

**2018**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**ANTI-CORRUPTION AND INTEGRITY COMMISSION BILL 2018**

**EXPLANATORY STATEMENT**

**Presented by  
Alistair Coe MLA  
Shadow Treasurer**

## ANTI-CORRUPTION AND INTEGRITY COMMISSION BILL 2018

This explanatory statement relates to the *Anti-Corruption and Integrity Commission Bill 2018* (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

### Background

There have been calls to establish an independent anti-corruption and integrity commission in the ACT for a number of years, including recently in relation to questionable property and land deals. There have been instances where it would have been appropriate to refer public officials or issues to an independent integrity body for investigation; however, this has not been able to occur. These scandals have eroded the public's confidence in the government, and during 2016 there was tri-partisan agreement to establish an integrity commission.

The Select Committee on an Independent Integrity Commission (the Committee) was established on 15 December 2016 to “inquire into the most effective and efficient model of an independent integrity commission for the ACT”. The Committee unanimously recommended that “the ACT Government establish a standing ACT independent integrity body to investigate corruption in public administration and strengthen public confidence in government integrity.”

The final report of the Committee was presented in the Assembly on 31 October 2017, and contained 79 recommendations relating to jurisdictional matters, relationships with other integrity stakeholders, the power to hold public hearings, accountability and independence, staffing and resourcing requirements, application of other legislation and other matters.

The Government Response agreed or agreed in part to 25 recommendations, agreed in principle to 11 recommendations, and noted 43 recommendations. The Government also indicated the timeframe for establishment of the integrity body would be delayed.

The *Anti-Corruption and Integrity Commission Bill 2018* (the Bill) has been drafted to give effect to 76 recommendations made by the Committee. The three remaining recommendations cannot be met through legislation; one will be fulfilled through a motion to refer the Bill to a Committee (Recommendation 3); another requires the ACT Government to seek advice on potential amendments to the *Criminal Code 2002* (Recommendation 20); and the final recommendation is in regard to resources for the ACT Office of the Director of Public Prosecutions, which is a budget consideration (Recommendation 46).

## Overview of the Bill

The Committee thoroughly and thoughtfully investigated independent integrity bodies in other jurisdictions and provided comprehensive analysis and recommendations. By incorporating each recommendation as if they were agreed to, the Bill ensures this model contained in the Bill has a high likelihood to be the most effective and efficient for the ACT.

While each recommendation from the report is important, this overview focuses on a number of the key recommendations and provides further context to important concepts. An attachment has been provided as a guide to how the recommendations have been included into the Bill.

### Establishment of an integrity body

The purpose of the Bill is to establish an ACT-specific integrity body, the Anti-Corruption Integrity Commission (the Commission).

### *Main objects*

The main objects of the Bill give effect to Recommendations 4 and 29.

The main object is to promote the integrity and accountability of public administration. This is achieved through establishing the Commission and conferring on the Commission special powers to inquire into allegations. The objects include to investigate, expose and prevent corruption involving public administration; to educate public entities and the public at large about corruption; to foster public confidence in combatting corruption and in promoting integrity and good repute; and to provide leadership and coordination for the integrity frameworks within public administration.

The objectives, to investigate, expose and prevent corruption and foster public confidence in the integrity of the ACT Government, underscore the functions of the Commission and are reflected throughout in the Bill.

### *Functions*

Recommendations 5, 6, 7, 18, and 29 address the functions of the Commission.

The Commission's functions are to investigate corruption issues, matters referred to the Commission by the Legislative Assembly, and matters involving serious or systemic corruption. Importantly, the threshold of serious or systemic corruption has been included to highlight the focus of the Commission on these matters, but also allow the Commission flexibility. For example, serious corruption is not always systemic.

The Commission's functions also include referral of suspected instances of criminality or wrongdoing to other authorities for investigation and action. The Commission also has a role in preventing corruption through providing education about corrupt practices, researching corrupt practices, and mitigating the risks of corruption. The publishing of information about investigations is key to fostering public confidence in, as well as giving leadership to, the parliament and the public sector.

Without limiting how the Commission may perform its functions, the Commission may take steps that the Commission considers necessary to uphold, promote and ensure adherence to standards of conduct, propriety and ethics in public authorities. The Commission may review and make recommendations about practices, procedures and standards; provide advice to public officers, the public and the Legislative Assembly; and consult with as well as provide assistance to public authorities to develop and implement codes of conduct. The Commission may evaluate the adequacy of systems and procedures in public authorities, in addition to developing and coordinating education and training programs. Contracts, agreements and partnerships may be entered into by the Commission to support its functions, and to undertake research into matters and prepare material as educational resources.

### Important concepts

#### *Corrupt conduct*

Recommendations 8, 10, 11, 12, 14, 15 and 29 are fulfilled through Part 2 of the Bill.

Corrupt conduct is conduct that could constitute or involve a criminal or disciplinary offence or provide reasonable grounds for terminating the services of a public official. In the case of Ministers or Members of the Legislative Assembly, corrupt conduct may constitute or involve a substantial breach of the applicable code of conduct, or cause a reasonable person to believe that it would bring the integrity of the office of the Minister or Legislative Assembly into serious disrepute.

The general nature of corrupt conduct is conduct:

- Of a public official that constitutes or involves:
  - The dishonest or partial exercise of an official's functions;
  - A breach of public trust;
  - The misuse of information or material acquired through the course of official functions;
- That adversely or could adversely affect:
  - The honest exercise of official functions;
  - The exercise of official functions which could involve official misconduct, or criminal acts (for example bribery, blackmail, fraud, election funding offences);
- That impairs or could impair the public confidence in public administration, including:
  - Collusive tendering;
  - Fraud in relation to applications under legislation;
  - Dishonestly obtaining, assisting in obtaining, or benefiting from the payment or application of public funds for private advantage;
  - Defrauding the public revenue;
  - Fraudulently obtaining or retaining employment or appointment as a public official.
- Secondary conduct engaged by a person in relation to conduct which would constitute an offence against the Criminal Code on the basis that the primary conduct is an offence, whether or not the primary conduct is an offence.

Importantly, conduct may amount to corrupt conduct regardless of whether the conduct happened before the commencement of the Bill, or if some or all of the effects or other

matters necessary to establish the conduct occurred before commencement. Additionally, the Bill applies regardless of whether the person is no longer a public official; or was not a public official at the time the conduct happened if the conduct was in relation to the exercise of the person's functions after becoming a public official.

The terms public authority and public official have been given a broad scope to include both public sector personnel and entities, as well as non-public sector entities including contractors and consultants to the extent they perform a public function or are engaged to provide services. This ensures that all levels and connections to the public sector are covered by the Bill.

While there are already misconduct and investigative mechanisms in place within the public service, it is appropriate that the legislation augments these processes to ensure consistency and allows the Commission to provide authoritative leadership in line with the Bill's objectives.

### Complaints and preliminary decisions

#### *Complaints*

Recommendations 23, 26, 27, 31 and 51 are achieved through Division 3.1

Any person may make a complaint to the Commission about a matter that concerns, or may concern, corrupt conduct. It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document under the *Criminal Code 2002*.

The Bill imposes a duty on the principal officer of a public authority and a Minister to report matters that the person suspects on reasonable ground, or may concern, corrupt conduct; and that is of relevance to, or comes to their attention, in their capacity as a public official.

The Deputy Commissioner of ACT Policing need not report a matter in relation to ACT policing if they suspect the matter concerns, or may concern, a corruption issue within the meaning of the *Law Enforcement Integrity Commission Act 2006* (Cwlth); and the matter does not concern, or may not concern, corrupt conduct of a public official other than a member of ACT Policing.

The Commission may also commence investigations on its own initiative, or by referral by the Legislative Assembly.

#### *Preliminary decisions*

Division 3.2 deals with Recommendations 22, 24, 30, 50 and 52.

Upon receiving a complaint, the Commission must either dismiss the issue; refer the issue to another entity; or investigate the issue. This is a similar triage approach as Victoria's Independent Broad-based Anti-Corruption Commission as highlighted in Recommendation 24.

The Commission may conduct a preliminary inquiry into a matter for the purposes of making a decision on how to deal with a corruption issue. The Commission may exercise its powers to obtain information and documents under the Bill.

The Commission may dismiss matters in certain circumstances, including if an investigation is not in the public interest. Factors that must be considered as part of the public interest test is also included in the Bill.

### Investigations

Part 4 of the Bill sets out the powers and procedures in relation to investigations.

#### *Investigation by commission*

Recommendations 15 and 29 have been included within Clause 29.

The Commission may investigate corrupt conduct alleged in a corruption issue through a complaint to the Commission; as reported by the principal officer of a public authority or Minister; or that the Commission has decided to investigate on its own initiative. The Commission must investigate a matter referred by the Legislative Assembly.

Similar to the Victorian Independent Broad-based Anti-Corruption Commission, the Commission must not conduct an investigation unless it suspects on reasonable grounds that the conduct constitutes corrupt conduct. The Commission may conduct an investigation even if no particular individual has been implicated in the corruption issue; a person who was a public official at the time of the alleged conduct is no longer an official; or the public authority no longer exists.

Crucially, the Commission may conduct an investigation regardless of when the alleged corrupt conduct occurred. No timeframes for corrupt conduct have been included in the Bill; the Commission has broad discretion to investigate matters they determine to be of interest. This may include conduct that happened a number of years ago, such as conduct that was exposed through a previous report by the Auditor-General. If the Commission were restricted or limited from investigating instances of corrupt conduct that had already occurred, it would have a significant effect on the public's confidence in the Commission, as well as undermining the efficiency and effectiveness of the Commission to root out corruption.

It is important to note that no new offences have been created by the legislation; rather the Bill creates a mechanism for the Commission to investigate potential instances of corrupt conduct that have already occurred. The investigations are simply fact finding in relation to whether past behaviour was a breach of a code of conduct or law at the time; as such, they are not retrospectively applying new standards. While the Commission has a prospective focus on preventing future corruption, the investigation and exposure of past corrupt conduct forms an integral part of the objectives and functions of the Commission.

#### *Examinations*

Recommendations 53, 54, 55 and 56 have been included within Subdivision 4.2.1 Power to conduct examination.

The Commission may conduct an examination in relation to a corruption issue or Assembly referral as part of its investigation. In determining the public interest, the Commission must consider the nature and seriousness of the corrupt conduct alleged; the harm or loss arising from the alleged corrupt conduct; whether the corrupt conduct alleged could be of significant public concern; whether the corrupt conduct alleged may be indicative of, or may expose, entrenched or systemic behaviour; and any other matter the Commission considers relevant.

