

## Submission to the ACT Select Committee on an Independent Integrity Commission.

From:  
Dr Oliver Dowlen

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The value of incorporating randomly selected citizens in integrity systems and procedures.

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# The value of incorporating randomly selected citizens in integrity systems and procedures.

## 1. Introduction.

I am an independent researcher affiliated to Sciences Po, Paris. My work is in the random selection of citizens for public office. I have recently completed a feasibility study into a scheme for citizen participation at constituency level. This was funded by the Australian newDemocracy Foundation. The essence of the scheme is that for each parliamentary or assembly constituency there would be a group of randomly selected citizens whose general brief would be to uphold the integrity and fairness of the political system. They would do this by:

- 1) helping to ensure that the MP adhered to an agreed code of conduct.
- 2) strengthening the links between the parliamentary process and the wider constituency.
- 3) demanding parliamentary activity on issues of grave public concern where there was a threat to the integrity and fairness of the political system.

The scheme is explored in respect to UK and Australian parliaments, state assemblies and devolved nation assemblies. The full study can be found on:

<https://www.newdemocracy.com.au/docs/researchpapers/2017/Oliver%20Dowlen%20-%20Citizens'%20Parliamentary%20Groups.pdf>

My submission to the Select Committee on an Independent Integrity Commission for the ACT addresses one major theme: the political value of incorporating randomly selected citizens in the defence of the integrity of political systems. This is discussed with particular reference to the proposed creation of an Independent Integrity Commission for the ACT. To do this I first look briefly at the potential problems of creating an integrity commission made up entirely of personnel who are appointed to their roles. This is followed by a presentation of the political logic of including a citizen element in the defence of the integrity of political systems in general and a short discussion of the potential value of the random mode of selection for participants. I discuss how this type of arrangement might address the problems of maintaining political integrity and then present three examples of scheme designs that might suit the ACT. Before concluding I raise certain practical issues that would need to be addressed if a scheme of this nature was to be considered.

## **2. Potential problems with the appointed model.**

The question of who will guard the guards or who should have power over those who exercise political power is a constant challenge to those charged with putting trustworthy political systems in place.

The first major problem facing those seeking to establish an integrity commission is to ensure that there is sufficient distance between its operations and its personnel and those of the political system over which it is to have oversight and power. What is more, in a democracy this distance has to be apparent to the citizens at large.

On the other hand, however great and however well maintained this distance, the model of an appointed integrity commission conflicts with the notion of a single locus of sovereignty that is a central principle of Westminster style parliamentary democracies. An integrity commission has to have power over

Members of Parliament but has also to be accountable to Parliament – normally to a special integrity committee. While various adjustments can be made to overcome this contradiction there is still a problem here. This is that a permanent integrity commission needs powers in order to fulfil its role and these powers have, from structural necessity, to be concentrated in the hands of a relatively small number of unelected individuals. We are therefore in a situation where power is concentrated in order to help eliminate the political malpractice and corrupt activities that themselves derive from the concentration of power. There is a constant danger, therefore that any lapse (or any perceived lapse) in its independence or impartiality, will threaten the integrity of the commission itself and with it the reputation of the entire political system. We can already see the beginnings of this sort of problem in the tendency for some political office-holders to use allegations of misconduct to integrity commissions as a weapon with which to discredit their political rivals. This type of partisan misuse can put the carefully balanced procedural independence of such commissions under increasing strain.

In all these questions and their ramifications the issue of the public's trust in the institutions of government and the political process is paramount. Above all the public has to be reassured that a new integrity commission is not going to end up as just another case of the political establishment policing itself.

### **3. The political logic of including a citizen element in integrity procedures.**

In a democracy the ruling principle is that the political system belongs to the citizens. In our current paradigm of elective democracy the system is operated by office-holders (elected or appointed) who are trusted by the citizens to work on their behalf. Should any action, series of actions or set of circumstances break this link of trust by deviating from the expectation of

good conduct and respect for public office, we can think of this as a breakdown in the integrity of the system.

