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Daily Media Overview



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Nurses plead: don't target us

The Saturday Age, Melbourne, General News, Dana Mccauley

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The nurses' union has distanced itself from the militant CFMMEU, appealing to the Senate crossbench to spare its "respectful" campaigns for patient safety from a union crackdown aimed at bringing the John Setkas of the movement to heel. Labor MP Ged Kearney, a former nurse and ACTU president, is seeking a meeting with Tasmanian senator Jacqui Lambie to plead for her to block the government's Ensuring Integrity Bill, which will make it easier to disqualify union officials and deregister unions.

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MORRISON SHAPES UP FOR EPIC UNION FIGHT

But those in its sights won't necessarily be caught

EWIN HANNAN

WORKPLACE EDITOR



Cut through the legalese and rhetoric and it is apparent that the Morrison government's rebooted workplace agenda is designed to give the Coalition more power to deregister unions, disqualify union officials, torpedo union mergers and reduce the multi-million-dollar revenue streams flowing to unions.

The objectives are consistent with the Coalition's approach since Work Choices helped defeat John Howard and his government in 2007: minimise overt measures to directly cut workers' pay and conditions and go after unions, particularly the Construction Forestry Maritime Mining and Energy Union.

Scott Morrison and his Attorney-General and Industrial Relations Minister Christian Porter have sought to capitalise on the labour movement's failure to kill off the career of CFMEU Victorian leader John Setka to legitimise their fresh bid to get two Fair Work amendment bills, Ensuring Integrity and Proper Use of Workers Benefits, passed by parliament.

The Prime Minister contrasts Anthony Albanese's move to expel Setka from the Labor Party

with the ALP's refusal to support the Ensuring Integrity Bill. "How can you not vote for a bill that would see John Setka booted out of the union movement as well?" he asks.

But the bill, if passed, will not mean that Setka is automatically disqualified, as it is not retrospective. He will have to be found guilty of future law breaches and be subject to a successful Federal Court application to ban him. While Setka's opponents might argue this is only a matter of time, there is no guarantee the bill's passage will have him removed.

That said, union leaders remain filthy at Setka as they believe his conduct has given the Coalition momentum to have a second go at passing laws that would also make it easier to put unions in administration and scuttle union mergers based on business opposition.

One of the bill's more contentious provisions is that it allows any person with a "sufficient interest" to apply to the Federal Court for orders to disqualify an officer or deregister a union. Unions say companies and employer groups will be able to exploit this provision and seek court orders to get union officials banned and unions deregistered.

ACTU president Michele O'Neil says the bill would allow "disgruntled employers, lobbyists and politicians to seek to deregister unions and disqualify mostly volunteer office holders for even minor civil breaches".

Asked whether employers in conflict with a union could potentially apply for such orders, Porter agrees "that's one potentiality" but argues the test is "not unusual" and exists in other industrial relations law. "We're open to engagement but that seems an entirely

reasonable provision," he said.

"What we are establishing is that people with serious criminal offending and serious repetitious breaches of the very industrial law they are meant to observe should

not be able to be elected officials of a registered organisation. That, to me, seems a complete no-brainer."

Australian Chamber of Commerce and Industry chief executive James Pearson says the bill "brings in a strong regime to sanction those who repeatedly break the law, act in a corrupt manner or commit serious offences". "Without a doubt, the government is

proposing a significant step up in accountability ... but there must come a point at which the government, on behalf of our community, says 'enough'," Pearson says.

The bill passed the lower house this week and will now be subject to a Senate inquiry due to report by October 25. A Senate vote might not occur until November, with the government needing the

support of four crossbenchers.

Centre Alliance MP Rebekha Sharkie says the bill is a response to the recommendations of the Heydon trade union royal commission, which she called a "damning indictment of the conduct of senior union members and the culture of self-interest that flourished under their watch".

While maintaining that the bill was an improvement on the 2017 version, Sharkie reiterated the minor party's concern that it gave the minister the power to apply to the Federal Court to deregister a union or disqualify a union official. "It may be that safeguards should be in place to ensure that this power is not exploited for political purposes," she says.

