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ACT Policing Submission

Select Committee on the establishment of an ACT Independent Integrity Commission

May 2017

Submission by ACT Policing

A. Introduction

1. ACT Policing welcomes the opportunity to make a submission in relation to the proposed Independent Integrity Commission for the ACT.
2. For the Committee's consideration, ACT Policing and the wider AFP have long established robust integrity frameworks and internal and external oversight mechanisms to detect, disrupt and deter corruption.
3. ACT Policing and the broader AFP also have past experience in the provision and outsourcing of investigative resources to other investigative bodies, including those with a focus on integrity assurance.

Contractual arrangement between ACT Government and the AFP for ACT Policing

4. The legislative framework which governs the provision of police services in the Australian Capital Territory (ACT) gives rise to a distribution of responsibilities between the Australian Federal Police (AFP) and the Territory, represented by the Minister for Police and Emergency Services (Minister) and supported by the Justice and Community Safety Directorate (Directorate).
5. Under the *Australian Federal Police Act 1979 (Cth)* (AFP Act), the Commonwealth Minister responsible for the AFP and the Territory Minister responsible for policing on behalf of the Territory, can enter into arrangements for the provision of police services for the ACT (section 8(1)(a) of the AFP Act) and for the doing of anything incidental or conducive to the provision of those services (section 8(2b) of the AFP Act). Having entered into an arrangement and subject to its terms, the functions of AFP members extend to the provision of police services in relation to the ACT (section 8(1)(a) of the AFP Act) and anything incidental or conducive to the provision of those services (section 8(1)(c) of the AFP Act). When a member is performing those functions in the ACT they have the powers and duties conferred or imposed on a constable or on an officer of police by or under any law of the Territory (including the common law) (section 9(1)(b) of the AFP Act). Under the *Human Rights Act 2004*, a member is expected to act consistently with human rights when exercising a function under a Territory law (section 40) and any power or function conferred on a member by a Territory law is to be read consistently with human rights as far as possible consistent with the purpose of that law (section 30).
6. Under the AFP Act, members remain officers of the Commonwealth and the AFP Commissioner retains responsibility for the general administration, and control of the operations of the AFP (section 37 of the AFP Act).
7. As a consequence of these administrative arrangements, ACT Policing members are subject to the same integrity framework as the rest of the AFP, including AFP Professional Standards, the Commonwealth Ombudsman, and the Australian Commission for Law Enforcement Integrity.

B. Internal anti-corruption processes

8. In 2007, the AFP (inclusive of ACT Policing) implemented an Integrity Framework (the Framework) as a result of recommendations from the Fisher Review. All AFP appointees are subject to the Framework, which encompasses four pillars: prevention, detection, investigation/response and continuous improvement. The Framework has been recognised as the benchmark for Australian Government agencies to maintain the integrity of people, information and physical premises. AFP Professional Standards (PRS) provides ongoing advice and support to other agencies in strengthening their integrity

frameworks. PRS is staffed by experienced investigators drawn from all areas of the AFP including ACT Policing.

9. The AFP's internal integrity program is managed by PRS. Part V of the AFP Act provides the legislative framework for professional standards and complaint management, and prescribes the process for recording and dealing with AFP conduct and practice issues related to the AFP. An AFP conduct issue relates to whether an AFP appointee has engaged in conduct that contravenes AFP professional standards or engaged in corrupt conduct.
10. Minor misconduct issues are generally dealt with managerially in the workplace, while serious misconduct is managed by PRS investigations. All corruption matters relating to AFP appointees are referred to the Australian Commission for Law Enforcement Integrity (ACLEI), and may be investigated jointly with AFP, solely by ACLEI or as an AFP only investigation.
11. Under Part V of the *Australian Federal Police Act 1979 (Cth)*, the AFP possesses a number of coercive powers. These powers – which may only be used in relation to AFP Appointees – are instrumental in revealing general misconduct and/or corruption-related matters. These powers are effective as they provide AFP investigators an opportunity to obtain all information relevant to an employee or incident, and support the identification and mitigation of integrity risks.
12. The strength of the AFP's processes and focus on effective prevention measures to increase AFP employee awareness of their responsibilities, reporting obligations and detection strategies, including mandatory drug testing, has been confirmed through regular external scrutiny.
13. The Commonwealth Ombudsman provides independent oversight of the AFP with regard to the application of procedural fairness, investigation standards and assurance to government about integrity activities conducted by the AFP. Recent reviews by the Commonwealth Ombudsman indicate the AFP continues to meet required standards. The AFP is a member of the ACLEI Community of Practice for Corruption Prevention which promotes anti-corruption strategies and knowledge sharing, and also engages with police Professional Standards counterparts to share best practice information.
14. The AFP continually reviews its integrity framework to ensure currency in the evolving policing context. In early 2016, the AFP undertook an analysis of integrity frameworks in comparable domestic and international police jurisdictions. As a key stakeholder in the AFP integrity and anti-corruption policy, the AFP consulted ACLEI as part of the review process. The findings indicate the existing AFP framework compares favourably, is functioning effectively and is robust, which is consistent with assessments made by the Commonwealth Ombudsman since the implementation of the Fisher Review. However, with the complexity of the changing law enforcement environment, proactively engaging intelligence-led, risk-based strategies with regard to deterrence, detection and disruption of misconduct and corruption are pivotal.
15. In particular, the AFP has a strong focus on the prevention aspects of integrity assurance, through ongoing education and awareness programs across the organisation. There is a demonstrated demand, including from overseas jurisdictions, for places on the AFP's Inter-Agency Integrity Program delivered by PRS. A key element of the AFP's prevention strategy is to ensure integrity awareness is an ongoing aspect of employee development. Key messages are included in recruit and induction training, prior to overseas deployment and within AFP leadership and training modules. This consistent messaging reinforces ethical decision making and employee integrity obligations across the AFP, including ACT Policing.