My premise for this submission is that citizen participation in measures designed to protect the integrity of any democratic political system is the best long-term solution for the problem of maintaining political integrity because it strengthens this link of trust between the citizens and the political office-holders. We can think of the citizenry as a new agency or a new partner in the task of defending the integrity of the political process - but this is no ordinary agency in the usual sense of the word. The citizens are the very people who the system is designed to serve, who stand to lose the most by its corruption and who have the greatest stake in its wellbeing.

In terms of elected officials, this argument can be put very simply: the citizens choose their political officers and the salaries of these officers come from public funds. It is therefore logical that the citizens should have some level of oversight or control over the conduct of their officers on a day-to-day basis. We can think of this as a key element in the political logic of any genuinely democratic system.

#### **4. The value of the random selection procedure.**

The random recruitment of political office-holders from the citizen body was the mainstay of ancient Athenian democracy where it was used for a number of institutions designed specifically to protect the integrity of the political system. It was also widely used in late medieval and renaissance Europe and survives mainly in the form of the randomly-selected jury.

The main rationale for its political use lies in its capacity to limit the power of appointment: taking this out of the hands of those who might use it to further their own ends. Thus the use of random recruitment contributed to the setting up and defence of shared political institutions and was a major weapon in the fight against corruption, against tyranny and against factional unrest.

The value of using this mechanism to select citizens charged with defending the integrity of the political system is that the method of selection is entirely compatible with the status of the office and the role that the citizens would be asked to undertake in office. This is because it guarantees the independence and impartiality of the process of selection. What is more, because the process of lottery selection is universally understood, its use can reinforce public confidence in the impartiality and independence of key institutions.

Although a lottery is an arational method of selection, lottery systems are capable of being rationally designed to serve rational ends. The drawing up of options to form the pool from which selection is made is a rational process. Similarly the tasks expected from those selected by lottery can be rationally matched with the skills of those in the pool. This can be achieved by training to ensure that those selected can effectively undertake what is required of them.

##### **5. The case for a randomly-selected citizen element within parliamentary integrity procedures.**

From the above it should be possible to envisage a system in which randomly selected citizens could be included in a scheme designed to defend the integrity of the political process. In a system of this type the citizens could have a carefully defined oversight role alongside experts in the field within an integrity commission or similar organisation and under the general control of a parliamentary body such as a parliamentary select committee.

The advantages of such a system can be defined as follows:

- 1) It would successfully counter suspicions of the political establishment policing itself.
- 2) It would add a demonstrably independent element to the integrity process.

- 3) It would bridge the gap between the citizens and the political system and increase confidence in the system.
- 4) A rotational system would mean that increasing numbers of citizens would have first-hand experience of the workings of the political system.
- 5) While the citizens would have carefully prescribed powers in terms of their official role, their incorporation would add a new, diverse form of power to the mix that would be independent of parliament without challenging the supremacy of parliament.
- 6) Such a scheme would bring citizens into a continuous, active political role between elections.

We can think of these advantages as operating under a number of key headings: democratic values, educational values, participatory values, confidence and independence. In addition I would argue that such a system has the potential to be more efficient than a system consisting of appointed officers working on behalf of the citizenry. Although many of these values could be realised without the incorporation of a citizen element, greater efforts, greater vigilance, and a greater programme of persuasion would be needed to bring the public on board.

## **6. Three models for a citizen element within a future ACT integrity procedure.**

The three models presented below are all set in the context of a smallish state parliament comparable with that of the ACT and involve the interaction between citizens holding temporary positions and some form of conduct or integrity commission along the lines of those in operation in other Australian states. What varies is where within the political system the citizens might be deployed, exactly what they might be charged with doing, and what powers they might be given in order to accomplish those tasks. These models are presented to give some indication of the type of design questions that might

need to be addressed if it was felt that there should be some level of citizen engagement in the integrity procedure.

MODEL ONE:

The use of a citizens' jury to endorse or reject the commission's findings.

This model deals with a late and reactive intervention into the process of investigation by a citizens' jury. The idea is that once an allegation of misconduct is made, an investigation is held and a conclusion is reached, a citizen's jury would be empanelled and asked to endorse or reject the decision made by the commission. The jury would also be asked to accept or reject the commission's proposals for sanctions or remedial actions should an allegation be upheld.

