



Senator the Hon Jacinta Collins
Chair, Select Committee on a National Integrity Commission
Department of the Senate
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By email: integritycommission.sen@aph.gov.au

Dear Senator Collins

Preamble:

It is clear from the findings of the 2016 Select Committee on the Establishment of a National Integrity Committee that Australia needs a federal body to tackle integrity issues because they are not being addressed properly now, other than by enormously costly and unwieldy Royal Commissions or by parliamentary inquiries that are inherently political even when they try not to be.

In fact, the updated figures provided by the Australian Public Service Commissioner, John Lloyd, in his submission to the current Committee are a stark illustration of the scale of the integrity challenge Australia faces at the national level. He says:

- “Only” (Mr Lloyd’s word) 228 people were sacked, out of 1866 misconduct investigations.
- Of the 717 cases finalised under the PS Commission’s Code of Conduct investigations, 106 public servants behaved corruptly.
- “Only” (Mr Lloyd’s word again) 4 per cent of public service employees have seen someone acting corruptly.

Despite his attempt to downplay the issue through repeated use of the word “only”, we calculate that, given there’s about 155,000 public servants, the “4% corrupt sightings” means there’s probably about 6000 public servants who have been seen to be acting corruptly.

If only 334 of them (228 plus 106) are being caught, then it would appear there is a culture of impunity and cover-up (or at least of turning a blind eye) in the public service and Mr Lloyd needs help urgently in cleaning it up.

It is also clear that integrity – or lack of it – comes in different types, forms and sizes. What is needed, therefore, is a method of responding appropriately to various sized needs.

We propose therefore an overarching, representative body, able to cleave into sub-panels or coalesce into larger groups as needed. This would provide the flexibility required. A deft

and dexterous response to each need according to significance and extent will also be the most cost-effective way to deliver improved national integrity over time.

Principles:

The integrity body – let's call it a NATional New Integrity Commission (NatNIC) – would be:

- Able to inquire into any activity which is nationally organised, funded or whose impacts have, or potentially have, national ramifications, and produce findings; and
- Able to inquire into any solely state-territory based activity on referral from one state or territory involved in the activity or affected by the impact, or potential impact, of the activity, and produce findings.

It will be compulsory for all government and any private sector bodies and individuals to implement the finding(s) of a NatNIC Inquiry within two years of the inquiry decision being handed down.

Composition of NatNIC:

Comprising a group of up to 18, whose number shall include:

4 judges or Senior/Queens Counsel or former Presidents of Law Societies

4 former politicians (2 federal, 2 from states/territories)

4 community representatives from organisations with charitable taxation status

3 civil liberties/human rights/transparency/privacy representatives from recognised bodies in those fields

3 Indigenous representatives from recognised bodies in Indigenous affairs

...all to be appointed to provide fair national representation, and paid sessional rates.

Able to sit in groups of 6, or 4, or 3, to comprise an individual Commission of Inquiry, or to sit as 2 x 9-person Commissions, or one Commission of the 18, to conduct an inquiry, or to endorse the findings of a smaller (3, 4 or 6-person) inquiry.

Each Commission of Inquiry able to second up to three subject-specialist representatives, by agreement between the individual Commissioners of that inquiry. Any seconded person to have full voting rights on the relevant inquiry.

Who can propose a referral:

It is most important to empower as many "inlets" to a commission, so that all cases that may involve corruption, as perceived by responsible people, can be investigated. The NatNIC should also be able to conduct own-motion investigations under certain circumstances, in particular where matters are not otherwise covered by state and territory commissions. It should be able to receive referrals from:

- Governor General or any State Governor or the NT Administrator
- PM and Deputy PM and State/Territory equivalent
- Opposition Leader and State/Territory equivalent

- Any other recognised (formally, by the relevant Parliament) Leader of a political party
- Australian and State/Territory Auditor
- Australian and State/Territory Ombudsmen and women
- Chief Justice of Australia and equivalents for States/Territories
- Any Australian Ambassador or High Commissioner representing Australia
- The head of the Australian Council of Trade Unions
- Any head of Industry Association with a record of responsible operation for more than 10 years.

Who can endorse a proposed referral to proceed:

Any group of 6 members of the 18 Commissioners, unanimously agreed as to terms of reference.

