

Document 1

From: [Meeting Briefs](#)
To: [AGO DLO](#)
Cc: [Quinn, Elizabeth](#); (s 22)
Subject: RE: Request - Meeting Brief - Due COB Tues, 6 Feb [SEC=UNCLASSIFIED]
Date: Tuesday, 6 February 2018 5:03:17 PM
Attachments: [Meeting Brief - AG meeting with National Integrity Commission - 12 Feb 1....docx](#)

UNCLASSIFIED

Hi (s 22)

Please find attached the final cleared meeting brief for the Attorneys meeting with the National Integrity Commission on Monday 12 February 2018.

If agreed, (s 22) from the department is available to attend the meeting.

Thank you

(s 22)

From: AGO DLO
Sent: Tuesday, 23 January 2018 2:47 PM
To: Meeting Briefs
Cc: AGO DLO
Subject: Request - Meeting Brief - Due COB Tues, 6 Feb [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hello

Please find attached a request for a meeting brief, due **COB Tuesday, 6 February** .

Happy to discuss.

Thanks,

(s 22)

| Departmental Liaison Officer
Office of the Hon Christian Porter MP | Attorney-General

(s 22)



Office of the Attorney-General

Meeting Brief

NAME OF MEETING:	Meeting
ORGANISATION:	National Integrity Committee
ATTENDEES:	<ul style="list-style-type: none"> • David Ipp AO QC - former NSW ICAC Commissioner • Margaret McMurdo AC - former President of the Queensland Court of Appeal • Anthony Whealy QC - former NSW Court of Appeal Judge and Chair of Transparency International • Paul Stein AM QC - former Judge of the NSW Courts of Appeal • Stephen Charles AO QC - former Judge of the Victorian Court of Appeal; and • David Harper AM QC - former Judge of the Victorian Court of Appeal.
AGD ATTENDANCE:	(s 22)
DATE OF MEETING:	Monday 12 February 2018
TIME AND LOCATION:	11:00am - APH
DATE SENT TO AGO:	6 February 2018

KEY POINTS

1. The purpose of this meeting is to discuss the newly-formed National Integrity Committee and its proposal for a federal anti-corruption commission.
2. The Government values the Committee's engagement and recognises its interest in this issue.
3. **Australia's approach to corruption**
 - a) Australia has a strong anti-corruption framework and is consistently ranked by Transparency International as one of the least corrupt countries in the world.
 - b) The Government takes a multi-faceted approach to combatting corruption. Multiple agencies have responsibilities for preventing, detecting and responding to corruption. For example:
 - i) the Australian Commission for Law Enforcement Integrity has specialist skills to address corruption risks that face law enforcement agencies
 - ii) the AFP-hosted Fraud and Anti-Corruption Centre has expertise in investigating serious and complex corruption offences, including fraud and foreign bribery
 - iii) the Commonwealth Ombudsman considers and investigates complaints where people believe they have been treated unfairly by an Australian Government department
 - iv) the Australian Public Service Commission is responsible for promoting and evaluating the extent to which agencies uphold the APS' values and the adequacy of compliance with the Code of Conduct, and
 - v) the Independent Parliamentary Expenses Authority audits, advises and reports on the work expenses of parliamentarians and their staff.
 - c) Dispersing responsibility for anti-corruption measures amongst a range of agencies promotes accountability and enables agencies develop expertise in dealing with corruption risks.
 - d) (s 47C)
 - e) (s 47C)