A variation on this model would be for the jury to be called at a point in the investigation prior to the commission reaching its final conclusions. The jury would be given a report of the investigation up to that point and could be involved in a question and answer session with the members of the commission on the subject of the allegation and the investigation.

With both variations the jury would be presented with the commission's final findings and their report of the investigation. They would first have the opportunity to question the commission (either by verbal or written questions) and would then meet to deliberate before reaching their conclusions. None of these sessions would be open to the public but could be attended by members of the select committee on integrity. Jury members would have to abide by rules of confidentiality similar to those observed by juries in criminal cases.

If the jury were to accept commission's findings and their proposed course of action the commission would then publish its findings and proceed to take

the proposed course of action. A jury's rejection might take a number of forms:

- 1) The investigative conclusions could be endorsed, but the course of action or sanctions proposed by the commission rejected.
- 2) The jury could conclude that the verdict reached by the commission did not follow from the evidence procured during the investigation. This would amount to a rejection both of the commission's findings and its proposed response.
- 3) The jury could conclude that the investigation was inadequate and that a new investigation was needed.

In the case of 1), the jury could be given the power to determine the level of sanctions against the offender within a specified range of options. In the case of 2) the jury would either demand a new investigation, specifying where greater attention should be directed, or dismiss the case. In cases of 3) the jury would have the power to order another investigation and to indicate areas that should be included in this. Any subsequent investigation would be judged by a new jury.

One of the main advantages of this model is that it counters any tendency towards, or accusations of, favouritism or partisanship on the part of the commission. Because a jury is called upon to endorse or reject the commission's work this model also puts the investigation of alleged breaches of integrity on something of a par with criminal cases – albeit within a different part of the political system. This analogy is valuable since political reputations can be made or broken by allegations of impropriety or misconduct. (The jury, of course, should have no role in cases where the commission decides to refer an allegation to the police for further investigation.)

There might be some difficulties in protecting jury members from the glare of publicity that might come with high profile cases. This, however could be

remedied by the design of the procedures for calling the jury, the rules governing the behaviour of jurors and the way that investigations were conducted. Of considerable importance in this respect is the question of whether allegations made to the commission should be made in the public domain. The idea that citizens would be involved in the work of the commission would go some way towards reassuring the public of the integrity of the procedure as a whole if key parts of the investigation and deliberation were held in private.

This model deals with possible citizen involvement after an allegation has been made. It is designed primarily as a means of guaranteeing the integrity of the processes of investigation i.e. the work of the commission itself at the point where allegations are made and investigations initiated. It is not aimed at monitoring the everyday work of the commission or limiting misconduct within the wider political community.

## MODEL TWO

### A permanent citizen group to oversee the commission's work.

My second model involves a longer term of office for the citizen participants, a more continuous form of oversight and fewer direct powers. Each group would be selected for a period of one year only and would consist of around 20 members. The group of 20 would meet monthly to receive a report from the commission on their activities. The group would have the role of considering any allegations that were put before the commission and have the power to endorse or reject the commission's decision to initiate or not to initiate an investigation in respect to any allegation. Any decision by the group that contradicted the commission's opinion would have to be approved by a 75% majority within the group.

In addition two members seconded from the group would have a closer role in each investigation undertaken by the commission. They would attend meetings to receive updates on the investigations and have full access to the documentation concerning the investigation. These two members would have the power to demand further investigation from the commission in areas they thought necessary. On the completion of the investigation the two members would report back to the group and the group would be asked to give their final collective approval of the thoroughness of the investigation. At this stage the group could ask the commission to conduct further investigation, but could do so only once. In contrast to the first model the group would not have the right to dispute or modify the commissions findings, but would be entitled to make a collective comment on the case in the final report into the investigation and the outcome.

In comparison to the first model this scheme would involve greater commitment on the part of the citizen group and greater day-to-day contact between the group and the commission. For a state of the size of ACT two members of the group (one male and the other female) could be selected from each of the Assembly Constituencies. As with the first model the focus would be on the integrity of the commission and its activities, but this time with an emphasis on process rather than on results. In this respect there would be a greater emphasis on developing trust between the citizenry and the commission in respect to the day-to-day running of the commission and its value to the community.

