

1998-99
THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

COMMISSION FOR INTEGRITY IN GOVERNMENT
BILL 1999

EXPLANATORY MEMORANDUM

Circulated by authority of
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COMMISSION FOR INTEGRITY IN GOVERNMENT BILL 1999

OUTLINE

The object of this Bill is to constitute a Commission For Integrity In Government for the Australian Capital Territory, and to confer on it wide powers, with special emphasis on:

- investigating conduct lacking integrity or possible conduct lacking integrity where public officials are involved, either on a complaint or reference made to it or on its own initiative; and
- educating public authorities and the community generally on the detrimental effects of public conduct lacking integrity and strategies to combat it.

The expression used in the Bill is "conduct lacking integrity". The description of conduct lacking integrity includes (among other things) conduct that adversely affects, or could adversely affect, the honest or impartial exercise of official functions by a public official or a public authority. It is immaterial whether the conduct is committed by a public official or anyone else.

Conduct lacking integrity must, however, be such as could constitute or involve a criminal offence, a disciplinary offence or reasonable grounds for terminating the services of a public official. The Bill has an extensive description of what constitutes "conduct lacking integrity" (clauses 8-10 below).

The Commission is to give special attention to matters referred to it by resolution of the Legislative Assembly.

The Bill provides for the appointment of a Commissioner who is to be responsible for the administration and affairs of the Commission. The Commissioner is to be assisted by one or more Assistant Commissioners and other staff. The Commissioner may not be removed from office except by an address of the Legislative Assembly.

The Bill also provides for:

- the appointment of an Operations Review Committee, whose function is to advise the Commissioner, especially as regards action that might be taken on complaints received about possible conduct lacking integrity;
- extending the responsibilities of the Standing Committee on Justice and Community Safety of the Legislative Assembly to include monitoring and reviewing the exercise of the Commission's functions; and
- the establishment of an Ethical Standards Council, comprising members of the Legislative Assembly and community members, whose function is to prepare draft codes of conduct for Assembly members, to carry out educative work relating to Assembly ethical standards, and to give the Assembly advice on such ethical standards

NOTES ON CLAUSES

PART I — PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be notified in the *Gazette*.

Clause 3 contains definitions used in the proposed Act.

PART II — CONSTITUTION OF COMMISSION

Clause 4 constitutes a statutory body with the corporate name of the Commission For Integrity In Government and provides for a Commissioner to act for the Commission.

Clause 5 provides that the Attorney General shall appoint a Commissioner for the Commission For Integrity In Government.

Clause 6 provides that a Commissioner shall not be appointed until the proposal has been referred to the Standing Committee on Justice and Community Safety, and that the Standing Committee may veto a proposed appointment.

Clause 7 provides for the appointment of one or more Assistant Commissioners, who are to assist the Commissioner.

PART III — CONDUCT LACKING INTEGRITY

Clause 8 defines conduct lacking integrity as any conduct which falls within the description of conduct lacking integrity in clause 9 (1) or (2) but which is not excluded by clause 10.

Clause 9 describes the general nature of conduct lacking integrity. Subclause (1) states that

conduct lacking integrity is:

- (a) any conduct of any person (whether or not a public official) that adversely affects or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority; or
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions; or
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust; or
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Subclause (2) states that conduct is also conduct lacking integrity if it adversely affects or could adversely affect any exercise of official functions by a public official and it is of a criminal nature, eg bribery, obtaining or offering secret commissions, or perverting the course of justice.

Conduct may amount to conduct lacking integrity even though it occurs before the commencement of the proposed provisions and even though it occurred outside the Territory or outside Australia.

Clause 10 limits the general nature of conduct lacking integrity to conduct that could (in the opinion of the Commission) constitute or involve a criminal offence, a disciplinary offence or reasonable grounds for terminating the services of a public official.

Clause 11 provides for the making of complaints to the Commission about possible conduct lacking integrity. The Commission is required to consult the proposed Operations Review Committee (see clauses 21 and 62-66) before deciding not to investigate or to discontinue an investigation of a complaint.

Clause 12 requires the Ombudsman, the Chief Police Officer of the Australian Federal Police—ACT Region or the principal officer of (or person who constitutes) a public authority to report to the Commission any matter suspected on reasonable grounds to involve conduct lacking integrity.