16. ACT Policing is subject to other legislative instruments including the *Public Interest Disclosure Act 2013 (Cth)* and the *Public Governance, Performance & Accountability Act 2013 (Cth)*. These instruments offer additional protections for 'whistle blowers' and provides for the prosecution of matters relating to corruption involving fraud or inappropriate use of public resources.

Legislative Measures

17. The Australian Government's anti-corruption framework is supported by robust legislative measures. Importantly:

- the *Criminal Code 1995 (Cth)* criminalises a range of corrupt behaviours directed at and committed by Commonwealth entities and foreign public officials
- the *Crimes (Superannuation Benefits) Act 1992 (Cth)* enables the forfeiture and recovery of employer- funded superannuation benefits from Australian Government employees who have been convicted of a corruption offence(s) and sentenced to more than twelve months imprisonment
- the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* provides financial intelligence to revenue and law enforcement agencies
- the *Law Enforcement Integrity Commissioner Act 2006 (Cth)* establishes the office of the Integrity Commissioner and the Australian Commission for Law Enforcement Integrity to facilitate the prevention, detection, and investigation of corrupt conduct in law enforcement agencies
- the *Public Governance, Performance and Accountability Act 2013 (Cth)* (PGPA Act) imposes requirements regarding the governance, performance and accountability of, and the use and management of, public resources by the Commonwealth
- the *Public Interest Disclosure Act 2013 (PID Act)* facilitates the disclosure and investigation of wrongdoing and maladministration in the Commonwealth public sector
- the *Public Service Act 1999 (Cth)* contains the APS Values and Code of Conduct, which bind APS employees and sets out required behaviours with respect to misconduct (including corruption), and
- The *Fraud Rule (s 10 of the Public Governance, Performance and Accountability Rule 2014)* sets out the key principles of fraud control under the PGPA Act framework and binds all entities.

C. External oversight

ACLEI

18. The Australian Commission for Law Enforcement Integrity (ACLEI) assists the Integrity Commissioner (IC) to provide independent assurance to government about the integrity of prescribed law enforcement agencies and their staff, by detecting and investigating corruption issues. ACLEI also collects intelligence about corruption in relevant agencies, and has a role in preventing corruption.

19. AFP Professional Standards refer all allegations of corruption involving AFP appointees to ACLEI. The ACLEI IC will then determine how the allegation is to be investigated. The IC may advise the AFP that the matter is to be investigated as an ACLEI only investigation, an AFP only investigation with or without ACLEI oversight or a joint ACLEI and AFP investigation. Joint investigations allow for more efficient and effective corruption investigations, promote a more efficient turnaround and timeliness of investigations and ensure any risk to the AFP is properly appreciated and appropriately managed. At times, PRS members are embedded with ACLEI to undertake these investigations as part of a joint taskforce arrangement.
20. PRS has a Joint Agency Agreement with ACLEI that allows for the placement of an AFP senior investigator within ACLEI in a liaison officer role to manage the day to day relationship between the agencies and offer operational support as required. PRS will also soon have an AFP member seconded permanently ACLEI whose role will be to investigate allegations of corrupt conduct in the AFP or where there is an AFP interest in a complex operating environment involving inter-agency and inter-jurisdiction investigations.
21. The AFP (including ACT Policing) are subject to the jurisdiction of the *Law Enforcement Integrity Commission Act*. The *Law Enforcement Integrity Commissioner Regulations 2017* specifically outline the interest of the ACT Government in assuring the integrity of its contracted provider of policing services, when that provider is the AFP.
22. Accordingly, Regulation 18 establishes a mechanism for the relevant ACT Government Minister to be informed about ACLEI's activities.

Regulation 18 - Requirement to give information or reports

- *Giving information or reports in specified circumstances*

(1) For the purposes of subsection 224(2) of the Act, information or reports that are required to be given under a provision of the Act prescribed in subsection (2) are also to be given to the persons prescribed in subsection (3) if:

(a) the corruption issue to which the prescribed provision relates is a relevant corruption issue in relation to the Australian Capital Territory or an External Territory; and

(b) the Integrity Commissioner:

(i) is investigating the corruption issue to which the prescribed provision relates; or

(ii) is managing or overseeing the investigation by a law enforcement agency of the corruption issue to which the prescribed provision relates.