Secretariat:

There shall be a secretariat body of initially 10 people, headed by a CEO and with a fair representation from territory, state and federal public services.

As needed for each inquiry, further secretariat support will be allocated by the CEO, with funding provided by the jurisdictions according to their involvement with the issue.

Funding:

There shall be an annual amount nominally budgeted for work of NatNIC. For the first and second years, this will be \$25m. Funds may be invested, with the interest used for ancillary purposes, including publicity and outreach.

Any educational or outreach activities by NATNIC in no way diminishes the responsibility of departmental heads for ensuring the proper training, supervision and control mechanisms are in place for all staff in their organisations - and any outside contractors.

Politicians bear similar responsibility for all advisors and others acting on their behalf.

Initial operations:

For the first four months of the first year, 2018 (or 2019), the 18 Commissioners – supported by the Secretariat – will decide NatNIC’s operational model and any other required protocols and guidelines, based on submissions to this inquiry.

For the second four months of the first year, 2018, the Commissioners will undertake two “trial” referrals, one considered by a 9-person panel and the other by a 4-person panel. The findings of these “trials” shall not be mandatory.

At the end of the “trial” inquiries, following feedback, the Operating Protocols shall be finalised. as formal Regulations to the enabling Act.

Basic Operating Method:

On accepting a referral meeting requirements as specified in regulations, the CEO of NatNIC will:

- allocate the matter to a 3, 4, 6, 9 or 18 member panel;
- decide the time to be allowed for inquiry and report;
- allocate an appropriate Commissioner as Panel Leader, and

In conjunction with the Panel Leader, decide:

- whether or not there is a need for specialist panel member(s), and the number
- method(s) of collecting information
- no. of days to be allocated to collecting information
- no. of days for internal consideration
- publication date for the finding(s)

A ***prime operating principle*** of NatNIC will be that technology is used to overcome time, distance and location barriers. This will apply to the extent of equipping the Commissioners and Secretariat with up-to-date communications technology, and facilitating broadcast of public hearings.

Public and open:

All physical hearings will be publicly available by at least online streaming, and physically open to the public. All broadcast hearings will also be public, with 5-minute delay technology so that a Panel Leader may decide that evidence tendered should not be made nationally available (but remains available to those in physical attendance).

Findings:

Before making any findings public, a person who gave evidence or made submissions or who was summoned before the commission/panel – and who is mentioned in any way which may negatively impact on its, his or her value/repute, shall have the right to consider the proposed findings and propose comments.

Seven days shall be allowed for comment: the commission/panel may amend or add to the findings in any way it sees fit before releasing them.

All findings shall be fully published, openly, with no sealed reports or confidential sections.

Each year, the Secretariat will report on implementation of findings. Beyond the deadline date, there will be penalties, which may include fines or withdrawal of services/facilities or inability to access concessions or the like.

Coverage

NatNIC's powers will extend equally to include public servants, politicians, political advisers and contractors, as well as ordinary members of the public. Non-Australians may also be subjected to commission processes.

Blowing the whistle on corruption

For a NatNIC to be truly effective, there needs to be substantial reforms to encourage those with knowledge of wrong-doing to come forward. CLA submits that Australia's current whistle-blower protection laws (as set out in the *Public Interest Disclosure Act 2013*) are woefully inadequate. The requirements of the law are so convoluted and so onerous that we are almost persuaded they are specifically designed to prevent disclosure of information that is in the public interest. See for example, the flow-chart describing the process on page 10 of the guide to making disclosures published by the Commonwealth Ombudsman.

Given the PID Act has now been in force for four years, its functioning and effectiveness need to be thoroughly reviewed and improvements implemented. The figures provided by the APS Commissioner (quoted at the start of this submission) demonstrate clearly that the current PID Act is not serving the purpose of facilitating information to be brought out when it is in the public interest.

We propose, for example, that reform of the PID Act could include *qui tam* provisions, as is used for example in the US False Claims Act, whereby an individual bringing to light information on fraud or corruption could be entitled to claim a proportion of the financial benefit that the Commonwealth derives as a result of that exposure.

These and other reforms should be implemented to create a culture in public life where no one turns a blind eye to corruption.

CLA trusts this response commenting on the establishment and operation of a NatNIC is of use to the Select Committee. We would welcome the opportunity to contribute further as the proposal progresses.

Yours Truly,

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President

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