4. **Coalition government measures**

- a) The Government is always open to new measures to strengthen the anti-corruption framework and fill any gaps.
- b) Measures already undertaken by this Government include:
 - i) \$128 million to establish the Serious Financial Crimes Taskforce, which leads the Commonwealth's operational response to high priority financial crimes.
 - ii) In December 2016, the Government released Australia's first National Action Plan under the Open Government Partnership which includes 15 commitments to enhance public sector integrity and transparency. We are also considering commitments to include in the second National Action Plan.
 - iii) In March 2017, the Government held the first Government Business Roundtable on Anti-Corruption to discuss foreign bribery legislative reforms and a new deferred prosecution agreement scheme with business representatives.
 - iv) In April 2017, the Government established the Independent Parliamentary Expenses Authority to strengthen the accountability and transparency of parliamentarians' work expenses.
 - v) On 6 December 2017, the Government introduced the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2017. The Bill will enhance the tools available to law enforcement to tackle corporate crime and corruption.
 - vi) On 7 December 2017, the Minister for Finance announced the Government's introduction of the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017 which amends the *Corporations Act 2001* and the *Taxation Administration Act 1953* to improve Australia's corporate and tax whistleblower protections.
 - vii) On 7 December 2017, the Government introduced the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017 to counter the threat of foreign states exerting improper influence over our system of government and our political landscape.

5. **Senate Committee on the Establishment of a National Integrity Commission**

- a) On 13 September 2017, the Senate Select Committee on a National Integrity Commission handed down its report. Of the seven recommendations made by the Senate Committee, none directly recommended the establishment of a National Integrity Commission.
- b) The recommendations are being carefully considered by the Government.

DEPARTMENT FUNDING

N/A

SENSITIVITIES

6. (s 47C) [Redacted]

7. (s 47C) [Redacted]

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8. **Labor's position on a Commonwealth anti-corruption commission**

- a) In an address to the National Press Club on 30 January 2018, Opposition Leader Bill Shorten pledged to establish a federal anti-corruption body if Labor wins the next election. Prior to this, Labor did not directly support a body (despite initiating and chairing the 2017 Senate Select Committee on a National Integrity Commission, which didn't directly recommend one either).

BACKGROUND**9. National Integrity Committee**

- a) The Committee, hosted by The Australia Institute, was established in 2017 to design accountability measures including a national anti-corruption body. It comprises several former judges including David Ipp AO QC, former NSW ICAC Commissioner and former judge of the NSW Supreme Court, Margaret McMurdo AC, former President of the Queensland Court of Appeal, Anthony Whealy QC, former NSW Court of Appeal Judge, Paul Stein AM QC, former Judge of the NSW Court of Appeal, and former Judges of the Victorian Court of Appeal Stephen Charles AO QC and David Harper AM QC.
- b) On 27 November 2017, the Committee released a briefing paper (**Attachment A**) which highlights gaps in the jurisdiction and investigative powers of existing federal agencies responsible for scrutinising the public sector and government, and outlines design principles for a national integrity commission.
- c) The Committee has proposed the establishment of an independent statutory body with the same coercive powers as a royal commission and a broad jurisdiction, including the ability to investigate any conduct that could adversely affect the honest or impartial exercise of public administration. The proposed agency would be led by three commissioners, have the ability to hold public hearings and would refer relevant matters to a new specialised unit within the Director of Public Prosecutions to consider charges. It is a similar model to the NSW Independent Commission Against Corruption.

10. Senate Select Committee on the Establishment of a National Integrity Commission

- a) On 13 September 2017, the Senate Select Committee on a National Integrity Commission tabled its report. The Government response to the report was due by 13 December 2017.
- b) The report makes seven recommendations, including that the Commonwealth Government:
 - i) prioritise strengthening the national integrity framework to make it more coherent, comprehensible and accessible
 - ii) give careful consideration to establishing a Commonwealth agency with broad scope and jurisdiction to address integrity and corruption matters, and
 - iii) consider strengthening the application of the Statement of Ministerial Standards, including measures to improve the identification, investigation and punishment of breaches.
- c) The Nick Xenophon Team and Australian Greens separately recommended the establishment of a national integrity agency with the power to hold public hearings.

11. Transparency International

- a) Transparency International is a non-profit, global civil society organisation whose purpose is to combat global corruption and prevent crimes arising from corruption. It is registered in Germany but has more than 100 national chapters, including in Australia.
- b) Since 1995, Transparency International has issued an annual Corruption Perceptions Index, ranking countries by perceived levels of corruption in the public sector.
- c) Australia was ranked 13th in the 2016 CPI – the 2017 CPI is due to be released on 21 February 2018.