- *Prescribed provisions of the Act*

(2) The following provisions of the Act are prescribed:

(a) section 33;

(b) subsection 35(4);

(c) subsection 36(6);

(d) subsection 39(4);

(e) subsection 40(6);

- (f) subsection 52(1);
- (g) paragraph 55(1)(a);
- (h) subsection 65(1);
- (i) paragraph 74(a), to the extent it relates to a corruption issue;
- (j) subsection 144(6);
- (k) subsection 145(6);
- (l) subsection 147(2), to the extent it relates to a corruption issue.

- Prescribed persons

(3) The following persons are prescribed:

- (a) for information or reports relating to a relevant corruption issue in relation to the Australian Capital Territory—the Minister, within the meaning of the Australian Capital Territory (Self-Government) Act 1988, who is responsible for exercising the power of the Australian Capital Territory Executive in relation to police matters;
- (b) for information or reports relating to a relevant corruption issue in relation to an External Territory—the Administrator of the External Territory.

- Definitions

(4) A corruption issue is a **relevant corruption issue** in relation to the Australian Capital Territory or an External Territory if:

- (a) the corruption issue relates to corrupt conduct of a person while the person was a staff member of the AFP whose duties included providing police services in relation to the Australian Capital Territory or an External Territory under section 8 of the Australian Federal Police Act 1979 (**AFP Territory police services**); or
- (b) the corruption issue relates to corrupt conduct of a person while the person is a staff member of the AFP whose duties include AFP Territory police services; or
- (c) the corruption issue relates to corrupt conduct that:
 - (i) is the conduct of a person who, at the time the corruption issue is being investigated, is a staff member of the AFP whose duties include AFP Territory police services; and
 - (ii) in the opinion of the Integrity Commissioner, affects, or is likely to affect, the person's performance of the police service functions of the agency.

23. This arrangement has arisen in the absence of an ACT Independent Integrity Commission. This system has the advantage of ensuring that the possibility of corrupt networks traversing different parts of the AFP are able to be dealt with in a seamless way.

Commonwealth Ombudsman

24. The Commonwealth Ombudsman may investigate complaints from people who believe they have been treated unfairly or unreasonably by an Australian Government department/ agency or prescribed private sector organisation. ACT Policing fall within the oversight of the Ombudsman.
25. The Ombudsman shares oversight of the *Public Interest Disclosure Act 2013* (PID Act), which seeks to encourage public officials to disclose suspected wrongdoing in the Commonwealth public sector. The Ombudsman is responsible for overseeing approximately 20 law enforcement agencies and their use of certain covert and intrusive powers. For example, ACT Policing has reporting obligations to the Ombudsman in relation to surveillance devices, telecommunications intercepts, controlled operations and our custodial facilities (practices, procedures and standards of care). The Ombudsman's complaints handling, investigation, inspection and PID Scheme oversight work provides a window into possible maladministration and corruption risk across government.

D. AFP Investigative capabilities supporting integrity bodies

26. The AFP possesses highly skilled investigators competent in a range of disciplines, ranging from both minor and serious community policing criminal investigations, to combating complex fraud, drug, cyber and terrorist criminal activity. Those investigators are inevitably sought after by external bodies on a secondment or multi-agency basis, such the National Anti-Gang Taskforce, the Australian Border Force, and integrity bodies. The committee may wish to consider this capability in light of any future requirement of an Independent Integrity Commission.
27. The interaction between the AFP and its counterparts in state and territory law enforcement agencies (including ACT Policing) extends to collaborating on the development of innovative approaches to the prevention and detection of corruption, and to promote ways of improving integrity compliance.

E. ACT corruption matters

28. All ACT Public Service organisations, including ACT Policing, have current integrity mechanisms in existence and report to various bodies in relation to corruption. The Committee may wish to consider these current mechanisms and their efficacy, to ascertain how they would operate in line with the introduction of an Independent Integrity Commission.

F. Conclusion

29. The AFP has significant and robust internal and external integrity mechanisms which arguably diminish the need for ACT Policing to also be subject to ACT Independent Integrity Commission oversight. Consequently, rather than create duplication and a requirement for de-confliction with other integrity bodies, ACT Policing would propose the current framework as it applied to ACT Policing and the broader AFP is adequate.
30. Options which the Committee may wish to consider if establishing an ACT Independent Integrity Commission include:
- establishing a dedicated investigative capability within the Integrity Commission which may take some years to mature; or
 - developing an arrangement to allow the purchase of investigative services from ACT Policing, or the AFP.
31. Should the establishment of an ACT Independent Integrity Commission be supported, ACT Policing would recommend consideration be given to drawing on the capabilities of ACT Policing for the Commission's investigative arm. The purchase of investigative services from ACTP would be an efficient and effective means to establish and maintain a scalable and flexible investigative capability. Such an arrangement would be consistent with the broader AFP's working relationship with ACLEI. The establishment of a new and independent capability would incur significant costs to the ACTG in terms of initial establishment and ongoing training and development.
32. The additional benefit of drawing on ACT Policing capability would be that those members would remain under the scrutiny of the existing integrity frameworks while conducting integrity investigations on behalf of an ACT Independent Integrity Commission.