



**TRANSPARENCY
INTERNATIONAL
AUSTRALIA**

NATIONAL INTEGRITY 2017

16-17 MARCH 2017 – NOVOTEL BRISBANE



**1st BIENNIAL CONFERENCE OF
TRANSPARENCY INTERNATIONAL AUSTRALIA**

Proudly Co-Hosted With Our Principal Partner



Integrity of Purpose: Designing a Federal Anti-Corruption Commission

Dr Grant Hoole &
Associate Professor Gabrielle Appleby
Gilbert + Tobin Centre of Public Law, UNSW Law



**TRANSPARENCY
INTERNATIONAL
AUSTRALIA**

NATIONAL INTEGRITY 2017

16-17 MARCH 2017 – NOVOTEL BRISBANE



**1st BIENNIAL CONFERENCE OF
TRANSPARENCY INTERNATIONAL AUSTRALIA**

Proudly Co-Hosted With Our Principal Partner



Setting the Framework for Commission Design

- **Legal process theory** focuses attention on three considerations for institutional design:
 - (a) Institutions are dynamic: they evolve according to decisions taken by officials in context;
 - (b) Institutions must understand and respect each other's fields of authority;
 - (c) Institutions must be faithful to their animating purposes, which includes observing properly tailored procedures.

What this means for institutional architects: “Integrity of purpose”

- (a) The design of a new commission must account for its **insertion into and evolution within an existing integrity landscape**
- (b) Its **purpose** should be defined by reference to **vulnerabilities and gaps** in the landscape
- (c) Its **powers and procedures** should be tailored to a foundational understanding of purpose

The **goal**: to ensure the commission evolves to build harmony, coherence, and public confidence.

Some key design questions

- (a) What should be the content of the Commission's **legislative purpose statement**?
- (b) How should the Commission's **jurisdiction** be framed and limited to ensure integrity to its purpose over time?
- (c) How can the Commission's **hearing powers** – including the **power to hold public hearings and report adverse findings** – be designed and exercised in a manner consistent with the provisions articulating its jurisdiction and purpose, as well as with more systemic values including protection of individual rights and the tenets of natural justice?
- (d) How should the framework governing the **appointment, removal and remuneration of Commissioners** be designed to ensure independence and impartiality to fulfill the legislative purpose with fidelity?



NATIONAL INTEGRITY 2017

16-17 MARCH 2017 – NOVOTEL BRISBANE



1st BIENNIAL CONFERENCE OF
TRANSPARENCY INTERNATIONAL AUSTRALIA

Proudly Co-Hosted With Our Principal Partner



The goal and content of a legislative purpose statement

- Existing federal integrity landscape
 - ACLEI
 - Commonwealth Ombudsman
 - Commonwealth Auditor-General
 - Independent Parliamentary Expenses Authority
 - Other – including ad hoc commissions of inquiries, the courts, and Parliament
- Identifying institutional vulnerabilities and gaps
- The relationship between “suppressing corruption” and “fostering confidence in government”

Proposed legislative purpose statement for a new federal anti-corruption commission

The object of this Act is to suppress corruption and foster public confidence in the integrity of the Commonwealth government by empowering an independent commission with authority to investigate Commonwealth government activities, including through consideration of public complaints, with the goal of identifying and reporting instances of serious or systemic corruption.



NATIONAL INTEGRITY 2017

16-17 MARCH 2017 – NOVOTEL BRISBANE



1st BIENNIAL CONFERENCE OF
TRANSPARENCY INTERNATIONAL AUSTRALIA

Proudly Co-Hosted With Our Principal Partner



Tailoring jurisdiction to purpose

Limit jurisdiction in two key ways:

- (a) Limited to investigating matters where the commission has a **reasonable suspicion** that they involve **serious or systemic misconduct**.
- (b) No power to investigate the conduct of **non-government parties** whose conduct is likely to lead a public official to fulfil his or her functions improperly (“the *Cunneen* question”)

Public hearings and public reporting

- Powers must be informed by the distinction between the purposes and processes of anti-corruption commissions and courts.
- Features of anti-corruption commissions that militate against power to hold public hearings:
 - Investigative and referral powers
 - Court-like evidentiary privileges do not apply
 - Investigations result in referral to prosecutorial authority and future judicial proceedings
- Public reporting and ‘follow up’ powers can still achieve:
 - Publicity and education around corrupt conduct
 - Deterrence
 - Accountability through transparency
- **Exception:** when a commissioner determines that the subject of an investigation concerns both **serious and systemic corruption**, and that it has **provoked a crisis of public confidence in government**.