

Bipartisan appointment and oversight of integrity commissioners

A National Integrity Commission must be established with an independent commissioner nominated by bipartisan committee

Briefing paper prepared by the National Integrity Committee

Summary

- Bipartisan appointment of commissioners to integrity institutions is critical to ensuring the institution can operate independent of political interference
- Bipartisan committees can nominate commissioners for appointment, and can also provide independent oversight of integrity institutions
- A National Integrity Commission must be established with an independent commissioner, nominated by bipartisan committee

The National Integrity Committee

The National Integrity Committee was established to design and advise policy makers on specific accountability reforms, including a national anti-corruption commission. 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 Antony Whealy QC.

Appointment of commissioners

There are a range of mechanisms in place to appoint commissioners and chairpersons of Australian integrity institutions. Outlined below are mechanisms for appointing commissioners and chairpersons of the NSW Independent Commission Against Corruption, the Queensland Crime and Corruption Commission, the Australian Commission for Law Enforcement Integrity, the Australian Broadcasting Corporation and the Australian Securities and Investments Commission.

Bipartisan support for the appointment is crucial to ensuring the independence of integrity institutions. This independence can be included in the legislation establishing a National Integrity Commission, by specifying that a Joint Committee be established with members from all parties represented in each house of parliament, and that this committee must give bipartisan support for nominations for commissioner before the commissioner can be appointed by the Attorney General or the Governor General.

Table 1: Appointments of commissioners and chairpersons, and the role of overseeing committees - NSW ICAC, Qld CCC, ABC, ACLEI and ASIC.

	Head of Corruption Body	Appointed By	Overseeing Committee	Is the committee bipartisan and bicameral?	Does the committee have a role in selecting the head of the corruption body?
NSW ICAC	Chief Commissioner	NSW Governor	Joint Committee on the Independent Commission Against Corruption	Yes. There are 11 members: 3 chosen by the Legislative Council; 8 by the Legislative Assembly. Current committee has membership from 4 parties.	Yes. A Commissioner can only be selected with the Committee's approval.
QLD CCC	Parliamentary Crime and Corruption Commissioner	QLD Minister for Justice	Parliamentary Crime and Corruption Committee	Bipartisan but not bicameral as Queensland parliament only has one house. There are 7 members: 4	Yes. In order for the Minister to nominate an individual for the role of Commissioner, she/he must

	Head of Corruption Body	Appointed By	Overseeing Committee	Is the committee bipartisan and bicameral?	Does the committee have a role in selecting the head of the corruption body?
				appointed by the Leader of the House; 3 by the Leader of the Opposition.	have the bipartisan support of the committee.
ACLEI	Integrity Commissioner	Governor-General	Joint Committee on the Australian Commission for Law Enforcement Integrity	Yes. There are 10 members: 5 from the Senate, chosen by the Senate; and 5 from the House of Reps, chosen by the House of Reps. Current committee consists of 4 Labor party members, 3 Liberals and 2 Nationals	No. The Committee monitors the Commission's performance, examines its reports, and reports to Parliament; but it does not play a role in selecting or nominating the head of the Commission.

	Head of Corruption Body	Appointed By	Overseeing Committee	Is the committee bipartisan and bicameral?	Does the committee have a role in selecting the head of the corruption body?
ABC	Board of Directors (4-6 members, including the Chairperson and Managing Director)	Governor-General appoints one Director Others are appointed by the Prime Minister and Minister for Communication and the Arts	Nomination Panel	Not necessarily. Members of the Panel are chosen by the Secretary of the Prime Minister's Department. However, after the nomination process is complete, the Prime Minister must discuss nominees for Chairperson with the Leader of the Opposition.	Yes, it nominates candidates for either the Prime Minister or the Minister for Communication and the Arts to choose from. However, the PM and the Minister have the power to select Directors not from the Panel's nominees.
ASIC	Chairperson and Commissioners	Governor-General on nomination by the Treasurer	Parliamentary Joint Committee on Corporations and Financial Services:	Yes. There are 10 members: 5 from the Senate, chosen by the Senate; and 5 from the House of Reps, chosen by the House of Reps. Current	No. The Committee simply oversees and reports on ASIC's operations.

	Head of Corruption Body	Appointed By	Overseeing Committee	Is the committee bipartisan and bicameral?	Does the committee have a role in selecting the head of the corruption body?
				committee consists of 4 Liberal party members, 4 ALP members, 1 Green and 1 National.	

