

The Senate

Legal and Constitutional Affairs
Legislation Committee

National Integrity Commission Bill 2018
[Provisions]

National Integrity (Parliamentary Standards)
Bill 2018 [Provisions]

National Integrity Commission Bill 2018
(No. 2)

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Chapter 1

Introduction

1.1 On 29 November 2018 the Senate referred the provisions of the National Integrity Commission Bill 2018 to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 5 April 2019.¹

1.2 On 6 December 2018 the Senate referred the National Integrity Commission Bill 2018 (No. 2) and the provisions of the National Integrity (Parliamentary Standards) Bill 2018 to the committee for inquiry and report by 5 April 2019.²

1.3 Both the National Integrity Commission Bill 2018 and the National Integrity Commission Bill 2018 (No. 2) would establish an Australian National Integrity Commission. The National Integrity (Parliamentary Standards) Bill 2018 would, among other things, introduce a code of conduct for parliamentarians and their staff.

Conduct of the inquiry

1.4 The committee considered the three bills as part of a single inquiry.

1.5 Details of the inquiry were advertised on the committee's website, and the committee wrote to a range of individuals and organisations inviting written submissions by 22 January 2019. The committee received 23 submissions, which are listed at Appendix 1.

1.6 The committee held a public hearing for this inquiry on 8 February 2019 in Sydney. The witnesses who appeared at this hearing are listed at Appendix 2.

Structure of this report

1.7 This report consists of two chapters:

- This chapter provides a brief overview of the bills and relevant background, including in respect of the Commonwealth Integrity Commission proposed by the Australian Government, as well as the administrative details of the inquiry.
- Chapter 2 discusses the key issues raised during the inquiry and provides the committee's view.

Overview of the bills

1.8 The bills under inquiry were introduced into the Parliament as follows:

- The National Integrity Commission Bill 2018 (McGowan NIC bill) was introduced into the House of Representatives by Ms Cathy McGowan MP on 26 November 2018.³

1 *Journals of the Senate*, No. 133, 29 November 2018, pp. 4324–4326.

2 *Journals of the Senate*, No. 137, 6 December 2018, pp. 4480–4484.

3 *House of Representatives Votes and Proceedings*, No. 149, 26 November 2018, p. 1940.

- The National Integrity Commission Bill 2018 (No. 2) (Greens NIC bill) was introduced into the Senate by Senator Larissa Waters on 29 November 2018.⁴
- The National Integrity (Parliamentary Standards) Bill 2018 (NIPS bill) was introduced into the House of Representatives by Ms McGowan on 3 December 2018.⁵

1.9 The two bills introduced by Ms McGowan are intended as a package to 'promote public trust and confidence in the integrity of Parliament, the public sector and the system of Government'.⁶

1.10 The McGowan NIC bill would establish an Australian National Integrity Commission. The NIPS bill would, among other things, introduce a code of conduct for parliamentarians and their staff.

1.11 Like the McGowan NIC bill, the Greens NIC bill would also establish an Australian National Integrity Commission. The Explanatory Memorandum (EM) to the bill states that it is the fifth bill on this subject introduced by the Australian Greens since 2010.⁷

1.12 The Greens NIC bill is almost identical to the McGowan NIC bill. The EM to the McGowan NIC bill states that it builds on and incorporates aspects of others' work, including a 2012 Australian Greens bill of the same name.⁸ Similarly, the EM to the Greens NIC bill states that it was drafted using the McGowan NIC bill but with two major changes, namely 'to refine the definition of corrupt conduct and to limit investigations of corrupt conduct to the last ten years'.⁹ These differences are set out in more detail below.

1.13 In this report the McGowan NIC bill and the Greens NIC bill are referred to collectively as the NIC bills.

1.14 The following graphic outlines the proposed reforms and appears in the EM of each of the three bills:

4 *Journals of the Senate*, No. 133, 29 November 2018, p. 4329.

5 *House of Representatives Votes and Proceedings*, No. 153, 3 December 2018, p. 1992.

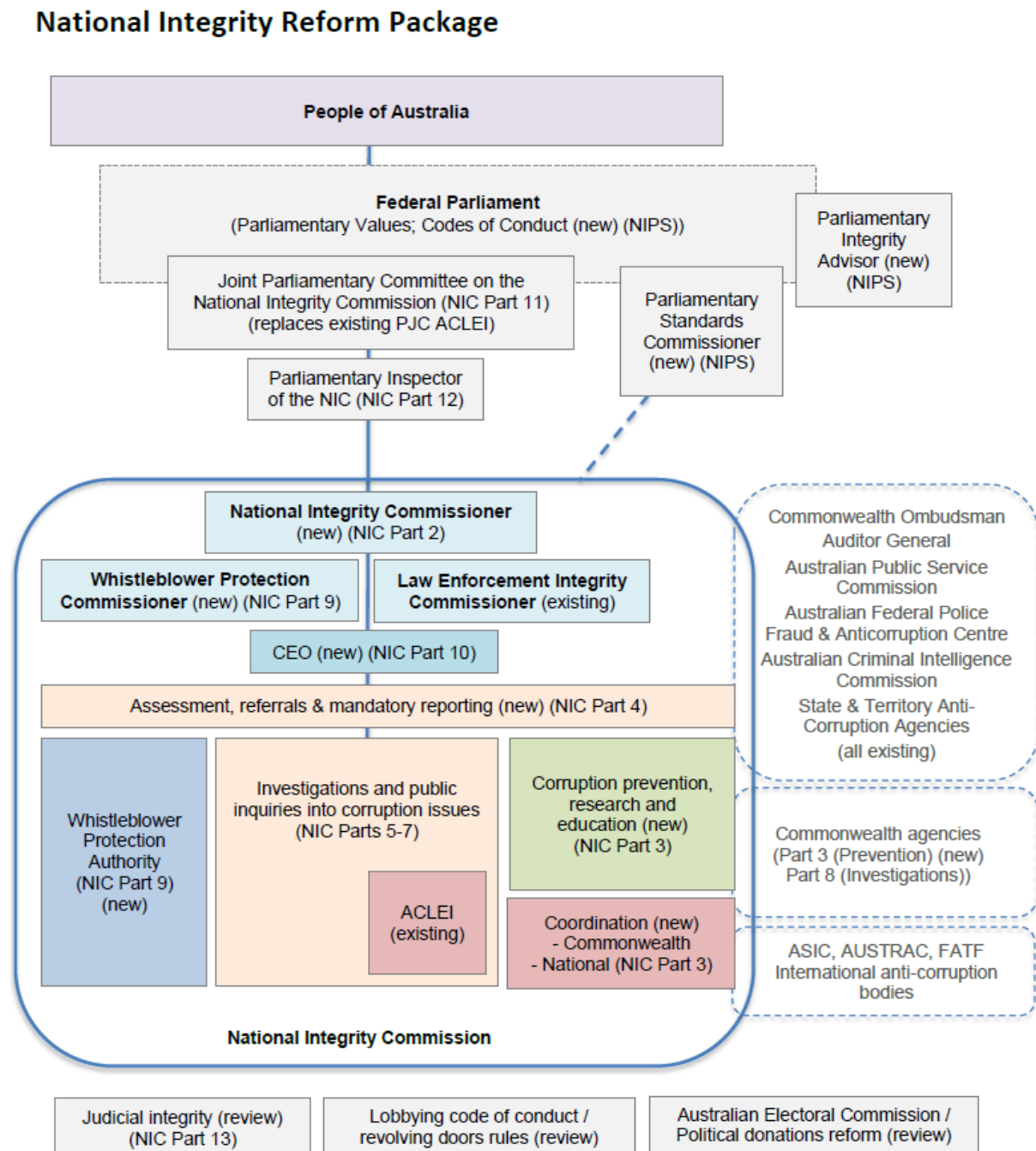
6 Explanatory Memorandum (EM), National Integrity Commission Bill 2018 (McGowan NIC bill), p. [2]; EM, National Integrity (Parliamentary Standards) Bill 2018 (NIPS bill), p. [2].

7 EM, National Integrity Commission Bill (No. 2) (Greens NIC bill), p. 1.

8 EM, McGowan NIC bill, p. [2].

9 EM, Greens NIC bill, p. 1.

Figure 1.1—Representation of proposed reforms



1.15 Each EM states that the graphic is based on a publication associated with Griffith University and Transparency International Australia.¹⁰

10 See A J Brown, Adam Graycar AM, Kym Kelly, the Hon Ken Coghill, Tim Prenzler, and Janet Ransley, *A National Integrity Commission – Options for Australia*, August 2018, <http://transparency.org.au/national-integrity-systems-assessment/> (accessed 20 March 2019), Option 3, p. 60.

Key provisions of the National Integrity Commission Bill 2018 and the National Integrity Commission Bill 2018 (No. 2)

1.16 The NIC bills would establish the Australian National Integrity Commission (NIC) 'as an independent, broad-based public sector anti-corruption commission for the Commonwealth'.¹¹ The EM to each bill states that the objectives of the Commission are:

...to promote integrity and accountability, prevent, investigate and expose corruption, support development and implementation of a national integrity and anti-corruption plan, improve coordination and efficiency in the Commonwealth integrity system, and ensure protection of whistleblowers.¹²

1.17 The EM to each of the NIC bills states that the proposed NIC would:

...be the lead agency for key functions (existing and proposed) in the Commonwealth integrity framework, and fill gaps in coverage. It will act as a partner to existing Commonwealth and State integrity and law enforcement agencies, with provisions for referrals, joint investigations and joint projects.¹³

1.18 The proposed NIC would consist of:

- the National Integrity Commissioner and any Assistant Commissioners;
- the Law Enforcement Integrity Commissioner and any Assistant Law Enforcement Integrity Commissioners; and
- the Whistleblower Protection Commissioner.¹⁴

1.19 There are certain requirements that would apply to prospective Commissioners. For example, the National Integrity Commissioner would need to be a current or former judge of the Federal Court of Australia or of the Supreme Court of a state or territory, or qualified for appointment as such a judge.¹⁵

1.20 The NIC would build upon the existing Australian Commission for Law Enforcement Integrity (ACLEI).¹⁶ For example, when providing for the functions and powers of the Law Enforcement Integrity Commissioner, the NIC bills refer to existing provisions of the *Law Enforcement Integrity Commissioner Act 2006*.¹⁷

11 EM, McGowan NIC bill, p. [2]; EM, Greens NIC bill, p. 1.

12 EM, McGowan NIC bill, p. [2]; EM, Greens NIC bill, p. 1.

13 EM, McGowan NIC bill, p. [3]; EM, Greens NIC bill, p. 2.

14 Subclause 11(2) of the NIC bills.

15 Subclause 187(2) of the NIC bills.

16 EM, McGowan NIC bill, p. [1] and p. [5]; EM, Greens NIC bill, p. 1 and p. 4.

17 Clauses 13 and 16 of the NIC bills.

Role and powers of the National Integrity Commission

1.21 The NIC bills contain a substantial number of provisions relating to the role and powers of the NIC. Key points, as summarised by the EM to each bill, are as follows:

The Commission will have a broad jurisdiction over official corruption including federal politicians and the federal public sector and promote responsible business conduct in the private sector. At this stage federal judicial officers under Chapter III of the Constitution are not included and the Bill establishes a review process to ensure their inclusion in a robust system of integrity oversight.

...

The Commission will be the lead agency for key functions (existing and proposed) in the Commonwealth integrity framework, and fill gaps in coverage. It will act as a partner to existing Commonwealth and State integrity and law enforcement agencies, with provisions for referrals, joint investigations and joint projects.

...

The Commission will have the powers of a Royal Commission to investigate, where necessary, corruption issues involving or affecting the Commonwealth Government, to be executed at the discretion of the Commissioner. It may hold a public inquiry and/or public hearings where satisfied this is the most effective means of investigation and, on balance, will be in the public interest.

Referrals to the Commission can be made by anyone who identifies a corruption issue. There will be a mandatory reporting requirement for public officials and Commonwealth agency heads. The Commissioner will have discretion on how to manage each referral, including dealing with frivolous or vexatious referrals.

After due process, the Commission will be empowered to make findings of fact, to be referred to the Commonwealth Director of Public Prosecutions or other enforcement agencies for consideration for prosecution, in criminal cases. It will also be empowered to make other findings of fact and recommendations, including by way of public report, in relation to non-criminal corruption issues, prevention and other areas of integrity reform.¹⁸

Parliamentary Joint Committee on the Australian National Integrity Commission

1.22 The NIC bills provide for the establishment of the Parliamentary Joint Committee on the Australian National Integrity Commission (the PJC NIC) to oversee

18 EM, McGowan NIC bill, p. [3]; EM, Greens NIC bill, pp. 2–3.

the NIC.¹⁹ The PJC NIC would replace the existing Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity.²⁰

1.23 The PJC NIC is intended to be bipartisan.²¹ Its members, of whom half would be senators and half would be members of the House of Representatives, would be:

- five members of the government, one of whom would be co-Chair;
- five members of the opposition, one of whom would be co-Chair; and
- two members from neither the government nor opposition.²²

1.24 Appointments of the National Integrity Commissioner, any Assistant Commissioners, and the Whistleblower Commissioner would be made by the minister, but only with the approval of the PJC NIC.²³

1.25 The PJC NIC would also review the performance of commissioners and report to the Parliament on matters relating to the NIC, but would not investigate corruption.²⁴

Parliamentary Inspector

1.26 The McGowan NIC bill would establish a Parliamentary Inspector as an independent officer of the Parliament to assist the PJC NIC to oversee the NIC.²⁵ The Parliamentary Inspector would fulfil its functions at the request of the NIC committee.²⁶ The functions of the Parliamentary Inspector include:

- inspecting records of the National Integrity Commission, including to consider whether the Commissioner has exercised power appropriately;
- investigating complaints made against the National Integrity Commission or its staff; and
- reviewing alleged incidences of unauthorised disclosure.²⁷

19 Subclause 244(1) of the NIC bills; also see EM, McGowan NIC bill, p. [4]; EM, Greens NIC bill, p. 3.

20 This is indicated by the graphic included in the EM to each of the NIC bills (see above). Also see Item 5 of Schedule 1 of the NIC bills.

