2017 SENATE SUB COMMITTEE INQUIRY INTO
ESTABLISHMENT OF A NATIONAL INTEGRITY COMMISSION

DRAFT Submission by ex-Major Allan Warren March 2017

The current anti-corruption integrity arrangements provided by the Australia Government are inadequate. The Australian people need and deserve an anti-corruption agency that is fearless and forceful with autonomy and freedom from political manipulation and subterfuge by law officers of the Crown. This submission gives longitudinal case evidence and substantive reasons why an independent National Integrity Commission (NIC) needs to be established. Case studies are an important part of policy formulation and law making as they greatly assists in bringing knowledge and focus to the issues being considered.

I was a career army officer, rank Major, when under Section 16, Defence Act 1903, (false) charges were laid against me by the most senior officer in the officer career management system, Brigadier A. He was aided by the most senior legal officer in army, Brigadier B. They charged me with unprofessionalism and gross incompetence. Using fabricated evidence, the charges were designed to constructively dismiss me from army. Despite my accurate and strong defence against their charges, they pushed my defence to the charges aside and forced my dishonourable resignation in disgrace.

Lord Justice Salmon (UK) is worldly known and highly regarded for his various inquiries into corruption within government. Amongst his numerous findings is that effective anti-corruption success very much depends on the personal integrity of portfolio responsible ministers.

Sir Angus Houston, as Air Marshal, Chief of Defence, was reported in the Sydney Morning Herald in 2005 as stating that he would not embarrass former top officers in the Australian Defence Force (ADF) who were alleged to have acted improperly by investigating complaints against them.

The above positions go a long way in community understanding of why and how corruption has permeated our federal government institutions and why our current anti-corruption mechanisms and agencies repeatedly fail when abuses of power are involved and especially when perpetrated by key officials.

Failed ministerial complaints mechanisms are key indicators of the lack of honesty and integrity of the responsible minister. If he/she fails than then the same applies to the Prime Minister (PM). The most powerful force of corruption within the Australian Government to-day is the failure of key officials to act against maladministration or to inquire into suspected abuses of power . Such deliberate omissions are the genesis of systematic

malfeasances and give birth to cover-ups. Anti-corruption mechanisms and agencies must have a priority capability of timely confronting these primary sources of corruption so as to identify and expunge them from our governing institutions. Tragically there are too many incidents where these anti-corruption agencies have themselves become agents of corruption and cover-ups of abuses of power.

The ability of an aggrieved person to make representation or report maladministration to the responsible minister is the most cost effective anti-corruption mechanism available to government. Unfortunately, this is also the most vulnerable mechanism to violation by corrupt and dishonest officials. This Senate Sub Committee Inquiry ought to consider ways of strengthening complaint mechanisms so that anti-corruption processes can redress wrongs and correct maladministration swiftly and competently. The potential savings to the Australian taxpayer could run into $100s of millions of dollars per annum.

In the past, failure in complaints and reporting mechanisms brought about the creation of the Administrative Appeals Tribunal (AAT). Also, Justice Mason reasoned that neither the courts nor parliament can bring to account the abuses of power by Ministers of the Crown.

The problem with the courts has been their resistance to re-examine factual findings of primary decision-makers. It can be also be argued that parliamentary committees of inquiry fail to get to the heart of corruption issues for similar reasons. They refuse to look at the detail. Yet such committees can be a significant and powerful agency against corruption and ought to be. But they can also be seats of deep rooted corruption and abuse of power perpetrated by political parties.

Lord Justice Salmon was alive to the lack of credibility of parliamentary committees of inquiries. His Royal Commission into Tribunals of Inquiry, 1966, raised serious matters of concern to their fitness to examine issues of corruption. His reasons included that they had no claim to impartiality; were prone to be actuated by party political motives; their findings are easily discredited where they attempt to cover up for the misconduct of ministers and other public servants; and they were bias in decisions and voted along party line splitting; and more.

Also relevant to this Inquiry is a quote from 'Parliament and Bureaucracy' edited by J R Nethercoate:

> *"The most potent weapon the present government has to deal with committees is simply to ignore them....such shabby treatment tends to lower the morale of those who work to produce the reports, and to dissuade them from further effort. Perhaps this is what the government has in mind."*

When I wrote to a former Attorney-General about maladministration by the then Minister for Defence in my case the A-G simply referred me back to same Minister. This powerful anti-corruption officer failed me. Yet, the A-G loudly claims to have a zero tolerance of abuse of power by key officials. And hence argues there is no need for a National Integrity Commission.