Prior to an examination being held, the Commission must give a concerned person written notice explaining why the public interest in exposing the matter outweighs the potential for prejudice to the concerned person's reputation; and give the concerned person not less than 7 days to make representations to the Commission about the examination. As an additional layer of accountability, the Commission must tell the Inspector not less than 7 days before an examination that it intends to hold an examination; and provide a written report stating the reasons the Commission decided to hold an examination.

Importantly, an examination must be conducted in public unless the Commission decides it is in the public interest to hold the examination in private. This is essential to many of the Commission's core objectives and functions, including fostering public confidence, exposing corruption, and informing educative resources for preventing future corruption. Public hearings are a key accountability mechanism, and allows the Commission be the authoritative, impartial and diligent public face of integrity.

As discussed in the Committee's report and demonstrated in many jurisdictions, public examinations are an essential tool of anti-corruption and integrity bodies. Examinations often follow extensive private investigations, and there is evidence to suggest a correlation between the effectiveness of integrity bodies and their ability to hold public examinations. Similar to the court system, there are a number of key principles that underscore the necessity of an open and public process. The default of public examinations provides for the transparency and accountability of the conduct of the Commission; public confidence in its operations; the discovery of further evidence; the education of the public; and also has a general deterrent effect to prevent future corruption.

With this in mind, there may be times when the Commission feels an examination would be more appropriately held in private. The public interest test has been incorporated to minimise risks to privacy and reputation, and to allow the Commission discretion to balance multiple considerations of procedural fairness and individual rights.

Without limiting the factors that the Commission may take into account in deciding whether it is in the public interest to conduct an examination in private, the Bill provides that the Commission must consider the benefit of exposing to the public, and making the public aware of, corrupt conduct; the seriousness of the allegation or complaint being investigated; any risk of undue prejudice to a concerned person's reputation (including prejudice that might arise from not holding an inquiry); whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of a concerned person; and any representations of a concerned person.

As part of further safeguards for individual rights and procedural fairness in examinations, the rules of natural justice have been incorporated into Subdivision 4.2.3 Procedure for examinations in line with Recommendation 57.

## Involvement of the Legislative Assembly

### *Appointment of the Commissioner and Inspector*

The consultative role of the Legislative Assembly in appointing the Commissioner and Inspector in line with Recommendations 59 and 62 have included in Part 6 Anti-corruption and Integrity Commission and Part 7 Oversight of Commission.

The Speaker must, on behalf of the Territory, appoint individuals to these positions; however, appointments must comply with a range of requirements. The appointment must be made in consultation with the Chief Minister; the Leader of the Opposition; the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party; and the presiding member of the relevant Assembly committee, as well as in accordance with an open and accountable selection process.

Furthermore, the Speaker must not appoint a person unless the Speaker is satisfied that the person has extensive knowledge and experience in integrity and accountability in public administration; and the appointment is agreed by a resolution passed by at least a 2/3 majority of the members of the Legislative Assembly. This threshold ensures that any appointments are not political in nature and are instead based upon the agreed appropriateness of candidates.

In circumstances where there are questions about the suitability of an individual, or a member of the Legislative Assembly is investigated by the Commission, a simple majority resolution may have attracted criticism that an appointment or appointee was partisan. The higher threshold of the 2/3 majority removes any doubt as to the independent and apolitical nature of the Commissioner and Inspector, which in turn reinforces public confidence in the Commission.

It is important that this politically nonpartisan approach is emphasised, and therefore the consultation requirements with the Chief Minister; the Leader of the Opposition; and the leader of a registered party with at least 2 seats in the Legislative Assembly have been carried throughout the Bill. These specific consultation requirements can be seen in provisions relating to the retirement, suspension, leave of absence, and appointment of an Acting Commissioner or Inspector.

## **Human Rights**

The provisions of the Bill have potential effects on an individual's human rights. If an individual's human rights were limited in any capacity, the limitations would be reasonable and consistent with other jurisdictions as well as the Committee's recommendations.



## Nature of the right affected

### *Privacy and reputation*

Section 12 of the *Human Rights Act 2004* provides individuals the right to privacy and reputation. This right may be impacted by investigations and examinations conducted under the Bill. The Commission has the power to conduct public examinations, obtain information and documents with search warrants, as well as in their own right. Private information or correspondence may be examined by the Commission or may be publicly reported on. Furthermore, public examinations may have implications for a person's reputation given the nature of the Commission's focus on corruption.

### *Taking part in public life*

An individual has a right to take part in public life under section 17 of the *Human Rights Act 2004*. Part of this right includes access, on general terms of equality, for appointment to public service and public office. A number of eligibility requirements are set for appointment as the Commissioner, as an officer of the Commission, and as the Inspector.

A person may only be appointed as the Commissioner or the Inspector of the Anti-Corruption Integrity Commission if the person has been a judge of the Supreme Court; a judge of the Supreme Court of a State or Territory; a judge of the Federal Court; a justice of the High Court; or a lawyer for at least 10 years.

A person must not be appointed if the person is or has been a member of the Legislative Assembly; the Parliament of the Commonwealth; the legislature of a State or Territory; a registered party; a political party registered under a law of the Commonwealth, State or Territory; a political party; or in the 10 years immediately before the day of the proposed appointment, a public employee.

The Commissioner must not employ a person if that person is or has been in the 10 years immediately preceding the day of the proposed appointment, a member of the Australian Federal Police. Furthermore, a person must not be employed or engaged as an officer of the Commission if the person is, or has been, a member of a registered party; or a political party registered under a law of the Commonwealth, State or Territory; or does not have an appropriate security clearance.

In addition, the Commissioner must not employ or engage a person as a senior officer of the Commission if that person is or has, in the 10 years immediately before the day of the proposed appointment, been a public servant; and other than on a fixed term contract of not more than 7 years duration.

### *Fair trial*

The *Human Rights Act 2004* provides under section 21 that everyone has the right to have rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The Anti-Corruption Integrity Commission is not bound by the rules of evidence; however, must comply with the rules of natural justice. The Commission may inform itself of any matter in any way that it considers appropriate but must consider the potential subsequent use of information obtained by the Commission.

The Commission may also issue procedural guidelines about the way in which the Commission will conduct its investigations, including examinations. The Commission must exercise its functions with as little formality and technicality as possible and must accept written submissions and conduct examinations with as little emphasis on an adversarial approach as possible.

#### *Right not to be tried or punished more than once*

Given that the Commission has broad powers to investigate corrupt conduct, there is a possibility that a person who has previously been tried or punished may come before the Commission. It may be necessary for the Commission to investigate conduct associated with a criminal offence which has already been tried and examine conduct of the person tried or acquitted, or another individual's conduct in connection with the offence. Section 24 of the *Human Rights Act 2004* provides that no-one may be tried or punished again for an offence which he or she has already been finally convicted or acquitted in accordance with law.

#### The importance of the purpose of the limitation

##### *Privacy and reputation*

One of the main objects of the Bill is the establishment of the Commission to investigate, expose and prevent corruption involving or affecting public authorities and public officials. There is significant public interest in ensuring corrupt conduct within government is independently and appropriately dealt with. This links into the objective of fostering public confidence in combating corruption, and in promoting integrity and good repute in public administration.

The Commission is unique in that it is singularly-focused on corrupt conduct where other entities, such as the Auditor-General, are focused on procedures and do not have the scope or powers to look into corrupt conduct. The limitations on these rights are reasonable and consistent with the good governance principles of accountability and transparency. The provisions included are similar to other jurisdictions, where it has been found to be appropriate and beneficial to thoroughly investigate and hold public examinations into corrupt conduct.

##### *Taking part in public life*

The eligibility requirements are key in ensuring appropriate, experienced, and impartial individuals are appointed as the Commissioner, officers of the Commission, and the Inspector. It is essential that the commission attracts high calibre individuals who are independent of any affiliations which may affect them during their tenure as part of the Commission. These restrictions foster public confidence in the independence and integrity of the Commission.

##### *Fair trial*

The inquisitorial features of the Commission differ significantly from the adversarial nature of criminal and civil proceedings. The Commission cannot make findings of guilt, and therefore is distinct in its investigatory functions. While, at times, examinations may become adversarial, the Commission only makes findings of fact. If material points to criminal offences, matters are referred to the Director of Public Prosecutions.

It is not the Commission's role to prosecute possible offences; instead, its function is to investigate possible corrupt issues.

It is appropriate that the Commission is not bound by the rules of evidence, as there is a different standard of proof for its findings and criminal proceedings; however, the Commission must have regard for the future use of any evidence it collects. There are also various unique accountability requirements for the Commission to ensure it acts in accordance with its processes and within its scope.

#### *Right not to be tried or punished more than once*

The public interest in investigating, exposing and preventing corruption is very high. The Commission may dismiss matters where a court or tribunal has adequately dealt with an issue; however, there may be cases where tried conduct is part of systemic corruption and it may be appropriate for the Commission to investigate the matter in a wider context. It would not be prudent of the Commission to disregard possible corrupt conduct on the grounds that one element or part had already been tried.

#### The nature and extent of the limitation

##### *Privacy and reputation*

The functions of the Commission include investigating corruption issues; matters referred to the Commission by the Legislative Assembly; and matters involving serious or systemic corruption, a high threshold. The Commission must not conduct an investigation unless the Commission suspects, on reasonable grounds, that the conduct constitutes corrupt conduct. A further safeguard against any unlawful or arbitrary infringement of this right is the legislative procedures surrounding investigations and examinations.

The powers granted to the Commission in its own right are similar to those of the Auditor-General; and where an investigation requires further probity, search warrants may be obtained to find information or documents. The limitations imposed on the right to privacy and reputation are in relation to the investigations or examinations into corrupt conduct regarding public officials and authorities. It is appropriate that an individual's right is limited in this context to allow for a thorough and full inquiry; in particular in the event that the conduct is in relation to administration of public powers and money.

Examinations, especially public examinations, are essential in exposing corrupt practices and are necessary to ensure the Commission upholds the highest standards of integrity. If the Commission's functions and actions were primarily confidential and private, it would undermine the public's confidence in an investigation and the processes used by the Commission. Where there may be some risks to an individual's rights, the Commission has discretionary powers to decline to report on matters and keep information confidential.