21 EM, McGowan NIC bill, p. [3]; EM, Greens NIC bill, p. 2.

22 Subclauses 244(2), 244(3) of the NIC bills; also see EM, McGowan NIC bill, p. [76]; EM, Greens NIC bill, p. 78.

23 See clauses 187, 197, 206, and 246 to 249 of the NIC bills. It appears that Law Enforcement Integrity Commissioner would be appointed by the Governor-General without the need for approval by the PJC NIC; see clause 196 of the NIPS bill.

24 Subsections 246(1) and 246(2) of the NIC bills.

25 Part 12 of the NIC bills; also see EM, McGowan NIC bill, p. [4]; EM, Greens NIC bill, p. 3.

26 Subclause 254(2) of the NIC bills.

27 Clause 254 of the NIPS bill.

Corruption prevention, research and coordination

1.27 The NIC bills provide for various measures to prevent corruption and coordinate anti-corruption measures.²⁸ These include:

- requiring each Commonwealth agency head to prepare, every two years, a plan to enhance integrity in the performance of the agency's functions;²⁹ and
- provisions relating to coordination and cooperation between Commonwealth agencies, facilitated by the National Integrity Commissioner.³⁰

Differences between the McGowan NIC bill and the Greens NIC bill

1.28 The EM to the Greens NIC bill states that it was drafted using the McGowan NIC bill but with two major changes.³¹

Difference 1: the definition of 'corrupt conduct'

1.29 The definitions of 'corrupt conduct' in the NIC bills are similar, but there are some differences.

1.30 Both the NIC bills provide a broad definition of corrupt conduct.³² Both definitions encompass conduct that is not criminal, but is nonetheless misconduct that could constitute, for example, a disciplinary offence or reasonable grounds for dismissing a public official.³³

1.31 A key difference is that the definition in the McGowan NIC bill covers conduct by a public official or parliamentarian that could constitute or involve 'a substantial breach of an applicable code of conduct'.³⁴ The definition in the Greens NIC bill modifies this criterion such that it only applies 'in the case of conduct of a Minister or a parliamentarian'.³⁵

1.32 An additional difference is noted in the EM to the Greens NIC bill, which states that the Greens NIC bill modified the definition in the McGowan NIC bill to 'remove and clarify the unclear terms in the existing NSW provisions replicated in the [McGowan NIC bill]'.³⁶

28 See Part 3 of the NIC bills.

29 Clause 20 of the NIC bills.

30 Division 6 of Part 3 of the NIC bills.

31 EM, Greens NIC bill, p. 1.

32 See clause 9 of each of the NIC bills.

33 Subclause 9(6) of the McGowan NIC bill and subclause 9(4) of the Greens NIC bill.

34 Paragraph 9(6)(d) of the McGowan NIC bill; also see the definition of 'applicable code of conduct' at clause 8 of the McGowan NIC bill.

35 Paragraph 9(4)(d) of the Greens NIC bill; also see an exchange between Senator the Hon Ian Macdonald, Senator Larissa Waters, and Ms Sarah Chidgey, Deputy Secretary, Integrity and International Group, Attorney-General's Department, *Committee Hansard*, 8 February 2019, p. 36.

36 EM, Greens NIC bill, p. 6.

Difference 2: Limiting investigations of corrupt conduct to the last ten years

1.33 The Greens NIC bill provides that the national integrity commission would not be able to investigate corruption issues that arose more than ten years prior to the commencement of the bill.³⁷ The McGowan NIC bill does not contain this limitation.³⁸

Key provisions of the National Integrity (Parliamentary Standards) Bill 2018

1.34 The NIPS bill would establish the *National Integrity (Parliamentary Standards) Act 2018*. The key provisions of the bill are:

- the introduction of a parliamentary code of conduct for parliamentarians and their staff;³⁹
- the establishment of a Parliamentary Integrity Advisor to provide confidential advice and guidance to parliamentarians and their staff about how to honour the code of conduct or about other integrity issues;⁴⁰
- the establishment of a Parliamentary Standards Commissioner (Standards Commissioner) to investigate alleged contraventions of a code of conduct (including the proposed parliamentary code of conduct or a ministerial code of conduct);⁴¹
- in relation to the Parliamentary Integrity Advisor and the Standards Commissioner, the introduction of an offence of victimisation⁴² and an offence for the unauthorised disclosure of confidential information;⁴³
- requirements that reviews be conducted relating to various integrity issues, including a review of the NIPS bill to be conducted after three years;⁴⁴ and
- provisions relating to parliamentarians' registers of interests, which the EM to the NIPS bill states provide 'a statutory basis' for those registers.⁴⁵

37 Subclause 12(3) of the Greens NIC bill; also see EM, Greens NIC bill, p. 1 and p. 7.

38 Subclause 12(1) of the McGowan NIC bill; EM, McGowan NIC bill, pp. [7]–[8].

39 See Divisions 1 and 2 of Part 2 of the National Integrity (Parliamentary Standards) Bill 2018 (NIPS bill).

40 See Part 4 of the NIPS bill.

41 See Part 5 of the NIPS bill.

42 Clause 93 of the NIPS bill.

43 Clauses 35 and 37 of the NIPS bill (in relation to the Integrity Adviser); Clauses 67 and 69 of the NIPS bill (in relation to the Standards Commissioner).

44 Clause 99 of the NIPS bill (relating to the review of the NIPS bill); clauses 96 to 98 of the NIPS bill (relating to other reviews)

45 EM, NIPS bill, p. [2]; Clauses 21 and 22 of the NIPS bill.

The Commonwealth Integrity Commission proposed by the Government

1.35 While each of the NIC bills would establish an NIC, the government has announced its intention to establish an alternative anticorruption commission.

1.36 On 13 December 2018 the Prime Minister, the Hon Scott Morrison MP, and the Attorney-General, the Hon Christian Porter MP, announced the government's intention to establish a Commonwealth Integrity Commission (CIC).⁴⁶

1.37 The government released a consultation paper outlining the proposed commission and called for public submissions to be received by 1 February 2019.⁴⁷ The paper notes that the Commonwealth's existing integrity arrangements are a multi-agency approach.⁴⁸

1.38 The proposed CIC is intended to 'detect, deter and investigate suspected corruption and to work with agencies to build their resilience to corruption and their capability to deal with corrupt misconduct'.⁴⁹

1.39 The CIC would have two divisions: a law enforcement integrity division and a public sector integrity division. The law enforcement division would:

...retain the powers and functions of [the Australian Commission for Law Enforcement Integrity], but with an expanded jurisdiction to cover several further agencies that exercise the most significant coercive powers and therefore present a more significant corruption risk.⁵⁰

1.40 The public sector division would cover the remainder of the public sector.⁵¹ It would only investigate 'corrupt conduct' where the commissioner has a reasonable suspicion that the conduct in question constitutes a criminal offence.⁵² The public sector division would have fewer powers than the law enforcement division.⁵³ It would not make findings of 'corruption at large', and the consultation paper states this would ensure that 'it is the courts making findings of criminally corrupt conduct'.⁵⁴

46 Press conference with the Attorney-General, Transcript, 13 December 2018, <https://www.pm.gov.au/media/press-conference-attorney-general-0> (accessed 11 January 2019).

47 Attorney-General's Department, *A Commonwealth Integrity Commission – Proposed reforms*, December 2018, p. 1.

48 Attorney-General's Department, *A Commonwealth Integrity Commission*, December 2018, p. 1.

49 Attorney-General's Department, *A Commonwealth Integrity Commission*, December 2018, p. 3.

50 Attorney-General's Department, *A Commonwealth Integrity Commission*, December 2018, p. 3.

51 Attorney-General's Department, *A Commonwealth Integrity Commission*, December 2018, p. 3.

52 Attorney-General's Department, *A Commonwealth Integrity Commission*, December 2018, p. 7.

53 Attorney-General's Department, *A Commonwealth Integrity Commission*, December 2018, p. 8.

54 Attorney-General's Department, *A Commonwealth Integrity Commission*, December 2018, p. 5.

Consideration by other parliamentary committees

Scrutiny of Bills Committee

1.41 The Standing Committee for the Scrutiny of Bills (the Scrutiny of Bills Committee) commented on both the McGowan NIC bill and the Greens NIC bill.⁵⁵ The concerns raised by the Scrutiny of Bills Committee include the following:

- In circumstances where the National Integrity Commissioner will make a finding that is critical of a person, the National Integrity Commissioner is not always required to provide that person with an opportunity to be heard. This effectively excludes the right to a fair hearing.⁵⁶
- The bills confer on the National Integrity Commissioner a broad range of coercive powers to require persons to give information, answer questions, and produce documents and things.⁵⁷ The Scrutiny of Bills Committee raised similar concerns regarding the Whistleblower Protection Commissioner.⁵⁸
- The bills allow persons other than police officers to execute search warrants, which include powers to use force and to conduct personal searches, with no specific requirements as to those persons' qualifications or expertise.⁵⁹
- The bills would abrogate the privilege against self-incrimination, and the EM of each bill does not provide a rationale for this.⁶⁰
- The bills would abrogate legal professional privilege, and the EM of each bill does not provide a rationale for this.⁶¹
- The bills would introduce a number of offence-specific defences, which reverse the burden of proof.⁶²
- The bills would confer immunity from civil liability on certain persons performing functions under or in relation to the bill. The Scrutiny of Bills Committee stated that such provisions should be 'soundly justified', but the EM of each bill merely restates the terms of the provisions.⁶³

55 Standing Committee for the Scrutiny of Bills (the Scrutiny of Bills Committee), *Scrutiny Digest 15 of 2018*, 5 December 2018, pp. 29–43.

56 Scrutiny of Bills Committee, *Scrutiny Digest 15 of 2018*, 5 December 2018, pp. 29–31.

57 Scrutiny of Bills Committee, *Scrutiny Digest 15 of 2018*, 5 December 2018, pp. 31–33.

58 Scrutiny of Bills Committee, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 42.

59 Scrutiny of Bills Committee, *Scrutiny Digest 15 of 2018*, 5 December 2018, pp. 33–36.

60 Scrutiny of Bills Committee, *Scrutiny Digest 15 of 2018*, 5 December 2018, pp. 36–37.

61 Scrutiny of Bills Committee, *Scrutiny Digest 15 of 2018*, 5 December 2018, pp. 37–38.

62 Scrutiny of Bills Committee, *Scrutiny Digest 15 of 2018*, 5 December 2018, pp. 40–41.

63 Scrutiny of Bills Committee, *Scrutiny Digest 15 of 2018*, 5 December 2018, p. 43.

1.42 The Scrutiny of Bills Committee also commented on the NIPS bill.⁶⁴ The concerns raised by the Scrutiny of Bills Committee include the following:

- The introduction of offence-specific defences, which reverse the burden of proof, in relation to the unauthorised disclosure of protected information.⁶⁵
- In circumstances where the Standards Commissioner will make a finding that is critical of a person, the Standards Commissioner is not always required to provide that person with an opportunity to be heard. This effectively excludes the right to a fair hearing.⁶⁶
- The NIPS bill provides for the Governor-General to make regulations that may require that information or reports that are required to be given under prescribed provisions are also to be given to prescribed persons in specified circumstances. The Scrutiny of Bills Committee stated that significant matters such as this should be included in primary legislation unless a 'sound justification' is provided; the EM to the bill does not provide such a justification.⁶⁷

Parliamentary Joint Committee on Human Rights

1.43 It does not appear that the Parliamentary Joint Committee on Human Rights considered either of the NIC bills or the NIPS bill.⁶⁸

Related inquiries by Senate select committees

1.44 Two Senate select committees recently inquired into the establishment of a national integrity commission.

1.45 On 24 February 2016 the Senate resolved to establish the Select Committee on the Establishment of a National Integrity Commission to inquire into the adequacy of Australia's integrity framework, and whether a federal integrity commission should be established. It presented an interim report in May 2016 containing one recommendation, as follows:

The committee recommends that the Australian Government support current and sound future research into potential anti-corruption systems appropriate for Australia including the research led by Griffith University, in partnership with Transparency International Australia.⁶⁹

64 Scrutiny of Bills Committee, *Scrutiny Digest 1 of 2019*, 13 February 2019, pp. 11–16.

65 Scrutiny of Bills Committee, *Scrutiny Digest 1 of 2019*, 13 February 2019, pp. 11–12.

66 Scrutiny of Bills Committee, *Scrutiny Digest 1 of 2019*, 13 February 2019, pp. 12–14.

67 Scrutiny of Bills Committee, *Scrutiny Digest 1 of 2019*, 13 February 2019, pp. 15–16.

68 Parliamentary Joint Committee on Human Rights, *Index of bills and instruments considered by the committee: 2018*, as at 15 February 2019; Parliamentary Joint Committee on Human Rights, *Index of bills and instruments considered by the committee: 2019*, as at 15 February 2019.

