

## Features

A watchdog for every house

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An Inquirer investigation shows the fight against official corruption in Australia remains patchy, although there may be a deterrent effect, write Matthew Denholm and Imre Salusinszky

TWENTY years since the birth of Australia's first anti-corruption watchdogs, seasoned anti-graft campaigners, alarmed at a sharp decline in ethical conduct, are demanding a fresh wave of reform to finish the job.

Monday marks 20 years since NSW introduced legislation to establish its Independent Commission Against Corruption, while Queensland's Criminal Justice Commission was not far behind. Yet two decades later, three states -- Victoria, South Australia and Tasmania -- stubbornly resist calls to set up similar watchdogs.

Federally, the Rudd Government is considering leading by example, with Special Minister of State John Faulkner eyeing a possible ethics commission. But there is no guarantee.

The case for a further reform is compelling. From the allegedly corrupting influence of some Wollongong, NSW, developers and former Labor premier Brian Burke's insidious sway over politicians in the west, to the apparent power of timber barons in Tasmania and the pokies industry in Victoria, state governments are plagued by a culture of seemingly dodgy backroom deals.

Wall-to-wall state governments of the same political hue, some in power for more than a decade, appear to have blurred the lines between government and business, between public service and executive government.

Even at the federal level, historically regarded as fairly clean, the trends across party lines are concerning. MPs have been caught moonlighting for private interests; ministers have made a mockery of the Westminster convention of ministerial accountability; the public service has become increasingly politicised and there have even been recent allegations of bribes.

Among those demanding further reform is Max Bingham QC, founding chairman of the Queensland Criminal Justice Commission (since replaced by the Crime and Misconduct Commission) and former member of the National Crime Authority (since replaced by the Australian Crime Commission).

Bingham, who retains respect on all sides of politics, is deeply concerned about a decline in adherence to Westminster principles of ministerial responsibility, as well as the undermining of the independence of the public service.

“I think we have got to a stage where it does seem necessary to have some sort of body to which people can take complaints and I think there does seem to be a need for general ethical training across the public sector,” Bingham tells Inquirer.

“Given the general state of things across the country in this day and age, it seems to me that most states need some sort of independent whistleblower, particularly where governments have held office for more than a few years.”

Bingham has developed proposals for a new form of ethics commission, which closely aligns with the work of Jeff Malpas, a leading campaigner for ethics in government, an Australian Research Council professorial fellow at the University of Tasmania and distinguished visiting professor at La Trobe University.

Bingham proposes an ethics commission with powers similar to the NSW ICAC but also with a vital role in educating politicians and public servants about ethical standards. He agrees wholeheartedly with NSW Premier Morris Iemma, who recently declared: “Any jurisdiction (that) doesn't have an ICAC-type body is, in my view, just crazy. If you don't have one, you have either discovered a secret to human nature that has eluded the rest of us or, as is more likely to be the case, you are just kidding yourself.”

So are John Brumby, Mike Rann and Paul Lennon, the premiers of Victoria, South Australia and Tasmania respectively, and Prime Minister Kevin Rudd crazy, kidding themselves or worse?

Rann and Lennon argue their states are too small to fund a NSW-style ICAC, and insist either that there is no evidence of organised crime on their patch or that existing structures can handle it.

However, the Bingham-Malpas model counters these arguments by focusing solely on ethical conduct by politicians and public officials in local and state government, leaving organised crime to other bodies. Bingham addresses the cost argument by proposing a slimmed-down structure that can respond to complaints when they arise, without a large permanent bureaucracy.

His ethics commission model is an ICAC-lite, designed to be less costly and more responsive than lumbering giants in NSW and Western Australia. Bingham, a former Tasmanian Liberal attorney-general and Opposition leader, says such a body would be headed by a full-time commissioner, most likely an ex-judge. They would be supported by two part-time commissioners, "a couple of sensible people to keep him (the commissioner) on track and in touch with reality". Support staff would be kept to a minimum, with police seconded to conduct investigations and existing ethics training, such as is offered at some universities, contracted.

The Bingham-style commission would have the powers of ICAC or a royal commission, including those to compel witnesses to answer questions and produce documents, but avoid some of the more controversial powers enjoyed by WA's Corruption and Crime Commission.

"What I'm proposing is small and simple but will do the job," Bingham says.

He and Malpas, who are part of a much larger chorus of politicians, lawyers and concerned citizens across the country, have an unlikely ally, in some ways, in former NSW Liberal premier Nick Greiner.

It was Greiner who moved the legislation to establish ICAC in NSW 20 years ago -- on May 26, 1988 -- but who ironically

became its most famous scalp. He lost power and political career when, in 1992, ICAC's first commissioner, Ian Temby QC, ruled he had technically acted corruptly in offering a public service position to former education minister and renegade Liberal MP Terry Metherell in return for him vacating his safe Liberal seat.

Greiner, now a leading Sydney business figure, was later cleared by the courts. Despite the experience, he is still a firm believer.

“ICAC has produced a significant cultural change,” he tells Inquirer. “That doesn't mean they have eliminated corruption. You can't do that because of human nature. But corruption hasn't been an issue in a state election since ICAC came in.”