CONSULTATION

N/A

ATTACHMENTS**Attachment A:** The National Integrity Committee's principles for designing a National Integrity Commission**CLEARANCE DETAILS**

Contact Officer:

(s 22)

Position:	Director
Division/Branch:	Criminal Law and Protective Security Branch
Phone/Mobile:	(s 22)
Cleared by:	Julia Galluccio
Position:	A/g Assistant Secretary
Division/Branch:	Criminal Law and Protective Security Branch
Phone/Mobile:	(s 22)

From: (s 22)
To: (s 22)
Subject: Read out - AG mtg with NIC (The Australia Institute) [DLM=For-Official-Use-Only]
Date: Monday, 12 February 2018 6:31:11 PM

For Official Use Only

Hi (s 22),

I sat in on the Attorney-General's meeting with the 'National Integrity Committee' ([Anthony Whealy QC](#), Chair of TI Australia; [Margaret McMurdo AC](#), former President of the Qld Court of Appeal; [Stephen Charles AO QC](#), former judge of the Victorian Court of Appeal) and [Ben Oquist](#) (Executive Director) and [Hannah](#) from The Australia Institute. This meeting was to discuss the Committee's ['Principles for designing a National Integrity Commission'](#).

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Thanks,

(s 22)

Principles for designing a National Integrity Commission

*A briefing paper prepared in November 2017 by the
National Integrity Committee*

BACKGROUND

A National Integrity Commission is urgently needed to investigate and expose corruption and misconduct in federal government and the public sector.

There are significant gaps in the jurisdiction and investigative powers of the existing federal agencies responsible for scrutinising the public sector and government. No federal agency has the power to investigate corrupt conduct as defined by our state based commissions. No federal agency can investigate misconduct of MPs, ministers, political staff or the judiciary.¹ The federal agencies that do have strong investigative powers, such as the federal police, can use them only when investigating criminal charges. No federal agency has the ability to hold regular public hearings, meaning that corruption and misconduct is not properly exposed to the public. Many cases of corruption reach across state borders, but state anti-corruption bodies are forced to abandon investigations once they reach the federal sphere. Consequently there is a need for an overarching body with umbrella type functions for the supervision of corruption and integrity in every area of federal public administration.

There is a growing public distrust of federal government with a recent poll finding 85% of Australians believe there is corruption in federal politics. In addition, there is overwhelming public support for a National Integrity Commission, with a recent poll

¹ Advice should be taken as to whether an investigation of this kind of all or some Commonwealth judicial officers is constitutional.

finding over 80% of respondents support the establishment of a commission, and 78% of respondents supportive of a commission that holds public hearings.²

The design of a National Integrity Commission is critical. That design must incorporate features which ensure that the commission increases public trust in government. It must therefore be such as to allow corruption and misconduct to be properly investigated and exposed without improperly and unfairly prejudicing the innocent. This briefing paper was prepared by the *National Integrity Committee* to establish design principles for a national integrity commission that will ensure it is given the strength and tools to effectively do its job effectively and fairly.

NATIONAL INTEGRITY COMMITTEE

The *National Integrity Committee* was established by the Australia Institute to advise on the design of specific accountability reforms, including the establishment of a National Integrity Commission. The members of the committee are Margaret McMurdo AC, David Ipp AO QC, Stephen Charles AO QC, David Harper AM QC, Paul Stein AM QC and Anthony Whealy QC.

PRINCIPLES AND RATIONALE

- 1. That the Commission is an independent statutory body that is provided with the required resourcing to enable it to promote integrity and accountability and to enable it to prevent, investigate and expose corruption.*

Rationale: establishing the National Integrity Commission as a statutory body ensures the Commission is a permanent body protected from political intervention and unjustified budgetary constraints imposed to lessen its effectiveness. It must be independent from existing federal agencies as these agencies do not have the overarching jurisdiction, investigative powers, or breadth of profile to effectively investigate and expose corruption.

² The Australia Institute (2017), *National poll – support for federal ICAC*, May 2017, <http://www.tai.org.au/content/support-federal-icac-poll>

A National Integrity Commission must be given sufficient resources to fulfil its purpose.