### MODEL THREE

#### Citizens' Parliamentary Groups

Unlike the first two models, this proposal adopts a more comprehensive approach to the integrity of the political process with a specific focus on the

role of those holding elected office. Rather than placing citizens within the decision-making structure of the commission itself, this scheme involves Citizens' Parliamentary Groups (CPG's) for each sitting Member of Parliament or Assembly Member. The role of these groups would be to defend the integrity and fairness of the political system by ensuring that the Member adheres to the agreed Code of Conduct. They would also have a wider role in creating stronger links between the Member and the constituency and a greater defensive role: that of demanding parliamentary action on issues of grave public concern. In respect to the Code of Conduct the role of the CPG would be to co-operate with other agencies such as an integrity commission in the event of any allegation and/or subsequent investigation.

One specific feature of this scheme is that for each month (or similar period) two members of the group would undertake what I have called "special duty". This means that they would be in closer contact with the Member of Parliament or Assembly Member for this period: they would visit constituency offices and parliamentary offices, attend meetings and attend parliamentary debates. The purpose of this is twofold. Firstly it would act as a preventative measure against small-scale misconduct; secondly it would enable the CPG members to understand the workings of Parliament at first hand.

As with the second model, the full CPG would meet every month. This meeting would receive reports from the MP and from the members on special duty and would hold a question and answer session with the MP. Reports of these meetings would be posted on a special CPG website.

If an allegation was made concerning a possible breach of the Code of Conduct, either emanating from the CPG or from the general public, the main investigative action would be under the auspices of an external organisation such as an Integrity Commission. The CPG would, however, have a role to

play in collaboration with the Commission. If the CPG felt that an allegation demanded investigation contrary to the opinion of the Commission, it could demand that an investigation be undertaken. Once an investigation was underway, two members of the CPG would be chosen to have a special role in its course. As with the second model they would be entitled to attend meetings to receive updates on the investigation, would be party to its documentation and could demand further investigative action in areas they thought necessary. When the investigation was completed a report would be passed to the CPG who could then make a single demand for further investigation. In a similar manner to the provisions of the second model the CPG could not challenge the Commission's findings but could comment on the thoroughness of the process of investigation in the final report to the relevant parliamentary committee.

The third task of the CPGs consists of the right to demand parliamentary action over issues of grave public concern where the integrity of the political system was under threat. This demand would be linked to the instigation of recall proceedings in the event of inaction on the part of the Member concerned. The aim of this provision is to guard against political inaction from those in power in respect major problems that might arise or might come to the attention of the CPG. Once the CPG became aware of such an issue and if there was no agreement with the Member as to its gravity or the necessity for action, the CPG would first have to gain the endorsement of two other CPGs to designate it as an "issue of grave public concern". Once this was done the demand for action could be made. In the case of insufficient action, recall proceedings could be instigated but only with the approval of two other CPGs. In a single member constituency recall would result in the holding of a by election. In a multi-member constituency this could lead to the suspension of the member concerned and their replacement until the next scheduled election.

The CPG scheme is a far more comprehensive model than the other two presented in this submission. It addresses the question of integrity at its root: at the interface between elected politicians (and hence the political system) and the citizenry at large. It is designed to support and enhance the electoral process as a means of effective public accountability. It also seeks to establish the citizens' control over the integrity of the political system at a number of levels: preventative, participatory and reactive. In this sense it is an ideal system to complement a largely appointed integrity commission.

## 7. Some practical questions

The first question involves the pools from which randomly-selected citizens might be drawn for any of these models. Since the CPG model is designed as an entry level scheme citizens would be drawn from all those on the voting lists. Within this there should be no stratification save those of area and gender. If, for example, an ACT scheme based on this model were to consist of 18 citizens for each Assembly Member, 9 should be drawn from the female voter and nine from the male members of the voting lists.