69 Select Committee on the Establishment of a National Integrity Commission, *Interim report*, May 2016, p. 39.

1.46 On 8 February 2017 the Senate established a new committee, the Select Committee on a National Integrity Commission, with substantially the same terms of reference. That committee presented a final report in September 2017. The report made seven recommendations, including the following:

- 'The committee recommends that the Commonwealth government gives careful consideration to establishing a Commonwealth agency with broad scope and jurisdiction to address integrity and corruption matters.'⁷⁰
- 'The committee encourages the Senate to review the question of a national integrity commission following the release of the Open Government Partnership review and the Griffith University and Transparency International Australia et al research, with a view to making a conclusive recommendation based on the evidence available at that time.'⁷¹

Note on terminology

1.47 For clarity, in this report:

- the National Integrity Commission Bill 2018 is referred to as the McGowan NIC bill;
- the National Integrity Commission Bill 2018 (No. 2) is referred to as the Greens NIC bill;
- the McGowan NIC bill and the Greens NIC bill are referred to collectively as the NIC bills; and
- the National Integrity (Parliamentary Standards) Bill 2018 is referred to as the NIPS bill.

Acknowledgements

1.48 The committee thanks all submitters and witnesses for the evidence they provided to this inquiry.

70 Select Committee on a National Integrity Commission, *Report*, September 2017, p. 218.

71 Select Committee on a National Integrity Commission, *Report*, September 2017, p. 219.

Chapter 2

Key issues

2.1 This chapter first outlines the key issues raised in evidence regarding the National Integrity Commission Bill 2018 (the McGowan NIC bill) and the National Integrity Commission Bill 2018 (No. 2) (the Greens NIC bill), as follows:

- The possible need for a national integrity commission.
- The jurisdiction of the proposed Australian National Integrity Commission (NIC), including the definition of 'corrupt conduct', possible oversight of the judiciary by the NIC, and oversight of historical instances of corrupt conduct.
- The powers of the proposed NIC, including how matters may be referred to the NIC, whether the NIC should be empowered to hold public hearings, and the ability of the NIC to make findings of corrupt conduct.
- Provisions for the protection of whistleblowers.
- The structure of the proposed NIC, including the resources provided for it.
- The oversight of the proposed NIC by the Parliamentary Joint Committee on the Australian National Integrity Commission and the Parliamentary Inspector.
- How the NIC will interact with existing integrity agencies, including the independence of those agencies and the effect of mandatory reporting requirements.

2.2 The chapter also outlines the key issues regarding the National Integrity (Parliamentary Standards) Bill 2018 (the NIPS bill).

2.3 The chapter concludes by providing the committee's view.

Is there a need for a national integrity commission?

2.4 A number of inquiry participants supported the establishment of a national integrity commission.¹ For example, Transparency International Australia (TIA) submitted that 'now is the time' for reform, and advanced that '[t]rust and confidence in the integrity of Parliament, the public sector and the system of government, is at an all-time low.'² It submitted that the current multi-agency integrity framework:

...is inadequate and fails to provide a comprehensive and coordinated approach to preventing, detecting and investigating corruption, and to prevent, manage and resolve parliamentary integrity issues.³

1 For example, Transparency International Australia, *Submission 12*, pp. 7–8; New South Wales Ombudsman (NSW Ombudsman), *Submission 15*, p. 2; Australian Council of Trade Unions, *Submission 16*, p. 3.

2 Transparency International Australia, *Submission 12*, p. 2.

3 Transparency International Australia, *Submission 12*, p. 2.

2.5 Similarly, the Accountability Round Table (ART) took issue with the current model involving the Australian Commission for Law Enforcement Integrity (ACLEI):

Independent experts in the formulation and implementation of public policy, particularly as it relates to national integrity commissions...know, and have known since its inception, that the Australian Commission for Law Enforcement Integrity (ACLEI) is not only a deeply flawed model but that the Commission has always been woefully under-resourced by successive Federal governments.⁴

2.6 The National Integrity Committee (The Australia Institute) (the National Integrity Committee) submitted that 'an ineffective commission is worse than no commission at all' and emphasised the need for a commission that would 'fill a serious gap in Australia's capacity to minimise corruption' at the Commonwealth level.⁵

2.7 The New South Wales Ombudsman (NSW Ombudsman), Mr Michael Barnes, stated that 'generally we wholeheartedly support the creation of the National Integrity Commission with the functions and powers set out' in the NIC bills. He explained:

In our view the bills' provisions are consistent with the principles which underpin an effective integrity commission—in particular, those provisions which provide for independence from government control; a focused, proactive approach to preventing corruption and instilling a culture of integrity across the public sector; and a broad jurisdiction in terms of who it can investigate and for what conduct, including non-criminal conduct if it's serious and systematic.⁶

2.8 It was noted by Ombudsman Western Australia that many countries have established an anticorruption commission, as in fact Australian states and territories have also done.⁷

2.9 In contrast to the above witnesses, the Institute of Public Affairs (IPA) opposed the establishment of a national integrity commission altogether, arguing that:

...based on the historical experience with state level anti-corruption agencies, a federal National Integrity Commission would not be appropriate or desirable, and would invite abuses of power.⁸

2.10 The IPA further submitted that 'it is not clear that corruption is such a problem in Australia that a federal agency – especially one with extraordinary investigative powers – is needed'. It noted that there is already 'a suite of federal regulators with

4 Accountability Round Table, *Submission 10*, p. 1.

5 National Integrity Committee (The Australia Institute) (National Integrity Committee), *Submission 6*, p. 1.

6 Mr Michael Barnes, NSW Ombudsman, Office of the NSW Ombudsman, *Committee Hansard*, 8 February 2019, p. 41.

7 Ombudsman Western Australia, *Submission 3*, p. 2.

8 Institute of Public Affairs, *Submission 5*, p. [1].

responsibility for enforcing existing laws against corrupt conduct', and that it 'would appear that these bodies are achieving their intended purpose'.⁹

2.11 The IPA also acknowledged survey results reflecting 'a population that is undeniably cynical about Australia's public institutions', but submitted that 'the causes of this cynicism are complex. It cannot necessarily be attributed to – nor accepted as evidence of – widespread corrupt conduct.'¹⁰ Mr Gideon Rozner, Director of Policy at the IPA, contended that establishing the NIC:

...won't do anything to enhance the trust in our public institutions. All the public will see is a rolling series of baseless accusations that make the adversarial and chaotic nature of our politics even worse. I think it will turn our political system further into a perennial sideshow.¹¹

Jurisdiction of the commission and the definition of 'corrupt conduct'

2.12 Consistent with its opposition to the establishment of a national integrity commission, the IPA expressed concern that an anticorruption commission may exceed its jurisdiction. Mr Rozner told the committee that 'inevitably these bodies become overzealous' and 'exceed their ambit'.¹² His colleague, Mr Morgan Begg, Research Fellow, elaborated:

At the state level, we've seen that these anticorruption agencies have become overenthusiastic. It's a symptom of what happens when you set up a special body, particularly a specialist body with a virtuous or very moral purpose, in this case challenging corruption. It's a very laudable objective, and unfortunately what happens is that these specialist bodies can become prone to pursuing those objectives without balancing considerations for the rule of law or considering what their appropriate jurisdiction is or faithfully executing their powers without going too far.¹³

2.13 Other inquiry participants supported a broad scope for the proposed national integrity commission.¹⁴ For example, TIA submitted that the commission:

...must have a broad jurisdiction, sufficient to cover all forms of serious or systemic corruption within or affecting any part of the public sector, the Parliament, parliamentarians and their staff, the executive and the judiciary.¹⁵

9 Institute of Public Affairs, *Submission 5*, Attachment 1, p. 8.

10 Institute of Public Affairs, *Submission 5*, Attachment 1, p. 9.

11 Mr Gideon Rozner, Director of Policy, Institute of Public Affairs, *Committee Hansard*, 8 February 2019, p. 29.

12 Mr Rozner, Institute of Public Affairs, *Committee Hansard*, 8 February 2019, p. 28.

13 Mr Morgan Begg, Research Fellow, Institute of Public Affairs, *Committee Hansard*, 8 February 2019, p. 28.

14 For example, National Integrity Committee, *Submission 6*, p. 1; Australian Council of Trade Unions, *Submission 16*, p. 2.

15 Transparency International Australia, *Submission 12*, p. 3.

2.14 One key issue affecting the scope of the proposed NIC is the definition of 'corrupt conduct'.

2.15 TIA submitted that while it prefers the breadth of the definition in the McGowan NIC bill to the government's proposed approach, it considers that:

...a better approach again would be a simpler version of the [New South Wales] and Queensland definitions which make clearer which forms of either criminal or non-criminal official misconduct (and associated non-official behaviour by private sector actors) fall within jurisdiction for prevention, investigation, findings of fact and recommendations.¹⁶

2.16 The National Integrity Committee proffered a definition of 'corrupt conduct', and supported the inclusion, within that definition, of 'any conduct of any person that has the potential to impair the efficacy or probity of an exercise of an official function, or public administration, by a public official'.¹⁷

2.17 The Hon Anthony Whealy QC, a member of the National Integrity Committee, submitted that the definition in the McGowan NIC bill is 'quite a good one', but supported the inclusion of:

...corrupt conduct of the kind where a public official acting honestly is nevertheless seriously misled by improper and inappropriate conduct to act in a certain way...We're not talking about a dishonest public official; we're talking about an honest public official who is seriously misled—for example, by a fraudulent tenderer. There could be millions of dollars involved, and the tender could be dishonest and fraudulent. We think that an anticorruption body must have the ability to investigate that action, even though it doesn't in the end expose any corruption on the part of the public official who may have been totally believing of what he'd been told.¹⁸

2.18 Similarly, the Crime and Corruption Commission Queensland (CCC Queensland) supported a definition that captures:

...the conduct of people outside the public sector that impairs or could impair public confidence in public administration by means of certain frauds and other dishonest acts which may result in loss of state revenue or improperly securing an appointment in the public sector.¹⁹

2.19 The CCC Queensland also noted that applicable definition in the *Crime and Corruption Act 2001* (Qld) 'is similar' to that proposed by the McGowan NIC bill.²⁰ It stated that the Queensland definition 'is considered to be generally consistent' with law

16 Transparency International Australia, *Submission 12*, p. 8.

17 National Integrity Committee, *Submission 6*, p. 5.

18 The Hon Anthony Whealy QC, Member, National Integrity Committee, *Committee Hansard*, 8 February 2019, p. 3.

19 Crime and Corruption Commission Queensland, *Submission 2*, p. 2; also see Mr Alan MacSporran QC, Chairperson, Crime and Corruption Commission Queensland, *Committee Hansard*, 8 February 2019, pp. 46–47.

20 Crime and Corruption Commission Queensland, *Submission 2*, pp. 1–2.

in New South Wales and Victoria, and that it is 'appropriate given the increasing degree of outsourcing and public-private partnerships in the delivery of government services'.²¹

2.20 The Community and Public Sector Union (CPSU) also referred to outsourcing in the public service, and advanced the view that the NIC should 'have a wide enough scope to ensure it covers not just [Australian Public Service] employees but also contractors and subcontractors'.²²

2.21 Regarding whether non-criminal conduct should be included in the definition, Mr Whealy of the National Integrity Committee supported its inclusion, recognising 'that some of that behaviour that people don't want to see is not necessarily criminal behaviour'. He explained:

In all of the state anticorruption agencies there is a definition of corrupt conduct, and in all of those states it's no longer the case that corrupt conduct must be criminal. That's so important because there can be a lot of corrupt conduct the public would regard as corrupt that wouldn't meet the notion of a criminal offence...This legislation in each of the states points to what is improper, even if it's not criminal.²³

2.22 The ACT Government confirmed that the relevant definition in its jurisdiction 'is not strictly tied to conduct that amounts to a criminal offence, as it also captures conduct such as a serious disciplinary offence'.²⁴

2.23 In the view of the Police Federation of Australia, investigations by the proposed NIC 'must not involve matters that fall short of corruption or serious misconduct'. It submitted:

Any activity that falls short of such conduct, does not warrant the independent investigation of an external agency, with the great powers afforded it. Those matters are better handled through internal investigation with external review to ensure accountability.²⁵

2.24 Aside from the policy intent of the definition of 'corrupt conduct', a representative of the Attorney-General's Department stated that there are 'potentially some drafting issues' relating to the definition in the NIC bills.²⁶ The representative provided one example in relation to the Greens NIC bill. She explained that

21 Crime and Corruption Commission Queensland, *Submission 2*, p. 2.

22 Community and Public Sector Union, *Submission 8*, p. 3; also see Mr Michael Tull, Assistant National Secretary, PSU Group, Community and Public Sector Union, *Committee Hansard*, 8 February 2019, p. 22

23 Mr Whealy, National Integrity Committee, *Committee Hansard*, 8 February 2019, p. 7.

24 ACT Government, *Submission 13*, p. 2.

25 Police Federation of Australia, *Submission 9*, p. 2.

26 Ms Sarah Chidgey, Deputy Secretary, Integrity and International Group, Attorney-General's Department, *Committee Hansard*, 8 February 2019, p. 35.

subclause 9(2), which lists conduct that could constitute corrupt conduct, does not adequately link to subclause 9(1). This means that subclause 9(2):

...could, for example, be taken to mean that any illegal gambling at a state level unconnected to any Commonwealth issues could be purported to be covered...²⁷

Oversight of the judiciary

2.25 Judicial officers would not be covered by the proposed NIC, but the NIC bills establish a review process to consider a system of integrity oversight for Commonwealth judicial officers.²⁸

2.26 Mr Whealy of the National Integrity Committee argued that the judiciary should be subject to integrity oversight.²⁹ The Hon David Ipp AO QC of the National Integrity Committee stated:

Whether it's done in the bills or whether it is done by a federal judicial commission is not material to us, but we agree that there should be no distinction made between judges and anyone else.³⁰

2.27 Ms Fiona McLeod SC, Chair of TIA, stated that the proposed commission should have a broad jurisdiction that covers the judiciary 'in due course, after consultations with them'.³¹ She further explained:

There should be consultation with the heads of jurisdiction to ensure that they are comfortable with the way it is managed and the way it operates. There are some good state models now, of course, that could be examined in taking this step. I would see that as a next step in terms of these bills.³²

2.28 The ART submitted that the NIC should 'be able to initially examine any allegations of serious judicial misconduct and corruption', while emphasising that a 'body that is totally independent of the Executive' was required for investigations in relation to the judiciary.³³ Dr Colleen Lewis, Director at the ART, emphasised that the 'most important thing is that the separation of powers is protected'.³⁴

27 Ms Chidgey, Attorney-General's Department, *Committee Hansard*, 8 February 2019, p. 39.

28 Explanatory Memorandum, McGowan NIC bill, p. [3]; Explanatory Memorandum, Greens NIC bill, p. 2; also see clause 278 of the NIC bills.