NSW ICAC has faced funding cuts over consecutive years, resulting in the loss of 17 staff including an entire investigative team. This occurred after ICAC exposed corruption in political donations involving ten members of the Liberal Party. The NSW Public Service Association has said that the funding cuts are an attempt by the NSW Government to diminish scrutiny.³ Former NSW DPP Nicholas Cowdery AM QC has raised concerns about the resources made available to NSW ICAC and a future federal anti-corruption commission:

NSW ICAC has been faced this year with a funding cut. It is an easy way for government to impair the effectiveness of such a body and steps would need to be taken to ensure that adequate resources continued to be allocated to a national integrity commission.⁴

- 2. That the Commission has a broad jurisdiction, including the ability to investigate any conduct of any person that adversely affects or could adversely affect, directly or indirectly, the honest or impartial exercise of public administration, if the Commissioner deems the conduct to be serious or systemic.*

Rationale: There are significant gaps in the jurisdiction of existing federal accountability agencies. Parliamentarians, Ministers, parliamentary staff, and at least half of the public sector are not currently covered by effective accountability measures. In addition, currently no federal agency can investigate conduct of third parties attempting to improperly and unfairly influence public administration. The Independent Review of the Jurisdiction of NSW ICAC by the Hon Murray Gleeson AC and Bruce McClintock SC found that:

Certain kinds of fraudulent conduct, not necessarily involving any actual or potential wrongdoing by a public official, should be treated as corrupt conduct where they impair or could impair confidence in public administration.⁵

³ Knaus (2017), *Icac weakening due to budget cuts and job losses, union and NSW Labor warn*, The Guardian, 17th July 2017, <https://www.theguardian.com/australia-news/2017/jul/17/icac-weakening-due-to-budget-cuts-and-job-losses-union-and-nsw-labor-warn>

⁴ Cowdery (2017), *Lessons from NSW ICAC*, Conference Paper: Accountability and the Law 2017 Conference, <http://tai.org.au/content/lessons-nsw-icac-watchdog-has-teeth>

⁵ Gleeson and McClintock (2015), *Report – Independent Panel Review of the Jurisdiction of NSW ICAC*

3. *That the Commission be granted the investigative powers of a Royal Commission to undertake its work, to be executed at the discretion of the Commissioner.*

Rationale: Corruption and misconduct are complex forms of wrongdoing. Corruption and misconduct are often committed by highly skilled professionals in positions of power within a system that is both well-known to them and difficult for others to penetrate. Corruption often occurs in networks of mutually beneficial relationships of powerful and influential people.⁶ The corrupt often know how to hide their trail and stay in front. As outlined by former Premier Nick Greiner in his second reading of the *NSW Independent Commission Against Corruption Bill* in 1988:

“... corruption is by its nature secretive and difficult to elicit. It is a crime of the powerful. It is consensual crime, with no obvious victim willing to complain. If the commission is to be effective, it obviously needs to be able to use the coercive powers of a Royal commission.”⁷

For this reason, a National Integrity Commission must be given the investigative powers of a Royal Commission. State based anti-corruption commissions, including NSW ICAC and Queensland CCC, have strong investigate powers including the ability to hold public hearings, compel evidence and witnesses, and use surveillance devices. To ensure these powers are not used irresponsibly, oversight of the Commission can be implemented through a parliamentary committee and an inspector as used in state based commissions around Australia.⁸

The necessary investigative powers include:⁹

- Coercive powers to compel the production of documents, other evidence and the examination of witnesses
- Ability to enter and search premises and inspect and copy documents
- Ability to use surveillance devices and phone intercepts
- Own motion powers to begin investigations at the discretion of the commissioner
- The absence of legal professional privilege, except in instances involving privileged communication between an Australian lawyer and a person for

⁶ Murray (2017), *Game of Mates: how favours bleed the nation*, self-published

⁷ Greiner (1988), NSW Parliamentary Hansard, 26th May 1988

⁸ See *NSW Independent Commission Against Corruption Act 1988* and *Queensland Crime and Corruption Act 2001*

⁹ Prenzler (2010), *Towards a model public sector integrity agency*, *The Australian Journal of Public Administration*, vol. 69, no. 3, pp. 251–262

the purpose of providing legal advice in relation to the appearance of a person at a hearing before the Commission