As for his treatment at the hands of Temby, Greiner is philosophical. “I always thought Temby's decision was just absurd and almost everyone else did, too,” he says. “There is a risk they will occasionally get things wrong, the same as the court system.”

In NSW, ICAC employs about 100 people and costs taxpayers \$17 million each year. In 2006–07, it received 2149 complaints, undertaking 73 investigations, finding 17 individuals corrupt and referring 16 of them to state prosecutors for possible criminal proceedings.

But there is a view that, since Greiner, its chief victims have been minnows -- local councillors and minor functionaries in government departments -- rather than the big fish. ABC television journalist Quentin Dempster, a veteran corruption-watcher who helped expose crooked police in Queensland in the 1980s, says ICAC has “proved its worth as an external accountability mechanism on a \$45 billion state bureaucracy”.

But he, too, has concerns. “The ICAC has used its coercive powers to good effect in RTA, State Rail, housing, building services and local government corruption, but there's a good deal of scepticism at the moment about its inscrutability,” says Dempster.

“After Wollongong council corruption was exposed, everyone wants to know why it has not been pursuing the evidentiary trail up to Macquarie Street to determine if the slush-funding of the NSW branch of the Labor Party by property developers and other

vested interests represents serious and systemic corrupt conduct."

Former NSW premier Bob Carr -- who reportedly stared down pressure from Labor mates to nobble ICAC -- says ICAC's oversight of local government corruption alone justifies its existence. ``Also, I think the advantage of NSW having a corruption-resistant state public service is very real, especially when we're competing with the other states in Australia and nations in the region for investment," says Carr. ``The mere threat of ICAC probably creates a useful atmosphere, but we do face a challenge that ICAC be ethical. You don't want them to stray from their anti-corruption brief into mad, undefined areas of oversight."

While Carr would not name names, senior legal figures are critical of the direction ICAC took under Barry O'Keefe, commissioner from 1994 to 1999. Most famously, an investigation by ICAC in 1998 into alleged links between colourful Blacktown Labor MP Paul Gibson and underworld figure Louis Bayeh was derailed after O'Keefe made comments about Gibson's character at a public function.

In Queensland, Bingham's CJC rose out of the Fitzgerald inquiry in the late '80s, which uncovered a web of public sector, police and political corruption that led to the jailing of four ministers and a police commissioner. The CJC, as it was then, was an integral part of Fitzgerald's blueprint for Queensland's future. The CJC merged in 2002 with the Crime Commission to become the Crime and Misconduct Commission. CMC chairman Robert Needham backs Bingham's concerns about, as he puts it, ``slippage" in the standards of public administration.

Of all the states with an anti-corruption watchdog, the CMC has the lowest rate of convictions. Its critics argue that this is because it's not doing its job. Its advocates insist it is rather a sign that it has succeeded in changing cultures.

Last financial year, the CMC, with a budget of \$39 million, recommended 85 criminal charges be laid against 29 individuals. However, critics say there are few high profile scalps, beyond mining magnate Ken Talbot and former minister Gordon Nuttall. Both have been charged with corruption and the prosecution is at a committal stage.

Former premier Peter Beattie says that while the CMC is far from perfect, it does provide a deterrent. ``It's like a dose of epsom salts, it puts the cleaners through everyone," he says. ``I used it as a big stick to wave around. Having it means that everyone knows that if you misbehave or have bad intentions, then they'll be on to you."

Beattie believes that after almost 20 years' operation, it's time to re-examine the CMC to ensure its powers are still the relevant. It's an opinion shared by Mike Ahern, Nationals premier when the legislation introducing the CJC was brought into the Queensland parliament in 1989. ``It has been very successful, but I've got an idea that it should be reviewed 20 years on, and whether it needs extra powers or less powers or different powers," he says. He too believes the CJC and CMC have turned around the culture in government and police.

Out west, the CCC has more powers and more recent Mr Bigs under its belt but it also attracts more negative publicity for what some see as Stasi-like secrecy and entrapment. Established in 2004 after years of ineffectual and legally hamstrung crime bodies, the CCC has gained national prominence in its pursuit of disgraced former premier Burke and his lobbyist partner, former Labor MP Julian Grill.

The collateral damage to Alan Carpenter's Government has been considerable; several ministers and numerous senior public servants have been forced to resign in disgrace. Police officers, prison warders, council officers and elected mayors have been named, shamed and, in some instances, charged and dealt with by the courts. That said, only 22 people have been convicted of charges directly brought about by the CCC's work since its inception, at a present cost of \$27million a year.

The CCC has the ability to tap phones, bug houses, secretly film crime targets, use assumed identities and compel witnesses to answer any question at any time it deems fit, and the quality and quantity of information flowing into it -- which is still restricted to investigating public officers, not organised crime -- is unprecedented.

Unlike its eastern states equivalents, the CCC also has the power to hold integrity tests, where targets are put in positions where they are tempted to break the law or act inappropriately. In the

past three years, there have been 22 such integrity tests. However, the methods are a closely guarded secret.

But there are also concerns people are not given a proper right of reply to allegations often aired in public hearings.