29 Mr Whealy, National Integrity Committee, *Committee Hansard*, 8 February 2019, p. 11.

30 The Hon David Ipp AO QC, Member, National Integrity Committee, *Committee Hansard*, 8 February 2019, p. 11; also see National Integrity Committee, *Submission 6*, p. 8.

31 Ms Fiona McLeod SC, Chair, Transparency International Australia, *Committee Hansard*, 8 February 2019, p. 53; also see Transparency International Australia, *Submission 12*, p. 3.

32 Ms McLeod, Transparency International Australia, *Committee Hansard*, 8 February 2019, p. 54.

33 Accountability Round Table, *Submission 10*, p. 2.

34 Dr Colleen Lewis, Director, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 54; also see Accountability Round Table, *Submission 10*, p. 2.

2.29 Dr Lewis' colleague at the ART, Professor Charles Sampford, further explained that while it is up to the parliament to decide about the continued tenure of a judge, it is 'not a great body for engaging in investigations'. He stated:

Before any motion to impeach a judge is moved, there needs to be an independent high-quality investigation into any allegations. This could in theory be done by the National Integrity Commission or it could be done by separate judicial commissions.³⁵

2.30 Professor Sampford added that an NIC is likely to have greater expertise than a judicial commission due to having a greater workload, and that this is 'an argument but not a conclusive argument' for including judges in the remit of the NIC.³⁶

2.31 Mr Barnes, the NSW Ombudsman, noted that 'there is no federal judicial commission' and contended that 'the NIC's jurisdiction should extend to federal judicial officers'. He stated:

We recognise that at Commonwealth level the separation of powers means that exactly the same procedures couldn't be used to investigate and report on alleged corruption by judicial officers. However, with necessary modification and the involvement of the heads of jurisdiction, those challenges can be overcome, in our view.³⁷

2.32 Regarding the current arrangements in Victoria, Ms Cathy Cato, Executive Director at the Victorian Inspectorate, noted that there is a separate judicial commission with oversight of the judiciary.³⁸ The Chairperson of the CCC Queensland, Mr Alan MacSporran QC, explained the situation in Queensland:

In Queensland we have jurisdiction, as the CCC, over judicial officers. Complaints of judicial misconduct have to be notified to the head of the jurisdiction, and they are required to provide cooperative assistance and to not impede in any way our independent investigation.³⁹

Historical instances of corrupt conduct

2.33 As explained in chapter 1, the Greens NIC bill limits the functions of the Integrity Commissioner such that the Commissioner may not investigate corrupt conduct that occurred more than ten years before the commencement of the bill. The McGowan NIC bill contains no such limitation.

35 Professor Charles Sampford, Director, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 54.

36 Professor Sampford, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 54.

37 Mr Barnes, NSW Ombudsman, *Committee Hansard*, 8 February 2019, p. 41.

38 Ms Cathy Cato, Executive Director, Legal and Integrity, Victorian Inspectorate, *Committee Hansard*, 8 February 2019, p. 44.

39 Mr MacSporran, Crime and Corruption Commission Queensland, *Committee Hansard*, 8 February 2019, p. 44.

2.34 Mr Tull of the CPSU noted that the NIC bills provide for some retrospectivity, which he said was 'important'.⁴⁰

2.35 The CCC Queensland submitted that the *Crime and Corruption Act 2001* (Qld) has 'never imposed any limit on the historical application of the definition of corrupt conduct'.⁴¹

Powers of the proposed National Integrity Commission

2.36 The IPA expressed concern that that the proposed NIC, with its coercive powers, would 'seriously compromise legal rights, democratic principles and the rule of law'.^{42,43}

2.37 The IPA suggested the NIC bills contain at least 12 provisions 'that breach the right to silence or remov[e] the privilege against self-incrimination' (six provisions in each bill).⁴⁴

2.38 One power discussed by the IPA relates to findings by the National Integrity Commissioner that are critical of a person. Mr Begg of the IPA stated that 'as I understand it, where the commissioner is satisfied that there is an allegation of criminality that they don't have to inform the person'. He called this 'one of the more bizarre aspects of the bill', as:

[t]o my mind that would be one of the situations where you most need to inform the person because the consequences are so severe.⁴⁵

2.39 Other inquiry participants submitted that it is appropriate that the NIC have the powers of a royal commission.⁴⁶ For example, the National Integrity Committee stated that the NIC:

...must be granted the investigative powers of a Royal Commission to undertake its work, to be executed at the discretion of the Commissioner. These powers would include the power to initiate its own investigations, and the power to make arrests, to conduct searches, and to gather and hold evidence.⁴⁷

40 Mr Tull, Community and Public Sector Union, *Committee Hansard*, 8 February 2019, p. 23; also see Community and Public Sector Union, *Submission 8*, p. 4.

41 Crime and Corruption Commission Queensland, *Submission 2*, p. 2.

42 Institute of Public Affairs, *Submission 5*, Attachment 1, p. 7.

43 Institute of Public Affairs, *Submission 5*, p. [1].

44 Institute of Public Affairs, *Submission 5*, Attachment 1, p. 11.

45 Mr Begg, Institute of Public Affairs, *Committee Hansard*, 8 February 2019, pp. 27–28.

46 See, for example, Accountability Round Table, *Submission 10*, p. 2; Transparency International Australia, *Submission 12*, p.3; Mr Barnes, NSW Ombudsman, *Committee Hansard*, 8 February 2019, p. 41; Ms McLeod, Transparency International Australia, *Committee Hansard*, 8 February 2019, p. 53.

47 National Integrity Committee, *Submission 6*, p. 1.

2.40 On this point, Mr Ipp of the National Integrity Committee, emphasised that 'a hearing before [the Independent Commission Against Corruption] or an anticorruption agency is not a judicial hearing; it is a means of investigation'.⁴⁸ He elaborated:

It's really very similar to a police investigation where the police investigate a person not really knowing whether the person is guilty or not but assembling whatever evidence they can, and that person can't say, 'What you're doing and what you're asking is contrary to the rules of evidence,' because it's not a court case; it's an investigation...The rights of royal commissions have been around for a couple of hundred years because the law recognises that the overall public interest demands that, in special cases, those laws should be abrogated where there is an investigation of the kind that takes place with a royal commission and, it follows, by an anticorruption agency.⁴⁹

2.41 Mr Ipp stated that an anticorruption agency is 'nothing more, in effect, than a roving royal commission. It's roving because it can decide what it investigates or not, but its rights are no more and no less than a royal commission's'.⁵⁰

2.42 The CPSU submitted that the NIC should be allowed to use covert tactics such as listening devices and optical surveillance, but 'only under strict oversight'. It continued that there should be no arbitrary use of coercive powers, and due process should apply.⁵¹

2.43 The CCC Queensland noted that the NIC bills do not 'expressly vest the NIC with the array of law enforcement powers available under Commonwealth legislation'.⁵² It recommended that:

...the NIC, like state anti-corruption agencies, have express powers of telecommunication interception and other related powers under the *Telecommunications (Interception and Access) Act 1979*. Depending on policy preference, the NIC (and its authorised officers) may also have express powers for controlled operations, integrity testing and assumed identities under the *Crimes Act 1914* and surveillance powers under the *Surveillance Devices Act 2004*.⁵³

2.44 A representative of the Attorney-General's Department noted that the NIC bills, as drafted, do not provide the full suite of powers to the proposed NIC:

Because of those issues about intersection with other acts, the bill itself gives some powers to the Integrity Commission, but not the full suite,

48 Mr Ipp, National Integrity Committee, *Committee Hansard*, 8 February 2019, p. 5.

49 Mr Ipp, National Integrity Committee, *Committee Hansard*, 8 February 2019, p. 6.

50 Mr Ipp, National Integrity Committee, *Committee Hansard*, 8 February 2019, p. 6; also see, for example, Dr Lewis, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 51.

51 Community and Public Sector Union, *Submission 8*, p. 6; also see, for example, National Integrity Committee, *Submission 6*, p. 8.

52 Crime and Corruption Commission Queensland, *Submission 2*, p. 3.

53 Crime and Corruption Commission Queensland, *Submission 2*, p. 4.

because there have been no amendments to pick up anything like telecommunications interception, surveillance devices, assumed identities and control operations. All of those kinds of things would need consequential amendments in order to give this body the full suite of investigative powers.⁵⁴

2.45 Regarding the treatment of legal professional privilege, the NSW Ombudsman noted that the NIC bills do not:

...require legal practitioners to disclose privileged communications to the Commission. This poses challenges to investigating bodies by preventing access to what may be highly relevant information, particularly given that organisations and individuals may use legal advisers to shield their actions and decisions from scrutiny.

I suggest that the Commissioner be able to require, although not necessarily disclose, the production of information claimed to be privileged.⁵⁵

2.46 The National Integrity Committee similarly saw the abrogation of legal professional privilege as 'eminently justifiable', and submitted that in the experience of the New South Wales Independent Commission Against Corruption (ICAC), the abrogation of the privilege 'has on many occasions proved to be essential to a successful investigation'.⁵⁶

2.47 The National Integrity Committee also highlighted that the NIC bills provide for a limited abrogation of public interest immunity.⁵⁷ It submitted that:

...claims for public immunity privilege or parliamentary privilege, or of commercial confidentiality, should not be available to those under investigation by the Commission, save to the extent that the Commission may, if it considers it in the public interest to do so, order that information or documents be kept confidential.⁵⁸

Referring matters to the proposed National Integrity Commission

2.48 Some inquiry participants supported the proposed NIC being able to receive referrals from the general public.⁵⁹ TIA submitted that the NIC 'must have the ability to receive complaints from the public, and to use its discretion as to how best to proceed'.⁶⁰ Professor Sampford of the ART also emphasised the importance of the

54 Ms Chidgey, Attorney-General's Department, *Committee Hansard*, 8 February 2019, p. 31.

55 NSW Ombudsman, *Submission 15*, p. 3.

56 National Integrity Committee, *Submission 6*, p. 7.

57 Also see, for example, discussion of immunities in Crime and Corruption Commission Queensland, *Submission 2*, p. 6.

58 National Integrity Committee, *Submission 6*, pp. 7–8.

59 For example, Mr Ipp, National Integrity Committee, *Committee Hansard*, 8 February 2019, p. 8.

60 Transparency International Australia, *Submission 12*, p. 3.

NIC accepting information from the public. He suggested that, similar to police work, the work of the NIC could benefit from small pieces of information:

[T]here are often little titbits of information which are insufficient to form a reasonable suspicion that a person has actually committed a crime but, if all the little bits are added together, in that case the police can think, 'There's something suspicious here; we have to investigate it.'...So cutting off the national integrity commission from the source of criminal intelligence that is most used by normal police forces, which is information from the public, is a huge mistake.⁶¹

2.49 Some inquiry participants were asked about the risk that a person might refer alleged conduct of their political opponent to the NIC, and that regardless of the legitimacy of their allegation, the person would receive political benefit.