- The ability to open hearings to the public
- The power to immunise witnesses on terms
- Protection to witnesses that anything said or disclosed may not be used against them in criminal proceedings

These powers must be available to be used in an investigation at the discretion of the Chief Commissioner, without any trigger or threshold. The Victorian IBAC has strong investigative powers but is only able to use them once a threshold of evidence has been met and the Commission is 'reasonably satisfied that the conduct is serious corrupt conduct'.¹⁰ This threshold, if applied in NSW, would have not allowed NSW ICAC to investigate the Obeid family. Operations Jasper and Acacia, which led to Eddie Obeid being jailed for misconduct in public office, began with an anonymous phone call to NSW ICAC suggesting that they should look into coal licences in the Bylong Valley.

*4. That the Commission may hold a public inquiry providing it is satisfied that opening the inquiry to the public will make the investigation to which the inquiry relates more effective, and would be in the public interest.*¹¹

Rationale: A National Integrity Commission will not be fully effective in exposing or investigating corruption unless it has the ability to hold public inquiries. An important factor to take into account when deciding to open the hearing, is whether the public interest in opening the hearing outweighs the potential damage to a person's reputation. Evidence from Australian state based anti-corruption commissions show that the ability to hold public inquiries has been critical to their success. Public inquiries are an important investigative tool, prompting members of the public to come forward with information that they may not have had the confidence or context to do without a public inquiry. They are also critical to exposing corruption and misconduct to the public, demonstrating publicly that corruption in public

¹⁰ *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s.60(2)

¹¹ Note: this Principle is the majority position of the committee, though a minority view is 'That the Commission may hold a public inquiry providing it considers on reasonable grounds that opening the inquiry to the public will make the investigation to which the inquiry relates more effective and would not cause unreasonable damage to a person's reputation, or be contrary to the public interest.'

administration is taken seriously by government and that investigations are carried out fairly by the commission.

In the 2015 report on the review of the jurisdiction of NSW ICAC, Murray Gleeson and Bruce McClintock observed that although public inquiries carry a risk of reputational damage and unfairness, publicity itself is a protection against administrative excess.¹² The report also noted that the Chief Commissioner is the best person to make the decision as to whether to open the inquiry, and that this process has led to predominantly good decisions:

The decision whether to conduct a public inquiry is an operational decision made for the purposes of the particular investigation. It is a decision best made by the Commissioner who is apprised of all the relevant facts and in the best position to weigh the public interest. There has, in fact, been little criticism brought to the Panel's attention (with one exception) of the ICAC's decisions to hold public inquiries, as distinct from the manner in which such inquiries are conducted. The exception is, of course, the decision to hold the public inquiry in [in the matter of Margaret Mary] Cunneen. That is an insufficient basis to recommend a change.¹³

Anti-corruption commissioners across Australia have recognised the power of public hearings. SA ICAC Commissioner Bruce Lander, who is currently the only Commissioner not able to open hearings, has made a recommendation to the SA State Government to allow the commission to hold public hearings to ensure transparency.¹⁴ Victorian IBAC Commissioner Stephen O'Bryan QC has said that openly examining cases of alleged serious corruption and misconduct in public hearings has encouraged and empowered people to come forward and report suspected wrongdoing.¹⁵ Former NSW ICAC Assistant Commissioner Anthony Whealy QC has said "there are many people out there in the public arena who will have information that's very important to the investigation. If you conduct the investigation behind closed doors, they never hear of

¹² Gleeson and McClintock (2015), *Report – Independent Panel Review of the Jurisdiction of NSW ICAC* pp 62

¹³ Gleeson and McClintock (2015), *Report – Independent Panel Review of the Jurisdiction of NSW ICAC* pp 60-61

¹⁴ MacLennan, 2016, *ICAC Commissioner Bruce Lander pushes for public hearings to ensure transparency*, ABC, 31st October 2016, <http://www.abc.net.au/news/2016-10-31/icac-commissioner-bruce-lander-wants-public-hearings-in-sa/7980960>