The very purpose of anti-corruption agencies and mechanisms is to detect and root out maladministration, abuses of power and corruption in all of its guises. Such infidelities to duty in high office are the most powerful weapons to threaten, with intent, to undermine our liberal democracy. If ministers and other decision-makers (e.g. the army generals) have been able to so openly and easily belittle, subvert and brazenly abuse due process in their improper decision-making, why pretend that the existing anti-corruption agencies and mechanisms are effective. Doesn't this signal alarms to this Senate Sub Committee of Inquiry that seeks to review the need to establish an independent NIC that the issues that give rise to its inquiry are amongst the most dangerous threats to the security of our nation and are highly political?

Lack of genuine accountability of the public service (including the military) to the portfolio responsible minister is perhaps the most extensive and most serious point of failure in containing the spread of corruption at the federal level of government. Primary decision makers are not going to investigate complaints so as not to embarrass other primary decision makers and this is the point that Sir Angus Houston made.

After I was dishonourably terminated from army on false charges that destroyed my career and reputation I made submission to the then Minister for Defence, Sir James Killen, QC. I addressed the issues of maladministration and made representation to him to have the circumstances of my forced resignation in disgrace from army properly investigated. I informed him "there were significant breaches of Army's management practises" to bring about my dismissal from Army.

The minister responded by personally and deliberately fabricating a mendacious Defence Force Ombudsman (DFO) investigation report into my case. There was no DFO in existence at the time. Killen's fraudulent DFO report upheld all the charges against me and gave high praise to the strength and veracity of army's treatment of me. It also asserted that in my case "army's administration was strictly according to the letter of the law". Eventually, the Administrative Appeals Tribunal (AAT), an internal Army Legal Corps investigation and the later appointed DFO found the minister's decision and actions to be a lie i.e. the real DFO disowned any connection with Killen's fraudulent report.

Killen wrote to my parents and declared that the investigation was carried out by a statutory authority (i.e. the DFO) totally independent from Department of Defence. Then two sequential Liberal Party Ministers for Defence upheld his fake DFO report and so denied truth and fairness to me. They also deliberately cut off my right to have the Commonwealth Ombudsman investigate my case. The three personal ministerial decision-makings against me were made more putrid by the fact that Killen's fake 'DFO' report was nothing more than multiple plagiarisms, paragraph after paragraph, from improper writings of Brigadiers A and B. Together they had fabricated the original charges against me so as to constructively dismiss me from army. Killen's fake DFO report had actually been contrived for him by a senior public servant within Defence. Killen deliberately and viciously lied about its origin and independence. If he intended to be genuine he would have referred my case to the only ombudsman in existence at that time - the Commonwealth Ombudsman, who had the power and responsibility for such investigations.

Later, I did make representation to the Commonwealth Ombudsman. He refused to touch the case. But I was then advised by the now appointed DFO that he would not investigate my case. He stated that the case was more than 12 months old, memories tend to fade and there would be difficulties in finding records, some getting lost. He should have been more forthright and simply told me that he had no power in law to investigate a ministerial decision or actions.

Over a decade later, with all the files and records intact, the AAT in Sydney examined them. Within minutes it discovered that Killen's fake DFO report was a fraud. The AAT bluntly declared that there was no DFO in existence at the time; that the report was simply a 'cut and paste job' from Brigadiers' A and B; and the report had been created within Defence.

Even with a change in government from Liberal to Labor, primary decision makers stuck to the Minister for Defence's cover up script. Defence refused to re-open the case because now it had been (allegedly) thoroughly examined by the DFO and at least two Ministers for Defence had made decisions to uphold the charges against me.

Then, on 26 July 1983 Defence Minister Kim Beazley (LAB) wrote to me that he would not consider my reinstatement to army because the DFO had previously investigate my case and found that army acted properly in terminating my services. He found my complaints of unfairness were groundless.

I made representation to the then Prime Minister (PM). In my correspondence I gave more than sufficient evidence to demonstrate the maladministration that was occurring within Defence, including mention of the DFO office. The PM would not touch my case and directed me to the Commonwealth Ombudsman. He would not touch my case and directed

me to the Defence Force Ombudsman (the real one this time) who would not touch my case. The later did however firmly distance himself from Killen's DFO report.