NSW Independent Commission Against Corruption (ICAC)

Head of ICAC: Chief Commissioner

Committee: Joint Committee on the Independent Commission Against Corruption

- The Commission consists of a Chief Commissioner and 2 other commissioners appointed by the Governor.¹
- A Commissioner holds office for 5 years.²
- In order to be a Commissioner, the nominee must be/qualified to be a judge; and cannot be a member of parliament of state/territory/federal.³
- The Joint Committee has 11 members: 3 appointed by Legislative Council; 8 by Legislative Assembly.⁴

¹ *Independent Commission Against Corruption Act 1988* (NSW), Part 2, Section 5 (1).

² ibid, Schedule 1, Section 5 (1-4).

³ ibid, Schedule 1, Section 1 (a-c).

⁴ ibid, Part 7, Section 65 (1).

- The NSW ICAC Act does not specify that the committee should be bipartisan, but says that the appointment of members should be in accordance with the practice of Parliament in regards to Joint Committees. In practice this has resulted in the current committee consisting of 4 Labor Party members, 3 Liberal, 3 National, and 1 Country Democratic Party member.
- Its role is to review the ICAC and ICAC Inspector's performance; examine their annual and other reports; and report to Parliament on matters relating to the Commission's functions.⁵
- It has the power to veto a candidate for Commissioner.⁶

Queensland Crime and Corruption Commission (CCC)

Head of CCC: Parliamentary Crime and Corruption Commissioner

Committee: Parliamentary Crime and Corruption Committee

- The Committee is formed of 7 members: 4 nominated by the Leader of the House; 3 by the Leader of the Opposition. The chairperson of the parliamentary committee is nominated by the Leader of the House.⁷
- The Queensland CCC Act specifies that the nomination for commissioner must be made by bipartisan support of the Parliamentary committee.⁸
- Its role is to monitor and review the CCC's performance;⁹ report to the Legislative Assembly regarding matters relevant to the CCC's findings and performance;¹⁰ and examine the CCC's annual and other reports.¹¹

⁵ *ibid*, Part 7, Section 63 (1).

⁶ *ibid*, Part 11, Section 64A (1).

⁷ *Crime and Corruption Act 2001* (Queensland), Part 3, Division 4, Section 300 (1-2).

⁸ *ibid*, Part 3, Division 2, Section 228.

⁹ *ibid*, Part 3, Division 2, Section 292 (a).

¹⁰ *ibid*, Part 3, Division 2, Section 292 (b).

¹¹ *ibid*, Part 3, Division 2, Section 292 (c).

- It also participates in the selection and removal of Commissioners and the Chief Executive Officer.¹² In order for the Minister to nominate an individual for the role of Commissioner, she/he must consult the Committee and must have the bipartisan support of that committee.¹³
- Parliamentary committee meetings are held in public unless it is necessary to be held in private (e.g. the meeting would likely disclose confidential information).¹⁴

Australian Commission for Law Enforcement Integrity (ACLEI)

Head of CCC: Integrity Commissioner

Committee: Joint Committee on the Australian Commission for Law Enforcement Integrity

- Conducts public enquiries into issues of corruption in law enforcement agencies.
- The Commissioner is appointed for a period of 5 years by the Governor-General.¹⁵
- The Committee is composed of 10 Members: 5 senators chosen by the Senate, and 5 members of the House of Representatives chosen by the House of Representatives.¹⁶
- The ACLEI Act does not specify that the committee should be bipartisan, but says that the appointment of members should be in accordance with the practice of Parliament in regards to Joint Committees. In practice this has resulted in the current committee consisting of 3 Liberal party members, 4 Labor party members and 2 National party members.

¹² ibid, Part 3, Division 2, Section 292 (e).

¹³ ibid, Part 3, Division 2, Section 228.

¹⁴ ibid, Part 3, Division 2, Section 302A.

¹⁵ *Law Enforcement Integrity Commissioner Act 2006* (Commonwealth), Part 3, Section 15 (d); and Part 13, Division 1, Section 175 (3).

¹⁶ ibid, Part 14, Division 1, Section 213 (2).

