



STRENGTHENING GOVERNMENT INTEGRITY

BY EMAIL

22 January 2019

Legal Constitutional Affairs Committee
The Australian Senate
Parliament House
Canberra

Dear Committee Chair and Members,

Attached please find the Accountability Round Table's (ART) submission to the Inquiry into the National Integrity Bill 2018, the National Integrity (Parliamentary Standards) Bill 2018 and the National Integrity Commission Bill 2018.

ART is pleased to have the opportunity to contribute to this important public policy matter, which has been the subject of debate for over 12 years.

For the Committee's information, ART is a non-partisan organisation comprised of former parliamentarians, former judges, retired and serving academics, business people and citizens interested in ensuring the delivery of much improved accountability, transparency and openness across the broader Commonwealth public sector, and in relation to matters that involve partnerships or contracts between the private and public sectors.

In making this submission, ART anticipates that the Legal and Constitutional Affairs Committee will advance the National Integrity Commission debate from the somewhat stagnant discussion stage to the implementation phase of the policy process. To do so would provide evidence to the Australian community that its elected representatives respect its often-expressed desire for an effective national integrity commission to be established.

Yours sincerely,

Fiona McLeod SC
Chair, Accountability Roundtable
<https://www.accountabilityrt.org/>

Adjunct Professor Colleen Lewis
Director, Accountability Roundtable

**Accountability Round Table Submission to the
Inquiry into the National Integrity Bill 2018,
the National Integrity (Parliamentary Standards) Bill 2018
and the
National Integrity Commission Bill 2018**

Independent experts in the formulation and implementation of public policy, particularly as it relates to national integrity commissions (also referred to as anti-corruption 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.

Legislators wishing to understand why independent experts have come to this conclusion may wish to reread the parliamentary debates and second reading speech that preceded the establishment of ACLEI.

It is also instructive to consult ACLEI's annual reports and analyse its budgets and the way in which its jurisdiction has been extended in a piece-meal fashion over the years, in an effort to address the latest scandal besetting elements of the Commonwealth public sector.

ART argues that to attempt, yet again, to refashion ACLEI, as recently suggested by the Government in its proposed model for a Commonwealth Integrity Commission (CIC), would be a retrograde step. For whatever way you examine ACLEI's history, you are forced to come to the same conclusion: it provides a text book example of a policy that can only pay lip service to effective accountability.

It is for this reason that ART writes in support of a 'one stop shop' approach to a national integrity commission. It does not in any way support the divided model suggested for the proposed CIC. It will not, however, go into great detail as to why this is the case here, as ART is making a submission to the Attorney-General's Department on the matter.

ART 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. An effective integrity commission is as concerned about preventing corruption as it is about investigating alleged corruption.

If the Australian community is to believe that parliamentarians are truly committed to the investigation of serious and systemic corruption and its prevention, a national integrity commission's reach must include all public servants, those who are elected to office and those who are appointed. It should also be able to initially examine any allegations of serious judicial misconduct and corruption. In relation to the judiciary, any investigation would need to be conducted by a body that is totally independent of the Executive. This is necessary to ensure the separation of powers is always maintained.

Like any effective integrity body, a national integrity commission must be given the powers of a royal commission. It should also be able to hold public hearings. The decision about when to exercise its royal commission type powers and to hold public hearings must be the responsibility of the head of the national integrity commission, the Commissioner. Hurdles should not be put in the Commissioner's way, for to do so could stymie the ability of the national integrity commission to deliver, to the Australian community, the level of accountability and transparency it wants and deserves.

An integrity commission's power to hold public hearings has been a matter of debate. It was referred to in Victoria's Independent Broad-Based Anti-Corruption Commission's (IBAC) 2017-2018 Annual Report. In his foreword to the Annual Report, IBAC's Commissioner, the Honourable Robert Redlich QC made the important point that:

Public examinations are a critical investigative tool in further exposing and preventing public sector corruption and police misconduct. They help educate the public sector and community about the impact of corruption and police misconduct and how it can be prevented. They have prompted the public sector to examine and improve its systems and practices. And they have encouraged further credible complaints about corruption.

Such achievement would coincide with the aims of any government serious about the prevention and investigation of corruption. It is worth noting that IBAC's public hearing powers have been used sparingly and wisely. Of the 69 inquiries (including preliminary inquiries) IBAC has completed it has, to date, held only five public hearings.

The appointment of the national integrity commission's Commissioner should be the responsibility of the Governor General, who would appoint on the advice of a bipartisan Parliamentary committee that reflects the composition of the Parliament. ART would like to recommend to the Legal and Constitutional Affairs Committee that it considers the Fitzgerald inspired appointment of four part-time commissioners to the senior management structure of a national integrity commission. The appointment of part-time commissioners would open the national integrity commission to outside perspectives, which would help to prevent a too insular culture from forming.

The Commissioner should be a judge or a retired judge, or be qualified to be appointed as a judge. This is common practice among all integrity (anti-corruption) commissions. The appointment period should be for five years.

If the Legal and Constitution Affairs Committee finds favour with the idea of part-time commissioners, ART suggests that 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. No part-time commissioner should be a serving or former politician (at any level of government) or be a person who has been closely associated with a political party. All appointees must be able to prove their non-partisan approach to decision-making.

It is self evident, that a national integrity commission must be adequately resourced. To do otherwise is to expect the commission to operate with one hand tied behind its back. Inadequate resourcing will also ensure that the commission is, in practice, unable (through no fault of its own) to be effective and hence unable to deliver to the Australian community what it so rightly deserves and is continually asking for: an effective, well resourced national integrity commission.

It is essential that a powerful national integrity commission with royal commission type powers be accountable for its actions. ART fully supports the creation of a Parliamentary Joint Committee of the Australian National Integrity Commission. That standing committee should reflect the composition of the parliament. There should never be a time when a powerful national integrity commission is not subject to oversight by a parliamentary committee. Hence every member of the committee should remain a member during an election period. It is only after a new government has been formed and parliamentary committees formed or reformed that committee members should stand down from their committee role should they wish.

To ensure the appropriate levels of accountability for the national integrity commission, ART also supports the appointment of a Parliamentary Inspector of the National Integrity Commission and argues that this person must be an independent officer of the Parliament. The Parliamentary Inspector's duties should be to inspect the records of the national integrity commission and any other relevant documents they require to ensure that she/he is satisfied that the commission is exercising their powers appropriately. The Inspector should also be responsible for investigating any complaints made against staff of the national integrity commission or concerns raised about activities of the commission. The Inspector, however, 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.

As the Legal and Constitutional Committee will have observed, ART supports nearly every aspect of the McGowan bill. It also notes that the bill was informed by considerable input from a highly acclaimed, leading international expert in anti-corruption matters, Professor AJ Brown of Australia's Griffith University and Transparency International Australia, and by the combined wisdom and knowledge of 34 esteemed retired judges, who have been arguing convincingly for the need to establish a national integrity commission for over 12 months. The views of these experts, who are acting in the public interest, must be respected. Their combined knowledge on what is the appropriate model for a national integrity commission is extremely difficult to refute. It is in the interests of the Australian community that expert opinion informs the structure, powers, jurisdiction and budget of any national integrity commission established by the Australian Parliament.

Should the Legal and Constitutional Affairs Committee require further input from ART, it is happy to provide it.

Yours sincerely,

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