##### *Taking part in public life*

The nature of the Commissioner and Inspector roles necessitate a certain level of legal experience to ensure procedural fairness and impartiality. These restrictions are essential in guaranteeing suitably skilled individuals are employed, as well as fostering public confidence in the Commission and, more broadly, in the government. Officers of the Commission must also be appropriately skilled, and they must also be seen to similarly impartiality.

The limits on previous work history and affiliations are consistent with other jurisdictions, and reasonable for the Territory. For example, it is reasonable that many people currently employed by, or who have recently departed, the ACT public service would have personal or professional relationships with individuals who may come under investigation, especially at the executive level. It would not be seen as appropriate or impartial if an officer of the Commissioner had to investigate their former co-workers or supervisor, particularly if they had a known connection. The time limit provisions seek to ensure that, as far as possible, there is distance and objectivity within the roles in the Commission and the Inspector.

Further, if the Commission were to undertake an investigation into a member of the Legislative Assembly, it would not be prudent for a known party member to be involved in the investigation of the corrupt conduct. Any such revelation would politicise the investigation and undermine any claims of independence and integrity in the public's mind.

These limits reinforce the independence of the Commission and underscore the integrity and impartiality of the procedures and investigations. It allows properly experienced and qualified staff to be engaged to cover the administrative, investigative, and prevention and education functions of the Commission.

#### *Fair trial*

The Commission is not bound by the rules of evidence, but instead may inform itself of a matter in any way that it considers appropriate. In exercising its functions with as little formality and technicality as possible, the Commission must accept written submissions which may not ordinarily be accepted as part of legal hearings.

This approach also allows for some of the complexities surrounding legal evidentiary burdens to be relaxed and means that more evidence or types of evidence may be considered by the Commission without regard for legal precedent. This would mean that hearsay may be applicable in certain circumstances outside of settled common law exceptions. The legal background of the Commissioner or presiding officer is important to allow the informed discretion in terms of evidence admitted, and what evidence may have subsequent uses.

Notwithstanding those broad powers, the Commission must comply with the rules of natural justice and consider potential subsequent use of information obtain by the Commission in the course of their investigation. Safeguards have been put in place to ensure the rules of natural justice are legislatively protected, namely clauses:

- 37 Content of notice to appear;
- 38 Right of appearance;
- 39 Right of representation;
- 40 Examination and cross-examination; and
- 45 Evidence and procedure.

These and other accountability measures within the legislation ensure that the Commission cannot act without regard for fairness and procedure. For example, certain matters may be put before the Supreme Court to make a determination, and search warrants must be issued a judicial officer.

### *Right not to be tried or punished more than once*

The Commission is not restricted on what matters it may investigate as it relates to corrupt conduct. If the Commission feels that a matter was not adequately dealt with by the court or tribunal, the Commission may decide it will not dismiss the matter, and it is not prohibited from pursuing its own investigation. This allows the Commission to act in a manner which is consistent with its pursuit of the accountability and may involve examinations. While the Commission has an investigative function and is not adversarial in nature, elements of the Commission's powers and functions are not dissimilar.

### The relationship between the limitation and its purpose

#### *Privacy and reputation*

Given a key focus of the Commission is the high threshold of serious or systemic corruption, it is appropriate that conduct of a significant nature is publicly investigated and exposed. The limits on a person's right to privacy and reputation are only in relation to investigations where the Commission reasonably suspects corrupt conduct has occurred. While there may be potential risks associated with these powers, there are harm-minimising procedures in place and mitigating factors to consider.

The significant public interest in ensuring corrupt conduct is appropriately investigated and exposed outweighs the relatively small risks of unlawful or arbitrary disclosure of information or damage to reputation. These limitations are reasonable and necessary to foster public confidence, as well as to investigate, expose and prevent corruption.

#### *Taking part in public life*

The purpose of the limitation is to ensure a high level of integrity and credibility in relation to the Commission and the Inspector. As the key integrity body for the Territory, it is reasonable that any individual appointed to a position within the Commission is held to a higher standard. This is necessary for fostering public confidence in the actions of the Commission and eliminates various factors which could potentially influence the nature or course of complex or contentious investigations. It is also essential that officers of the Commission are able to obtain the relevant security clearance, as they will be dealing with sensitive information on an ongoing basis and will need to appropriately manage the risks associated access to confidential information.

#### *Fair trial*

One of the primary functions of the Commission is to investigate and expose corruption. The Commission is limited to making findings of fact and opinion, such as whether corrupt conduct has occurred. This makes the Commission unique and requires broad investigative powers. Without the ability to inform itself as it sees fit, the Commission would be restricted to evidence that could be admitted in court, and this would impair its functions. These thresholds are deliberately high as there are clearly delineated punishments attached to offences and conduct; however, the Commission has no powers to enforce any penalties except in relation to conduct against itself, such as contempt of the Commission. It is therefore appropriate that the Commission has the discretion to act in manner which enables them to most effectively and efficiently carry out their duties.

### *Right not to be tried or punished more than once*

The Commission has a specific focus on corrupt conduct and may be required to look at the broader scope or implications of corrupt conduct as it relates to public administration. It is important to allow the Commission to inform itself on matters as it considers appropriate. For example, criminal charges may be quite narrowly focussed on an individual; however, the conduct may be part of wider systemic corruption. It may be necessary for the Commission to investigate the conduct of other public officials generally in connection to an offence, and this may involve an additional investigation for the Commission's purposes.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

### *Privacy and reputation*

There are no less-restrictive means to achieve the functions of the Commission. Search warrants are required in certain circumstances; however, the Commission must still be able to investigate and act independently and within their own powers to be effective and efficient. Furthermore, risks are mitigated by the Commission's ability to decline to publish reports or information. This is paired with public interest tests throughout the Bill to add an additional layer of protection for information. Secrecy provisions have been incorporated into the Bill, along with penalties for divulging information which should have been protected. Finally, a reputational repair protocol has been included in addition to creating an offence and penalties in relation to taking detrimental action.

### *Taking part in public life*

There are no less-restrictive means to ensure the Commissioner, Inspector, and the officers of the commission have the required experience and credibility to perform their duties. It is common for positions, both in the public and private sector across jurisdictions, to have eligibility requirements attached. These limitations are reasonably necessary to ensure the integrity of the Commissioner, the Commissioner's staff, and the Inspector.

### *Fair trial*

There are no less-restrictive means to ensure a fair trial. The Commission has an inquisitorial nature, not adversarial. The Commission is not bound by the rules of evidence but must follow the rules of natural justice. Lord Justice Salmon's principles of fair procedure for public inquiries have been included in the Bill as part of the protections and ensure the right to a fair trial is protected while allowing the Commission to carry out its investigative functions.

### *Right not to be tried or punished more than once*

There are no less-restrictive means to ensure a person is not tried or punished more than once. The Commission only makes findings of fact, and therefore cannot find someone guilty of an offence or enforce punishment. The Commission has the power to dismiss an issue if the corruption issue has been, or is being, adequately dealt with by a court or tribunal or has been dealt with by the Commission. As the objectives and functions outline, there is a strong focus on preventing corruption, which gives the Commission a largely prospective focus.

Furthermore, a matter may be referred to another entity by the Commission, and the Commission needs to take steps not to unnecessarily duplicate the work of another authority. Overall, while a matter may come before the Commission which has previously come before a court or tribunal, the Commission may still undertake its own investigation without breaching this right.

## **Details of the Anti-corruption and Integrity Commission Bill 2018**

### **Part 1 Preliminary**

Part 1 names the Act the *Anti-Corruption and Integrity Commission Act 2018* (the Act) and provides a commencement date of 1 January 2019. It also includes general information regarding the dictionary and notes within the Act, and that the *Criminal Code 2002* applies in relation to offences against this Act. This part also includes the main objects of the Act.

### **Part 2 Important concepts**

Part 2 defines the important concepts of the Act, those being the meaning of corrupt conduct; the general nature of corrupt conduct; the meaning of public authority; and the meaning of public official.

### **Part 3 Dealing with corruption**

#### **Division 3.1 Initiating commission investigation**

Division 3.1 allows any person to make a complaint to the Commission. It also imposes a duty on the principal officer of a public authority or a Minister to report corruption to the Commission.

The Territory is prevented from making laws for the Australian Federal Police under the *Australian Capital Territory (Self-Government) Act 1988* and cannot bind the Commonwealth without agreement. The established processes under the *Law Enforcement Integrity Commissioner Act 2006* (Cwlth) for dealing with conduct within ACT Policing have been kept intact, however the Deputy Commissioner must report matters which involve other public officials to the Commission. This approach is consistent with New South Wales provisions.

This Division also allows for the Commission to investigate matters on its own initiative, or by referral of the Legislative Assembly.

#### **Division 3.2 Preliminary decision**

Division 3.2 sets out the meaning of corruption issue, and how the Commission may proceed once a corruption issue has been received. The Commission may refer the corruption issue to another entity, or alternatively has the power to conduct a preliminary inquiry or dismiss certain matters.

#### **Division 3.3 Protections for complainants and reporters**

Division 3.3 provides protections for complainants and reporters, outlining the application of the protection; immunity from liability; and protection from defamation action. This Division also includes how protection may be lost and a person's liability for their own conduct.

Provisions relating to detrimental action have also been inserted: these include the meaning of detrimental action; the offence of detrimental action; as well as damages and injunctions in relation to detrimental action.



## **Part 4            Investigations**

### **Division 4.1   Powers of investigation**

Division 4.1 relates to the Commission's powers of investigation. The Commission has the power to appoint investigators, and investigate corrupt conduct alleged in a corruption issue. The Commission has the power to obtain information and obtain documents by giving written notice. These powers are consistent with those held by the Auditor-General.

### **Division 4.2   Compulsory examinations**

#### **Subdivision 4.2.1    Power to conduct examination**

Subdivision 4.2.1 gives the Commission power to conduct examinations, both public and private. A public interest test has been included to provide protections against risks to individual rights; however the default is public examinations in line with the objects and functions of the Act in fostering public confidence and exposing corruption.

#### **Subdivision 4.2.2    Commission's powers on examination**

Subdivision 4.2.2 provides the Commission with a range of powers in relation to their examinations. The Commission may give written notice for a person to appear before the Commission, and the presiding officer may compel witnesses. The Commission may apply to a magistrate for an arrest warrant if the witness fails to appear.