Porter says he will talk to the



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**MIKE
SECCOMBE**

is *The Saturday
Paper's* national
correspondent.

Coalition bets anti- union bill on Setka rebuttal

While the government argues it needs tough new powers to break up thuggish, militant unions, experts say the average union member is a 50-something woman working in aged care.
Mike Seccombe reports.

The Morrison government must be thanking its lucky stars for John Setka.

Who would it point to in order to stir support for the latest tranche of proposed anti-union legislation, were it not for Setka?

Perhaps underpaid teachers. Or workers in understaffed aged care facilities. Nurses? The teenagers who serve at McDonald's?

In his speech introducing the Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019 into Parliament, Christian Porter – who is both attorney-general and minister for industrial relations – referred expansively to “organisations” that “have nothing but contempt for the law”, but mentioned only one by name. That was Setka’s – the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU).

And Porter spoke about its “repeated law-breaking” at some length.

“As recently as last month,” he said, “the CFMMEU and its officers faced another fine of over \$100,000 for unlawful entries and threats on construction sites. That decision saw them top \$4 million worth of court-ordered penalties for the 2018-19 financial year alone.

“In fact, the CFMMEU’s behaviour has been so poor for so long that in 2017, one Federal Court judge described that union as ‘the most recidivist corporate offender in Australian history’. It seems, sadly, little has changed.

“That is why the government is committed to passing this vital

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State of the unions

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legislation, which will take a significant step towards curbing the behaviour we have seen threaten the rule of the law in Australian workplaces,” said Porter.

That was on July 4, and in the weeks since, Porter and others in the government have taken every opportunity to refer to the record of the union, and of Setka in particular. A number of Coalition members have used identical words. On Monday, Nicolle Flint, the Liberal member for Boothby, said:

“John Setka has, to this point, amassed around 59 court convictions for a multitude of offences, including assault police, five times; assault by kicking, five times; wilful trespass, seven times; resisting arrest, five times; theft, attempted theft by deception and intent to coerce, nine times; and coercion, 10 times.”

Setka and the union are no doubt tough nuts, and the government insists it needs tough new measures to crack them.

The proposed laws would not only make it easier for the courts to remove union officials who, as Porter puts it, “flout the law”. They would also make it easier to deregister entire unions or parts of unions that act unlawfully, and for courts to appoint administrators, in cases where “the organisation or part of the organisation has ceased to function effectively”. And they would give the Fair Work Commission the power to veto union amalgamations if they were deemed not to be in the public interest – if, for example, the amalgamating entities had bad records of compliance with the law.

And if you were only considering these proposed changes by reference to Setka and his crew, you might think “fair

enough”.

Certainly, Jacqui Lambie, Tasmanian independent and a crucial senate vote, is tempted to think that way. Last week, she told Australian Council of Trade Unions (ACTU) president Michele O’Neil: “you got a problem with the IR bill and it’s called John Setka”. She subsequently told *The Sydney Morning Herald* that “every day” that Setka continues to hold his job does more harm to the union movement and makes it more likely she will vote with the government.

Setka shows no signs of going – from either the Labor Party, which wants to expel him, or the union. He is fighting the party through the courts, and has won the backing of his members, despite the urging of the ACTU that he should go for the good of the movement.

And that suits the government, which clearly would rather Lambie and other members of the senate crossbench focus on the hard case of Setka, rather than the broader reality, which is that most unions are not like the CFMMEU.

As Labor’s industrial relations spokesman Tony Burke put it in his speech on the bill this week, much as the government might seek to characterise the average union member as “a bloke ... involved in a blue-collar industry, who gets into lots of fights ... the typical union member these days is a woman in aged care.”

Nor, says Dr Jim Stanford, director of the Centre for Future Work at The Australia Institute, are they at all militant. The number of days lost to industrial action has been in steady decline for the past several decades, and now is down more than 95 per cent compared with levels of the 1970s and ’80s. The number of workers involved in



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disputes is down, and so is the number of working days lost.

