

A Genuine National Integrity Commission for Australia

Submission to the Attorney-General's Department consultation on the
Coalition Government's proposed Commonwealth Integrity Commission

ACTU Submission, 1 February 2019
ACTU D No. 2/2019

1. The Australian Council of Trade Unions ('ACTU') makes the following submission to the Attorney-General's Department consultation on the Turnbull/Abbott/Morrison Coalition Government's proposed Commonwealth Integrity Commission.
2. The ACTU is the peak body representing approximately 1.6 Million working Australians. The ACTU and its affiliated unions have a long and proud history of fighting for workers' interests and defending Australia's democratic institutions.
3. The ACTU calls for the establishment of a genuine Federal independent Commission against corruption with a broad mandate, effective powers and adequate safeguards against partisan abuse.
4. As we submitted to the Senate Constitutional and Legal Affairs inquiry into the cross benchers' proposal for a National Integrity Commission, the case for a Federal anti-corruption body is undeniable. Our current framework fails to prevent corrupting influences on our political processes and the operation of government. Well known, for example, is the endemic corrupting influence of the tobacco lobby, gambling concerns, tax avoiding companies, and property developers. These influences undermine good government and merit-based policy and decision making.¹
5. Australia has steadily fallen from the eight least corrupt country of 180 countries in 2012 to thirteenth last year according to Transparency International's Global Corruption Perceptions Index.²
6. As the Community and Public Sector Union notes in its response to this consultation, "Corruption, by its very nature is a very difficult, and very covert form of criminality to detect, investigate, prosecute and prevent".³ It requires a dedicated corruption body with teeth. All of the states and territories have recognised this by establishing dedicated anti-corruption bodies. Each of those bodies have also proved their worth by finding significant instances of corruption that would otherwise have gone unaddressed. Without such a body, the full extent of corruption at the Federal level will continue to remain unknown.

¹ See ACTU, Submission to the Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the *National Integrity Commission Bill 2018*, *National Integrity (Parliamentary Standards) Bill 2018*, and *National Integrity Commission Bill 2018 (No.2)* (Submission 16).

² See <https://www.transparency.org/country/AUS#>; Yee-Fui Ng, 'The Proposed National Integrity Commission is a watered-down version of a Federal ICAC', *The Conversation*, 13 December 2018.

³ See submission by the CPSU to this inquiry.

7. We have particular concerns about the risk of corruption presented by privatisation and the outsourcing of Federal public services. Any integrity commission needs the scope, resources and powers to deal with the corruption risks associated with the outsourcing of public services to private enterprise, including through private consulting firms and labour hire arrangements.
8. It is disconcerting that for some time, the Abbott/Turnbull/Morrison Coalition government has opposed the creation of a Federal anti-corruption body and that the model it now proposes in the face of pressure from Labor, the Greens and various cross-benchers is lacking in substantial commitment. The model has been heavily criticised for its secrecy, weak powers, and lack of sufficient funding and resources.⁴ We strongly endorse former ICAC Commissioner, David Ipp's warning that in designing an anti-corruption body:

"It is very easy to create a commission that, on its face, will placate the public's demands for an ICAC-like body, but which in reality will be a fangless institution, the task of which will be to create a mirage of having an anti-corruption institution which in truth will do little to disturb the status quo."⁵
9. As Judge Stephen Charles, a retired Justice of the Victorian Court of Appeal told *The Guardian Australia*, "We see this body, the [Commonwealth Integrity Commission], insofar as public servants and parliamentarians are concerned, as a sham," and "It's not really an anticorruption commission at all" and "It's a body set up to shield parliamentarians and public servants."⁶
10. Various senior lawyers have labelled it a "disaster" and "worse than having no Commission", given, "It has no teeth, [and] it has no powers."⁷
11. Our major concerns with the Coalition's model include that:

⁴ See, for example, Amy Remeikis & Christopher Knaus, 'Morrison government announces new federal anti-corruption commission', *The Guardian*, 13 December 2018 <<https://www.theguardian.com/australia-news/2018/dec/13/morrison-government-announces-new-federal-anti-corruption-commission>>.

⁵ Amy Remeikis & Christopher Knaus, 'Morrison government announces new federal anti-corruption commission', *The Guardian*, 13 December 2018 <<https://www.theguardian.com/australia-news/2018/dec/13/morrison-government-announces-new-federal-anti-corruption-commission>>.

⁶ Christopher Knaus, 'Coalition's plan for anti-corruption body a 'sham' set up to protect MPs, former judge says', *The Guardian*, 24 January 2019, < <https://www.theguardian.com/australia-news/2019/jan/24/coalitions-plan-for-anti-corruption-body-a-sham-set-up-to-protect-mps-former-judge-says>>.

⁷ <https://www.abc.net.au/news/2018-12-14/lawyers-slam-federal-government-integrity-commission-model/10619210>.

- (a) It ignores the expert evidence and best practice in this area, including issues raised in the Transparency International/Griffith University's options paper on reform;
- (b) All hearings by the public service division are to be held in secret. We are strongly of the view that the Commission should have the power to hold hearings to investigate corruption in the public service in public view where doing so is in the public interest. It is difficult to imagine, for example, how the banking and finance sector could have been held to account for misconduct, in anything approaching the degree to which it has thus far via the Royal Commission into the sector if the proceedings had been held in private;
- (c) Judicial officers are included within the Commission's proposed purview. This would risk giving the executive too much power over the judiciary, undermining the fundamental principles of judicial independence and the separation of powers between the judiciary and the executive. We concur with the Law Council of Australia that there should be a separate national judicial commission to monitor complaints against judges relating to misconduct or impairment, modelled on the NSW Judicial Commission;
- (d) The power of the Commission is limited to preparing reports and referring potential criminal conduct to the Commonwealth Director of Public Prosecutions, without the power to make findings of corruption and limited evidence-gathering powers;
- (e) It lacks a proactive pro-integrity mandate with the power and resources to implement a national plan for eliminating corruption; and
- (f) The Commission would be critically underfunded and under-resourced. Option 3 in the Griffith University / Transparency International report, the preferred and most expansive and broad-based model was estimated to cost \$104.7 million per annum, an amount approximately in line with New Zealand's anti-corruption body and the weakest of the Australian state commissions.⁸ The inadequacy of the

⁸ A J Brown et al., *A National Integrity Commission – Options for Australia*, Griffith University & Transparency International, August 2018, p59.

Coalition's proposal is brought into relief when one considers its proposed funding – a miserly \$30 million per year.

12. Hence, we strongly urge the Coalition Government to consider establishing a genuine anti-corruption body.

ACTU, February 2018.

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