2.50 Mr Rozner of the IPA said that that is 'a very real risk'. He explained that:

...these avenues often create the opportunity for political opponents to refer people for the sake of being referred. Again, it's a shorthand way of running somebody through the mud and damaging their credibility with absolutely no evidence or cause necessarily.⁶²

2.51 When asked a similar question, Mr MacSporran of the CCC Queensland acknowledged that this has historically been an issue, and explained:

We've endeavoured to deal with it in this way: to publicly campaign, if you like, and educate the public and others, including politicians and elected officials, that, if they are genuinely concerned about corrupt behaviour, they should come to us as the appropriate agency to deal with it, but they should do so confidentially. We promote that on the basis that if, at the end of the day, we conclude there is nothing corrupt about the conduct, for reasons we are able to articulate to the complainant, and the complainant then disagrees with our assessment of that matter, they can then go public and express their views in that way. But ordinarily, if they accept our advice that there is no corrupt conduct for reasons which we express reasonably, there is no harm done to reputations, and the matter goes nowhere.⁶³

2.52 Mr MacSporran also stated that he was:

...reluctant to take it further to the point where we routinely prosecute people who make allegations that can't be substantiated publicly, because I think the greater good is served by encouraging all complainants to come forward. The last thing we want is to discourage people by the threat of prosecution, unless it's a very clear case, and those are few and far between in our experience.⁶⁴

61 Professor Sampford, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 57.

62 Mr Rozner, Institute of Public Affairs, *Committee Hansard*, 8 February 2019, p. 29.

63 Mr MacSporran, Crime and Corruption Commission Queensland, *Committee Hansard*, 8 February 2019, p. 43.

64 Mr MacSporran, Crime and Corruption Commission Queensland, *Committee Hansard*, 8 February 2019, p. 43.

2.53 When asked about what remedies might be available if a person's reputation was damaged by false allegations, Mr MacSporran stated that there is '[n]othing other than the civil law of defamation, unfortunately'. He also noted that there may also be 'a backlash at the polls from an increasingly aware public who understand the nuances of some of these things'; a similar point was made by the NSW Ombudsman, Mr Barnes.⁶⁵

Hearings of the National Integrity Commission

2.54 A number of inquiry participants supported, subject to certain criteria, the ability of the proposed NIC to hold public hearings.⁶⁶

2.55 For instance, the National Integrity Committee submitted that the power to hold public hearings, subject to certain provisos, is 'crucial'.⁶⁷ It suggested that it 'is now generally accepted that it is difficult to uncover corruption without the aid of public hearings', but it also acknowledged that public hearings should be held 'sparingly and only where they are demanded by the public interest'.⁶⁸

2.56 The ART similarly advanced that the NIC should be able to hold public hearings, and noted that the Victorian Independent Broad-based Anti-corruption Commission (IBAC) has used its public hearing powers 'sparingly and wisely'—of the 69 inquiries (including preliminary inquiries) it has completed to date, five public hearings were held.⁶⁹ Dr Lewis of the ART emphasised that:

...discretion to hold a public hearing must be in the hands of the commissioners appointed to run the integrity commission. If parliamentarians don't have faith in a particular person to be able to do that then they shouldn't be appointing them in the first place. Public hearings are absolutely crucial, and I really think they're non-negotiable.⁷⁰

2.57 Ms McLeod of TIA also suggested that the ability to hold public hearings is 'absolutely vital':

This commission has to have the role of not just investigating and reporting on or passing on its findings of fact that could support findings of corruption; it has to have an educative and preventive role, and in appropriate cases it has to have that power of public hearings...If the threshold is, as it is in Victoria, that the commissioner takes into account the potential risks for damage to reputation, that they consider that there's a

65 Mr MacSporran, Crime and Corruption Commission Queensland, *Committee Hansard*, 8 February 2019, p. 44; Mr Barnes, NSW Ombudsman, *Committee Hansard*, 8 February 2019, p. 44.

66 See, for example, Crime and Corruption Commission Queensland, *Submission 2*, p. 6; Community and Public Sector Union, *Submission 8*, p. 6; Transparency International Australia, *Submission 12*, p. 3; NSW Ombudsman, *Submission 15*, p. 2.

67 National Integrity Committee, *Submission 6*, p. 2.

68 National Integrity Committee, *Submission 6*, p. 2.

69 Accountability Round Table, *Submission 10*, p. 2.

70 Dr Lewis, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 57.

public interest in having a public hearing, and it's considered to be exceptional, then there should be a public hearing.⁷¹

2.58 Mr MacSporran of the CCC Queensland explained that his organisation generally holds public hearings 'in a corruption prevention context, as opposed to exposing corrupt behaviour that might ultimately be prosecuted'. He explained:

We have a policy view that, if we conduct public hearings, we have to be very careful that we're not going to prejudice the fair trial of someone who might ultimately be charged with a corruption offence. Our public hearings are mostly designed to expose weaknesses in systems of governance and so forth with a view to making recommendations that might, in the public interest, address those deficiencies. We're not usually about exposing corruption with a view to handing the public hearing transcript over to the DPP to lay charges and prosecute.⁷²

2.59 The IPA expressed its opposition to public hearings. Mr Rozner posited there is a risk that 'hearings in these matters become perennial show trials that raise a lot of media attention and trash the reputation of the person subjected to them'.⁷³ More generally, Mr Begg of the IPA suggested that the question of whether hearings should be public is one of the issues with 'quasi-judicial bodies' such as the proposed NIC:

On the one hand, if it's a public hearing, you're effectively defaming people as a matter of course by involving them in corruption inquiries. On the other hand, if they're closed inquiries, they're not open to the public; there's less oversight and it's a more opaque process...you can't really get it right in these formats. That is why we should rely on the traditional methods in the common-law courts.⁷⁴

2.60 Unlike the proposed NIC, the public sector division of the government's proposed Commonwealth Integrity Commission would not be permitted to hold public hearings. A representative of the Attorney-General's Department explained the government's rationale for this approach:

The government's view on the absence of a public hearing power in the [government's] current proposal is very much because it's appropriate for a court to be holding those public hearings and making any ultimate public determination of culpability. Obviously that is particularly so when we are talking criminal corrupt conduct.⁷⁵

2.61 A separate, technical issue was raised by the National Integrity Committee regarding the provisions in the NIC bills on public hearings. The National Integrity

71 Ms McLeod, Transparency International Australia, *Committee Hansard*, 8 February 2019, pp. 56–57.

72 Mr MacSporran, Crime and Corruption Commission Queensland, *Committee Hansard*, 8 February 2019, p. 46.

73 Mr Rozner, Institute of Public Affairs, *Committee Hansard*, 8 February 2019, p. 29.

74 Mr Begg, Institute of Public Affairs, *Committee Hansard*, 8 February 2019, p. 28.

75 Ms Chidgey, Attorney-General's Department, *Committee Hansard*, 8 February 2019, p. 38.

Committee submitted that the current draft of the NIC bills would allow a decision of the NIC to hold a public hearing to be challenged in court. It stated that in order to respond to any such challenge, the NIC would be 'obliged to expose its hand in order to demonstrate the seriousness of the corruption issue'. In addition, the court challenge would cause a delay 'during which a person under investigation for corruption will have the opportunity to destroy or conceal evidence'. The National Integrity Commission supported re-drafting the NIC bill to prevent this from occurring.⁷⁶

The ability of the proposed National Integrity Commission to make findings

2.62 The committee heard some discussion about whether the proposed NIC should be able to make findings of corrupt conduct or findings of criminality.⁷⁷

2.63 Mr MacSporran of the CCC Queensland confirmed that his organisation does not 'prosecute, make findings of corruption or make any findings of fact'.⁷⁸

2.64 Ms McLeod stated that TIA supports the NIC 'being able to make findings of fact rather than findings of corruption'. She explained that this approach:

...strikes a balance between the intrusion on the role of the court and the protection of the individual's reputation and rights. If a standing commission has the power to make findings of fact and then refer those matters for investigation and presentation, you still get the protection of a prosecutorial agency having to make decisions about admissible evidence, reasonable prospects and public interest in terms of proceedings.⁷⁹

2.65 The National Integrity Committee submitted that while its members agreed the NIC should have no power to make findings of criminality,⁸⁰ they were divided on whether the NIC should be empowered to make findings of corrupt conduct:

After a detailed consideration of powerful opposing views amongst members of the Integrity Committee, the majority, not without hesitation, took the preliminary view that the Commission must have the power to make findings of fact, but should not have the power to make corrupt conduct findings.⁸¹

2.66 The National Integrity Committee provided rationales, held by a majority of its members, against allowing corrupt conduct findings. These included the following:

- A national integrity commission 'is a branch of the Executive, and is not a court'.

76 National Integrity Committee, *Submission 6*, p. 7.

77 See, for example, Community and Public Sector Union, *Submission 8*, p. 5.

78 Mr MacSporran, Crime and Corruption Commission Queensland, *Committee Hansard*, 8 February 2019, p. 46.

79 Ms McLeod, Transparency International Australia, *Committee Hansard*, 8 February 2019, p. 56; also see Transparency International Australia, *Submission 12*, p. 3.

80 National Integrity Committee, *Submission 6*, p. 5.

81 National Integrity Committee, *Submission 6*, p. 2.

- The proceedings of a national integrity commission 'are inquisitorial rather than adversarial. At commission level, the standard of proof never reaches that which applies in criminal proceedings: beyond reasonable doubt. Rather, it operates on the civil standard: the balance of probabilities.'
- 'For the very reason that serious and systemic corruption is seriously inimical to the proper functioning of society, findings of corruption where a criminal offence is involved must be made only after very careful and independent assessment of the evidence, and by a tribunal such as a court which is independent of the Commission.'⁸²

2.67 Mr Ipp of the National Integrity Committee was in the minority that supported the ability of the NIC to make findings of corrupt conduct. He provided a rationale based on his experience:

In the great case of Eddie Obeid and his cohorts, which involved at least 10 people involved in corrupt conduct, the facts were extremely complicated. They involved tracing disguises through trusts, companies and shareholders, with money passing secretly. If there were simply factual findings there in regard to each issue, without connecting the dots and demonstrating that they all add up to corrupt conduct in the end, very few people would appreciate the extent of the corruption. One of the main purposes of an anticorruption agency is to expose corruption. It exposes it, really, through public inquiries and through media reports. But, if in a complicated case the factual findings are so many and so complex that no journalist is going to read that report from beginning to end with any care, as is inevitably the case, a great deal of the commission's work will be lost.⁸³

2.68 One implication of the approach proposed by Mr Ipp, discussed at the committee's hearing, is that the NIC would be able to make a finding of corrupt conduct based on the evidence before it, but it would not be able to take further action. Rather, the person would need to be prosecuted in the courts, but the court would have to rehear the matter and do so under more restrictive rules of evidence.⁸⁴

2.69 The National Integrity Committee noted other rationales, held by its minority, that support an ability for the NIC to make corrupt conduct findings. These rationales included that 'a finding that a person has not been guilty of corrupt conduct will firmly protect reputation'.⁸⁵

2.70 In addition, Mr Ipp contended that:

[t]o try to define crimes that cover every kind of corruption is just about impossible, and, the more legislation, the more complex, the more difficult, the more gaps there are for people to slip through. So that's why having the

82 National Integrity Committee, *Submission 6*, p. 5.

83 Mr Ipp, National Integrity Committee, *Committee Hansard*, 8 February 2019, pp. 4–5.

84 See Mr Ipp, National Integrity Committee, *Committee Hansard*, 8 February 2019, p. 6.

85 National Integrity Committee, *Submission 6*, p. 5.

ability to make corrupt conduct findings where there is no criminal conduct is a failsafe. It's a backstop.⁸⁶

Provisions relating to the protection of whistleblowers

2.71 Several inquiry participants welcomed additional measures for the protection of whistleblowers.⁸⁷ For instance, the Australian Council of Trade Unions (ACTU) submitted that it was:

...also clear that there is a need for better whistle-blower protections for those who speak out about corruption and malpractice. At present, there is a strong disincentive for whistleblowers to come forward, given the lack of protection and potential risk to their careers and reputations.⁸⁸

2.72 The Police Federation submitted that the proposal to establish a Whistleblower Protection Commissioner is 'commendable', but the proposed office:

...must have sufficient resources and legislative powers to manage and resolve complaints efficiently and ensure the safety and well-being of employees who report these matters throughout the reporting/investigation process.

There likewise needs to be a process to deal with malicious complaints.⁸⁹

2.73 The NSW Ombudsman, Mr Barnes, told the committee that the 'joint public-private whistleblower protection oversight model' set out in the NIC bills 'breaks new ground and is strongly supported by my office'.⁹⁰ Mr Barnes provided some of the reasons that his office supports the proposed model:

The mandatory reporting regime, whereby public sector agencies are required to notify whistleblower protection issues to a dedicated oversight body, would allow for high-risk and complex matters to be identified early and support to be provided, both to the whistleblower and to the relevant agencies, so that proactive action is taken to prevent detriment occurring or escalating. Current Australian legislation only provides legal protection to whistleblowers to remedy harm after the fact.

The oversight model also clearly separates responsibilities for supporting the whistleblower and investigating the substantive allegations they have disclosed. This ensures the independence of any investigation, while recognising the vulnerable position of a whistleblower and their need for an advocate. One of the ways the bills achieve this is by appointing a separate whistleblower protection commissioner with distinct functions and staff. We strongly support that proposal. Further, it provides a special account to fund legal and other support, and to compensate whistleblowers who have

86 Mr Ipp, National Integrity Committee, *Committee Hansard*, 8 February 2019, p. 7.

87 See, for example, Community and Public Sector Union, *Submission 8*, p. 8; Transparency International Australia, *Submission 12*, p. 3.

88 Australian Council of Trade Union, *Submission 16*, p. 2.

89 Police Federation of Australia, *Submission 9*, p. 4.

90 Mr Barnes, NSW Ombudsman, *Committee Hansard*, 8 February 2019, p. 41.

suffered detriment. We also support that proposal. The commission itself can commence any proceedings for remedies, to mediate a dispute or to seek an enforceable undertaking. The practical value of this to whistleblowers cannot be understated, both in providing justice and encouraging staff in organisations to come forward more generally.⁹¹

2.74 Notwithstanding the above points, the NSW Ombudsman also raised some concerns, including that certain whistleblower protection functions are not included in the NIC bills and that they would form part of a fragmented and complex legislative framework.⁹² It recommended 'avoiding the prescriptive approach taken in the Bill and instead...adopting a principles-based approach to any whistleblower protection legislation'.⁹³

2.75 The Commonwealth Ombudsman pointed to some technical issues with how the whistleblower protection provisions would interact with the *Public Interest Disclosure Act 2013*.⁹⁴ As Mr Michael Manthorpe, the Commonwealth Ombudsman, explained, the issues relate to:

...how the public interest disclosure activities that we perform would sit vis-a-vis the whistleblower protection authority. In making sure that that worked in an effective way, there are some technical issues that we pointed out in our submission that would need to be worked through.⁹⁵

Structure of the proposed National Integrity Commission

2.76 Regarding the governance of the proposed NIC, the ART suggested a model in which four part-time commissioners would be appointed to support the National Integrity Commissioner.⁹⁶ It suggested that this would 'open the national integrity commission to outside perspectives, which would help to prevent a too insular culture from forming'.⁹⁷ Of the four part-time commissioners:

...one should be a legal practitioner with a proven record in civil liberty-related matters and the remaining three should have a mixture of skills including senior management experience and community engagement.⁹⁸

2.77 In a similar vein, the National Integrity Committee submitted that the independence of the commission would be enhanced by the appointment of at least

91 Mr Barnes, NSW Ombudsman, *Committee Hansard*, 8 February 2019, pp. 41–42; also see NSW Ombudsman, *Submission 15*, p. 3.