#### **Subdivision 4.2.3    Procedures for examinations**

Subdivision 4.2.3 sets out the procedures for examinations, including the content of notices to appear; right of appearance; right of representation; as well as examination and cross examination of witnesses. These provisions legislatively enshrine the principles of natural justice. The Commission also has the power to appoint a presiding officer for examinations, and the presiding officer may give direction about people present at private examinations and further directions about the disclosure of information.

This subdivision also allows for the reimbursement of the expenses of witness appearing before the Commission in line with an amount authorised by the Supreme Court scale of costs.

### **Division 4.3   Procedural matters**

Division 4.3 deals with various procedural matters, including evidence and procedure. The Commission is not bound by the rules of evidence but must comply with the rules of natural justice. There are also provisions in relation to privilege in regard to information and documents; and that parliamentary privilege is not affected.

The independence of holders of judicial office is set out, and the Act states that the Commission must have proper regard for the importance of preserving such independence. Any investigation by the Commission is limited to investigating corrupt conduct that, if established, would warrant the judicial officer's removal from office. The Commission's investigation must be conducted in accordance with appropriate conditions and procedures agreed by the Commission and the ACT Judicial Council established under the *Judicial Commissions Act 1994*; and any examinations must be conducted by the Commissioner.

The involvement and agreement of the ACT Judicial Council reinforces the judiciary's independence, while also recognising the broad context of the judicial officer's role and the Commission's powers in relation to corrupt conduct of public officials.

This division also provides the Commission with powers to determine how to proceed when a matter is currently the subject of a proceeding before a court or tribunal. The Act also allows for an examination conducted by the Commission to be treated as a legal proceeding for the *Criminal Code 2002*, and that a person may be found in contempt of the Commission.

#### **Division 4.4 Dealing with parliamentary privilege claims**

Division 4.4 deals with the application of parliamentary privilege claims during the course of a preliminary inquiry or investigation and provides some definitions. Notice must be given by an investigator prior to inspecting, copying, or seizing a document or thing that the investigator considers likely to be the subject of parliamentary privilege, and reasonable notice must be given to the Clerk of the Legislative Assembly.

If a memorandum of understanding is in place with the Legislative Assembly, an investigator must comply with the stated procedures. If a memorandum of understanding is not in place, the investigator must consider the claim of privilege and either stop exercising their power in relation to the document or thing; or if the investigator believes on reasonable grounds that parliamentary privilege may not apply, require the claimant or claimant representative to seal the document in an envelope or otherwise secure it.

The Commission may apply to the Supreme Court for a determination on the application of parliamentary privilege during its investigations. The Supreme Court has the power to make determinations on parliamentary privilege, and penalties may apply if a person contravenes these provisions.

#### **Division 4.5 Commission's powers on completion of investigation**

Division 4.5 provides important powers and limits on the completion of investigations by the Commission. The Commission may make a finding or form an opinion in relation to matters investigated, regardless of whether the finding or opinion relates to corrupt conduct. The Commission may also make a recommendation if it considers that a person should take action in relation to a finding or opinion, for example the Director of Public Prosecutions.

The Commission must not make a finding or opinion in relation to a person's guilt or make a recommendation that a named person be prosecuted. However, the Commission does not make a finding of guilt or a recommendation for prosecution merely because the Commission finds that corrupt conduct has occurred.

#### **Division 4.6 Reports**

Division 4.6 sets out that the Commission must prepare a report on completion of an investigation in relation to a corruption issue; an Assembly referral; and if requested by the relevant Assembly committee. The Commission may prepare reports at its discretion in relation to a matter before the investigation is completed. The Commission need not prepare a report on completion of an investigation if the Commission believes this would be contrary to the public interest.

A number of public interest considerations are taken into account when determining whether all or part of the report must be kept confidential, including whether there is the potential to compromise an ongoing investigation; place an individual in danger; or prejudice judicial proceedings.

If the Legislative Assembly is sitting when the Commission has finished the report, the Commission must give a copy of the report to the Speaker; and the Speaker must present it on the next sitting day. If the Legislative Assembly is not sitting when the report has been finalised, the Commission must give the Speaker the report; the Speaker must circulate the report to all members of the Legislative Assembly on the same day; and the Speaker must present a copy on the next sitting day.

The Commission must give a copy of a confidential report to the chair of the relevant Assembly Committee.

Content of the reports may include statements of any of the Commission's findings, opinions, recommendations along with any statement of reasons, and any other matter arising from the performance of the Commission's functions.

#### **Division 4.7 Referrals**

The Commission may at any time refer matters to another person or body, the relevant authority, for investigation or other action. The Commission may give any information they have obtained to the relevant authority and must advise whether the information is protected information. A matter must not be referred unless the Commission has consulted the relevant authority and has considered the views of the authority.

The Commission may provide directions on how the relevant authority is to deal with a matter, and any report requirements in relation to the matter. The Commission cannot give directions to the Speaker or judicial officers on how a matter may be dealt with, in keeping with the independence of these offices. If the Commission has directed an authority to provide a report in relation to a referred matter, the relevant authority must give the Commission a report within the required time period.

The Commission may take further action if it is not satisfied that a relevant authority has taken appropriate action regarding a referred matter. The Commission must give written notice stating the reasons for its dissatisfaction to the relevant authority and allow the authority to respond. If the Commission is still not satisfied, a report may be given to the relevant Minister to take appropriate action.

Following an investigation, the Commission may also provide a brief of evidence to a law enforcement agency, public authority or public officer for action.

#### **Division 4.8 Offences**

Division 4.8 sets out offences in the Act including a person failing to comply with a requirement; failing to comply with a direction to give their name and address; and failing to comply with the presiding officer's direction.

## **Part 5            General information gathering powers**

### **Division 5.1    Power to enter premises**

Division 5.1 provides the power to enter premises of a public authority or public official; and the power to enter other premises. An investigator must not remain at premises if the investigator does not produce an identity card when asked. Certain procedures must be followed when seeking consent to enter, including the signing of a written acknowledgement by the occupier.

An investigator has general powers upon entering premises without a warrant and may direct a person whom they reasonably believe may be able to assist with an investigation to provide their name and address. The Commission may also apply to the Supreme Court for an injunction to restrain a person from engaging in conduct.

### **Division 5.2    Search warrants**

Division 5.2 sets out definitions and procedures for issuing search warrants, as well as powers under warrant and to seize evidence. Warrants may be applied for in a variety of forms, and search warrants must be announced before entry. A copy of the search warrant must be given to the occupier along with a document setting out their rights and obligations. The occupier is entitled to observe the search unless the person would impede the search, is under arrest, or would interfere with the objectives of the search.

### **Division 5.3    Dealing with things seized**

Division 5.3 details that receipts must be issued for things seized, and that a person may access seized things that they would otherwise have been entitled to apart from the seizure. A seized thing must be returned to its owner, or the owner must be otherwise reasonably compensated. The Commission may dispose of a thing after making reasonable efforts to returned the thing to its owner.

## **Part 6            Anti-corruption and integrity commission**

Part 6 establishes the Anti-Corruption Integrity Commission and sets out functions of the Commission. The Act sets out that the Commissioner is an officer of the Legislative Assembly, and that the Commission has independence and complete discretion in the exercise of its functions.

### **Division 6.1    Appointment of commissioner**

Division 6.1 includes provisions relating to the appointment of the Commissioner, including the Acting Commissioner. Given the ordinarily short term and potentially unforeseen nature of the Acting role, an open and accountable selection process does need not apply to the Acting appointment. The Legislative Assembly is not required to provide a 2/3 majority vote in these circumstances, as an Acting Commissioner may not be able to be appointed for a number of months depending on the Assembly Sitting Calendar. Finally, the restriction on public employees is removed for the Acting role as it may be appropriate to appoint an officer of the Commission in the role. Eligibility requirements and the term of appointment are also set out in this division.

## **Division 6.2 Other provisions applying to commissioner**

Division 6.2 provides that the Commissioner must take an oath or affirmation and regularly disclose their interests. The Commissioner must also take all reasonable steps to avoid being placed in a position where a conflict of interest arises, and follow the legislative process set out in the Act.

The Commissioner may resign or may be retired or suspended by the Speaker in certain circumstances. The relevant Assembly committee must consider the suspension, and members of the Legislative Assembly may be consulted. The ending of the suspension and ending of the appointment, along with providing a leave of absence, may be undertaken through the provisions in this subdivision.

## **Division 6.3 Officers of the commission**

Division 6.3 allows for the Commission to employ staff, consultants and contractors. Eligibility requirements are detailed, along with conflict of interest provisions for consultants and contractors. Officers of the Commission must take all reasonable steps to avoid being placed in a position where a conflict of interest arises, and follow the legislative process set out in the Act.

An officer of the Commission is not subject to direction from anyone other than the Commissioner, or another officer of the Commission authorised by the Commission. The Commission may delegate the Commission's functions to an officer of the Commission. Identity cards must be issued by the Commissioner to officers of the Commission for use.

## **Part 7 Oversight of commission**

### **Division 7.1 Legislative Assembly**

Division 7.1 deals with the Legislative Assembly's oversight of the Commission. The relevant Assembly committee may monitor and report on the performance and functions of the Commission. Oversight is also achieved through the annual reports process, where the Commission must provide a report under the *Annual Reports (Government Agencies) Act 2004*, and include detailed content as prescribed by legislation.

### **Division 7.2 Inspector**

#### **Subdivision 7.2.1 Appointment and functions of inspector**

Subdivision 7.2.1 contains similar eligibility requirements and appointment processes as the Commissioner. The functions and term of appointment of the Inspector and the Inspector's independence are included, along with provisions for the Acting Inspector. Given the ordinarily short term and potentially unforeseen nature of the Acting role, an open and accountable selection process does need not apply to the Acting appointment. The Legislative Assembly is not required to provide a 2/3 majority vote in these circumstances as an Acting Inspector may not be able to be appointed for a number of months depending on the Assembly Sitting Calendar. Finally, the restriction on public employees is removed for the Acting role as it may be appropriate to appoint someone employed by the Inspector.

The Inspector must review the Commission's performance each financial year and must allow for the Commission to make comments on the proposed reports. Once a report is completed, the report must be provided to the Legislative Assembly through the Speaker tabling the report or circulating it out of session.

Complaints may be made about the Commission to the Inspector, and the Commission must allow the Inspector access to the premises and anything in possession or control of the Commission. The Inspector has further powers, including the power to refer matters and make recommendations to the Commission or public authority. In a report, the Inspector may disclose information only to the extent that is necessary and must consider the effect of the disclosure.