“Interestingly, major and long-lasting lockouts (like the 742-day lockout at Esso Longford) make up a growing share of total days lost in work stoppages,” says Stanford. He also notes a “clear correlation” between the historically low levels of employee-initiated industrial action over the past six years with historically low wage growth.

Stanford points to the government's latest “Trends in Federal Enterprise Bargaining” report, released this week by the Attorney-General's Department, as confirmation of the weakened position of unions.

The report shows that average annualised wage increases (AAWI) in newly approved agreements continued to fall in the March quarter, across the board – in private-sector deals and even more so in the public sector. Overall, the AAWI fell by 0.1 per cent to 2.7 per cent.

“In all current agreements – rather than just the newly approved ones – the AAWI held steady in the private sector, and slipped slightly in the public sector,” says Stanford.

“Another interesting point is that close to half of all workers covered by newly approved [enterprise agreements] in the March quarter – 45.5 per cent, to be precise – had ‘non-quantifiable’ wage increases. What that means is their wage gains are not specified in the deal, but rather are tied to things like future increases in the minimum wage, or changes in award wages.

“This report clearly confirms that the wage slowdown in Australia is getting worse, not better ... [and] that the power of unions to win higher wage increases continues to erode, in the face of employer and government opposition to unions and collective bargaining, and a very hostile legal and regulatory environment.”

Given that Australia now is experiencing the lowest wage growth since World War II, says Stanford, the Morrison government should be endeavouring to raise wages, rather than pushing measures to further curtail union activity.

Burke made the same point in his second-reading speech on the legislation.

At a time when the great economic challenge is to get wages up, when wage theft by employers is a growing problem and real wages are a growing problem, said Burke, the government's response is

“to attack the organisations” that argue for wage increases and defend against wage theft.

Of course, as advocates of the labour movement, Labor would say that. But so do important unaligned voices. It now has been more than two years since the Reserve Bank governor first publicly referred to a “crisis of low pay” and called on workers to push for rises.

How is that to be achieved though, given the already tight constraints on employees' capacity to bargain?

“People tend to think of Australia as a worker-friendly society,” says Stanford, “perhaps because of cultural markers like the Eureka rebellion, the Harvester decision [which in 1907 established the basis for the minimum wage], or the old Conciliation and Arbitration Commission.

“But it absolutely is not, anymore.

“I can think of no other country in the industrialised world where a union has to jump through so many hoops in order to take industrial action of any kind. No other country where the government tells a union and an employer what's legitimate to talk about in collective bargaining – this whole ‘legitimate matters’ regime in Australia. No other advanced country where the government has to give permission for a union to reorganise itself.”

He points to a surprising source of support for his argument – the World Economic Forum, an organisation funded by 1000 global private companies, best known for its annual high-level meetings in the Swiss resort town of Davos.

“They are not exactly a group of raving Bolsheviks,” says Stanford. “They have assembled an index of respect for fundamental labour rights, a comparison across countries. They ranked 26 OECD countries. Australia ranked 22nd, just a nose ahead of the United States.”

Anthony Forsyth, professor of workplace law at RMIT University, says a quarter-century of hostility towards unions reached its peak under the Howard government's Work Choices scheme.

“The Howard government wound back traditional legal supports for unions – rights of entry to workplaces, rights to take industrial action – and took on strong unions like the [Maritime Union of Australia]. It also had the CFMEU in its sights, through the Cole royal commission, resulting in special legislation to impose



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the rule of law in that industry [and] succeeded in breaking union power through individualised/non-union bargaining in industries like mining.”

And unions have been significantly weakened, with membership now down to about 14.7 per cent of the workforce and only 10 per cent in the private sector, he says, although they maintain significant influence in some sectors, “like construction, education, nursing” and in the Labor Party.

What the Morrison government now proposes, Forsyth says, “will provide new weapons in the armoury of government and employers”.

He cites the example of nurses, concerned about staff–patient ratios.

“The [current] system allows protected industrial action when you’re negotiating a new agreement, so nurses could, for example, have bans on performing particular kinds of work as part of that negotiation,” he says.

If such action is taken outside the protected negotiating period, their employer can apply for orders or injunctions to stop it.

