

2007

Corruption, power and the law

Joel Butler

Bond University, Joel_Butler@bond.edu.au

Follow this and additional works at: <http://epublications.bond.edu.au/nle>

Recommended Citation

Butler, Joel (2007) "Corruption, power and the law," *The National Legal Eagle*: Vol. 13: Iss. 1, Article 4.
Available at: <http://epublications.bond.edu.au/nle/vol13/iss1/4>

This Journal Article is brought to you by the Faculty of Law at ePublications@bond. It has been accepted for inclusion in *The National Legal Eagle* by an authorized administrator of ePublications@bond. For more information, please contact [Bond University's Repository Coordinator](#).

Corruption, Power and the Law

Joel Butler
Senior Teaching Fellow
Faculty of Law
Bond University

News stories over the past few months have seen a number of politicians across Australia accused of corruption. And it's not only politicians: readers will be familiar with regular claims made about the police in various Australian States, about corrective service officers and local government councillors, or against public servants generally.

Wikipedia defines corruption thus:

'Corruption is a general concept describing any organised, interdependent system in which part of the system is either not performing duties it was originally intended to, or performing them in an improper way, to the detriment of the system's original purpose.'

It is not only politicians and others who take money for favours who constitute the corrupt of Australian society. One of the major 'types' of corruption found in western societies – Australia included – is certain forms of 'white collar' crime. Where, for instance, a director knows that his or her company is about to make a market announcement that will affect the share price, and buys or sells shares based upon that information before it becomes publicly known, this too is a form of corruption.

Why is corruption bad?

Corrupt activities undermine processes that were put in place to achieve a certain outcome. Undermining those processes in order to make a personal gain has the potential to cause *public* harm, as well as harm to many individuals.

At a simple level, let's say for example that a local builder pays a local council inspector \$1000 to allow him to put in a swimming pool that is larger than allowed by Council regulations. Why is this bad? It could be argued that the owner has now got the pool she wants, the builder has been paid for his job, and the local councillor is a little better off. But it is very probable that the swimming pool regulations are in place for a reason. Perhaps pools that big are more likely to collapse or be faulty, perhaps they use a huge amount of extra water in an area where water is scarce, or perhaps there is another good reason why swimming pools should not be over a certain size in a certain area. Allowing a swimming pool this size might, therefore, actually be dangerous.

But a more serious issue is that the *system* put in place by the local council has been undermined. Even if, in this instance, it does not really matter that a particular person has got a bigger swimming pool than they should, what has happened is that the system of building approvals has been undermined. It may not matter if one person is allowed a bigger pool, but what happens if 1000 people 'cheat the system'? What happens if the same council inspector takes bribes to overlook occupational health and safety laws and people's lives are actually endangered as a result?

Another major negative effect of corruption is that it undermines people's confidence in the system. Once people find out that the council will allow ratepayers to circumvent their rules by paying money, it is more than likely that very few people will have any respect for those rules at all.

Finally, corruption can simply be viewed as *unfair*. A corrupt system is one that treats people differently because of reasons not relating to the law or merit. Should a person who has enough money to bribe a council official have more rights (in this case, the right to a bigger swimming pool) than a person who does not?

Corruption at a more serious level can have more serious consequences. Politicians who take bribes in return for their votes on particular issues in parliament or Ministers who take bribes in return for favours for those who pay undermine the public's confidence in the whole democratic process. Generally it is a principle of western democratic systems that politicians are elected by the people to represent their interests – not the interests of those who secretly pay for them. Corruption of elected representatives and politicians leads to voters taking less seriously the democratic process itself – and along with a cynicism about the fairness of the system comes an attitude on the part of citizens that, since those in power are not following the rules, why should they? A society cannot last too long if people do not follow the laws because they have no faith in them or the system that those laws are meant to support.

Private corruption

Corruption not only relates to those in public office. There are many instances where breaches of the law by *private* persons can be considered corruption as well. Insider trading by company directors is one example of this sort of private corruption. An example would be where a director is privy to inside knowledge about a company that will affect the share price of that company, but the general public and investors are not aware of that information.

This would allow the director to buy or sell shares on the market *knowing* they are about to go up or down in value. This means that someone else – the innocent investor – is buying or selling shares at a disadvantage to that director. If the director knows that the shares are worth more than the market thinks they are worth, and the investor sells to the director at the current price, then the director is gaining a profit that they otherwise would not have had, based on their insider information. This sort of activity is illegal in Australia and most other countries that have sophisticated trading markets.

Like public corruption, this sort of activity is not only unfair, but here it would also undermine the public's confidence in financial markets. If investors feel that they will be the victim of others with insider knowledge they are likely to stop investing in markets altogether. Since companies across the world rely upon markets for literally trillions of dollars of investment funds, the collapse of these markets would be, to say the least, a financial disaster.

So it is clear that widespread corruption is bad not only for the democratic process but also for the economy.

Effective laws

Law by itself is useful for nothing. Citizens can pass all the laws they want, but unless there is some way of *enforcing* those laws, it is unlikely they will be effective at all.

When most people talk about mechanisms to enforce laws they think first of all of the police force, which typically investigates and enforces criminal laws.