- Its role is to monitor and review the Commissioner's performance;¹⁷ examine annual and other reports;¹⁸ and report to Parliament any changes it thinks desirable regarding the Commissioner's functions and powers, her/his procedures, or the Commission's structure.¹⁹
- Reports to both Houses on any changes it thinks desirable re: Integrity Commissioner's functions/powers; Commissioner's procedures; or ACLEI's structure.
- The Committee does not play a role in selecting a Commissioner.

Australian Broadcasting Corporation (ABC)

Head of ABC: Board of Directors, including the Chairperson

Committee: Nomination Panel

- The Panel is composed of the Chair of the Nomination Panel and 2-3 other members.²⁰
- Members of the panel are appointed, and can be dismissed, by the Secretary of the Prime Minister's Office for a period of 3 years.²¹
- There is no direction in the ABC Act 1983 that the Panel be bipartisan.
- The Panel conducts a selection process and assesses applicants for Board. Provides written report to PM if for Chairperson; and a written report for Minister if not other Director.
- Nomination Panel is not subject to direction by the Government.²²

¹⁷ ibid, Part 14, Division 1, Section 215 (1a).

¹⁸ ibid, Part 14, Division 1, Section 215 (1c).

¹⁹ ibid, Part 14, Division 1, Section 215 (1b, d).

²⁰ *Australian Broadcasting Corporation Act 1983* (Commonwealth), Part IIIA, Section 24E.

²¹ ibid, Part IIIA, Section 24F (1-3).

²² ibid, Part IIIA, Section 24C.

- If the Panel has nominated an individual for Chairperson, the Prime Minister must consult the Leader of the Opposition in the House of Representatives before recommending the individual to the Governor-General.²³
- The Board itself consists of 4-6 Directors.²⁴
- The Governor-General appoints one Director on a part-time basis for no more than 5 years. This person can be the chairperson.²⁵
- If the Governor-General appoints a Chairperson, the Prime Minister must approve; if s/he appoints a Director who is not the Chairperson, the Minister for Communications and the Arts must approve.²⁶
- The Governor-General also appoints one of the non-executive Directors to be Deputy Chairperson of the Board.²⁷
- Governor-General also can remove a non-executive director from office.²⁸
- Managing Director is appointed by the Board for 5 years and is eligible for re-election.²⁹

Australian Securities and Investments Commission (ASIC)

Head of ASIC: Chairperson

Committee: Parliamentary Joint Committee on Corporations and Financial Services

²³ ibid, Part IIIA, Section 24X (1).

²⁴ ibid, Part III, Section 12 (1c).

²⁵ Australian Broadcasting Corporation Act 1983, Part III, Section 12 (2).

²⁶ ibid, Part III, Section 12 (5).

²⁷ ibid, Part III, Section 12 (3).

²⁸ ibid, Part III, Section 18 (1).

²⁹ ibid, Part III, Section 13 (1-2).

- The Committee is made of 10 members: 5 senators chosen by the Senate; 5 members of the House of Representatives chosen by the House of Representatives.³⁰
- The ASIC Act does not specify that the committee should be bipartisan, but says that the appointment of members should be in accordance with the practice of Parliament in regards to Joint Committees. In practice this has resulted in the current committee consisting of 4 Liberal party members, 4 Labor party members, 1 Green and 1 National.
- Its role is to enquire into and report on the actives of ASIC.³¹
- It does not play a role in nominating the Chairperson.
- The Chairperson is appointed by the Governor-General on the advice of the Treasurer and the Prime Minister.³²
- Without a bipartisan committee involved in the selection process, we are more likely to see selections called into question by the Opposition and sections of the public. (E.g. In September 2017, Bill Shorten called John O'Sullivan unsuitable due to his involvement in the Utegate affair).³³

Recommendation

A National Integrity Commission must be established with an independent commissioner appointed by a bipartisan Joint Committee.

³⁰ *Australian Securities and Investments Commission Act 2001* (Commonwealth), Part 14, Section 241 (2).

³¹ *ibid*, Part 14, Section 243 (a).

³² *Australian Securities and Investments Commission Act 2001* (Commonwealth), Part 2, Division 1, Section 10.

³³ Phillip Coorey, ‘Labor refuses to back bank boss John O’Sullivan as next ASIC chairman’, *The Australian Financial Review* (20 Sep 2017). Accessed on 20 Feb 2018. <http://www.afr.com/news/labor-refuses-to-back-bank-boss-john-osullivan-as-next-asic-chairman-20170920-gykz0j>.