PART 4 — FUNCTIONS OF COMMISSION

Division 1 — Functions generally

Clause 13 requires the Commission to regard the protection of public interest and the prevention of breaches of public trust as paramount in exercising its functions.

Clause 14 sets out the principal functions of the Commission. The Commission is required to investigate allegations of conduct lacking integrity and to communicate the investigations to appropriate authorities. Its functions also include such matters as the education of public authorities and officials on strategies to combat conduct lacking integrity and the fostering of public support in combating conduct lacking integrity. The Commission is also required to investigate matters and carry out functions referred to it by the Legislative Assembly.

Clause 15 provides that other functions of the Commission include the provision of evidence for prosecutions to the Director of Public Prosecutions, and the furnishing of evidence relating to offences in other States, etc. to the Attorney General with recommendations as to action to be taken.

Clause 16 provides for the establishment of task forces and cooperation with other State, Territory or Commonwealth task forces.

Clause 17 provides for the Commission to work in cooperation with law enforcement agencies, the Auditor-General, the Ombudsman, the National Crime Authority, the Australian Bureau of Criminal Intelligence, the NSW Independent Commission Against

Corruption and certain other officials and bodies. The Commission is authorised to disseminate information to other persons and bodies.

Clause 18 requires the Commission to exercise its functions with as little formality as is possible and provides that it is not bound by the rules or practice of evidence.

Clause 19 authorises the Commission to carry out investigations even though court proceedings are in progress.

Clause 20 gives the Commission powers incidental to its functions. The clause also specifically authorises the Commission to apply for warrants under the *Listening Devices Act 1992*.

Division 2 — Investigations

Clause 21 allows the Commission to conduct investigations on its own initiative, on complaint or on report or reference being made to it. The Commission may refuse to conduct an investigation if the matter is trivial or remote in time or if a complaint is frivolous, vexatious or not in good faith.

Clause 22 allows the Commission to conduct preliminary investigations in order to discover or identify conduct which might be made the subject of a more complete investigation, or to decide the sort of particular conduct which might be made the subject of more complete investigation.

Clause 23 gives the Commission power to require public authorities or officials to produce information.

Clause 24 allows the Commission to require persons to attend before the Commissioner or an Assistant Commissioner and produce specified documents, etc.

Clause 25 empowers the Commissioner or an authorised officer to enter premises occupied or used by a public authority or official and inspect and copy documents.

Clause 26 saves certain claims of privilege in relation to information requested by the Commission.

Clause 27 saves certain claims of privilege in relation to entry on premises and inspection and copying of documents.

Clause 28 protects certain persons from prosecution in respect of self-incriminating statements, documents or other things produced at the request of the Commission.

Clause 29 authorises the Supreme Court to grant injunctions restraining conduct by persons (whether or not public authorities or officials) if it relates to an investigation or proposed investigation.

Clause 30 provides that an injunction is not to be granted unless the conduct concerned is likely to impede an investigation or cause irreparable harm. The clause also provides that the Commission need not give an undertaking as to damages.

Clause 31 provides that the powers under the Division may be exercised whether or not the Commission is conducting a hearing for the purposes of the investigation.

Division 3 — Hearings

Clause 32 authorises the Commission to hold hearings for the purposes of an investigation.

Clause 33 provides for the holding of public or private hearings.

Clause 34 allows a right of appearance for interested parties.

Clause 35 allows legal representation at a hearing.

Clause 36 allows a group or unincorporated association to be authorised to appear or to be authorised or required to give evidence at a hearing.

Clause 37 provides for examination or cross-examination of witnesses, with the leave of the Commission.

Clause 38 allows the summoning of witnesses to give evidence and produce documents.

Clause 39 authorises the Commissioner to issue a warrant for the arrest of a person failing to attend in answer to a summons, or a person not likely to attend unless compelled to do so.

Clause 40 authorises the Commissioner to allow a person so arrested to be released subject to certain conditions, and for the Commissioner to vary those conditions.

Clause 41 authorises the Supreme Court to review and adjudicate on a decision by the Commissioner not to release or to fail to release a person so arrested and to review and adjudicate on any conditions of a release.

Clause 42 makes provisions in relation to the answering of questions by witnesses, the production of documents and the admissibility of answers or documents in other proceedings. The clause provides that a witness must answer questions or produce documents, even though self-incriminating.