“But if this bill’s passed then there is a new avenue open to that employer: to try and get union officials disqualified from office or, in an extreme case, get the union deregistered.

“Or the government, if it decides it doesn’t want this stuff going on in the public hospital system, could apply as an interested party. Not just to stop the unlawful industrial action, but to have a crack at the right of the union official, the union, to exist at all.”

Forsyth notes the risk to conservative parties of overreach in their eternal battle with organised labour. Work Choices, after all, cost Howard the 2007 election. And he thinks the current government appears to have learnt from that.

“The Howard government, through Work Choices, attacked not just unions, but the rights of individual workers – through individual agreements, through removing unfair-dismissal protections. And that’s why they lost, I think.

“In Australia, for over 100 years, we’ve had a social compact about fairness in the workplace. People might not like unions so much, but they are attached to [the] concept of individual worker rights, and to the notion of an independent umpire.

“The Coalition, still scarred by the [consequences of] that overreach, has not, until now, gone really hard on removing individual workers’ rights. They’ve attacked unions and tried to restrain union power,” he says.

And luckily, they have Setka and the CFMMEU to point to as abusers of that power.

“That’s what they want people to focus on,” says Forsyth.

He says the propensity for construction unions to act in defiance of the law “goes back a long way”. The response of previous governments – starting with the Howard government and continuing in “somewhat diluted form” under Labor – was to set up a specialist regime, under separate legislation with a separate regulator and higher penalties, to deal with it.

“But you have a union that just continues not to care about that and continues to act in defiance of whatever legal restrictions are imposed; well, I honestly don’t know how you deal with that, short of deregistering the union,” he says.

Interestingly, Forsyth believes the CFMMEU could potentially be deregistered under current law “because there are provisions for that where there has been a history of non-compliance.”

That would suggest the John Setka is not the reason for the proposed legislation, but the excuse. ●

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Nurses plead: don't target us

Dana McCauley

The nurses' union has distanced itself from the militant CFMMEU, appealing to the Senate cross-bench to spare its "respectful" campaigns for patient safety from a union crackdown aimed at bringing the John Setkas of the movement to heel.

Labor MP Ged Kearney, a former nurse and ACTU president, is seeking a meeting with Tasmanian senator Jacqui Lambie to plead for her to block the government's Ensuring Integrity Bill, which will make it easier to disqualify union officials and deregister unions.

"No matter what your view is of an individual in the movement, the union movement is greater than one person," Ms Kearney said.

"I don't think you should sacrifice the whole union movement."

The government only needs Ms Lambie's vote to get the bill through the Senate, after using its majority in the House of Representatives to pass it there on Wednesday.

Senator Lambie is yet to decide her position, despite threatening last week to back the bill if Mr Setka did not resign as Victorian secretary of the Construction, Forestry, Maritime, Mining and Energy Union.

Australian Nursing and Midwifery secretary Annie Butler said her members had "a professional obligation . . . to stand up and advocate for patient care" if employers were putting their patients at

risk through unsafe practices.

The union's Tasmanian branch is lobbying Senator Lambie, pleading that nurses should not be tarred with the same brush as militant construction union officials.

"I'm hopeful we can highlight that none of us condone the behaviour of the CFMEU and certainly appreciate that there needs to be greater compliance and transparency – but not at the expense of those of us who are doing the right thing," branch secretary Emily Shepherd said.

"We have always conducted our industrial action in a very respectful way."

Labor's industrial relations spokesman Tony Burke said the government bill would enable the nurses' union to be "hailed into court for deregistration" if nurses took unprotected industrial action to argue for better nurse ratios or sterilisation procedures.

Industrial relations Minister Christian Porter rejected this, saying no nurses' union had engaged in the type of "systemic unlawful conduct" that would provide the basis for a court to deregister it.

But workplace law expert Anthony Forsyth from RMIT's Graduate School of Business and Law said the nurses' industrial action would not have to be repeated or systemic to be caught by the bill.



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Paul Bongiorno

Prisoners of the Crown



PAUL BONGIORNO

is a columnist
for *The Saturday
Paper* and a
30-year veteran
of the Canberra
Press Gallery.