### **Subdivision 7.2.2 Other provisions applying to inspector**

Subdivision 7.2.2 requires the Inspector to take an oath or affirmation before the Speaker and must regularly provide a written statement of their interests. The Inspector must take all reasonable steps to avoid being placed in a conflict of interest, and follow the legislative process set out in the Act.

This subdivision also deals with the resignation, retirement, and suspension of the Inspector. The relevant Assembly committee must consider the suspension, and members of the Assembly may be consulted. The ending of the suspension or appointment of the Inspector, along with providing a leave of absence, may be undertaken through the provisions in this subdivision. These clauses are also similar to those of the Commissioner.

### **Division 7.3 Office of the inspector**

Division 7.3 allows the Inspector to employ staff on behalf of the Territory and engage contractors and consultants. The Inspector may arrange with the head of service to use the services of a public servant or Territory facilities. A person employed or engaged by the Inspector must take all reasonable steps to avoid being placed in a position where a conflict of interest arises, and follow the legislative process set out in the Act. The Inspector may also delegate the Inspector's functions to staff or contractors.

## **Part 8 Information protection requirements**

Part 8 includes secrecy provisions and sets out penalties for circumstances where people are reckless with or divulge information. There is an exception to the secrecy provisions to allow protected information to be used as evidence in criminal proceedings. The Commission must also consult with the information privacy commission to develop and publish information handling guidelines.

## **Part 9 Cooperation and referral between commission and other entities**

Part 9 allows for the Commissioner to enter into a memorandum of understanding with the Speaker in relation to the exercise of the Commission's function in the Legislative Assembly.

The Commission must cooperate with other entities to ensure its functions are exercised in a way that does not delay or unnecessarily duplicate the functions of other public entities; and may enter into arrangements to efficiently interact with public entities. Public authorities must cooperate and consult with the Commission; and ensure the Commission's functions aren't delayed or unnecessarily duplicated by the authority.

A public authority may refer a matter to the Commission and may disclose relevant information to the extent that is reasonably necessary. The Commission or Minister may enter into an agreement with the relevant head of a Commonwealth, State or Territory integrity entity in relation to the exercise of the Commission's functions. This includes the Australian Commission for Law Enforcement Integrity in relation to ACT Policing.

## **Part 10        Miscellaneous**

Part 10 contains protections for officials from liability. The Commission must develop reputational repair protocols for a person who was named by the Commission as having engaged in corrupt conduct but was subsequently cleared of wrongdoing.

The Executive may make regulations for the Act, and the Minister must review the operation of the Act at the end of every fifth year of its operation.

## **Part 11        Amendments**

Part 11 provides that legislation in Schedule 1 is amended.

### **Schedule 1    Consequential amendments**

#### **Part 1.1        *Corrections Management Act 2007***

Part 1.1 inserts the Anti-Corruption and Integrity Commission into the *Corrections Management Act 2007*.

#### **Part 1.2        *Crimes (Controlled Operations) Act 2008***

Part 1.2 inserts corrupt conduct and the Anti-Corruption and Integrity Commission into the *Crimes (Controlled Operations) Act 2008*.

#### **Part 1.3        *Crimes (Surveillance Devices) Act 2010***

Part 1.3 inserts corrupt conduct and the Anti-Corruption and Integrity Commission into the *Crimes (Surveillance Devices) Act 2010*.

#### **Part 1.4        *Freedom of Information Act 2016***

Part 1.4 inserts the Anti-Corruption and Integrity Commission and exceptions for protected information into the *Freedom of Information Act 2016*.

#### **Part 1.5        *Information Privacy Act 2014***

Part 1.5 inserts the Anti-Corruption and Integrity Commission into the *Information Privacy Act 2014*.

#### **Part 1.6        *Legislation Act 2001***

Part 1.6 inserts the Anti-Corruption and Integrity Commission into the *Legislation Act 2001*.

**Part 1.7**      *Public Interest Disclosure Act 2012*

Part 1.7 inserts that the Minister must commission an independent review of the operation of the *Public Interest Disclosure Act 2012* in the 18-month period after the clause commences; and must review the operation of the *Public Interest Disclosure Act 2012* after the end of every fifth year of its operation commencing 1 July 2020.

**Dictionary**

The Dictionary contains definitions of terms used through the Act.



Recommendation	Recommendation text	<i>Anti-corruption and Integrity Commission Bill 2018</i>
<b>Recommendation 1</b>	The Committee recommends that the ACT Government establish a standing ACT independent integrity body to investigate corruption in public administration and strengthen public confidence in government integrity.	92 Establishment of Anti-corruption and Integrity Commission
<b>Recommendation 2</b>	The Committee recommends that the ACT Government finalise the establishment of a standing ACT independent integrity body by the end of 2018.	2 Commencement
<b>Recommendation 3</b>	The Committee recommends that any proposed bill for the establishment of a standing ACT independent integrity body be referred to an ACT Legislative Assembly committee for inquiry and report.	Not in Bill – Achieved through motion
<b>Recommendation 4</b>	The Committee recommends that a standing ACT independent integrity body should have as its primary objective(s) to investigate, expose and prevent corruption and foster public confidence in the integrity of the ACT Government.	6 Objects of Act
<b>Recommendation 5</b>	The Committee recommends that a standing ACT independent integrity body should have the following functions:  (a) investigation, referral and reporting; (b) corruption prevention (including research and risk mitigation); and (c) public education.	93 Functions of the commission

<b>Recommendation 6</b>	The Committee recommends that the corruption prevention function of a standing ACT independent integrity body should include communicating and disseminating (as it concerns research, risk mitigation and prevention) lessons learned from investigation outcomes.	93 Functions of the commission
<b>Recommendation 7</b>	The Committee recommends that the public education function of a standing ACT independent integrity body should be focused on upholding and modelling high levels of probity and ethics together with communicating the outcomes of investigations, facilitating transparency, and awareness of corruption issues.	93 Functions of the commission
<b>Recommendation 8</b>	The Committee recommends that the focus of a standing ACT independent integrity body should be on corruption and integrity connected with public administration.	7 What is corrupt conduct?
<b>Recommendation 9</b>	The Committee recommends that a standing ACT independent integrity body should be named as an Anti-Corruption and Integrity Commission (ACIC) to ensure consistency with theory and practice and to accurately reflect its objectives, functions and relationships with other integrity stakeholders.	92 Establishment of Anti-corruption and Integrity Commission
<b>Recommendation 10</b>	The Committee recommends that the substantive jurisdiction of an ACT Anti-Corruption and Integrity Commission should cover all public officials. Public officials is to include all persons receiving a salary, wages or other payment from the ACT Government Service, its statutory authorities, agencies or boards. This would include parties delivering contracted work or services on behalf of government.	9 Meaning of public authority 10 Meaning of public official

<p><b>Recommendation 11</b></p>	<p>The Committee recommends that in investigating possible wrongdoing or impropriety on the part of a public official in exercising their official functions that the substantive jurisdiction of an ACT Anti-Corruption and Integrity Commission may extend to the conduct of third parties, i.e., where the third parties' conduct would give rise to (or could give rise to) wrongdoing.</p>	<p>7 What is corrupt conduct?</p>
<p><b>Recommendation 12</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) should have oversight over policing officers funded to deliver services by and to the ACT taxpayer and community.</p>	<p>10 Meaning of public official</p>
<p><b>Recommendation 13</b></p>	<p>The Committee recommends, as it concerns ACT Policing, that the enabling legislation for an ACT Anti-Corruption and Integrity Commission (ACIC), together with a Memorandum of Understanding with the Australian Commission for Law Enforcement Integrity (ACLEI), must:</p> <ul style="list-style-type: none"> <li>(a) provide for the ACLEI to refer corruption matters relating to ACT Policing to the ACT ACIC;</li> <li>(b) provide for the ACT ACIC to operate cooperatively with ACLEI and other agencies, including those in other jurisdictions for joint investigations and information sharing;</li> <li>(c) establish an appropriate framework for inter-agency coordination; and</li> <li>(d) establish an appropriate framework for information sharing to enable the exchange of relevant intelligence and documentation when an investigation is commenced.</li> </ul>	<p>65 Commission may refer matters (a) 154 Intergovernmental arrangements (d) 155 Interjurisdictional arrangements (a), (b), (c)</p>
<p><b>Recommendation 14</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) have oversight over Members of the Legislative Assembly (MLAs), MLA staff, and Judicial Officers.</p>	<p>10 Meaning of public official</p>

<p><b>Recommendation 15</b></p>	<p>The Committee recommends, as it concerns Members of the Legislative Assembly (MLAs), MLA staff, and Judicial Officers, that the enabling legislation for an ACT Anti-Corruption and Integrity Commission (ACIC) must:</p> <ul style="list-style-type: none"> <li>(a) ensure that judicial independence and parliamentary privilege is maintained;</li> <li>(b) have regard to the separation of powers;</li> <li>(c) with respect to parliamentary privilege, clearly define the boundaries between the powers of an ACT ACIC and parliamentary privilege;</li> <li>(d) include a legislated process to deal with items that might be subject to disputed claims of privilege;</li> <li>(e) make it clear that any code of conduct binding MLAs, MLA staff, and Judicial Officers augments and does not restrict the definition of corruption included in the Act; and</li> <li>(f) establish a process where conduct crosses over into other jurisdictions—that, an ACT ACIC shall first take the decision to proceed with an investigation.</li> </ul>	<p>7 What is corrupt conduct? (e)  29 Investigation by commission (f)  47 Parliamentary privilege not affected (a), (b), (c)  48 Independence of holders of judicial office (a), (b)  56 Investigator to consider privilege and secure document or thing (a), (c), (d)  57 Application to Supreme Court to determine parliamentary privilege generally (d)  58 Determination of privilege claim (d)  66 Directions to relevant authority (a), (b)  150 Exercise of commission powers—Assembly (a), (b)  155 Interjurisdictional arrangements (f)</p>
<p><b>Recommendation 16</b></p>	<p>The Committee recommends, as it concerns the ACT Legislative Assembly, that the enabling legislation for an ACT Anti-Corruption and Integrity Commission (ACIC) specify the requirement for a Memorandum of Understanding (MOU) between the statutory head of the ACIC and the Speaker of the ACT Legislative Assembly on the execution of a judicially approved search warrant on the premises of the Legislative Assembly.</p>	<p>150 Exercise of commission powers—Assembly</p>
<p><b>Recommendation 17</b></p>	<p>The Committee recommends that the definition of ‘corrupt conduct’, as set out in Part 3 of the NSW <i>Independent Commission Against Corruption Act 1988</i>, should form the definition of ‘corrupt conduct’ in the enabling legislation of an ACT Anti-Corruption and Integrity Commission.</p>	<p>7 What is corrupt conduct?  8 General nature of corrupt conduct</p>