92 NSW Ombudsman, *Submission 15*, pp. 5–6.

93 NSW Ombudsman, *Submission 15*, p. 5.

94 Commonwealth Ombudsman, *Submission 17*, p. 4.

95 Mr Michael Manthorpe, Commonwealth Ombudsman, Office of the Commonwealth Ombudsman, *Committee Hansard*, 8 February 2019, p. 34.

96 Dr Lewis, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 51.

97 Accountability Round Table, *Submission 10*, p. 2.

98 Accountability Round Table, *Submission 10*, p. 3.

two deputy commissioners 'with the same attributes of character and qualifications as the Commissioner and who with the Commissioner would be the members of the senior management team'. It suggested the benefit of this approach is that:

...all could be involved in the decision-making process when politically controversial decisions had to be made. Having Deputy Commissioners with particular expertise and responsibilities would also be a benefit.⁹⁹

2.78 However, the National Integrity Committee also noted that an 'experienced and wise Chief Commissioner must not be inhibited in the making of correct decisions by the intervention of less experienced and perhaps less wise deputies'. It expressed a preliminary view that the chief commissioner should be required to consult the deputies on important matters, but nonetheless make the final determination.¹⁰⁰

2.79 The ACTU suggested that there should be three National Integrity Commissioners, as this would 'help protect against a corrupt Commissioner being appointed', and also means that 'any conspiracy involving a Commissioner is more likely come to light'. The ACTU submitted that the three commissioners may be of equal status, or there may be one commissioner and two deputies.¹⁰¹

2.80 Regarding who might be appointed as the National Integrity Commissioner, some inquiry participants submitted that the commissioner should be a judge, former judge, or qualified for appointment as a judge.¹⁰² The ACTU submitted that being qualified for appointment as a judge is insufficient; the candidate should be a current or former judge.¹⁰³

2.81 The National Integrity Committee set out several criteria for the independence of the NIC, including the following relating to the commissioners:

First, those with the rank of Commissioner or Deputy Commissioner must be persons of such quality and reputation as would enable them to resist the pressure, which they will surely encounter, to act otherwise than in accordance with their duty. Secondly, they must have a limited period of tenure of office, with no prospect of re-appointment following the expiration of that period, but with security of tenure until such expiration. Thirdly, their remuneration must not be diminished following their appointment.¹⁰⁴

99 National Integrity Committee, *Submission 6*, p. 4.

100 National Integrity Committee, *Submission 6*, p. 4.

101 Australian Council of Trade Unions, *Submission 16*, p. 8.

102 Note that this position is consistent with subclause 187(2) of the NIC bills. Also see National Integrity Committee, *Submission 6*, p. 2; Accountability Round Table, *Submission 10*, p. 2.

103 Australian Council of Trade Unions, *Submission 16*, pp. 6–8.

104 National Integrity Committee, *Submission 6*, p. 3.

Resourcing the National Integrity Commission

2.82 A number of inquiry participants contended that the proposed NIC should have appropriate resources to fulfil its functions.¹⁰⁵ For instance, the ART submitted that it:

...strongly advocates for a well resourced, independent national integrity commission, adequately staffed by experts in the investigation of corruption and in its prevention. The latter element is crucial for a number of reasons, not the least being the identification of system-wide 'red flags' to prevent corruption occurring and recurring and to prevent the perception among public servants in particular, that a 'one stop shop' anti-corruption body only exists to wield a big stick.¹⁰⁶

2.83 The CPSU also submitted that 'it is essential that staff are trained and resourced appropriately.'¹⁰⁷ Mr Osmond Chiu, Senior Policy and Research Officer at the CPSU, suggested that staffing 'in the vicinity of 400 [average staffing level]' would be needed for a national integrity commissioner, as well as offices in several state capital cities. He noted that this was 'reaffirmed by the 2018 Griffith University Transparency International options paper on a national integrity commission'.¹⁰⁸

2.84 A representative of the Attorney-General's Department explained the resourcing approach being considered by the government for its proposed Commonwealth Integrity Commission:

The government's proposal paper gave an indication that the initial estimate for resourcing would be something in the order of \$100 million to \$125 million over the forward estimates but said that that would be subject to further consideration. And so we are giving that further consideration. One issue with the bills before the committee is that, because the remit is so extensive, the sheer volume of information—allegations—that might make its way through the commission to sort through really does have the potential to be overwhelming. It would potentially be given to some of the other integrity agencies and that would be quite significant in terms of any resourcing that would enable that to be managed. The government does have a more focused proposal.¹⁰⁹

2.85 National Integrity Committee suggested that the National Integrity Commissioner should 'have the right to address Parliament about the financial needs of the Commission'. It stated:

105 See, for example, National Integrity Committee, *Submission 6*, p. 3; Transparency International Australia, *Submission 12*, p. 4; NSW Ombudsman, *Submission 15*, p. 2.

106 Accountability Round Table, *Submission 10*, p. 1.

107 Community and Public Sector Union, *Submission 8*, p. 3.

108 Mr Osmond Chiu, Senior Policy and Research Officer, PSU Group, Community and Public Sector Union, *Committee Hansard*, 8 February 2019, p. 19.

109 Ms Chidgey, Attorney-General's Department, *Committee Hansard*, 8 February 2019, p. 38.

Such an opportunity should be made available at least annually, and at an appropriate time before the Treasurer's federal budget speech. By like reasoning, the government should be required to give a public explanation for any failure to meet the Commission's request for funds. The Commission should then be provided with a one-line budget sufficient to enable it to discharge to the full all its statutory functions.¹¹⁰

Oversight of the proposed National Integrity Committee

Parliamentary Joint Committee on the Australian National Integrity Commission

2.86 Some submitters welcomed the proposed establishment of the Parliamentary Joint Committee on the Australian National Integrity Commission (PJC NIC).¹¹¹

2.87 The ART stated that it 'fully supports' the establishment of the PJC NIC.¹¹² The National Integrity Committee submitted that the composition of the proposed PJC NIC is 'impeccably even-handed, provided that independents continue to be elected'. It suggested that the NIC bills 'should provide for the possibility that this may not be so'.¹¹³

Parliamentary Inspector

2.88 The ART also supported the appointment of a Parliamentary Inspector and argued that the Inspector 'must be an independent officer of the Parliament'. While The Inspector would have roles overseeing the NIC, including monitoring the exercise of power by the NIC, the ART added that the Inspector:

...must not interfere, in any way, with the national integrity commission's decision to investigate a matter, to conduct an inquiry (in public or privately) or to interfere with any decision by the national integrity commission to conduct ongoing investigations.¹¹⁴

2.89 The Victorian Inspectorate submitted that the model of Parliamentary Inspector proposed in the NIC bills is 'very different to that of the Victorian Inspectorate model'.¹¹⁵ The Victorian Inspectorate submitted:

In my experience, an oversight body such as the Parliamentary Inspector needs to be invested with clear powers in order to be able to successfully deal with jurisdictional challenges raised by an oversight body. Specifying powers by reference to those of the National Integrity

110 National Integrity Committee, *Submission 6*, p. 4.

111 See, for example, Transparency International Australia, *Submission 12*, p. 8; Australian Council of Trade Unions, *Submission 16*, p. 6.

112 Accountability Round Table, *Submission 10*, p. 3.

113 National Integrity Committee, *Submission 6*, p. 6.

114 Accountability Round Table, *Submission 10*, p. 3; also see National Integrity Committee, *Submission 6*, p. 6.

115 Victorian Inspectorate, *Submission 1*, p. 1. These differences are discussed at Victorian Inspectorate, *Submission 1*, pp. 1–2; also see Ms Cato, Victorian Inspectorate, *Committee Hansard*, 8 February 2019, p. 42.

Commissioner and dependent on regulations is very much a sub-optimal way of legislating. Further, the operational limitations on the Parliamentary Inspector as outlined above restrict the independence and effectiveness of the Parliamentary Inspector with a consequential impact on the quality of oversight of which the Parliamentary Inspector will be capable.¹¹⁶

2.90 One issue highlighted by Ms Cathy Cato, an Executive Director at the Victorian Inspectorate, concerned the level of independence of the proposed Inspector:

The operational limitations on the parliamentary inspector, which include only performing the core functions if so requested by the proposed joint committee on the Australian National Integrity Commission, restrict the independence and effectiveness of the parliamentary inspector, with a consequential impact on the quality of oversight of which the inspector will be capable. An oversight body such as the parliamentary inspector also needs to be vested with clear powers in order to be able to successfully deal with any challenges to its jurisdiction that may be raised by a body that it oversees. The bills are not clear in this respect, as they specify the parliamentary inspector's powers by reference to those of the National Integrity Commissioner and with a scope that is dependent on regulations.¹¹⁷

Interaction with Australia's existing multi-agency integrity framework

2.91 Some inquiry participants, including state agencies, commended the NIC bills for their provisions relating to cooperation and coordination between agencies.¹¹⁸ However, other inquiry participants expressed concern about potential overlap between the proposed NIC and existing agencies.

2.92 The Inspector-General of Intelligence and Security (IGIS) noted that the functions of the proposed NIC include investigating the conduct of personnel within the intelligence agencies currently overseen by IGIS.¹¹⁹ IGIS highlighted various ways in which it already can and does 'deal with issues that could be described as corruption and other misconduct'.¹²⁰ However, it also acknowledged that its oversight is different to that of the proposed NIC, as its functions do not involve investigating 'suspected criminal conduct by particular individuals for the purposes of obtaining evidence for a potential criminal prosecution or other law enforcement action'.¹²¹

2.93 IGIS advised the committee that it 'supports the broad approach to cooperation contemplated by the Bills'. However, it also submitted that to the extent

116 Victorian Inspectorate, *Submission 1*, p. 2.

117 Ms Cato, Victorian Inspectorate, *Committee Hansard*, 8 February 2019, p. 42.

118 See, for example, Crime and Corruption Commission Queensland, *Submission 2*, p. 6; NSW Ombudsman, *Submission 15*, pp. 2–3.

119 Inspector-General of Intelligence and Security, *Submission 11*, p. 1.

120 Inspector-General of Intelligence and Security, *Submission 11*, p. 2.

121 Inspector-General of Intelligence and Security, *Submission 11*, p. 3.

there is concurrent jurisdiction, it will be important for both agencies to have access to 'legislative tools that clearly enable information-sharing and cooperation to avoid duplication and ensure appropriate coordination, subject to the requirements of security'.¹²²

2.94 Separately, the Commonwealth Ombudsman noted that some of the activities of the proposed Parliamentary Inspector 'are already within the remit of the Ombudsman'. In particular, the Commonwealth Ombudsman's office:

...already inspects and reports to Parliament on whether law enforcement agencies have secured appropriate authorisations to exercise certain covert and intrusive powers. This Office also has a complaints investigation role and broad powers to undertake own motion investigations into systemic issues that might be apparent from individual complaints.¹²³

2.95 The Commonwealth Ombudsman also suggested that:

...further consideration is required to avoid the risk of duplication of effort between the Parliamentary Inspector and the Ombudsman. One approach could be to vest the Parliamentary Inspector role in the Ombudsman and his Office. This would obviate the need for a further proliferation of integrity-related bodies. Alternatively, further drafting could be commissioned to differentiate the respective roles of the Parliamentary Inspector and the Ombudsman.¹²⁴

2.96 Ms Sarah Chidgey, Deputy Secretary at Attorney-General's Department, stated that while an integrity commission would 'obviously add' to the existing multi-agency framework, it is important that the commission does not 'duplicate or complicate arrangements'.¹²⁵ Ms Chidgey highlighted that various existing integrity agencies already have misconduct and maladministration within their remit, including IGIS, the Inspector-General of the Australian Defence Force and the Inspector-General of Taxation. She stated that 'more thought would need to be given to their roles in a context where this [NIC] would very much reach out into all the matters that they currently have responsibilities for'.¹²⁶

The independence of existing Commonwealth agencies

2.97 Some inquiry participants discussed the potential implications of the proposed NIC on the functions of existing agencies. For instance, the Australian National Audit Office (ANAO) submitted that the NIC bills in their current form:

...would impact negatively on the independence of the Auditor-General and the effective administration of Auditor-General functions under the Auditor-General Act in a number of respects. Of particular concern is the

122 Inspector-General of Intelligence and Security, *Submission 11*, p. 3.

123 Commonwealth Ombudsman, *Submission 17*, p. 2.

124 Commonwealth Ombudsman, *Submission 17*, p. 3.

125 Ms Chidgey, Attorney-General's Department, *Committee Hansard*, 8 February 2019, p. 31.

126 Ms Chidgey, Attorney-General's Department, *Committee Hansard*, 8 February 2019, p. 35.

extension of the coercive and mandatory information-gathering powers of the Commission and office holders to the Auditor-General and ANAO staff in the performance of Auditor-General functions.¹²⁷

