



15 January 2019

Our ref: VI6670
Your ref:

Dr Sean Turner
A/g Committee Secretary, Senate Legal and
Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Dr Turner

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

Thank you for your letter dated 13 December 2018 inviting the Victorian Inspectorate (VI) to make a submission to your Committee on its inquiry into the National Integrity Commission Bill 2018, the National Integrity (Parliamentary Standards) Bill 2018 and the National Integrity Commission Bill 2018 (No. 2).

The VI is the key oversight body in Victoria's integrity system. It is an independent body, not subject to direction or control by the executive government. Its main role is to ensure that the agencies it oversees, including the Independent Broad-based Anti-corruption Commission (IBAC), use their powers, and exercise their functions, lawfully and properly. The Inspector is an independent officer of the Parliament and may only be removed from office if both Houses of Parliament resolve that the Inspector ought to be removed. The VI may at any time report to Parliament on any matter relating to the performance of its duties and functions. The VI is currently funded from accrual-based grants derived from money appropriated annually by Parliament to the Department of Premier and Cabinet.

In relation to IBAC, the VI has broad oversight powers, including to receive complaints and to investigate and assess the conduct of IBAC and IBAC personnel. The VI may conduct an "own motion" investigation and exercise royal commission-like powers when holding an inquiry. IBAC is required to provide the VI with copies of confidentiality notices issued by it and report to the VI on the issue of witness summonses. IBAC is also required to give a written report to the VI giving the reasons for holding a public examination.

The model of Parliamentary Inspector of the Australian National Integrity Commission (Parliamentary Inspector) provided by both the National Integrity Commission Bill 2018 and the National Integrity Commission Bill 2018 (No. 2) is very different to that of the Victorian Inspectorate model.

Under Part 12¹ of each of those Bills:

- while having the status of an independent officer of the Parliament, the Parliamentary Inspector is not protected from being directed in the performance or exercise of his or her functions or powersⁱⁱ and may be removed from office by the Presiding Officers
- the Parliamentary Inspector's core functions may only be performed if the proposed Joint Committee on the Australian National Integrity Commission requires it to do so

- the Parliamentary Inspector only has such of the National Integrity Commissioner's powers as are prescribed by the regulations
- the regulations may prescribe the process by which the Parliamentary Inspector is to conduct an audit, inspection, investigation or review
- the Parliamentary Inspector is dependent on the Presiding Officers for staff, resources, etc.
- the Australian National Integrity Commission is not required to give any information to the Parliamentary Commissioner in relation to an investigation or public inquiry being held by it nor is it required to give the Parliamentary Commissioner a statement of reasons for holding a public inquiry
- a report of the Parliamentary Inspector relation to the information or evidence gathered by the Parliamentary Inspector on an investigation relating to the conduct of an Australian National Integrity Commission staff member may only be tabled in limited circumstances
- the Parliamentary Inspector does not have the immunity from civil proceedings and from certain State and Territory laws proposed for the Australian National Integrity Commission nor, in holding a hearing, the same protection and immunity as a Justice of the High Court as proposed for the National Integrity Commissioner.

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 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.

The proposed Australian National Integrity Commission is a Hydra-like body comprised of multiple Commissioners each with their own separate functions. The Parliamentary Inspector's role is directed to the conduct and activities of, and the exercise of powers by, the Commission. While neither Bill expressly confers on the Commission as such the national integrity commissioner functions, the law enforcement integrity commissioner functions or the whistleblower protection commissioner functions, it is to be assumed that the intention is that, for the purposes of the Parliamentary Commissioner, those functions are to be treated as functions of the Commission.

I am confining my submission to the role of the proposed Parliamentary Inspector, given the similarity (albeit slight) of that role to that of the VI. I would happy to expand on my comments should your Committee so desire.

Yours sincerely

Eamonn Moran PSM QC
Inspector

¹ Note that there would appear to be a typographical error in clause 262(6) of both the National Integrity Commission Bill 2018 and the National Integrity Commission Bill 2018 (No. 2) where a reference to the National Integrity Commissioner should instead be a reference to the Parliamentary Inspector.
² Compare clause 23(3) of the National Integrity (Parliamentary Standards) Bill 2018.