Tasmanian independent Jacqui Lambie has returned to the senate convinced that people don't trust politicians. That's the message she received anywhere she went in the island state during her enforced exile from parliament over citizenship eligibility, she says. And that's why she and other crossbenchers in both the house of representatives and the senate are calling for the urgent establishment of a national integrity commission.

The independents grabbed centre stage this week, not so much for playing any key role in helping the government but rather for the way the major parties backed and filled over sensational accusations against Crown Casino. First aired on Channel Nine's *60 Minutes*, they were added to by the station's new stablemates at *The Age* and *The Sydney Morning Herald*. The reports go to dealings with Chinese criminal triads, money laundering and sex trafficking. In a statement, Crown said it "absolutely rejects" the allegations and described them as "ill-informed".

In his pep talk to troops before they take a belated winter break, the prime minister proudly proclaimed that the reason the Coalition won the election was "we believe what Australians believe". Scott Morrison said it was important when parliamentarians return to their electorates that they show their constituents the conservatives are "on their side". Lambie and the independents are far from convinced. The Greens' Adam Bandt told parliament that the Liberals and Labor were "running a protection racket for ministers and former ministers who have ties to Crown Casino".

The tone was set by longtime anti-gambling

campaigner Andrew Wilkie. The independent member made full use of parliamentary privilege to add to the accusations. He said a Crown informant had told him police officers referred to the casino as "the Vatican", an independent sovereign state all its own, where the laws of Victoria and the laws of the Commonwealth do not apply". Wilkie, backed by Rebekha Sharkie, unsuccessfully moved for a joint parliamentary inquiry. Labor and the government voted it down.

Spurring the move was the answer Bandt received when he asked the prime minister on Monday about the allegations made by former Border Force chief Roman Quaedvlieg that two ministers and one MP had "lobbied Home Affairs to ensure that high rollers can fly into the country and drive to Crown Casino with a minimal amount of clearances". Bandt asked if Morrison could give assurances that ministerial guidelines had not been breached, and that no Home Affairs officials had "acted improperly in these matters".

Morrison said his government takes allegations of illegal activity very seriously and that law enforcement agencies are hardworking. He dodged the issue of ministerial behaviour, saying "there has been nothing presented to me that would indicate there are any matters there for me to address".

On Tuesday, Attorney-General Christian Porter came armed with a countermove to Wilkie's parliamentary inquiry. He conceded the allegations had raised "sufficient concerns ... to at least warrant further investigations". He said he had already referred them to the Australian Commission for Law Enforcement

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Integrity (ACLEI). This agency can look at the performance of the federal police, customs officials and other federal law enforcement bodies, but not ministers or politicians. The shadow attorney-general, Mark Dreyfus, welcomed the referral and said it was a more

effective way of investigating the “allegedly shocking behaviour” as it had the powers of a royal commission.

Dreyfus says the course chosen by Porter is a good first step. He agrees with the crossbench that the time has well and truly come for a national integrity commission. He noted in parliament, during the debate on the Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill to nobble the unions, that no mention has been made of the foreshadowed integrity commission. It is not listed for debate this year. “Perhaps it’s gone into the wastepaper basket,” he posited.

On Thursday, Porter announced an integrity commission bill was being drafted but details won’t be finalised until the end of the year. The model the Liberals took to the election was weak and refused to give its proposed commission the independence to initiate its own inquiries, especially in regard to politicians. The chair of the Accountability Round Table, Fiona McLeod, SC, a Labor candidate at the last election, says the ACLEI is no substitute for a national commission along the lines of the Independent Commission Against Corruption in New South Wales. There are “gaps in our integrity oversight framework”, she told ABC Radio’s *RN Breakfast*, saying this was “of great concern”.

McLeod pointed out that the business model of Crown, and indeed casinos around the world, is to attract as many “high rollers” or “whales” to their tables as possible. According to the Nine newspapers, Crown was spectacularly successful in the instance of Chinese billionaire Huang Xiangmo. He gambled \$800 million a year at the casino. Huang was a generous donor to both the Liberal and Labor parties and the central figure in the demise of Labor senator Sam Dastyari’s political career. Dastyari alerted Huang to the fact he was under ASIO surveillance.