¹⁵ IBAC, 2016, *IBAC sheds light on serious corruption in its third year*, Media release, 14th September 2016, <http://www.ibac.vic.gov.au/media-releases/article/ibac-shines-light-on-serious-corruption-in-its-third-year>

it and the valuable information they have will be lost."¹⁶ Former NSW ICAC Commissioner David Ipp AO QC has said that "Its main function is exposing corruption; this cannot be done without public hearings."¹⁷

Sir Anthony Mason, former Chief Justice of Australia, when discussing a possible restraint on the public hearings of a Royal Commission said:

However, this restraint, limited though it is, seriously undermines the value of the inquiry. It shrouds the proceedings with a cloak of secrecy; denying to them the public character which to my mind is an essential element in public acceptance of an inquiry of this kind and of its report. An atmosphere of secrecy readily breeds the suspicion that the inquiry is unfair or oppressive.

The denial of public proceedings immediately brings in its train other detriments. Potential witnesses ..., lacking knowledge of the course of proceedings, are less likely to come forward. And the public, kept in ignorance of developments which it has a legitimate interest in knowing, is left to speculate on the course of events.

... Here the ultimate worth of the Royal Commission is bound up with the publicity that the proceedings attract and the public has a substantial and legitimate interest in knowing what is happening before the Commissioner. ¹⁸

- 5. That the Commission be governed by one Chief Commissioner and two Deputy Commissioners, appointed by the Minister on recommendations from a bipartisan Parliamentary committee. The Chief Commissioner is to be appointed for fixed non-renewable 5 year terms, and must be a judge or a retired judge or be qualified for appointment as a judge.*

Rationale: the appointment of one Chief Commissioner ensures efficient and fast decision making, functional staff management, and a direct line of responsibility

¹⁶ Gerathy, 2016, *ICAC inspector calls for end to public hearings to stop 'trashing of reputations'*, ABC, 12th May 2016, <http://www.abc.net.au/news/2016-05-12/icac-inspector-david-levine-calls-for-end-to-public-hearings/7409126>

¹⁷ Gerathy, 2016, *ICAC inspector calls for end to public hearings to stop 'trashing of reputations'*, ABC, 12th May 2016, <http://www.abc.net.au/news/2016-05-12/icac-inspector-david-levine-calls-for-end-to-public-hearings/7409126>

¹⁸ In *Victoria v Australian Building Construction Employees and Builders Labourers Federation* (1982) 152 CLR 25 at 97.

whereby the Chief Commissioner is held accountable for the proper functioning of the Commission. Appointing Deputy Commissioners is critical to ensuring that the commission has sufficient capacity to undertake its work. Appointment by the Minister on recommendations from a bipartisan committee and for a fixed term ensures political independence and freedom from fear of political retaliation.

6. That the Commission be empowered to make findings of fact, to be referred to a well-resourced and specialised unit within the DPP for consideration for prosecution.¹⁹

By their very nature, anti-corruption bodies are not judicial and do not exercise judicial power. Similarly to a Royal Commission, the bodies are usually empowered to receive information; to make findings; to report those findings; and to make recommendations to other agencies, including prosecuting authorities, in respect of further action to be taken arising from the information and findings.

There is a risk that corruption cases are not pursued with sufficient staff, knowledge or skills once referrals are made to the Director of Public Prosecutions (DPP). Corruption cases are often complex and unique, and may not be prioritised in a resource scarce department. For this reason, it is recommended that a well-resourced and specialised unit within the DPP is established to pursue these cases.

¹⁹ Note: this Principle is the majority position of the committee, though a minority view is ‘That the Commission be empowered to make findings of corrupt conduct, to be included in investigation reports and referred to a well-resourced and specialised unit within the DPP for consideration for prosecution.’ The Hon David Ipp AO QC notes that the ability to make corrupt conduct findings are critical to the commission’s role in exposing corruption to the public, as without the power to make corrupt conduct findings the outcomes of investigations can become lost in long lists of specific facts that will confuse the public and may or may not be pursued by the DPP. The dishonest implications of the specific facts found may also be confused, and the public is left not knowing if the government representative or public servant in question is corrupt or not.