<p><b>Recommendation 18</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission’s (ACIC) scope of conduct be focused on investigating matters where they involve serious or systemic corruption. While the Committee believes that the focus should necessarily be on serious and systemic corruption, any legislation should not be drafted in a way that would unduly limit the scope of an ACT ACIC.</p>	<p>93 Functions of the commission</p>
<p><b>Recommendation 19</b></p>	<p>The Committee recommends that the terms ‘serious’ and ‘systemic’ should each be defined in an ACT Anti-Corruption and Integrity Commission’s enabling legislation—as follows:</p> <ul style="list-style-type: none"> <li>(a) ‘serious corruption’ should be defined as corrupt conduct that is likely to threaten public confidence in the integrity of government; and</li> <li>(b) ‘systemic corruption’ should be defined as it is in the Australian Commission for Law Enforcement Integrity (ACLEI) statute—that is, as a pattern of corrupt conduct.</li> </ul>	<p>Dictionary</p>
<p><b>Recommendation 20</b></p>	<p>The Committee recommends that the ACT Government take advice as to whether the concept of ‘corrupt conduct’ adopted in the enabling legislation of an ACT Anti-Corruption and Integrity Commission is reflected in the terms of offences under the <i>Criminal Code 2002</i>. If it is not reflected, the Committee recommends that the Code should be amended so that it defines in statute the new standard or offence of ‘corrupt conduct’.</p>	<p>Not in Bill – Requires Government to seek advice</p>
<p><b>Recommendation 21</b></p>	<p>The Committee recommends that an investigation threshold of ‘reasonable suspicion’ (as per the Victorian <i>Independent Broad-based Anti-corruption Commission Act 2011</i>) of the occurrence of corrupt conduct be required for an ACT Anti-Corruption and Integrity Commission to commence an investigation.</p>	<p>29 Investigation by commission</p>

<b>Recommendation 22</b>	The Committee recommends that an ACT Anti-Corruption and Integrity Commission have the power to conduct preliminary investigations that do not include the use of coercive authority.	17 Commission may conduct preliminary inquiry
<b>Recommendation 23</b>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) must be visible, accessible and a contact point for:</p> <ul style="list-style-type: none"> <li>(a) citizens and public servants to make complaints and report corruption concerns;</li> <li>(b) referrals from within government (ACT Public Service);</li> <li>(c) referrals from other integrity stakeholders/bodies; and</li> <li>(d) referrals from other designated stakeholders.</li> </ul>	<p>11 Complaints about possible corrupt conduct  151 Cooperation with other entities (c)  153 Public authority may refer matter to commission  (b), (c), (d)</p>
<b>Recommendation 24</b>	The Committee recommends that complaints/referrals as received by an ACT Anti-Corruption and Integrity Commission (ACIC) are to be triaged using set criteria—such as: dismiss/refer/investigate. The triage criteria as detailed in the <i>Victorian Independent Broad-based Anti-Corruption Commission Act 2011</i> are a useful reference point.	<p>16 Commission to decide on next steps  17 Commission may conduct preliminary inquiry  18 Commission may dismiss certain matters  65 Commission may refer matters</p>
<b>Recommendation 25</b>	The Committee recommends that confidentiality requirements are to apply to all complaints and referrals as received by an ACT Anti-Corruption and Integrity Commission (ACIC) until such time as the Commission decides to conduct public hearings or report.	147 Secrecy

<p><b>Recommendation 26</b></p>	<p>The Committee recommends that mandatory reporting should apply within the ACT Public Service—such that Directors-General (and equivalents) have a duty to notify an ACT Anti-Corruption and Integrity Commission of any information or allegation that raises a corruption issue in his or her agency. Further, these requirements for mandatory reporting should be accompanied by the development of guidelines to assist those to whom mandatory reporting provisions apply.</p>	<p>12 Duty of principal officer of public authority to tell commission about corrupt conduct</p>
<p><b>Recommendation 27</b></p>	<p>The Committee recommends that where Directors-General (and equivalents) knowingly or wilfully fail to comply with an ACT Anti-Corruption and Integrity Commission’s duty to notify it of any information or allegation that raises a corruption issue in their agency, penalties should apply.</p>	<p>12 Duty of principal officer of public authority to tell commission about corrupt conduct</p>
<p><b>Recommendation 28</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) should be empowered to take steps to protect the safety of anyone providing assistance to it or anyone consequently at risk. Appropriate provisions should be put in place to ensure protection of complainants or persons making reports, for example, protection from reprisals and victimisation. The Committee considers that these protections would be consistent with protections in other legislation.</p>	<p>Division 3.3 Protections for complainants and reporters</p>
<p><b>Recommendation 29</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) as informed by its purpose, should have a role in fostering public confidence in an integrity context and bring an authoritative leadership, organising and coordinating focus to the ACT public sector and parliamentary integrity framework.</p>	<p>6 Objects of Act 29 Investigation by commission 93 Functions of the commission</p>

<p><b>Recommendation 30</b></p>	<p>The Committee recommends, as it concerns relationships with other integrity stakeholders, that an ACT Anti-Corruption and Integrity Commission’s (ACIC) enabling legislation, at a minimum, should:</p> <ul style="list-style-type: none"> <li>(a) provide for the ACIC to operate cooperatively with other integrity agencies, including those in other jurisdictions—for joint investigations or information sharing with these jurisdictions;</li> <li>(b) provide an appropriate framework for inter-agency coordination;</li> <li>(c) detail information sharing provisions to enable the exchange of relevant intelligence and documentation when an investigation is commenced;</li> <li>(d) provide for appropriate referral mechanisms which allow the ACIC to refer matters to other bodies, that fall outside its jurisdiction and scope of conduct;</li> <li>(e) provide the ACIC, in referring matters to other integrity stakeholders, with power to give directions and guidance with regard to the conduct of the matter and to require the agency to provide a report as to the investigation undertaken and its results;</li> <li>(f) include, where the ACIC refers a complaint or report concerning an MLA to the Commissioner for Standards to specify that the Commissioner be obligated (as opposed to compelled) to provide a report as to the outcome of the referral. The ACIC will be able to report publicly that it has made such a referral and this will leave the onus on the ACT Legislative Assembly to explain what has happened to the referral; and</li> <li>(g) include, where the ACIC refers a complaint or report concerning a member of the Judiciary to the Judicial Council, to specify that the Judicial Council be obligated (as opposed to compelled) to provide a report as to the outcome of the referral. The ACIC will be able to report publicly that it has made such a referral and this will leave the onus on the Judicial Council to explain what has happened to the referral.</li> </ul>	<ul style="list-style-type: none"> <li>16 Commission to decide on next steps</li> <li>17 Commission may conduct preliminary inquiry</li> <li>65 Commission may refer matters (d)</li> <li>66 Directions to relevant authority (e), (f), (g)</li> <li>67 Report to commission (e)</li> <li>151 Cooperation with other entities (a), (b)</li> <li>152 Cooperation with commission (a), (b)</li> <li>153 Public authority may refer matter to commission (b)</li> <li>154 Information sharing (c)</li> <li>155 Interjurisdictional arrangements (a)</li> </ul>
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<p><b>Recommendation 31</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission have own motion powers for the purposes of investigating, exposing and preventing corruption and fostering public confidence in the integrity of the ACT Government.</p>	<p>13 Own initiative investigations</p>
<p><b>Recommendation 32</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission have powers to:</p> <ul style="list-style-type: none"> <li>(a) require attendance by witnesses and compel answers to questions;</li> <li>(b) apply for warrants to search properties and seize evidence; and</li> <li>(c) apply for warrants to engage in covert tactics—including: listening devices and optical surveillance.</li> </ul>	<p>30 Power to obtain information  31 Power to obtain documents etc  81 Issue of search warrant  82 Powers under warrant  Part 1.3 <i>Crimes (Surveillance Devices) Act 2010</i> (c)</p>

<p><b>Recommendation 33</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission’s (ACIC) enabling legislation must contain mechanisms to ensure procedural fairness and to guard against its investigative and coercive powers being abused. This should include safeguards to avoid any unwarranted violation of personal rights of a person under investigation; and placing reasonable limits on the circumstances in which such powers can be exercised. This should include:</p> <ul style="list-style-type: none"> <li>(a) requiring that when witnesses are summonsed that they be given notice of the subject matter that will be discussed (provided it does not unduly prejudice the investigation);</li> <li>(b) ensuring that warrants that are issued for an ACIC investigation are issued by the Courts rather than the Commission itself;</li> <li>(c) any action to engage in covert tactics should be subject to obtaining a warrant through a judicial officer;</li> <li>(d) as it concerns engaging in a controlled operation—that detailed and prescriptive criteria should be included in any legislation which permits the ACIC to engage in these activities and that punitive measures should also be in place to protect against unauthorised controlled operations in connection with an ACIC’s work;</li> <li>(e) evidence gathered about unrelated third parties should form no part of an ACIC’s investigation (unless it is relevant to the investigation);</li> <li>(f) that evidence given by a suspect under compulsion cannot be used against that suspect in any subsequent prosecutions; and</li> <li>(g) if proceedings are proceedings for an indictable offence, an ACIC must, to the extent it thinks it is necessary to do so, ensure that the accused’s right to a fair trial is not prejudiced.</li> </ul>	<p>36 Commission may apply for arrest warrant (b)  37 Content of notice to appear (a)  46 Privilege as regards information, documents etc (f)  49 Concurrent court proceedings (g)  81 Issue of search warrant (b)  147 Secrecy (e)  Part 1.2 <i>Crimes (Controlled Operations) Act 2008</i> (d)  Part 1.3 <i>Crimes (Surveillance Devices) Act 2010</i> (b),  (c)</p>
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<b>Recommendation 34</b>	The Committee recommends that an ACT Anti-Corruption and Integrity Commission’s enabling legislation must provide that the protections afforded by legal professional privilege and privilege against self-incrimination respectively are waived in circumstances where the Commission uses its power to compel the production or giving of evidence.	46 Privilege as regards information, documents etc
<b>Recommendation 35</b>	The Committee recommends that an ACT Anti-Corruption and Integrity Commission is not bound by the rules of evidence and can inform itself on any matter in such a manner as it sees fit.	45 Evidence and procedure
<b>Recommendation 36</b>	The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) should not have the power:  (a) to engage in integrity testing; and (b) arm its officers.	155 Interjurisdictional arrangements
<b>Recommendation 37</b>	The Committee recommends, to ensure consistency with the powers of the Australian Commission for Law Enforcement Integrity (ACLEI), where it concerns conduct of ACT Policing officers, that an ACT Anti-Corruption and Integrity Commission have the power to engage in integrity testing.	155 Interjurisdictional arrangements
<b>Recommendation 38</b>	The Committee recommends that an ACT Anti-Corruption and Integrity Commission have the power to make findings of fact that corruption has occurred and that such a finding is not to be taken as a finding of guilt.	59 Findings, opinions and recommendations