2.98 As explained by Dr Tom Ioannou, Group Executive Director at the ANAO:

...we prefer arrangements that do not weaken the Auditor-General's independent conduct of his statutory functions or reporting to parliament. For example, we wish to avoid a situation where the Auditor-General may be required to stop an audit or review activity if another integrity agency is undertaking an investigation or is considering doing so. We also wish to avoid the circumstance where the Auditor-General is required to negotiate on the contents of his reports to the parliament. We believe that collaborative mechanisms enabling the new office-holders that are proposed would enable them to bring any concerns that they may have to the Auditor-General's attention, and we believe there are workable alternatives to some of the propositions put in the bills.¹²⁸

2.99 The Commonwealth Ombudsman noted that under the NIC bills, in certain circumstances it would be possible for the NIC to refer a matter to the Ombudsman and then manage or oversee the Ombudsman's investigation into the matter. For example, the proposed NIC could provide the Ombudsman with detailed or general guidance that must be followed. Moreover, the National Integrity Commissioner would be able to direct an agency, such as the Ombudsman, not to investigate a matter that has been referred to them.¹²⁹

2.100 The Commonwealth Ombudsman submitted that, '[a]s these powers may impact on the independence of the Ombudsman we recommend an exception be considered for independent agencies such as ours.'¹³⁰

2.101 IGIS raised a similar issue to the Commonwealth Ombudsman. It submitted that allowing the NIC to manage or oversee IGIS in the performance of its statutory oversight functions:

...would be incompatible with the independence of the IGIS to determine whether, and if so how, to conduct an inquiry into a matter. The Committee may wish to consider whether the concept in the Bills of a corruption issue or whistleblower protection issue or a disclosure of wrongdoing that 'relates to a Commonwealth agency' could be clarified to avoid this outcome, which may be unintended.¹³¹

127 Australian National Audit Office, *Submission 18*, p. 2, also see pp. 8–13.

128 Dr Tom Ioannou, Group Executive Director, Australian National Audit Office, *Committee Hansard*, 8 February 2019, p. 32; also Australian National Audit Office, *Submission 18*, p. 3

129 Commonwealth Ombudsman, *Submission 17*, p. 3.

130 Commonwealth Ombudsman, *Submission 17*, p. 3.

131 Inspector-General of Intelligence and Security, *Submission 11*, pp. 3–4.

2.102 The Attorney-General's Department raised a separate issue regarding how the NIC bills would interact with the *Law Enforcement Integrity Act 2006*. Ms Chidgey stated that the NIC bills purport:

...to give the Integrity Commissioner the power to direct the Law Enforcement Integrity Commissioner, but that is quite likely to cause some legal difficulties, because the Law Enforcement Integrity Commissioner would have legal responsibilities for decision-making under their own act. Under administrative law that, I think, would mean that directions power would be a complication and would need to be further worked on to make that effective.¹³²

Mandatory reporting by Commonwealth agencies

2.103 Some Commonwealth agencies raised technical issues regarding the requirement for public officials and Commonwealth agency heads to report to the NIC regarding an allegation or information that raises a corruption issue.¹³³

2.104 The ANAO noted that the broad definition of 'corrupt conduct' may lead to a number of less serious matters being caught by the mandatory reporting requirements:

Care should be taken to ensure that mandatory reporting on a broad front does not result in the Commission receiving a lot of information on lower-level matters that may divert resources from its ability to investigate more serious matters.¹³⁴

2.105 The Attorney-General's Department made a similar point specifically in relation to the Australian Federal Police (AFP). A representative noted that 'the sheer breadth of the definition of corrupt conduct' would include a 'significant range of potential offences that the AFP currently has responsibility for'. She explained:

With the AFP, if any member of the AFP becomes aware that they're investigating any of those there's then a compulsory reference to the Integrity Commission. So I think there's a question about how that would work, because of the sheer breadth of the remit for potential criminal offences that the bills would give to the Integrity Commission.¹³⁵

2.106 IGIS highlighted that, in some circumstances, 'intelligence agencies have a legitimate national security interest in suspected public sector corruption'. This includes, for example, espionage and foreign interference investigations relating to public officials. IGIS submitted that these matters 'can be extremely sensitive and cannot be discussed in an unclassified setting':

132 Ms Chidgey, Attorney-General's Department, *Committee Hansard*, 8 February 2019, p. 31; also see Australian National Audit Office, *Submission 17*, pp. 7–8.

133 See clause 44 of the NIC bills.

134 Australian National Audit Office, *Submission 18*, p. 10.

135 Ms Chidgey, Attorney-General's Department, *Committee Hansard*, 8 February 2019, p. 31.

IGIS notes the possibility that the mandatory reporting provisions proposed by the Bills could trigger obligations in the following cases, and notes that the Committee may wish to consider whether this is the intended effect:

- intelligence agency heads may be required to refer their ongoing security investigations to the NIC, when these investigations may be core intelligence agency activities; and
- IGIS may also be subject to reporting obligations in respect of these investigations, which will come to her attention as a result of oversight activities, especially periodic inspections of agency activities and pro-active briefings provided by agencies. Such an outcome may have a chilling effect on the willingness of agencies to pro-actively brief the Inspector-General and her staff on some matters, [and] this could make oversight by IGIS less effective.¹³⁶

2.107 IGIS also highlighted potential practical issues with oversight of intelligence agencies by a national integrity commission:

IGIS is a specialised oversight agency that is equipped to deal with managing highly classified information. Officers reviewing intelligence agency activities have the highest level of security clearance and the office space and equipment used by IGIS staff is accredited in accordance with the relevant security standards. The difficulties and cost of replicating this ability to deal with highly classified information in a new agency should not be underestimated.¹³⁷

Key issues regarding the National Integrity (Parliamentary Standards) Bill 2018

2.108 Inquiry participants that discussed the NIPS bill tended to support it.¹³⁸ Adjunct Professor the Hon Dr Ken Coghill urged support for the NIPS bill in its current form, stating:

I don't see any fatal flaws in it, and I think it would be a major advance in defending and advancing ethical conduct in the Australian parliament by members of the Australian parliament.¹³⁹

2.109 Dr Coghill linked the bill to the 'public trust principle', by which he distinguished 'members of parliament acting as trustees for the public from the public

136 Inspector-General of Intelligence and Security, *Submission 11*, p. 4.

137 Inspector-General of Intelligence and Security, *Submission 11*, p. 5.

138 See, for example, Adjunct Professor the Hon Dr Ken Coghill, Private capacity, *Committee Hansard*, 8 February 2019, p. 15; Transparency International Australia, *Submission 12*, p. 9; Dr Lewis, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 51; Professor Sampford, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 52.

139 Dr Coghill, Private capacity, *Committee Hansard*, 8 February 2019, p. 15; also see Dr Coghill, *Submission 14*, p. 3.

having a trust in the institution of parliament or individuals in other matters'.¹⁴⁰ He stated that the principle 'goes back to the Justinian code', and explained:

The code indicates that it is the responsibility of someone who has a public appointment to act as a trustee of things that are held in common for the public as a whole. This is a principle that is not necessarily fresh in the minds of all members of parliament, but I think it is an important one because it extends from people making the rules, such as senators, through to the people who might be applying or even enforcing the rules...So, that is where the parliamentary standards legislation, I think, is an important advance.¹⁴¹

2.110 Transparency International Australia also voiced support for the NIPS bill, which it said:

...makes a significant contribution to promoting trust and confidence in the integrity of parliament, the public sector and our system of government.

It will, alongside the National Integrity Bill 2018, create a nationally-coordinated integrity framework, that goes beyond just criminal offences. It recognises the nexus that can exist between misconduct, integrity failings and corrupt conduct. It focuses on values and a much-needed code of conduct.¹⁴²

2.111 Inquiry participants commented on several elements of the bill. Many of the key points were neatly encapsulated by Adjunct Professor the Hon Dr Ken Coghill.

2.112 First, inquiry participants supported the introduction of a code of conduct for parliamentarians and their staff.¹⁴³ Dr Coghill submitted that the code of conduct proposed by the NIPS bill is 'largely in line with' the recommendations of the Commonwealth Parliamentary Association.¹⁴⁴

2.113 Dr Coghill advocated for periodic reviews of the code to enable it to keep pace with any developments. He also stated that reviews would have 'an educative function', as they would involve parliamentarians having to 'think very seriously about whether the existing code is satisfactory and adequate in its current form'. Dr Coghill noted that some parliaments review their code after each election.¹⁴⁵

2.114 Second, inquiry participants supported the establishment of a Parliamentary Integrity Adviser to provide confidential advice to parliamentarians

140 Dr Coghill, Private capacity, *Committee Hansard*, 8 February 2019, p. 13.

141 Dr Coghill, Private capacity, *Committee Hansard*, 8 February 2019, p. 13.

142 Transparency International Australia, *Submission 12*, p. 9; also see Dr Lewis, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 51.

143 See, for example, Dr Coghill, Private capacity, *Committee Hansard*, 8 February 2019, p. 13; Transparency International Australia, *Submission 12*, p. 9.

144 Dr Coghill, *Submission 14*, p. 3.

145 Dr Coghill, Private capacity, *Committee Hansard*, 8 February 2019, p. 14.

about ethical matters.¹⁴⁶ Dr Coghill stated that there is good precedent for such an office in the British House of Commons and the Canadian House of Commons, as well as in the Integrity Commissioner of the Queensland Parliament and the Parliamentary Ethics Adviser of the New South Wales Parliament.¹⁴⁷

2.115 Third, inquiry participants supported the establishment of a Parliamentary Standards Commissioner to investigate alleged or suspected contraventions of an applicable code of conduct.¹⁴⁸ Dr Coghill contended that complaints to the Standards Commissioner should not be made public immediately.¹⁴⁹ He stated that the Standards Commissioner should provide the accused with an opportunity to be heard, including regarding provisional findings.¹⁵⁰ Moreover, the Standards Commissioner should:

...make findings of fact sufficient that the House could then make a decision as to whether there had been a breach of the code of conduct. If it were a matter of apparent breach of criminal law, then it should be referred straight to the police or the public prosecutor.¹⁵¹

2.116 Fourth, Professor Sampford of the Accountability Round Table referred to potential improvements of the provisions relating to ministerial codes of conduct:

The only thing that I wish [the NIPS bill] did more is look at failures of ministerial conduct, because at the moment we have a situation where the Prime Minister effectively decides whether a minister has breached the code of conduct and what to do about it. The Prime Minister, unfortunately, has a huge conflict of interest in deciding whether a minister has breached the code of conduct and whether he or she should be disciplined. It's a much better idea if this is taken out and given to a completely independent body.¹⁵²

2.117 Finally, while Transparency International Australia supported the NIPS bill, it also listed several 'weaknesses'. These primarily related to the fact that the bill provides for reviews of several matters—including relating to post-separation

146 See Dr Coghill, Private capacity, *Committee Hansard*, 8 February 2019, p. 13; Transparency International Australia, *Submission 12*, p. 9; Dr Lewis, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 51; Professor Sampford, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 52.

147 Dr Coghill, Private capacity, *Committee Hansard*, 8 February 2019, pp. 13–14; also see Professor Sampford, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 52.

148 See Dr Coghill, Private capacity, *Committee Hansard*, 8 February 2019, p. 13; Transparency International Australia, *Submission 12*, p. 9; Dr Lewis, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 51; Professor Sampford, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 52.

149 Dr Coghill, Private capacity, *Committee Hansard*, 8 February 2019, p. 14.

150 Dr Coghill, Private capacity, *Committee Hansard*, 8 February 2019, p. 15.

151 Dr Coghill, Private capacity, *Committee Hansard*, 8 February 2019, p. 15.

152 Professor Sampford, Accountability Round Table, *Committee Hansard*, 8 February 2019, p. 52.

employment and political donations—to be conducted after the commencement of the bill, rather than addressing those matters in the current draft of the bill.¹⁵³

Committee view

2.118 The overwhelming majority of public servants working for the Commonwealth act with honesty and integrity. However, it is important that appropriate measures are in place to ensure that Commonwealth resources are used appropriately and that the public can have confidence in government institutions.

2.119 Australia's current multi-agency framework has played an important role in preventing and addressing corruption. Nonetheless, the committee considers that an integrity commission would be a useful addition to Australia's anticorruption efforts. The committee notes that the government has proposed the establishment of a Commonwealth Integrity Commission.

2.120 The committee acknowledges that many inquiry participants supported the establishment of a national integrity commission similar to that proposed by the NIC bills. However, the committee has concerns about the proposed model, including the expansive powers proposed for the NIC and how the NIC will fit with Australia's existing multi-agency framework.

2.121 A particular concern relates to how the NIC might facilitate unjustified damage to a person's reputation without due process. This includes the risk that a person may refer their political opponent to the NIC, and gain political mileage by doing so, even though the referral has no merit. It also includes the risk that public hearings of the NIC could irreparably damage a person's reputation, even though the evidence against that person is not sufficient to convict the person in a court.

2.122 The committee also notes that various technical and drafting issues were raised during the inquiry. These issues include that the proposed NIC may duplicate functions of existing agencies, or may unduly impinge on the independence of Commonwealth agencies.

2.123 It is critical that the establishment of an integrity commission be subject to careful consideration. The commission must fit appropriately into Australia's existing multi-agency integrity framework and be subject to proper process. The committee recognises that the government is currently giving this issue due consideration, including through a consultation process managed by the Attorney-General's Department. The committee has confidence in this process.