I then made a second representation to the PM. He asserted that my case had been thoroughly examined by the (non-existent) DFO in 1982 and by then Minister for Defence and that these investigations and decisions stood. I again wrote to the PM. He responded to assert that "the several investigations of your allegations have been thorough and objective". He upheld the charges against me based on improper decision making itself based in lies.

In effect, the PM was now claiming that one fabricated DFO investigation by Killen, plagiarised from Brigadiers A and B documents, had swelled to become several thorough and objective investigations of my case. I felt compelled to petition the Governor-General to seek a reality check, some common sense, fair treatment and a proper and honest investigation. I made a very detailed submission to him. It ought to have been cause for concern to anyone holding such high office to bring sanity to government. The G-G immediately directed the responsible defence minister to investigate and report back to him. In turn the Minister directed Defence to investigate. Freedom of Information Act (FoI) documents I later obtained reveal that army did nothing to respond to the G-G directive. It sat on my case for weeks. Instead of investigating it army set upon an agenda to lose, destroy or feign loss and destruction of all of my army personal history records. This included destruction or loss of multiple file copies of case documents in army's separate files, especially those within the Directorate of Army Legal Services (Brigadier B's) office. Also destroyed or missing were the documents relating to the PM's examination of my case. These were the files and records needed for the Governor-General's examination of my case. Army then continued to do nothing to report to the G-G or the Defence minister.

I waited patiently for a reply from the G-G but nothing was forthcoming. I then rang the G-G's official secretary who apologised for the delay and undertook to hasten the report from the responsible minister. In turn the minister prompted army to respond. Army wrote 4 x 3 line paragraphs to the minister stating that the case had already previously been investigated several times. The minister wrote his report to the G-G. He apologised for the time taken for the investigation but it had been necessary to thoroughly re-examine all aspects of the case in detail. He advised that the charges against me were sound and army's conduct was thorough and proper.

The relevance of my above case details is that nothing has changed to date since these events over 25 years ago. The culture of abuse of power, the lying and deceit by primary decision makers is the same today. The anti-corruption agencies and mechanism of parliamentary standards, ministerial oversight of his/her department, the Attorney-General's Department and the ultimate oversight of ministerial standards by the Governor-

General are captive to the culture or mentality that primary decision makers can avoid exposure of abuse of power by refusing to examine them, or by feigning investigations. And this is exactly what several Ministers for Defence, a Prime Minister and a Governor-General did to me. It clearly demonstrates how systematic malfeasances gives birth to cover-ups to date.

I then discovered the evidence under FoI that the Governor-General decided to stand by the corrupt ministerial advice given to him and that Defence was determined to destroy the history records of government to cover-up for Army's maladministration. I had to steel myself against this seemingly endless breakdown in the rule of law by primary decision makers and the Crown itself.

I made 3 sequential applications to the AAT in Sydney. Each was an FoI Act matter relating to my army personal history records. Then, Deputy Chief of Army (DCofA), MAJGEN M P Jeffery, certified under FoI Act law that he knew all of my history records had been lost or destroyed by Defence and hence army could not release them to me. I assessed this to be a blatant lie and sought a review of Jeffery's decision by then Chief of Army LTGEN J Coates. He too certified that he also knew that my army records had been destroyed or lost. He too lied. Defence was forced to release my complete set of personal records. But the AAT failed to compel army to release my personal records relating to the Prime Minister's investigation of my case.

My second AAT hearing latest perhaps 15 minutes. The AAT swiftly ruled against MAJGEN Grey, then DCofA. He too had violated the law in his attempt to deny facts and reasons why he would not make annotations to my army records to show that certain information on them was misleading or inaccurate. Grey's successor MAJGEN Carter retaliated. He submitted to the AAT over 160 pages giving his reasons to prove that I was unprofessional and grossly incompetent. He presented himself as an expert on army's 'T-Scores' system to prove the irrational 'T-Scores' on my annual performance reports demonstrated my gross incompetence warranting dishonourable termination from army.