<b>Recommendation 39</b>	The Committee recommends that an ACT Anti-Corruption and Integrity Commission’s enabling legislation must explicitly restrict the Commission from reaching formal determinations of law, including findings of criminal guilt, as this would usurp the judicial role and violate the separation of powers.	59 Findings, opinions and recommendations
<b>Recommendation 40</b>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission institute an Exoneration Protocol that can be accessed in circumstances where an individual is subsequently exonerated or cleared of any personal corruption—after a finding of corruption. The Protocol amongst other things should include:</p> <ul style="list-style-type: none"> <li>(a) a mechanism for public acknowledgement of the exoneration or clearance of any person if corruption is not found after the person’s reputation has been attacked publicly; and</li> <li>(b) the development of guidelines to govern such a process.</li> </ul>	157 Reputational repair protocol
<b>Recommendation 41</b>	The Committee recommends that an ACT Anti-Corruption and Integrity Commission should not have powers to make disciplinary decisions nor manage a mediation program.	59 Findings, opinions and recommendations
<b>Recommendation 42</b>	The Committee recommends that where an ACT Anti-Corruption and Integrity Commission refers a complaint or report to an integrity counterpart it should be informed (where applicable) of the outcome of any disciplinary proceedings.	67 Report to commission
<b>Recommendation 43</b>	The Committee recommends that an ACT Anti-Corruption and Integrity Commission should have the power to take action for, and where applicable take action against any contempt of the Commission (subject to parliamentary privilege).	51 Contempt of commission

<p><b>Recommendation 44</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission should not have the power to take action against a person for an act or omission where it is established that there was a reasonable explanation for the act or omission concerned.</p>	<p>51 Contempt of commission</p>
<p><b>Recommendation 45</b></p>	<p>The Committee recommends than an ACT Anti-Corruption and Integrity Commission be empowered to refer suspected instances of criminality to appropriate authorities, subject to existing legal restrictions against reliance on derivative evidence by those authorities.</p>	<p>65 Commission may refer matters 69 Brief of evidence</p>
<p><b>Recommendation 46</b></p>	<p>The Committee recommends that sufficient resources need to be provided to the ACT Office of the Director of Public Prosecutions to manage any increase in workload that may arise in connection with referrals from an ACT Anti-Corruption and Integrity Commission.</p>	<p>Not in Bill – Budget consideration</p>
<p><b>Recommendation 47</b></p>	<p>The Committee recommends that enabling legislation for an ACT Anti-Corruption and Integrity Commission include provisions that:</p> <ul style="list-style-type: none"> <li>(a) will regulate the manner in which evidence is gathered and shared with other agencies so as to improve the prospects of that material being used in subsequent prosecutions and to minimise any risk that such evidence will be misused; and</li> <li>(b) set out a mechanism for timely communication between the Commission and the ACT Director of Public Prosecutions to assist in pursuing matters of mutual interest.</li> </ul>	<p>45 Evidence and procedure</p>

<p><b>Recommendation 48</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) should have the power to publicly report the findings that result from any investigation, including findings of serious and systemic corruption and their relevant factual foundations. The power to report should include:</p> <ul style="list-style-type: none"> <li>(a) powers to report and bring to the attention of the Assembly and the public findings and recommendations in relation to specific investigations;</li> <li>(b) a statutory power of ‘follow-up’—the ability to report publicly on the Government’s compliance (or lack thereof) with past reports and recommendations;</li> <li>(c) power to make a special (confidential) report to the designated Assembly oversight committee—where the statutory head of the ACIC considers that the disclosure of the information in a report to the Assembly would, on balance be contrary to the public interest; and</li> <li>(d) power to decline to report a matter which, in the opinion of the statutory head of the ACIC, should remain confidential.</li> </ul>	<p>60 Reports on investigations (a), (c), (d)  61 Public interest considerations (c), (d)  62 Delivery and tabling of reports (a)  63 Confidential reports to be given to relevant committee (c)  64 Content of reports (a)  68 Further action by commission (b)</p>
<p><b>Recommendation 49</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) be provided with exceptions to public disclosure in the form of reporting where disclosure, based on a public interest test, would compromise an ongoing investigation, place an individual in danger, or prejudice an upcoming judicial proceeding.</p>	<p>61 Public interest considerations</p>
<p><b>Recommendation 50</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) have the power to deal with vexatious complainants. This power should take the form of the statutory head of the ACIC having discretion to not proceed where there are reasonable grounds to believe that a complaint is vexatious.</p>	<p>18 Commission may dismiss certain matters</p>

<b>Recommendation 51</b>	The Committee recommends that an ACT Anti-Corruption and Integrity Commission have the power to impose appropriate penalties on those complainants, who knowingly or wilfully make false or misleading claims or complaints.	11 Complaints about possible corrupt conduct
<b>Recommendation 52</b>	The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) should not be limited as to the timeframes around which former actions can be assessed; but is of the opinion that the operational focus of an ACT ACIC should largely be prospective and focused on current matters.	18 Commission may dismiss certain matters
<b>Recommendation 53</b>	The Committee recommends that an ACT Anti-Corruption and Integrity Commission’s enabling legislation refer to examinations (public and private) as opposed to hearings (public and private) to reinforce the investigatory proceeding that applies.	32 Commission may conduct examination
<b>Recommendation 54</b>	The Committee recommends that an ACT Anti-Corruption and Integrity Commission should have the power to hold public examinations. The decision on whether to hold public or private examinations should be informed by a public interest test.	33 Examination may be private

<p><b>Recommendation 55</b></p>	<p>The Committee recommends that when determining whether a public or private examination should be held, the following should be considered by an ACT Anti-Corruption and Integrity Commission in making that decision:</p> <ul style="list-style-type: none"> <li>(a) the benefit of exposing to the public, and making it aware, of corrupt conduct;</li> <li>(b) the seriousness of the allegation or complaint being investigated;</li> <li>(c) any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an examination); and</li> <li>(d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.</li> </ul>	<p>33 Examination may be private</p>
<p><b>Recommendation 56</b></p>	<p>The Committee recommends that the statutory head of an ACT Anti-Corruption and Integrity Commission, as it concerns a decision to hold a public examination be subject to a statutory requirement to ‘sign a statement explaining why the public interest outweighs the potential for prejudice or privacy infringements’, provide a copy to the person to be the subject of the examination, and give that person the opportunity to ‘make representations as to why the statement may be incorrect’.</p>	<p>33 Examination may be private</p>
<p><b>Recommendation 57</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission be required to conduct its examinations, especially those open to the public, in accordance with Lord Justice Salmon’s principles of fair procedure for public inquiries.</p>	<p>37 Content of notice to appear  38 Right of appearance  39 Right of representation  40 Examination and cross-examination  45 Evidence and procedure</p>
<p><b>Recommendation 58</b></p>	<p>The Committee recommends that the statutory head of an ACT Anti-Corruption and Integrity Commission be designated as an Officer of the Assembly.</p>	<p>94 Officer of the Legislative Assembly—  commissioner</p>



<p><b>Recommendation 59</b></p>	<p>The Committee recommends, as it concerns an ACT Anti-Corruption and Integrity Commission’s (ACIC) relationship with the ACT Legislative Assembly, that it be pursuant to the Officer of the Assembly framework and include the following requirements:</p> <ul style="list-style-type: none"> <li>(a) the ACIC to be oversighted by, and required to report to, an Assembly standing committee. The standing committee to be a committee established pursuant to Standing Order 215 (not Standing Order 16850). The Committee to be chaired by a nongovernment member, its membership to be representative of the Assembly and the secretary to the Committee should not be a statutory office holder;</li> <li>(b) involvement by the Assembly (a combination of the Assembly as a whole and the relevant Assembly standing committee) in the appointment and dismissal of the statutory head of the ACIC; and</li> <li>(c) involvement by the Assembly (a combination of the Assembly as a whole and the relevant Assembly standing committee) in the approval of the budget for the ACIC.</li> </ul>	<p>94 Officer of the Legislative Assembly—commissioner  100 Oath or affirmation of office—commissioner (b)  101 Disclosure of interests—commissioner (b)  102 Commissioner must avoid conflict of interest (b)  103 Resignation—commissioner (b)  104 Retirement—commissioner (b)  105 Suspension of commissioner (b)  106 Relevant Assembly committee to consider suspension of commissioner (b)  107 Ending of suspension of commissioner (b)  108 Ending appointment of commissioner (b)  109 Leave of absence—commissioner (b)  117 Oversight of commission by committee (a)  Dictionary</p>
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<p><b>Recommendation 60</b></p>	<p>The Committee recommends that the appointment of an Integrity Commissioner for an ACT Anti-Corruption and Integrity Commission should comply with the following requirements:</p> <ul style="list-style-type: none"> <li>(a) a single Commissioner model;</li> <li>(b) appointment as an independent statutory officer;</li> <li>(c) appointment for a fixed term between 5–7 years non-renewable;</li> <li>(d) appointment by the ACT Legislative Assembly—pursuant to the Officer of the Assembly framework;</li> <li>(e) to be qualified for appointment as Commissioner the person must be a former Judge of a Supreme Court or the Federal or High Court, or be a legal practitioner of not less than ten years standing;</li> <li>(f) no age restriction should apply; and</li> <li>(g) the Commissioner must not be a former or current Member of the Legislative Assembly, or any other Australian Parliament.</li> </ul>	<p>94 Officer of the Legislative Assembly—commissioner (d)  95 Independence (b)  96 Appointment of commissioner  98 Eligibility for appointment as commissioner (e), (g)  99 Term of appointment of commissioner (c)</p>
<p><b>Recommendation 61</b></p>	<p>The Committee recommends that the following additional requirements should be applied as it concerns the appointment of an Integrity Commissioner for an ACT Anti-Corruption and Integrity Commission:</p> <ul style="list-style-type: none"> <li>(a) the Commissioner to have a legislative duty to avoid actual or perceived conflicts of interest. A legislative direction may be appropriate for consequences to follow if the existence of a conflict of interest (real or perceived) is established;</li> <li>(b) that the appointee not have (or had) any political affiliations; and</li> <li>(c) appointments to the position should not be permitted from the ranks of existing ACT Government public servants or those who have been public servants in the ACT Public Service for a period of 10 years previously.</li> </ul>	<p>98 Eligibility for appointment as commissioner (b), (c)  102 Commissioner must avoid conflict of interest</p>