The CCC parliamentary inspector, Malcolm McCusker QC, believes some adverse findings have been unfair and challenges the commission's findings against former police minister John D'Orazio, senior public servants Paul Frewer and Mike Allen, as well as former Environmental Protection Authority head Wally Cox, much to the CCC's fury.

Despite squabbles over powers and methods, no one in any of the states with anti-corruption watchdogs seriously suggests they should be abolished.

This takes us back to the central point: are we really expected to believe that politicians and public servants in Tasmania, Victoria, SA and federally are incorruptible? Hardly.

In Tasmania, state Labor has lost two deputy premiers to scandal in less than two years and Lennon has been plagued by allegations of improper conduct, largely relating to his relentless pursuit of a pulp mill.

Lennon argues that Tasmania's "existing systems" -- police, ombudsman, DPP and auditor-general -- are sufficient. Bingham says Lennon is missing the point. "Clearly, the Premier is mistaken," Bingham says. "I mean, we're running out of deputy premiers."

"I think he's been misled perhaps by the emphasis on organised crime and corruption; I don't think that's what we're looking at in Tasmania. What we are looking at is what in Queensland they called allegations of official misconduct and breach of trust by public officials, and a need for ethical training. We have a problem about people understanding what their public duties are."

Since replacing the terminally ill Jim Bacon as premier in March 2004, Lennon has been exposed as accepting upgrades from the Packer empire's Crown Casino, ahead of a major announcement on a Packer-Betfair betting exchange licence; seen nothing wrong with failing to declare the flow of many tens of thousands

of dollars in government contracts from departments under his control to a company part-owned by his brother; been accused of leaning on a planning judge to cut short the pulp mill assessment; and refused to answer basic questions about whether his fast-track of the mill was cooked up in advance with Gunns Ltd to sidestep planning laws. (Gunns denies this, but Lennon has repeatedly refused to answer questions about prior discussions with the company ahead of announcing the fast-track.) In the meantime, then deputy premier Bryan Green was charged with serious criminal conduct for signing a secret monopoly deal with two ex-Labor ministers, while Green's replacement, Steve Kons, was caught lying to parliament about the alleged nobbling of a judicial nominee who had embarrassed the Government over the mill. Green was charged and tried twice, but in both cases the juries were unable to reach a verdict.

Lennon holds up the Green case as proof that no ICAC is needed in Tasmania. However, the secret deal Green signed only became public and known to Lennon and police because it was exposed by The Australian. And DPP Tim Ellis SC has made it clear he investigated the matter only because it was referred by Kons, who was then attorney-general. Even then, Ellis has said he felt able to take the issue on only because of tripartite support for an investigation; a mere reference from the attorney was of itself not enough. Ellis has publicly taken on Lennon over this issue, bluntly informing Tasmanians that there is no independent investigative body in the state.

So even when respected QC David Porter, now a judge, provided legal advice that it was ``reasonably arguable" that Lennon had broken the law by allegedly ``leaning on" planning judge Christopher Wright, nothing happened. Lennon, who denies any wrongdoing, simply stonewalled. Time and again in Tasmania, serious allegations are left hanging because there is no independent body capable of initiating investigation.

Lennon has an ally in Brumby, who yesterday reiterated his view that the combination of the Office of Police Integrity, the Ombudsman and the Auditor-General gave Victoria adequate protection against corruption. But public administration experts, the Opposition and the police union say it is ludicrous to suggest corruption stops at the doors of state parliament.

``Whether they're doing it because they're concerned about what might be uncovered or they're concerned about the political



fallout, they have yet to give a credible explanation," says Colleen Lewis, Monash University associate professor of criminology.

Liberal leader Ted Baillieu argues the pre-election deal between Labor and the Police Association in 2006, the Government's handling of gaming and lottery licences, and the Myki transport ticketing controversy are all issues that warranted investigation by a standing commission.

Similarly, in South Australia, Rann is resisting intense pressure from the Liberal Opposition and a determined band of 80 lawyers demanding a oversight body. Rann argues it be a ``lawyer's banquet" and, like Brumby and Lennon, insists existing structures are sufficient.

Most of those pushing reform point to the case involving former Rann government adviser Randall Ashbourne as evidence for the need for a new body to examine misconduct, as well as criminal actions.

Ashbourne was acquitted in the District Court of the charge of using his influence and the offer of a government board position to have ex-Labor MP Ralph Clarke dump a defamation action against Attorney-General Michael Atkinson.

Malpas says Canberra should not be let off the hook, either. ``I would argue very strongly for the need for an ethics commission at the federal level and not only at the state level," Malpas says. ``One example of the relatively low levels of understanding of ethical conduct in government at the federal level was given by the Mark Vaile case earlier this year." The Nationals MP was caught moonlighting, while on leave from parliament, for ServCorp, a company whose activities he once promoted as trade minister. ``The focus on ethics rather than corruption is what is important, since Australia has a very poor record of upholding ethical standards in public life, whether in government or in parliament more broadly," Malpas argues.

``This is in marked contrast, for instance, to the British system in which ministers are much more likely to be called to account for impropriety and in which there is a much larger and encompassing structure of ethical oversight of politicians and public officials."