My third AAT hearing was my request to have 13 annotations placed on my personal army records to show them to be incorrect or misleading. These included the records Brigadiers A and B used to bring formal charges against me. What was not told to me by the AAT at that time was that BRIG A, who had retired from army, was now an AAT-Sydney member and a colleague of the 3 AAT members who decided on my case. I failed to get any of the 13 annotations I sought. However, the AAT did put several of its own annotations on my records to reflect poorly on my commanding officers who wrote assessment appraisals on my work performance to generate incomprehensibly bad T-Scores on them. The AAT criticised BRIG B, (Legal Corps) for his improper superficial decision against my defence to

BRIG A's charges against me. It criticised MAJGEN Carter, then acting Chief of Army for his bias and bizarre assessments of my performance as an officer.

Two things resulted from my third AAT hearing. The AAT had protected BRIG A of any hint of wrongdoing by him. But it left open doubt as to improper decision making by my superior officers, the Director of Army Legal Services, BRIG B and MAJGEN Carter, Acting Chief of Army. BRIG A was at the centre of the maladministration against me. If he was exposed for what he had done to me and that was known publically, it would have created serious problems to the AAT's own credibility as an anti-corruption agency. Thus, the AAT had a strong motive to decide partially and unfairly against me. This was especially so in respect to its deliberations on one of its own members, BRIG A. And here again Sir Angus Houston's point about not wanting to embarrass key officials where their improper conduct maybe involved resonates.

My aforementioned case outline demonstrates that our existing anti-corruption agencies and mechanisms are ineffective because of their real lack of independence and impartiality when tested against primary sources of abuse of power. Only by the establishment of an independent NIC can we achieve a level of independence in anti-corruption scrutiny. A NIC would provide more freedom from the manipulations, cronyisms and abuses that degrade our current systems and agencies.

An ombudsman cannot investigate a decision made by a Minister of the Crown, national security matters or international relations of Australia. This renders the ombudsman powerless to scrutinise ministerial decisions. Thus, the restriction on an ombudsman not to investigate the minister's decision against me is a major obstacle in corruption prevention and detection. These restrictions also gave the ministers a powerful means to cover up not only their own abuses of power but also that of Defence. This major weakness in anti-corruption agencies is made more putrid because of the numerous times and over the years that portfolio responsible ministers, a Prime Minister and other primary decision makers advised me to take my complaints to the DFO or the Commonwealth Ombudsman if I sought relief from previous ministerial decisions against me. They would have known or certainly ought to have know the dishonesty of their advice to me.

The current network of anti-corruption agencies are impotent and almost farcical once under the influence of Ministers of the Crown. The decision making by Ministers of the Crown, including a Prime Minister, in my case, keep insisting that the circumstances of my forced termination from army were thoroughly and properly investigated by the DFO, the Commonwealth Ombudsman and the AAT in Sydney. The AAT made it quite clear to me that it would not examine or review the circumstances of my termination from army. The Department of Defence made it quite clear to the AAT that it refused to address my complaints and grievances relating to my termination from army. It would only address the

13 FofI Act annotations that I had requested be placed on my army records. But it refused to make any of my 13 annotations that would have revealed BRIGs A and B's maladministration. The 13 annotations were the only matters decided by the AAT. But the Australian Government still continues to insist my case has been thoroughly and objectively investigated by the anti-corruption agencies and they found no one acted unfairly against me.

And Defence has remained insistent for years that responsibility for the decisions to uphold the charges against me were Ministers of the Crown and not army. Eventually a Defence minister formally admitted to me that there was no factual basis whatsoever in the evidence used by BRIGs A and B to charge me with unprofessionalism and gross incompetence. The minister expressed regret but denied that any office had acted unfairly against me.

The web of lies, obfuscations, omissions and the abuses of power that primary decision-makers have weaved to cover up for BRIGs A and B and my former commanding officers is staggering. This web has been intensely corrupted by responsible ministers and primary decision makers alike. Existing anti-corruption agencies, officials and mechanisms cannot or will not identify, examine or hold to account the perpetrators of the systemic abuses of power that had kept my case covered up to date.

