overseas conference, and breached a requirement of the *Biodiversity Act 2015* (Cth) by bringing in and not declaring a prohibited good, he or she would have 'engaged in corruption'.

We are perplexed by the different treatment proposed for the heads and staff of higher education providers compared to the other categories of individuals to whom the proposed law will apply. Moreover, we do not understand how many of the potential offences that could be committed under the various listed laws (*Autonomous Sanctions Act 2011*, *Biosecurity Act 2015, Charter of the United Nations Act 1945*, *Defence Trade Controls Act 2012*; *Foreign Influence Transparency Scheme Act 2018*; *Public Interest Disclosure Act 2013*) could be regarded as corruption. Appropriate powers to enforce compliance, investigate and prosecute alleged offences by office holders and staff of public universities are already embedded in the other Acts.

3. The increased administrative and extra red tape burden the proposed regime will introduce for higher education providers

It is not widely appreciated that Australia's large, public research-intensive universities, are subject to some of the most stringent and complex regulatory requirements applied to any Australian organisations. This arises from the breadth of the education, research and related activities research universities undertake and the need to comply with sometimes overlapping Commonwealth, State or Territory laws. For example, the University of Sydney currently has 120 Commonwealth and NSW Acts listed on its legislative compliance framework which is concerned with laws which have particular significance for universities.

Ensuring compliance with the ever-changing regulatory requirements comes with a significant cost, which we estimate already exceeds $10 million annually once all direct and embedded costs are taken into account. Every dollar that universities must spend ensuring legal compliance is a dollar that cannot be invested to improve the quality and impact of their education and research activities.

The extreme complexity of the proposed CIC Bill, combined with its inevitable overlaps with NSW's existing anti-corruption laws, mean that the additional red-tape compliance costs are likely to be significant. We struggle to see how such an outcome would be desired by a Government that is seriously committed to minimising regulatory compliance costs across all sectors of the economy. At the very least, a comprehensive review of the regulatory impact of the proposed regime on all types of higher education providers (public and private) needs to be completed in line with the Office of Best Practice Regulation's guidelines.

For these reasons, and the many others our peak bodies, legal experts and others have outlined extensively in their submissions, we strongly recommend that the Department seriously rethinks the overall design of the CIC Bill as well as its proposed application to Australia's public universities established as statutory authorities of State governments.

Yours sincerely,

(signature removed)

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