



actlawsociety

19 May 2017

The Secretary
Select Committee on an Independent Integrity Commission
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

via email: committees@parliament.act.gov.au

	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
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Dear Secretary,

INQUIRY INTO THE ESTABLISHMENT OF AN INDEPENDENT INTEGRITY COMMISSION FOR THE ACT

The Law Society of the Australian Capital Territory (Society) welcomes the opportunity to respond to the inquiry by the Select Committee on an Independent Integrity Commission into the establishment of an independent integrity commission for the ACT.

The Society is the peak professional association that supports and represents the interests of the members of the legal profession in the ACT. The Society maintains professional standards and ethics as well as providing public comment and promoting discussion regarding law reform and issues affecting the legal profession. The Society currently represents over 2,400 legal practitioners within the ACT.

The Society supports in principle the establishment of an Independent Integrity Commission (IIC) in the ACT. In doing so, the Society acknowledges the long-standing and ongoing debate within the ACT regarding the establishment of an anti-corruption body, and the fact that all other Australian States and Territories have now established, or are in the process of establishing, anti-corruption bodies within their jurisdictions. The underlying rationale of such bodies, namely open and accountable public administration and the maintenance of public confidence in the integrity of public administration and officials, is a valuable objective and is supported by the Society.

The ACT is in a fortunate position in that it can now draw on the experience of other jurisdictions in establishing and operating its IIC and select those aspects of the various schemes that function most effectively. In considering the functions, operations and powers of the IIC, the Society believes it is vital that an appropriate balance is achieved between the effective operation of the Commission and the adequate protection of the individuals who are subject to IIC processes.

The Society would make the following comments in relation to specific aspects of the proposed ACT IIC:

- It is appropriate that the jurisdiction of the IIC include ACT public sector agencies, public officials, and members of the Legislative Assembly. In addition, careful consideration should be given to extending the reach of the IIC to entities who are contracted to

undertake government work. The Society notes that as AFP officers, ACT Police are subject to the AFP's Professional Standards unit and judicial officers are subject to the recently formed Judicial Council. The Society notes that protocols between the IIC and other relevant regulatory / investigative bodies (such as the Judicial Council and other agencies with an oversight role including the ACT Auditor-General) would need to be developed and agreed in order to regulate interaction between the bodies and to avoid duplication of effort.

- Similarly, it is appropriate that the jurisdiction of the IIC not be confined to criminal offences, but extend to a broader range of undesirable conduct, including matters where there exists a reasonable suspicion of corruption, conflicts of interest and/or undue influence.
- In addition to the IIC's investigative role, it is proper that the body also exercise a wider educative, training, and advisory role.
- The IIC should be able to act on its own motion as well as responding to referrals.
- As a general rule, matters considered by the IIC should be managed privately, but the IIC should have the power to conduct public hearings in specified circumstances. The Society notes that a number of jurisdictions prescribe a public interest test to provide guidance as to when it is appropriate to hold public (as opposed to private) hearings. It is important that the IIC have sufficient flexibility to proactively balance the public interest in disclosing and exposing corrupt behaviour with the potential disproportionate damage to reputation (including the public's trust in government bodies).
- It is appropriate that the IIC have sufficient powers (such as the power to require attendance and compel answers) in order to facilitate the efficient investigation of matters. However, it is equally important that such powers be proportionate and tempered by appropriate controls. For example, the Society believes it is most appropriate that the IIC be directed to the Courts to apply for warrants of surveillance, entry, and search and seizure, and not be empowered to issue search warrants in its own right. Similarly, (and particularly given the ACT's position as a human rights jurisdiction), it is important that individuals subject to investigation by the IIC retain fundamental rights (such as the privilege against self-incrimination) and be afforded procedural fairness and natural justice. The Society presumes that individuals subject to IIC findings would also have available to them rights of review in an appropriate forum.
- The IIC should be an investigative (as opposed to a prosecutorial) body. If the IIC considers that further action is required at the conclusion of an investigation, it should refer the matter to the appropriate agency (such as the ACT Director of Public Prosecutions) for action and/or prosecution. The Society recognises that this will necessarily impact the manner in which the IIC will gather and test evidence during the investigative phase.
- It is crucial that the IIC be appropriately independent and suitably resourced to enable it to conduct its investigations as well as to perform its training and advisory functions. The Society notes that the establishment of such a body necessarily requires the Government to commit significant ongoing funding, but believes that under-resourcing would severely hamper the ability of the IIC to perform its independent oversight role.

- While noting the requirement for the IIC to be strongly independent, the operations of the IIC should nonetheless be subject to a suitable reporting regime. Reporting (through the Legislative Assembly and its committees) will ensure that the operations of the IIC remain consistent with its jurisdiction conferred by statute and suitably transparent to the general public.

The Society has had the benefit of reading the submissions to the Committee prepared by the ACT Bar Association, and endorses those remarks.

It is hoped that the comments outlined above are of assistance to the Committee. The Society would be pleased to comment further on any specific draft legislation developed through this consultative process.

Yours sincerely,

¹ Sarah Avery
President