Clause 43 empowers the making of a declaration that answers, documents or other things are given or produced subject to a general objection by the witness concerned, so as to avoid repeated objections.

Clause 44 provides for the bringing of prisoners before the Commission where their attendance is required.

Division 4 — Search warrants

Clause 45 authorises the issue of search warrants by justices or by the Commissioner.

Clause 46 sets out the powers conferred by a search warrant.

Clause 47 requires production of search warrants.

Clause 48 provides for the use of force to enter premises.

Clause 49 allows the use of assistants to execute warrants.

Clause 50 contains special provisions for the execution of warrants by night.

Clause 51 provides for the expiry of warrants.

Clause 52 provides for the seizure and retention of documents found.

Division 5 — Miscellaneous

Clause 53 provides for the Attorney General to grant, on the recommendation of the Commission, indemnities from prosecution to persons or undertakings not to use statements as evidence in other proceedings.

Clause 54 provides for the protection of witnesses whose safety may be prejudiced.

Clause 55 relates to the payment of witnesses' expenses.

Clause 56 allows the giving, by the Attorney General, of legal and financial assistance to witnesses.

PART V — REFERRAL OF MATTERS BY COMMISSION

Clause 57 authorises the Commission, before, during or after an investigation by it, to refer a matter to any other appropriate person or body ("a relevant authority") for investigation.

Clause 58 enables the Commission to require a relevant authority to report on the action taken.

Clause 59 sets out the action that may be taken by the Commission if it is dissatisfied with a report of a relevant authority. This includes the submission of a report to a relevant Minister.

Clause 60 requires a relevant authority to comply with the Commission's requirements.

Clause 61 provides for the revocation, variation, etc. of referrals, requirements or directions under the Part.

PART VI — OPERATIONS REVIEW COMMITTEE

Clause 62 constitutes an Operations Review Committee.

Clause 63 sets out the Committee's functions, which are to advise the Commissioner as to whether complaints should be investigated and to advise on such other matters as the Commissioner refers to it.

Clause 64 provides that the Committee shall consist of 7 members, being the Commissioner, an Assistant Commissioner, the Chief Police Officer of the Australian Federal Police – ACT Region, and 4 persons, appointed by the Attorney General on the recommendation of the Standing Committee on Justice and Community Safety and with the concurrence of the Commissioner, to represent community views.

Clause 65 sets out the procedure for Committee meetings. Questions arising at a meeting are to be determined by a majority, the Chairperson having a casting vote.

Clause 66 requires members to disclose any interests in matters before the Committee and prohibits them taking part in matters in which they have an interest (unless the Committee or the Attorney General determines otherwise).

PART VII — LEGISLATIVE ASSEMBLY STANDING COMMITTEE

Clause 67 provides for the Standing Committee on Justice and Community Safety of the Legislative Assembly to have, in addition to its other functions, responsibility for examining matters related to the Commission For Integrity In Government.

Clause 68 sets out the additional functions of the Standing Committee. They include monitoring and reviewing the Commission's functions, reporting to the Legislative Assembly, and inquiring into questions referred to it by the. The Standing Committee cannot investigate any particular conduct or reconsider the findings of the Commission in a particular case.

Clause 69 gives the Standing Committee power to veto a proposed appointment by the Attorney General of a person as Commissioner. The Standing Committee is required to notify the Attorney General of its agreement to the proposed appointment, or otherwise, within a specified period.

Clause 70 specifies that if the Legislative Assembly is not sitting when the Commission seeks to present a report, a copy of the report may be made to the Speaker, who may then authorise publication of the report as a privileged document.

Clause 71 gives the Standing Committee power to send for persons, papers and records and provides for the taking of evidence in public.

Clause 72 provides for the taking of evidence in private where a secret or confidential matter is involved. Penalties are provided for disclosing, without the consent of the witness, evidence taken in private.

Clause 73 provides that the purposes of the Standing Orders of the Legislative Assembly and for any other purposes, the proposal to add responsibility for the Commission to the Standing Committee's other functions shall be taken to have originated in the Assembly.

Clause 74 states that acts or proceedings of the Standing Committee are valid even though there is a vacancy in the office of a member or a defect in the appointment of a member.