In multi-member constituencies such as those in the ACT there are two options for selecting citizens for a CPG scheme. The first would be to divide each constituency into smaller geographical sectors, one for each member. CPGs would be drawn from each sector for their respective Member. After one year each Member would be allocated another sector so that they would effectively rotate between sectors during the parliamentary cycle. The other option is for the CPGs for each Member to be drawn randomly from the entire constituency. This would mean greater diversity on each CPG in terms of where people came from but more travel to meetings for those selected.

It is my opinion that those selected for the CPG scheme should be required to serve and should be remunerated for their work based on payments for

meetings and special payment for officers (secretary and chairperson) and for those on special duty. In the early years of a scheme of this type it might be advisable to include a mix of volunteers and those required to serve. These are questions that are probably best addressed through pilot studies.

For the other two models it might be possible to design a system by which every local civil society groups (excluding political parties) could be asked to nominate the members of the pools from which citizen officer-holders or citizen jurors on the Integrity Commission could be then drawn. This would mean that the members of these bodies would have had some organisational or leadership experience.

In all three models some sort of regulatory body would be required to act in an administrative capacity. This would include the organisation of training for citizen participants, giving support to the groupings and organising the random selection of the citizen office-holders. While such a body would operate under the auspices of the parliamentary system it could benefit from including amongst its members citizens who had previously held office under the scheme in question. This would be more applicable to models two and three than to model one.

## **8. Conclusions.**

In this submission I have made the general case for citizen involvement in the integrity process – that is the process of ensuring the integrity of the political system by which collective decisions are made. I also highlighted some of the problems that could arise from having integrity procedures and institutions staffed entirely by appointees. As well as helping to ensure greater transparency and public accountability, I have argued that greater citizen participation can also generate greater confidence in the institutions of government amongst the citizenry at large and can generate a sense of greater ownership of the political system by the people.

I also explored some of the advantages of using random selection to choose those who might participate in this work. These include the fact that a random choice is impartial and that such a choice would be free from the influence of any partisan body or special interest group. Use of randomly selected citizens as part of the integrity programme of the ACT could therefore reinforce the independent status of institutions such as the proposed integrity commission. Lottery selection of political officers was traditionally used as an anti-power mechanism. The incorporation of randomly-selected citizens as part of an integrity commission could therefore be used to limit and monitor its powers: as a means of making sure it genuinely served the interests of the people.

My submission also included three possible models for including citizens in the integrity system. The reason for doing so was to convey some of the complexity of design thinking that would have to go into the introduction of schemes of this nature. It should be noted that these schemes would all involve rotation in office, the careful delineation of the duties and responsibilities of those chosen involved and the setting up of an administering or regulating body. This body would ideally include ex-office holders once the scheme in question was up and running.

The citizens' jury model concentrated on the outcomes of investigations by the commission. The second model involved a group of citizens with more continuous oversight of the commission's activities. The third option focused on the wider political activity of elected members but included citizen collaboration with the commission in investigations of breaches of the Code of Conduct should these take place.

I would regard the third model as the most comprehensive long-term solution to the problem of maintaining political integrity because it places that task firmly in the context of a broader collaboration with the political process on the part of the citizenry. It is preventative in the general sense of

promoting greater, more continuous, access to the inner workings of the parliamentary system and when no infringements or problems have taken place it can operate to develop greater understanding and foster stronger links between the citizens and their elected representatives.

This is not to dismiss the other two models or to exclude the use of different elements from within them in respect to new schemes of this nature. It might be possible or valuable, for instance, to combine models two and three by selecting citizen members of a new commission from a pool of previous CPG members. Similarly random selection could be used to choose temporary members of the commission from pools of qualified experts to work alongside those appointed. Lotteries could also be used within the commission to allocate cases to different investigative teams.

What I hope to have achieved by this submission, therefore, is to open up these ideas for further discussion and to give some indication of the basic principles that could inform those discussions. The paper referred to in the introduction covers the Citizens' Parliamentary Group scheme in greater detail.

I wish you all the very best in your task of setting up the ACT Integrity Commission and would be happy to answer any written questions on the contents of this submission should that be required.

Oliver Dowlen May 18<sup>th</sup> 2017

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