



GILBERT + TOBIN CENTRE OF PUBLIC LAW

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Committee Secretary
Select Committee on the National Integrity Commission
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

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

Dear Secretary

Thank you for the opportunity to make a submission to the Select Committee on a National Integrity Commission. We are writing this submission in our capacity as members of the Gilbert + Tobin Centre of Public Law, at the Faculty of Law, University of New South Wales. We are solely responsible for the views and content in this submission.

We have previously been involved in a submission to the 2016 Select Committee on the Establishment of a National Integrity Commission, with our colleagues Associate Professor Sean Brennan and Shipra Chordia, dated 20 April 2016. We understand that the Committee has access to this submission.

In addition, we would like to draw the Committee's attention to a discussion paper that we have written as part of the recent Transparency International Australia conference, 'National Integrity 2017'. The paper is entitled 'Integrity of Purpose: Designing a Federal Anti-Corruption Commission'. This paper explains many of the recommendations we have made in our submission by reference to a theory of institutional design that we refer to as 'integrity of purpose'. A copy of the paper is attached for your reference.

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In short, we suggest that ‘integrity of purpose’ requires the following key steps in the design of an anti-corruption commission:

1. In determining the need for, and design of, a federal anti-corruption commission, the Parliament should undertake an audit of existing institutional capabilities, and identify specific vulnerabilities and gaps in the current regulatory landscape.
2. Should the Parliament conclude from this audit that it is desirable to create a new anti-corruption commission, the commission should be crafted with a clear institutional mandate, stipulated in its governing legislation, that clearly reflects the systemic vulnerabilities and gaps it is intended to address.
3. This further requires that in defining the purpose and related powers and procedures of a new anti-corruption commission, the Parliament ensure that the commission retain appropriate awareness and respect for the existing purposes, jurisdiction, powers and procedures of other institutions.
4. The features of an anti-corruption commission should be designed always with the commission’s unique institutional purpose in mind, and with the aim of ensuring respect for higher order values of the legal system, such as procedural fairness and fundamental human rights.

We apply this theory in the paper to several important design questions, including drafting a possible purpose statement for an anti-corruption commission, the framing and limitations of an anti-corruption commission’s jurisdiction, and the commission’s hearing powers, with a particular focus on the power to hold hearings in public and to report adverse findings. Additional design features, such as the appointment of commissioners, are dealt with in our earlier submission.

Yours sincerely

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