2.124 Noting that the weight of evidence to the committee concerned the NIC bills rather than the NIPS bill, the committee acknowledges that the NIPS bill was not the focus of this inquiry. The committee is conscious that the reforms proposed by the NIPS bill are substantial and would have a significant effect on the Parliament and government. These reforms include the introduction of a parliamentary code of conduct, the establishment of a Parliamentary Integrity Adviser, and the establishment

153 Transparency International Australia, *Submission 12*, pp. 10–11.

of a Parliamentary Standards Commissioner. Such major reform merits close consideration and input from a wide range of stakeholders.

2.125 The committee holds preliminary concerns about certain elements of the bill, such as the provisions relating to breaches of the proposed code of conduct. It is crucial that any enforcement of a code give due consideration to the democratic mandate held by all parliamentarians.

2.126 More generally, the committee does not consider that the limited evidence before it justifies recommending that the NIPS bill proceed. Additional work is required to consider any further measures, legislative or non-legislative, to enhance public confidence in the parliament and the conduct of parliamentarians.

Recommendation 1

2.127 The committee recommends that the National Integrity Commission Bill 2018, the National Integrity Commission Bill 2018 (No. 2) and the National Integrity (Parliamentary Standards) Bill 2018 not be passed, noting that the government is giving ongoing consideration to the establishment of a Commonwealth Integrity Commission that would be effective, well resourced, and subject to proper process.

**Senator the Hon Ian Macdonald
Chair**

Additional comments from Labor senators

1.1 Labor stands for integrity and transparency in government, and we have no tolerance for corruption. In January 2018, Labor announced that legislation to establish a National Integrity Commission would be introduced in the first 12 months of a Shorten Labor Government. Labor also said that we would be willing to work with the government to establish a National Integrity Commission during the current term of this 45th Parliament.

1.2 After spending almost a year rejecting calls from Labor and the crossbench to support the establishment of a National Integrity Commission and a mere two weeks after the Prime Minister dismissed it as a 'fringe issue', the Morrison government finally announced that it would backflip to establish a 'federal anti-corruption commission'.

1.3 Unfortunately, the model proposed by the government is grossly inadequate to the task. It has been roundly criticised by experts for its limited scope, limited powers and lack of transparency. The former head of the NSW Independent Commission Against Corruption, the Hon David Ipp AO QC, summed up the concerns of many when he said that the model proposed by the government was the 'kind of integrity commission that you would have when you don't want to have an integrity commission'.

1.4 Unlike the government's model of a secret tribunal with very limited powers, Labor members of this committee believe that a national integrity commission must have all the powers of a standing Royal Commission, and the power to hold public hearings where it is in the public interest to do so.

1.5 It will be an independent, statutory agency. The Commissioner will be appointed for a fixed, five year term. The Commission itself will be subject to oversight by a parliamentary committee.

1.6 Labor agrees with the majority of this committee that the models for a national integrity commission proposed in the bills introduced by Ms McGowan and by the Greens Party, which are the subject of this inquiry, should not proceed. While Ms McGowan's aims are admirable, the design of a complex body like this should be done with the help of a department over a period of months and the design then consulted on with legal experts, anti-corruption specialists and the wider Australian community. This process has not yet occurred.

1.7 Faith in the political class in Australia is at historically low levels. Some Australians believe the political system is broken altogether. We can't let this continue. If distrust develops between voters and their elected representatives, our democracy is in danger.

1.8 Labor believes that the establishment of a National Integrity Commission, with full independence from government and appropriate powers and resources, will help to set a standard and send a message—that corruption in any part of our Commonwealth is not acceptable.

1.9 Since Labor's announcement, momentum and popular support for a federal anti-corruption body has only increased. We are proud to have committed to establish a National Integrity Commission, with all the powers, resources and independence of a standing Royal Commission into corruption.

1.10 If a Shorten Labor Government is elected we will immediately get to work finalising the design and technical details of the National Integrity Commission, in consultation with legal and anti-corruption experts and the wider Australian community. And within a year of taking office we will introduce legislation to make a National Integrity Commission a reality.

Senator Louise Pratt
Deputy Chair

Australian Greens' dissenting report

National Integrity Commission Bill 2018 and National Integrity Commission Bill 2018 (No. 2)

1.1 The Australian Greens have been campaigning in federal Parliament for 10 years to create a national anti-corruption commission. One decade ago, Senator Bob Brown moved a motion in the Senate calling on the government to establish a National Integrity Commission. Since then, the Greens have introduced five bills to establish a National Integrity Commission. This, fifth, Greens bill to establish a National Integrity Commission comes at a time when the crossbench, the opposition and even the government have caught on to the fact that this is what Australians are demanding to end the maladministration that successive governments have modelled.

1.2 The 45th federal Parliament will soon end, leaving the Commonwealth as the only jurisdiction in Australia left unchecked against corruption. In the years since the Greens introduced the first bill for a National Integrity Commission in 2010, the states have gotten on with implementing their own independent anti-corruption commissions. The overwhelming evidence of these culture-changing institutions has reinforced the need for such a body at the Commonwealth level.

1.3 Every day the call grows stronger, and more people across civil society add their voices to the calls for an Integrity Commission. Although Labor and the Coalition voted against Greens Senate motions calling for a National Integrity Commission in 2009, 2016, 2017 and 2018, with a motion in 2014 not even proceeding to a vote, even they are now on board.

1.4 This is no longer a debate about whether we should have an Integrity Commission. The debate is about whether we have the courage to give it the scope, powers and resourcing to be effective.

1.5 Since the Greens introduced our Integrity Commission Bill in 2010, research by the University of Canberra and the Museum of Australian Democracy has revealed that the percentage of Australians who are satisfied with our democracy has plummeted from 72 per cent to 41 per cent. Three in ten Australians trust the federal government. The longer we equivocate on an Integrity Commission, the more trust is lost, and there will be only one chance to get it right.

1.6 This inquiry considered two bills: the National Integrity Commission Bill 2018, and the National Integrity Commission Bill 2018 (No. 2). The first was introduced into the House of Representatives by Ms Cathy McGowan AO MP on 26 November 2018, and is modelled on bills introduced by the Greens. The Greens introduced the second bill into the Senate on 29 November 2019.

1.7 Before doing so, the Greens made two major changes to this latest version of the bill, to address concerns raised by the government and the opposition. Firstly, a 10-year limit on the Commission's retrospectivity was added. Secondly, the definition

of corrupt conduct was refined, to hold ministers and members of Parliament to a high standard of behaviour.

1.8 The Greens firmly believe these bills should pass, and that the framework they establish holds significant advantages for Australian democracy, especially when compared with proposals for an Integrity Commission from the government and the opposition.

Resourcing the agency

1.9 The Australian Greens believe the Commission must be scoped, as well as resourced, to do its job. In its submission to this inquiry, the Community and Public Sector Union made the important point that corruption, by its very nature, is difficult to detect, investigate, prosecute and prevent. Corruption investigations are resource-intensive and can take lengthy periods to complete, in order to gather enough evidence for a criminal prosecution. Further, staff must be trained and resourced properly, or the Commission will struggle to perform its key operational, corporate and strategic functions, including developing and rolling out the National Integrity and Anti-Corruption Plan.

1.10 We have now seen in the 2019 budget that the government has committed \$104.5 million over the forward estimates for a Commonwealth Integrity Commission, which is at the lower end of the range proposed by the Attorney-General's Department in late 2018. The Department proposed \$100-125 million over the forward estimates, with an operating budget of approximately \$30 million per year. The 2019 federal budget has funded \$15.4 million for the Commission in its first year.

1.11 The Attorney-General's Department proposed an average staffing level of 150 for the Commission. The Department advised in Senate Estimates this week that 2019 federal budget has funded approximately 93 staff for the 2019-20 financial year.

1.12 The government's proposed Integrity Commission is not only scoped in such a way that it won't properly address corruption—it is also resourced in a way that will reduce its impact.

1.13 Transparency International Australia, in its submission, contrasted this commitment with the even smaller funding commitment of \$15 million per year which the Labor opposition has committed. It recommended that this inquiry take into account the issue of adequate resources for the integrity framework. To this end, as part of our fully costed platform the Australian Greens are committing \$350 million for our proposed National Integrity Commission over the next 10 years, with \$150 million of this committed in the forward estimates.

Public hearings

1.14 To be truly effective, a National Integrity Commission must be able to hold public hearings. Submitters to this inquiry overwhelmingly said so. Transparency International Australia said the Commission must have discretionary and coercive powers to hold public hearings if sufficient evidence is not obtained, if a prosecution becomes unlikely, if it is in the public interest and if it will be more efficient to

uncover what occurred. The National Integrity Committee notes this power is crucial if the Commission is to adequately deal with corruption. It submitted that it is now generally accepted that it is difficult to uncover corruption without the aid of public hearings. The government's proposed model does not provide for public hearings and as such, has been rightly criticised for its likelihood to be ineffective in tackling corruption. To properly address corruption, we need public hearings as provided for by these bills.

The Commission's powers

1.15 As the Australian Council of Trade Unions pointed out, the model in this legislation is superior to that proposed by the Coalition Government, which has been criticised for its secrecy, weak powers, and lack of sufficient funding and resources. This legislation is our opportunity for a Commission with substantive investigative powers and resources with all hearings held in public where appropriate.

1.16 Submitters found that, in contrast to proposals put forward by the government and opposition, this bill has key features that will address parliamentary integrity and prevent corruption. These include:

- a comprehensive and coordinated approach to providing, detecting and investigating corruption through the establishment of an independent, broad-based anti-corruption commission at a national level;
- strong investigative powers, including the power of a Royal Commission to investigate corruption issues involving the federal government;
- expanding the role of the Australian Commission for Law Enforcement Integrity;
- powers to hold public inquiry and public hearings when in the public interest and to make findings of fact;
- allowing referrals to be made by anyone who identifies a corruption issue; and
- a mandatory reporting requirement for public officials.

1.17 Our bill provides the legislative framework for the comprehensive prevention of corruption and misconduct in the federal Parliament and public service. It fills the most glaring defects of our governance framework and it will provide the public with an institution it can rely upon to ensure the highest standards of public administration now and into the future. Our democracy belongs to the people of Australia, not to vested interests, corporate donors and those who can afford to buy access in the halls of Parliament. We need transparency and accountability in our political system and until we get a federal anti-corruption body, our politicians will keep working for the big end of town, not the community they are elected to represent. The Australian Greens believe these bills should pass.

Senator Larissa Waters
Senator for Queensland

Appendix 1

Submissions and tabled documents

Submissions

1. Victorian Inspectorate
2. Crime and Corruption Commission Queensland
3. Ombudsman Western Australia
4. Steering Committee Australian Open Government Partnership Network
5. Institute of Public Affairs
6. The National Integrity Committee (The Australia Institute)
7. Name Withheld
8. Community and Public Sector Union
9. Police Federation of Australia
10. Accountability Round Table
11. Inspector-General of Intelligence and Security
12. Transparency International Australia
13. ACT Government
14. Adjunct Professor the Hon Dr Ken Coghill
15. New South Wales Ombudsman
16. Australian Council of Trade Unions
17. Commonwealth Ombudsman
18. Australian National Audit Office
19. Professor Peter Tregear
20. W J Pearson
21. Ms Karen Hutchinson
Response from the Administrative Appeals Tribunal
22. Dr Anthony Pun OAM and Dr Leong-Fook Ng
Response from the Australian Health Practitioner Regulation Agency
Response from the Royal Australasian College of Physicians
23. Name Withheld

Tabled Documents

1. Document tabled by the Australian National Audit Office at the public hearing in Sydney, 8 February 2019

Appendix 2

Public hearings

Sydney, NSW, 8 February 2019

Members in attendance: Senators Hume, Macdonald, Molan, Patrick, Pratt, Waters, Watt.

ATKINSON, Ms Lucinda, Assistant Secretary, Institutional Integrity Branch,
Attorney-General's Department

BARNES, Mr Michael, New South Wales Ombudsman, Office of the New South
Wales Ombudsman

BEGG, Mr Morgan, Research Fellow, Institute of Public Affairs

CATO, Ms Cathy, Executive Director, Legal and Integrity, Victorian Inspectorate

CHIDGEY, Ms Sarah, Deputy Secretary, Integrity and International Group,
Attorney-General's Department

CHIU, Mr Osmond, Senior Policy and Research Officer, PSU Group, Community and
Public Sector Union

COGHILL, the Hon. Dr Ken, Private capacity

HINCHCLIFFE, Ms Jaala, Deputy Ombudsman, Office of the Commonwealth
Ombudsman

IOANNOU, Dr Tom, Group Executive Director, Australian National Audit Office

IPP, the Hon. David, AO, QC, Member, National Integrity Committee (The Australia
Institute)

LEWIS, Dr Colleen, Director, Accountability Round Table

MacSPORRAN, Mr Alan, QC, Chairperson, Crime and Corruption Commission
Queensland

MANTHORPE, Mr Michael, Commonwealth Ombudsman, Office of the
Commonwealth Ombudsman

McLEOD, Ms Fiona, SC, Transparency International Australia

OLSEN, Ms Jane, Senior Research and Policy Officer, Office of the New South
Wales Ombudsman

ROZNER, Mr Gideon, Director of Policy, Institute of Public Affairs

SAMPFORD, Professor Charles, Director, Accountability Round Table

TULL, Mr Michael, Assistant National Secretary, PSU Group, Community and Public Sector Union

WHEALY, the Hon. Anthony, QC, Member, National Integrity Committee (The Australia Institute)