PART VIII — ETHICAL STANDARDS COUNCIL

Clause 75 constitutes a body to be known as the Ethical Standards Council.

Clause 76 sets out the principal functions of the Council, which are to prepare for consideration by the Legislative Assembly draft codes of conduct for members of the Assembly, to provide advice relating to Assembly ethical standards, and to carry out educative activities relating to Assembly ethical standards.

Clause 77 provides that the Council shall consist of 5 members, being the Speaker and two other members of the Legislative Assembly Standing Committee on Administration and Procedure, and 2 community members appointed by the 3 Assembly members from applicants who respond to public advertisement. A community member of the Council cannot be a member of the Assembly or of a registered political party.

Clause 78 sets out circumstances under which a member of the Council ceases to be a member.

Clause 79 provides that the Chair of the Council shall be the Speaker and that a Deputy Chair shall be elected by a majority of members of the Council. The clause further sets out circumstances under which the Chair and Deputy Chair cease to hold office.

Clause 80 specifies the general procedure, including voting procedure, for meetings of the Council. The Council may meet even if the Legislative Assembly is prorogued, adjourned or sitting

Clause 81 provides that the Council may request persons to appear before it and documents and records to be tendered to it. Subclause (2) provides that the Standing Orders of the Legislative Assembly and parliamentary protection against defamation shall apply to the Council as if it were an Assembly standing committee.

Clause 82 makes valid acts or proceedings of the Council even though there might be a vacancy or defect in the appointment of a member.

PART IX — REFERENCES BY AND REPORTS TO PARLIAMENT

Clause 83 provides that the Legislative Assembly, by resolution, may refer matters to the Commission for investigation or other action. The matters that may be referred include whether conduct lacking integrity may have occurred or may be about to occur, whether practices of a public authority or official need to be changed in order to reduce the likelihood of conduct lacking integrity occurring, and the developing of educational programs in relation to combating conduct lacking integrity.

Clause 84 relates to the preparation and furnishing to the Legislative Assembly of reports on matters investigated and on other matters referred to it. A report may include a statement as to whether there is evidence warranting consideration of the prosecution of, or the taking of other action against, specified persons.

Clause 85 relates to the content of reports under Clause 84, including the Commission's findings, opinions and recommendations, and reasons for findings, opinions and recommendations. Reports must include statements about all persons who have been the subject of inquiry by the Commission.

Clause 86 specifies that reports under Clause 84 must not include findings or opinions of a person's guilt or recommendations for prosecution or disciplinary action. A finding or opinion about conduct lacking integrity is not here a finding or opinion of guilt.

Clause 87 authorises the Commission to make special reports to the Legislative Assembly on administrative or policy matters.

Clause 88 requires the Commission to make annual reports to the Legislative Assembly on its operations.

Clause 89 provides that if the Commission has made a recommendation to an authority that certain action be taken in relation to a matter under investigation and that recommendation has not been adopted, the Commission may report the matter to the Legislative Assembly.

Clause 90 provides for the tabling of reports. If the Commission so recommends, the Speaker of the Legislative Assembly may make a report public forthwith even though the Assembly is not in session. If published, it attracts the same privileges and immunities as if it had been tabled.

Clause 91 provides that if the office of Speaker of the Legislative Assembly is vacant, reference shall be made to the Deputy Speaker.

PART X — CERTAIN OFFENCES

Clause 92 makes it an offence to obstruct the Commission or fail to comply with a lawful requirement of the Commission, to give false or misleading statements to the Commission or to disrupt a hearing before the Commission.

Clause 93 relates to the making of false or misleading statements in complaints to the Commission.

Clause 94 relates to failure to comply with notices to produce information and furnishing false or misleading information.

Clause 95 makes it an offence to fail to comply with a notice to attend before the Commission and produce documents.

Clause 96 relates to obstruction of persons executing search warrants.

Clause 97 makes it an offence to be present (in contravention of a Commission direction) at a hearing in private before the Commission.

Clause 98 provides a penalty for failing to attend the Commission in answer to a summons or to answer questions or produce documents.

Clause 99 provides that it is an offence to give false or misleading evidence at a hearing before the Commission.

Clause 100 makes it an offence to destroy or dispose of potential evidence or to alter documents with intent to delay or obstruct.

Clause 101 relates to the procuring of false testimony.

Clause 102 relates to bribery of witnesses.