Another crucial element in the enforcement of laws is an effective court system. A court system is also essential for ensuring public confidence in laws. This is where the concept of an independent judiciary becomes important. Citizens need to believe that if they are accused of breaching a law their case will be independently and fairly judged. Here too, if judges are seen as corrupt, the system will fail, as citizens will not be confident that the law will be applied fairly.

Combating corruption

As society becomes more and more complex, the laws needed to regulate people's behaviour become equally complex. As laws increase in complexity and number, the methods of enforcement also need to adapt.

In Australia today we have a number of different institutions set up to combat corruption. These have been established to investigate possible corruption in a certain area (eg, State-based organisations) or in certain fields of activity (eg, in the financial markets) or by certain types of organisation (eg, organised crime).

State-based organisations

Many Australian States have established their own corruption 'watchdog'. New South Wales, for example, has the Independent Commission against Corruption (ICAC),



Western Australia has the Corruption and Crime Commission (CCC), and Queensland the Crime and Misconduct Commission (CMC). Each body has an Act of Parliament that establishes it and gives it power – and in some cases these powers are very broad.

For instance, ICAC's functions include:

- *investigating and publicly exposing* corrupt conduct so lessons may be learned and its recurrence minimised;
- *actively preventing* corruption by giving advice and assistance to build resistance to corruption in the public sector; and
- *educating the community and the public sector* about corruption and its effects.

Other bodies in other States have similar roles and powers.

Specialised national organisations

At the federal level these bodies include the Australian Federal Police (AFP), the Australian Crime Commission (ACC), the Australian Securities and Investments Commission (ASIC), and the Australian Transactions Reports and Analysis Centre (AUSTRAC). Although it is not necessarily the central function of each of these bodies to investigate corruption, their wide powers mean they have the ability to investigate corrupt activities in certain areas, as explained below:

- **AFP.** As well as having a role in investigating overseas crime that might impact on Australia (including corruption) the AFP has a significant role in investigating and preventing crime within Australia. In particular it concentrates on crimes involving illicit drugs, fraud, online child sex exploitation, child sex tourism, electronic crimes and people smuggling.
- **ACC.** The ACC was established in 2003 and its role is to investigate and 'disrupt' serious criminal activities such as money laundering, serious tax fraud, drug running, terrorism, gun running and organised crime. Where these crimes involve corruption (as they often do) the ACC has the power to investigate.
- **ASIC.** ASIC's role is (among other things) to uphold Australian *companies* law uniformly, effectively and quickly, and to promote confident and informed participation by investors and consumers in the financial system. To do this it has wide powers to investigate the activities of companies and directors to ensure that they are not engaged in any improper or corrupt practices. Insider trading (discussed above) is one of the things ASIC investigates and tries to stop.
- **AUSTRAC.** The Australian Transaction Reports and Analysis Centre is Australia's anti-money laundering regulator and specialist financial intelligence unit. It monitors financial transactions across the country to detect money laundering, organised crime and terrorist activities. Every transaction over a certain size wherever it occurs in Australia needs to be reported to AUSTRAC – and AUSTRAC then uses sophisticated software to look for suspicious patterns in financial dealings.

Other mechanisms for combating corruption

There are also a large number of specialised tribunals that have some role in preventing corruption or dealing with its consequences once it has occurred. Tribunals are much like

courts in the way they deal with issues and the powers given to them to resolve disputes between parties, but they usually are restricted to hearing very specific types of matters.

At the federal level, and in some States, there are administrative review tribunals. These bodies allow people to seek a review of the decisions of government decision-makers. Tribunals generally have the power to decide whether a decision-maker took into account things she or he should not have, to determine whether the decision-maker made a particular decision based on improper motives, and so on. The existence of these tribunals means that it is much easier for a citizen to claim that she or he is the victim of corruption, and to get a remedy when it is shown they have been.

One of the major types of law that has been introduced in the past decades that allows corruption to be brought to light is 'freedom of information' legislation. These laws allow citizens to apply for and receive government documents relating to the work of government. Although there are some restrictions on what can be claimed, it has become very clear that the ability of people (whether individual citizens or journalists, for instance) to access government documents is an excellent way of exposing corruption and incompetence.

Other important laws passed in some areas protect 'whistleblowers' who expose corruption. Whereas in the past it may have been that a government bureaucrat would be unwilling to expose corruption because they thought they would be victimised if they did so, many States now have specific laws making such victimisation unlawful – another development that makes it more likely corruption will be exposed.

Conclusion

There are many organisations that exist specifically to deal with corruption, or to make it more likely that people will become aware of it and then have a mechanism for dealing with it. But all of these systems are reliant upon people – ordinary citizens – taking them seriously and caring about them. If there is no vigorous media willing to bring corrupt practices to light, and no informed and interested public watching out to ensure the various anti-corruption bodies and mechanisms are working properly, it will be much easier for corruption to occur.

Laws, oversight and enforcement bodies, and anti-corruption mechanisms are simply tools. In order for them to work properly, they have to be kept in good working order – and the responsibility of doing this rests with the citizens within a system. If the public simply does not care, they should not later complain when they are the victims of the corrupt politician or police officer!

Explore:

Find out more about the anti-corruption bodies operating in your State or Territory and/or nationally. What are they called, where are they located, what are their powers, what do they do?