Casinos are huge businesses: Crown is said to be the biggest private employer in Melbourne. The Howard, Rudd, Gillard and Abbott governments treated Crown as if it were any other huge enterprise bringing millions in investment and spending into Australia. Porter reminded parliament “a variety of passport holders, particularly referenced in the white paper on developing northern Australia, are themselves able to access and facilitate quick visa processing. There’s nothing new in that.” But Crown’s privilege was axed three years ago after Beijing arrested 19 Crown employees for illegally promoting gambling in an effort to keep attracting mega-punters to enjoy the facilities at its Australian “resorts”.

Fiona McLeod says casinos are “notoriously used to wash money and the question remains: how do we, the Australian public, have confidence that our integrity mechanisms are able to address corruption issues like this when they come up?”

Bill Shorten promised to begin restoring confidence

in politicians by prioritising the establishment of a robust national integrity commission. Labor is expected to revive that policy ahead of the next election. In the meantime, Anthony Albanese has told some of his restive MPs and senators they had better get used to backing what they consider to be flawed government bills.

Albanese angered Left powerbroker Kim Carr by comparing Labor’s position now with that after the 2004 election, when John Howard had a majority in both houses of parliament. Carr says it’s simply not true. Even if it were, Labor won the next election, in 2007, in a landslide. Morrison does not have a majority

in the senate and needs four of six crossbench senators to pass a bill if Labor and the Greens are opposed. Carr says Labor should not run up the white flag on reform or adopt a small-target strategy.

Carr spells out his arguments in the John Curtin Research Centre’s journal, *The Tocsin*. His article is titled “We can’t start with a blank sheet of paper”. He takes aim at what some in the party see as Albanese’s preferred strategy, a view bolstered by the fact Labor staffers were told this week that focusing on the government’s negatives is the pathway to winning the next election.

Carr says an analysis of the election results does not support the argument that a reform agenda “risks almost certain defeat”. He says the Liberals’ scare tactics worked best in seats where voters owned the least number of shares and the fewest investment properties. Gilmore, which Labor won, is his prime example. The New South Wales seat, he says, has “one of the highest densities of self-funded retirees in the nation”.

Carr blames a failure of messaging. The results, especially in Queensland and Western Australia, say “that we paid insufficient attention to the anxieties and insecurities that working-class families have about the future”. These insecurities were exacerbated by Clive Palmer’s \$60 million lies: “Palmer was able to say things that no respectable political party could say.”

Albanese defended his tactics in the caucus meeting. He praised Labor’s two-week focus on the emissions reduction and energy minister, Angus Taylor, for an apparent conflict of interest. “We targeted one of the slowest members of the herd and he has been exposed,” Albanese said. Taylor is still there thanks to the backing of the prime minister and the government’s numbers in the house, plus the protection offered by Pauline Hanson in the senate. She declined to supply her party’s two votes for a senate inquiry into Taylor.

Hanson believes land-clearing restrictions are getting in the way of farmers’ bottom line, anyway. Taylor’s family-run farm is being investigated for the alleged poisoning of protected grasses. Labor’s Tony Burke says Taylor had given three different reasons for seeking a meeting with the Environment Department in 2017 but the only consistent interest is Taylor’s own.

Mark Dreyfus seized the opportunity of the debate over the government’s “ensuring integrity” bill to use Taylor’s behaviour as an example of what should be sent to a national integrity commission if indeed one existed.

Dreyfus noted that the commission the Liberals



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promised offered protections to besieged politicians. He told parliament “they are so allergic to ensuring integrity ... in their own ranks they can’t even bring themselves to talk about an election commitment”. ●

FIONA McLEOD ASKS: “HOW DO WE, THE AUSTRALIAN PUBLIC, HAVE CONFIDENCE THAT OUR INTEGRITY MECHANISMS ARE ABLE TO ADDRESS CORRUPTION ISSUES LIKE THIS WHEN THEY COME UP?”

