

22 January 2018

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Secretary,

Inquiry into the National Integrity Commission Bill 2018 [Provisions], National Integrity (Parliamentary Standards) Bill 2018 [Provisions], and National Integrity Commission Bill 2018 (No. 2)

Thank you for the opportunity to make a submission to your Committee on its inquiry into the National Integrity Commission Bill 2018 [Provisions], National Integrity (Parliamentary Standards) Bill 2018 [Provisions], and National Integrity Commission Bill 2018 (No. 2).

Broad Mandate

There's no smoke without fire. The claim that there is no corruption connected to the Federal Government of Australia is no longer tenable. Public trust is very important to maintaining a functional government and the tale of a corruption free federal government is increasingly seen by the public as unbelievable.

Why exposing and preventing corruption is important? (ICAC NSW, 2019)

Undetected and unchecked corruption in the public sector can cause serious damage including:

- undermining public trust in government
- wasting public resources and money
- causing injustice through advantaging some at the expense of others
- inefficiencies in operations
- reputational damage which makes it difficult to recruit and retain quality staff or obtain best value in tender processes. It may also be more difficult to attract business investment, adversely affecting prosperity.

Globally, the World Economic Forum has estimated that the cost of corruption is about US\$2.6 trillion a year. The impacts of corruption disproportionately affect the most vulnerable people in society. Widespread corruption deters investment, weakens economic growth and undermines the rule of law.

In NSW, the ICAC works to prevent corruption before it occurs and provides guidance and advice on what public officials can do to prevent corruption and how to manage specific corruption risk functions.

Research from The Australia Institute finds that a broader definition of corrupt conduct and regular public hearings render the NSW ICAC far more effective than other state bodies. (The Australia Institute, 2017)

The report found that, from 2012-2016, NSW ICAC made corrupt conduct findings against 123 people, referred 76 people to the Director of Public Prosecutions (DPP) and held 28 public hearings. This is a significantly better performance than other state commissions. The Qld CCC made held no public hearings, made no findings of corrupt conduct, and referred 32 people to the DPP, while Vic IBAC held 4 public hearings, made no corrupt conduct findings and referred 6 people to the DPP, SA ICAC and Tas IC held no public hearings, made no corrupt conduct findings, and while SA ICAC referred 16 people to the DPP, the Tas IC made no referrals.

In addition to higher numbers of hearings and corruption findings, NSW ICAC also pursued investigations in systemic large scale cases, including ministers issuing corrupt mining licenses and major parties taking illegal donations. In contrast the Queensland CCC investigated minor fraud involving one or two individuals, including public servants lying on their timesheets or issuing dodgy drivers licenses.

The ability conduct covert operations and to utilize assumed identities must be allowed and adopted from existing legislation for current investigatory agencies. It is sometimes necessary for investigatory agencies to break the law to covertly gather evidence on a suspect of investigation. This is particularly true regarding corrupt conduct, which is by nature highly secretive and less penetrable by ordinary investigatory techniques. Consequently six out of seven Integrity Commissions in Australia have powers to conduct controlled operations. (ACT Government, n.d.)

Section 44

The partisan enforcement of the Australian Constitution is continuing to undermine public trust in the Federal Government of Australia. The recent inquiry into matters relating to Section 44 of the Constitution highlighted the potential for a future federal integrity commission to utilize and enforce Section 44.

A federal anti-corruption commission has great potential to bring to light any foreign allegiance or untoward influences on our parliamentarians by independently assessing and investigating alleged Section 44 breaches with the possibility of making a referral directly to the Court of Disputed Returns avoiding the current situation of partisan enforcement that leads to the perception of a lack of respect for the Australian Constitution and the rule of law.

Associate Professor Gabrielle Appleby, Professor Rosalind Dixon and Mr Lachlan Peake jointly submitted that s. 44 is intended to 'reduce the probability that members of parliament will act in a corrupt manner' and, in particular, 'to reduce the possibility of a conflict of interest caused by holding another public office or a pecuniary interest.' Their submission stated: ...a federal integrity commission would have a number of advantages in dealing with conflicts of interest over the constitutionally entrenched disqualification mechanism... (Joint Standing Committee on Electoral Matters, 2017)

The Commonwealth Electoral Act, Div 2, s 376 could be amended to enable to the federal anti-corruption commission to make referrals to the Court of Disputed Returns. This may remove the potential and perceived public opinion that politicians protect each other from referrals thus enforcing and promoting integrity.

The status quo cannot continue. An independent federal anti-corruption with a broad mandate is required to repair Australia's reputation and improve the public's trust in the Australian government.

Yours sincerely,
NAME WITHHELD

References

ACT Government, n.d. *Integrity Commission Bill 2018*, s.l.: s.n.

ICAC NSW, 2019. *Why exposing and preventing corruption is important*. [Online]
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Joint Standing Committee on Electoral Matters, 2017. *Report into matters relating to Section 44 of the Constitution*, s.l.: s.n.

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