<p><b>Recommendation 62</b></p>	<p>The Committee recommends that the enabling legislation for an ACT Anti-Corruption and Integrity Commission should provide for the appointment of an acting commissioner to act as Commissioner during any period for which there is no person appointed as commissioner or the Commissioner is absent from, or unable to discharge, official duties. A consultative process with the ACT Legislative Assembly pursuant to the Officer of the Assembly framework should be used with regard to proposals for acting arrangements.</p>	<p>96 Appointment of commissioner 97 Acting commissioner</p>
<p><b>Recommendation 63</b></p>	<p>The Committee recommends that the enabling legislation for an ACT Anti-Corruption and Integrity Commission should provide for the suspension and removal of the Commissioner. The process should comply with the following requirements:</p> <ul style="list-style-type: none"> <li>(a) suspension and removal of the Commissioner to be pursuant to the Officer of the Assembly framework;</li> <li>(b) be in accordance with specified criteria—including: for misbehaviour; for physical or mental incapacity, if the incapacity substantially affects the exercise of the Commissioner’s functions; if the Commissioner becomes bankrupt or personally insolvent; or if the Commissioner has been guilty of corrupt conduct; and</li> <li>(c) the procedures for either suspension or removal of the Commissioner should ensure procedural fairness.</li> </ul>	<p>105 Suspension of commissioner 106 Relevant Assembly committee to consider suspension of commissioner 107 Ending of suspension of commissioner 108 Ending appointment of commissioner</p>
<p><b>Recommendation 64</b></p>	<p>The Committee recommends that funding arrangements for an ACT Anti-Corruption and Integrity Commission (ACIC) should be pursuant to the Officer of the Assembly framework.</p>	<p>94 Officer of the Legislative Assembly— commissioner</p>

<p><b>Recommendation 65</b></p>	<p>The Committee recommends that the accountability and oversight regime for an ACT Anti-Corruption and Integrity Commission (ACIC) must include:</p> <ul style="list-style-type: none"> <li>(a) oversight by a relevant Assembly standing committee—broad oversight role and broad mandate to ‘monitor and report’ on the performance and functions of an ACIC;</li> <li>(b) oversight by an inspector/inspectorate type mechanism—to receive and investigate complaints concerning any aspect of an ACIC’s operations or any conduct of its officers; and</li> <li>(c) oversight of the ACIC’s exceptional powers<sup>857</sup>—in the form of monitoring, review and report.</li> </ul>	<p>Part 7 Oversight of commission  117 Oversight of commission by committee  120 Functions of inspector (b), (c)  125 Review of commission’s performance (c)</p>
<p><b>Recommendation 66</b></p>	<p>The Committee recommends that a part-time Inspector be appointed to:</p> <ul style="list-style-type: none"> <li>(a) provide oversight as it concerns complaints relating to any aspect of an ACT Anti-Corruption and Integrity Commission’s (ACIC) operations or any conduct of its officers; and</li> <li>(b) to conduct a review of the operations (in the form of monitoring, review and report) of an ACT ACIC at a minimum every 12 months.</li> </ul>	<p>Part 7 Oversight of commission  119 Appointment of Inspector  120 Functions of inspector  125 Review of commission’s performance (b)</p>

<p><b>Recommendation 67</b></p>	<p>The Committee recommends that the eligibility criteria, and process for appointment, and dismissal, of a part-time Inspector for an ACT Anti-Corruption and Integrity Commission (ACIC) should mirror that which applies for the ACIC’s Integrity Commissioner.</p>	<p>Part 7 Oversight of commission  119 Appointment of Inspector  122 Acting inspector  123 Eligibility for appointment as inspector  124 Term of appointment of inspector  132 Oath or affirmation of office—inspector  133 Disclosure of interests—inspector  134 Inspector must avoid conflict of interest  135 Resignation—inspector  136 Retirement—inspector  137 Suspension of inspector—generally  138 Relevant Assembly committee to consider suspension of inspector  139 Ending of suspension of inspector  140 Ending of appointment of inspector  141 Leave of absence—inspector</p>
<p><b>Recommendation 68</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission should be subject to annual reporting requirements as per the <i>Annual Report (Government Agencies) Act 2004</i>. In addition, the annual report should contain, amongst other things, detailed information as it concerns matters referred and investigated by the ACIC during the reporting period. The reporting requirements as detailed in section 76 of the <i>Independent Commission Against Corruption Act 1988</i> (NSW) are instructive.</p>	<p>118 Annual reports of commission</p>
<p><b>Recommendation 69</b></p>	<p>The Committee recommends that the enabling legislation of an ACT Anti-Corruption and Integrity Commission must be reviewed every five years after commencement of the Act. The Report on the Review should be presented to the ACT Legislative Assembly within three months after the Review has started and be referred to the relevant Assembly oversight committee for inquiry and report.</p>	<p>159 Review of Act</p>

<p><b>Recommendation 70</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission’s specialised investigative capability services should be purchased from a state-based anticorruption body; and that an arrangement is in place that provides for these services on an as-needed basis.</p>	<p>111 Commission consultants and contractors</p>
<p><b>Recommendation 71</b></p>	<p>The Committee recommends that the statutory head of an ACT Anti-Corruption and Integrity Commission be permitted to engage persons on terms and conditions the statutory head sees fit. In any determination of the terms and conditions on which staff could be engaged, it would be appropriate for the statutory head to have regard to the general terms and conditions of employees of the ACT Public Service (ACTPS).</p>	<p>110 Employing staff of the commission 111 Commission consultants and contractors</p>
<p><b>Recommendation 72</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission’s (ACIC) enabling legislation should include a provision recognising that the staff assisting the statutory head of the Commission are not subject to the direction of any person other than the statutory head, or a person authorised by the statutory head in relation to matters dealing with investigative functions and duties performed pursuant to the ACIC’s enabling legislation.</p>	<p>114 Officer of commission not subject to direction from others</p>
<p><b>Recommendation 73</b></p>	<p>The Committee recommends that appointments to senior management positions within an ACT Anti-Corruption and Integrity Commission should not be permitted from the ranks of existing ACT Public Service (ACTPS) employees or those who have been public servants in the ACTPS for a period of 10 years previously. Further, appointment terms for these positions should be for fixed terms (with the possibility of extension).</p>	<p>112 Eligibility for appointment as officer of commission</p>

<p><b>Recommendation 74</b></p>	<p>The Committee recommends that the following employment provisions and special conditions should apply to staff working for an ACT Anti-Corruption and Integrity Commission (ACIC):</p> <ul style="list-style-type: none"> <li>(a) staff to have a legislative duty to avoid actual or perceived conflicts of interest. A legislative direction may be appropriate for consequences to follow if the existence of a conflict of interest (real or perceived) is established;</li> <li>(b) staff not to have (or had) any political affiliations;</li> <li>(c) former AFP or ACT Policing police officers are not eligible for appointment to positions within an ACT ACIC;</li> <li>(d) staff to be subject to certain confidentiality requirements. Current or former staff members must not record, divulge or communicate any information acquired in the course of carrying out their duties, except in the performance of those duties; and</li> <li>(e) eligibility for employment to be subject to security clearance/assessments.</li> </ul>	<p>110 Employing staff of the commission (a)  112 Eligibility for appointment as officer of commission (b), (c)  113 Conflict of interest—consultants and contractors (a)  147 Secrecy (d)</p>
<p><b>Recommendation 75</b></p>	<p>The Committee recommends that further work be undertaken to identify appropriate exemptions for an ACT Anti-Corruption and Integrity Commission from the operation of the <i>Privacy Act 1988</i>.</p>	<p>Part 1.5 <i>Information Privacy Act 2014</i></p>
<p><b>Recommendation 76</b></p>	<p>The Committee recommends that an ACT Anti-Corruption and Integrity Commission be required, in consultation with the Office of the Privacy Commissioner, to develop and publish information handling guidelines.</p>	<p>149 Information handling guidelines</p>
<p><b>Recommendation 77</b></p>	<p>The Committee recommends that further work be undertaken to identify appropriate exemptions for an ACT Anti-Corruption and Integrity Commission (ACIC) from the operation of the <i>Freedom of Information Act 1989</i>.</p>	<p>Part 1.4 <i>Freedom of Information Act 2016</i></p>

<p><b>Recommendation 78</b></p>	<p>The Committee recommends that the ACT Government appoint an independent person to conduct a statutory review of the <i>Public Interest Disclosure Act 2012</i> (the PID Act). The Review, amongst other things, should consider:</p> <ul style="list-style-type: none"> <li>(a) any potential conflict of interest (real or perceived) as it concerns decision makers and disclosure officers under the PID Act;</li> <li>(b) the findings of the Moss Review examining the operation of the <i>Commonwealth Public Interest Disclosure Act 2013</i> as it concerns the strengthening of that legislation to achieve the Act's integrity and accountability aims;</li> <li>(c) the matters raised in submission No. 3 (as detailed in paragraph 3.162) to the Inquiry as it concerns the PID Act;</li> <li>(d) application of the PID Act to any future ACT Anti-Corruption and Integrity Commission (ACIC)—in particular, its articulation with any protected disclosure provisions that may apply to any informants providing assistance to the ACIC or anyone consequently at risk; and</li> <li>(e) the suitability of an ACT ACIC for the purposes of receiving disclosures pursuant to the PID Act.</li> </ul>	<p>Part 1.7 <i>Public Interest Disclosure Act 2012</i></p>
<p><b>Recommendation 79</b></p>	<p>The Committee recommends that the ACT Government appoint an independent reviewer to examine appointment terms for statutory officer holders in the ACT and make recommendations to strengthen integrity as it concerns appointment of these office holders.</p>	<p>151 Cooperation with other entities</p>