Clause 103 concerns fraud or deceit with intent to affect the testimony of witness.

Clause 104 makes it an offence to prevent a witness from attending before the Commission.

Clause 105 makes it an offence to use violence against or to cause loss, disadvantage, etc. to a witness.

Clause 106 provides that an employer who dismisses or prejudices an employee on account of the employee giving evidence is guilty of an offence.

Clause 107 relates to impersonation of officers of the Commission.

Clause 108 relates to bribery of officers of the Commission.

PART XI — CONTEMPT OF COMMISSION

Clause 109 defines “offender” for the purposes of the Part as including a person alleged to have committed contempt.

Clause 110 sets out the circumstances in which a person is guilty of contempt of the Commission.

Clause 111 provides for the Commissioner to certify a contempt to the Supreme Court, and for the examination and punishment of the offender by the Supreme Court.

Clause 112 contains ancillary provisions in relation to dealing with cases of contempt. The Commissioner may summon a person to show cause why the offender should not be dealt with for contempt, and the Commissioner may have the offender arrested and brought before the Supreme Court.

Clause 113 authorises the Commissioner to allow a person so detained to be released, subject to one or more conditions, before the offender is brought before the Supreme Court but a condition must be that the offender is to appear before the Supreme Court.

Clause 114 authorises the Supreme Court to review and adjudicate on a decision by the Commissioner not to release or to fail to release a person so detained and to review and adjudicate on any conditions of a release.

Clause 115 states that an act or omission which is both contempt and an offence can be punished as either contempt or an offence but not both.

PART XII — SPECIAL POWERS

Clause 116 contains definitions in this Part, including the meaning of “Commission investigator” and “Commission surveillance officer” and “seconded police officer”.

Clause 117 states that a Commission investigator who is a seconded police officer is authorised to exercise all the powers of a constable of the Australian Federal Police—ACT Region but only when acting as a Commission officer.

PART XII — MISCELLANEOUS

Clause 118 states that the proposed Act will bind the Crown.

Clause 119 gives effect to a schedule of provisions relating to the appointment, tenure of office and remuneration of the Commissioner and Assistant Commissioners.

Clause 120 provides for the employment by the Commission of such staff as may be necessary. The Commission may, with the approval of the relevant Minister, make use of the staff of government departments or authorities (including members of the Australian Federal Police) in carrying out its functions.

Clause 121 provides that a member of the Australian Federal Police seconded to the Commission may continue to act as a constable.

Clause 122 authorises the Commission to appoint counsel to assist it, either generally or in relation to particular matters.

Clause 123 provides for the delegation, subject to certain specified exceptions, of functions by the Commission, the Commissioner or an Assistant Commissioner.

Clause 124 specifies how documents may be served for the purposes of the proposed Act.

Clause 125 provides certain protections from liability to the Commissioner, any person acting under the direction of the Commission or the Commissioner, and other persons involved in proceedings before the Commission.

Clause 126 authorises the making of regulations with respect to the disclosure of pecuniary interests and other matters by officers of the Commission.

Clause 127 contains secrecy provisions regarding information acquired in the exercise of functions under the proposed Act.

Clause 128 states that privacy provisions are not to apply to disclosing information for the purposes of any proceedings for an offence under this proposed Act.

Clause 129 authorises the Commission to give a direction prohibiting the publication of evidence or other matters.

Clause 130 provides that if a person is charged with an offence in a court, the court may (after considering any representations by the Commissioner) require that evidence subject to a direction referred to in clause 129 be made available to the person charged or to the prosecutor.

Clause 131 provides that it is an offence to disclose information about a notice to furnish information or produce documents to the Commission if the disclosure will prejudice an investigation.

Clause 132 provides that the maximum pecuniary penalty applicable to a corporation is double that otherwise applying to an offence.

Clause 133 contains provisions relating to proceedings for offences.

Clause 134 authorises the making of regulations.

Clause 135 states that nothing in this proposed Act affects parliamentary privilege.

SCHEDULES

Schedule 1 contains the provisions relating to the appointment, etc. of the Commissioner and Assistant Commissioners.

Schedule 2 contains provisions applying to the office of the appointed members of the Operations Review Committee.

Schedule 3 sets out the employment rights of staff of the Commission who were previously employed in the service of the Government.
