



## **Promoting integrity and preventing corruption through a National Integrity Commission**

**A Design Framework**

**August 2019**

The establishment of a National Integrity Commission is crucial to restoring public trust in government and its institutions. Increasing perceptions of corruption have led to public concern that government, politicians and public servants do not always act in the public interest. A perceived lack of integrity in government also costs the economy, as businesses no longer believe they are operating on a level playing field.

Currently there is no federal agency with the necessary jurisdiction and investigative powers to scrutinise the operations of government and the public service. No agency can currently investigate allegations of corruption involving members of parliament or their staff, and a large portion of the public sector is not covered by any existing anti-corruption agency. A National Integrity Commission is needed to prevent, investigate and expose corruption in the Federal Government and public sector.

In order to restore public trust in government, and fulfil its purpose of investigating and exposing corruption, a National Integrity Commission must have a broad jurisdiction and the strong investigative powers of a Royal Commission, including the ability to hold public hearings. A strong design built on the success of state integrity commissions is crucial to ensuring the success of a National Integrity Commission. This Design Framework aims to outline the key elements of an effective commission.

### **Objectives of a National Integrity Commission**

The objectives of a National Integrity Commission will be to:

- a) to promote and improve the integrity and accountability of public administration; and
- b) to investigate, expose and prevent corruption involving or affecting the impartial exercise of public administration; and
- c) to educate and guide public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and the community.

The objectives of a National Integrity Commission do not include prosecuting convictions, as the Commission will operate primarily as an investigative agency.

## **The independence of a National Integrity Commission**

A National Integrity Commission must be independent from government, politics, and business in order to improve the integrity of public administration, and investigate and expose corruption in government and the public sector.

Independence requires:

- a) establishment of a National Integrity Commission as an independent statutory agency;
- b) appointment of one Chief Commissioner and two Deputies via nomination by a cross-party parliamentary committee;
- c) appointment of Commissioners for 5 year terms, with inbuilt flexibility to ensure that the terms of all Commissioners do not expire at the same time, and that terms may be extended if terms expire during an investigation;
- d) appointment of Chief Commissioners only with the qualifications necessary to be appointed as a judge in a Supreme or Federal court;
- e) a limited number of circumstances where the Commissioners may be removed from office during their terms,
- f) secure, sufficient and multi-year funding of the Commission of at least \$100 million per year made available every 3 years.

## **The jurisdiction of a National Integrity Commission**

The jurisdiction of a National Integrity Commission must be broad to encompass corruption and misconduct that is beyond the definition set out in any criminal code. It must cover any conduct of any person, whether or not they are a public official, that affects the impartiality of public administration.

The Chief Commissioner of a National Integrity Commission must have the authority to begin investigations if they believe the conduct in question may be serious or systemic. The Chief Commissioner may begin investigations based on referrals from other agencies, issues arising from own motion investigations, and complaints from the public which may be anonymous.

Corrupt conduct, broadly defined, is:

- a) Any conduct of any person that has the potential to involve or induce the placing by a public official of private interests over the public good in public office, or
- b) any conduct of any person that has the potential to impair the efficacy or probity of an exercise of an official function, or public administration, by a public official, or
- c) any conduct of any person that adversely affects or could adversely affect, directly or indirectly, the honest or impartial exercise of public administration, or
- d) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
- e) any conduct of a public official or former public official that involves the improper use of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person,

provided that such conduct would, if proven in criminal proceedings, be a criminal offence, a disciplinary offence, reasonable grounds for dismissal, or a breach of an applicable code of conduct.

Allegations made against a member of the judiciary must be investigated by an agency with adequate investigative powers of a Royal Commission, whether that is a National Integrity Commission or a Federal Judicial Commission.

### **The investigative powers of a National Integrity Commission**

Corruption is by nature secret, difficult to prove, and often involves complex networks of mutually beneficial relationships. Those involved in large-scale corruption are often well organised, experienced and wealthy and have access to complex means of concealing misconduct including legal and technical barriers. To effectively expose and prevent corruption, a National Integrity Commission requires the full investigative powers of a Royal Commission including:

- a) search and surveillance powers;
- b) coercive powers to compel witnesses and documents;
- c) exercise arrest warrants;
- d) the ability to hold both private and public hearings;
- e) the absence of legal professional privilege except when applied to communication between a lawyer and a client in relation to Commission hearings;
- f) retrospective powers to investigate issues and draw evidence from the past;
- g) the ability to make findings in investigation reports, and refer matters to the Commonwealth Director of Public Prosecutions for consideration of prosecution by a specialised unit within the DPP;
- h) the ability to immunise witnesses on terms, and protection to witnesses that anything said or disclosed may not be used against in criminal proceedings;
- i) measures for enforcing the above powers through the offences relating to the Commission for withholding evidence, giving false or misleading evidence, misleading witnesses, bribing witnesses, acting in contempt of the Commission etc.

### **The ability of a National Integrity Commission to hold public hearings**

After preliminary private hearings, the National Integrity Commission requires the ability to open hearings to the public. This ability may be used in cases where the Commissioner believe it is in the public interest to do so, and will be make the investigation to which it relates more effective.

1. For the purposes of an investigation, the Commission may, if it is satisfied that it is in the public interest to do so, conduct a public inquiry.
2. Without limiting the factors that it may take into account in determining whether or not it is in the public interest to conduct a public inquiry, the Commission may consider the following:
  - a) the benefit of exposing to the public, and making it aware, of corrupt conduct,
  - b) the seriousness of the allegation or complaint being investigated,

- c) whether conducting a public inquiry will make the investigation to which it relates more effective,
- d) any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry),
- e) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.

## **Oversight mechanisms and safeguards of a National Integrity Commission**

The following oversight mechanisms will be in place to provide safeguards against the risk of misuse of investigative powers. These oversight mechanisms are greater than any current oversight of Royal Commissions:

- a) the appointment of an Inspector to ensure legal compliance of the Commission's activities and to receive and process complaints;
- b) a cross-party parliamentary oversight committee;
- c) the appointment of Commissioners via this cross-party committee;
- d) a threshold for beginning investigations, whereby the Commissioner deems the conduct to be serious or systemic, and would, if proven, be a criminal offence, a disciplinary offence, reasonable grounds for dismissal, or a breach of an applicable code of conduct;
- e) the necessity for private hearings to be held prior to opening any hearings to the public;
- f) the opening of hearings to the public only in instances where the Commissioner believes it to be in the public interest;
- g) the necessity for procedural fairness to be followed in all hearings;
- h) the provision of search, surveillance, and arrest warrants by a Public Interest Monitor within the Federal Court;
- i) the availability of judicial review;
- j) a transparent reporting regime for Annual Reports and investigation reports, with reports on public inquiries being tabled in both Houses of Parliament, and reports on private inquiries being made available to those involved in the investigation.

## **About The Centre for Public Integrity**

The Centre for Public Integrity is an independent think tank dedicated to preventing corruption, protecting the integrity of our accountability institutions, and eliminating undue influence of money in politics in Australia. Board members of the Centre include the Hon Tony Fitzgerald AC QC, the Hon David Ipp AO QC, the Hon Stephen Charles AO QC and the Hon Anthony Whealy QC.

This discussion paper was prepared by The Centre for Public Integrity's project committee on a National Integrity Commission. Members of the committee include the Hon Stephen Charles AO QC, Nick Cowdery AO QC, Professor Colleen Lewis, and Morry Bailes.