

## **An independent anti-corruption agency for Victoria?**

In recent months there has been debate in Victoria about whether it is in the public interest for the Parliament to establish a standing commission having the continuing function to investigate and expose corruption in the public sector and to educate public authorities about corruption and its detrimental effect on public administration.

Transparency International, of which I am the Australian Chair, has urged the Government to accept the need for a standing commission and to apply itself as to how it should be structured. New South Wales, Queensland and Western Australia have established anti-corruption commissions with some differences. But their core functions are the same, viz to investigate, expose and educate.

New South Wales was the first state to establish an anti-corruption commission following a number of public sector scandals in the seventies and eighties (not an entirely dissimilar state of affairs in Victoria at the present time).

It was recognised that the criminal justice system was unable adequately to deal with public corruption. Unlike most unlawful behaviour, corrupt conduct leaves behind no damaged bodies or defrauded individuals. It is conduct engaged in by consenting adults behind closed doors. But it is not victimless because the victims are the body politic and law-abiding citizens.

In order to be effective, a standing commission must have powers beyond those ordinarily given to the police. For example the NSW Commission can compel the production of information, and can hold public and private hearings at which people called are not excused from answering questions on the grounds of what might be called common law privileges (e.g. the right of silence, the privilege against self incrimination, legal professional privilege etc.). However answers given and information obtained under compulsion cannot be received in evidence in criminal, civil or disciplinary proceedings. Whether that immunity should continue in civil and disciplinary proceedings is presently the subject of debate.

When the Bill was introduced into the NSW Parliament, it was bitterly opposed by the Labor Party, civil libertarians and professional associations. Labor feared the Commission would unfairly harass and persecute members of the outgoing government. Others feared the Commission would eventually abuse its powers as did the Star Chamber in England in the 17th century.

The Commission has operated for more than 20 years, during which time it has exposed corruption at the State and local government level. It is now supported by all major political parties. It presently enjoys massive public support as is evidenced by many surveys. There have been no instances of abuse of power or other impropriety, notwithstanding the establishment of an Inspectorate years ago to whom people may complain and which has the power to undertake spot audits.

Most criticisms come from member of the parties in opposition claiming the Commission is not sufficiently energetic in pursuit of those in power. Some claim to have referred matters to the Commission when they have not. Others claim the Commission is not investigating when it is. For self evident reasons these criticisms cannot be debated in public. But of some significance is that hardly any are referred to the Inspectorate and it has made no findings adverse to the Commission.

It is sometimes argued that the absence of legally admissible evidence of corrupt conduct demonstrates no corruption and hence a standing commission is unnecessary.

During my tenure as Commissioner I presided over many public hearings resulting in many findings of corrupt conduct. Had there been no Commission, very little would have seen the life of day. Most exposure was the result of the Commission exercising coercive powers not available to the police.

Another criticism is that, if (as has happened in NSW) corrupt conduct is repeated after exposure, how can the effort and expense be justified? That criticism would be better directed to those responsible for governing the State - Ministers of the Crown and heads of departments. If it is not fixed it should be taken up in the Parliament. The Commission has neither the expertise nor the resources to supervise the conduct of 350,000 public servants. Moreover by becoming too close to the solutions the Commission risks compromise. But however that may be, it is surely in the public interest for corruption to be exposed rather than hidden.

The jurisdiction of the NSW Commission extends to the Governor, members of parliament and all other public officials, including elected and non-elected local government officials. It also extends to non-public servants who attempt to corrupt public officials or cause them to misapply their discretions.

It must be steadily borne in mind that the Commission is not and was not intended to be a Crime Commission or a criminal law enforcement agency. It cannot prosecute or even recommend prosecution. The only thing it can do is refer material to the Office of the Director of Public Prosecutions for advice and, if appropriate, action. In this regard it is different from the Hong Kong Commission which is a criminal law enforcement agency.

Ultimately it is for the Victorian Parliament to make its own decision. But it is the hope of Transparency International that, unless the State is confident that absence of public sector corruption is what separates it from the rest of the country, it will adopt an anti-corruption commission.

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*May 2010*