As an anti-corruption mechanism in 2013 then Minister for Defence, Steven Smith (LAB), having lost trust and confidence in the service chiefs to report honestly and competently to him, stood them aside and contracted international law firm DLA Piper to do what the generals lacked the integrity and courage to do. DLA Piper examined cases like mine that the generals were obsessed with covering up. DLA Piper reported the abuses that I had endured by superior officers that destroyed my reputation and career. The 1994 army legal corps investigation asserted these abuses never happened. It also reported that the T-scores used to grade my performance were valid and correct. The following year, an independent university examination of the T-Scores revealed them to be a mixture of "hocus-pocus", "arrant nonsense", "ignorance" and "definitely punitive". DLA Piper found that I had been abused by superiors. Together the university report on T- scores and the DLA Piper report on abuse revealed the army's 1994 legal corps investigation report on my case to be poor and improper. Yet it remains to date army's definitive cover up report of itself.

Following DLA Piper's contrary findings that I had incurred abuse, the DCofA agreed to meet with me in 2015 for 'reconciliation purposes' under the A-G's Defence Abuse Response Task Force (DART) programme. The DCofA described what happened to me as 'disturbing' and 'compelling'. He gave his word as DCofA that he would investigate my case afresh. This time, he declared it would be an honest and proper investigation. He said he was not

responsible for past investigations but he would get to the bottom of my case. His commitment to investigate my case came after the international law firm DLA Piper had recently found I had been abused by my superior officers to bring about my termination from army. This is the core issue of my case and still denied by the generals and the Australian Government.

Weeks later, on the 28 August 2015 the DCofA wrote to me that the Australian Government would not let him fulfil his undertaking to investigate because the 1994 army investigation of itself still stands as the government's current position. Nor would he apologise for the abuses I had suffered at the hands of my superior officers. Instead, he apologised "unreservedly for any pain or suffering you have endured as a result of your service with army". Surely this is a meaningless apology by any standard. He then recommended I take my concerns to the Commonwealth Ombudsman. In 2007 Commonwealth Ombudsman had refused to investigate my case and refused again in 2016. The DCofA has effectively pushed aside Defence Minister Smith's instigated DLA Piper Report which was unfavourable to army and reactivated the 1994 army report on itself that covered up for the abuses of power as being the only investigation that counts to-date. This behaviour puts the Australian Government and the DCofA above any attempt by a Minister of the Crown to check and balance corruption at the Federal level. This contempt takes army back to the same level of cover-ups and corruption that existed over 20 years ago.

Corruption dominates over the rule of law within the Australian Government as exemplified by my case. Two primary reasons for this are easy to identify. They are the very observations made by Lord Justice Salmon and Sir Angus Houston. The causes are the lack of personal integrity and courage in Ministers of the Crown and their refusal to properly and competently investigate cases of corruption involving decisions/actions by primary decision makers. Defence Minister Steven Smith, is the stand out exception. But his efforts were easily wiped out by the Australian Government's refusal to allow the current DCofA to properly investigate my case as undertaken by him.

It is the failure of Parliamentary Standards as an anti-corruption overseer that continues to inflict insidious corruption upon Australians. When Questions on Notice were asked in Parliament about my case the responsible minister simply answered with lies to cover up for BRIG A. She was never held to account. I have reported my case details to parliamentarians many times. I have made multiple submissions to a range of parliamentary committees of inquiry. Politicians only want to keep the maladministration of my case covered up.

Gone from Parliamentary Standards is the anti-corruption safeguard that Ministers take responsibility for the maladministration of their departments. Nor does it seem are they accountable to the Prime Minister or the Governor-General. This collapse in Parliamentary Standards is precisely what has happened in my case. It is systematic. Ministers are

supposed to have direct responsibility for the administrative failures of their departments, especially when they have made personal decisions in the mattes themselves and where cover-ups and lies abound.

The current DCofA has had no hesitation in firmly putting the responsibility for the decision-making involved in my case into the hands of the Australian Government. In turn it has been relentless in its determination to keep the case closed and to ratify army's legal corps' 1994 cover- up investigation. It claims no officers acted unfairly against me.

The 30 years of Australian Government impropriety and cover-ups would not have happened if my case had gone directly to a NIC for independent and competent examination. Often it is what parliamentarians fail to do that reveals the most damaging evidence of their abuse of power. And this level of ministerial abuse of power has become the norm and existing anti-corruption agencies won't change this status quo.

There is a compelling need for an independent NIC in Australia. Perhaps the biggest obstacle to that been established is the decision by politicians who would not want their power in decision making examined or investigated or being accountable to an overarching commission. As it stands, there is power in having existing ineffective anti-corruption agencies manipulated by them.

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