



**Submission to the
Select Committee on an Independent Integrity Commission**

by the

Ethics and Integrity Adviser to Members of the ACT Legislative Assembly

1. Integrity in public administration should be a resolute goal in the Australian Capital Territory as much as in any other representative democracy.
2. There is no evidence of which I am aware that would suggest that public administration in the ACT is blighted by any widespread or systemic corruption or want of integrity.
3. Nevertheless, one would be exceptionally naïve to believe that this meant that there was now, or would be in the future, no undetected corruption or integrity failure in ACT public administration.
4. There are in the Territory numerous institutions and mechanisms that do and should play an important part, directly or indirectly, in safeguarding integrity in ACT public administration. These extend far beyond the obvious role of the Australian Federal Police, the Director of Public Prosecutions, the ACT Courts and the *Criminal Code 2002* and other relevant legislation. They include, for example, proceedings on the floor and in the Committees of the Legislative Assembly, rights to judicial and tribunal review, the Auditor-General, the Ombudsman, freedom of information and public interest disclosure legislation, the Human Rights Commission, the Commissioner for Standards and the Ethics and Integrity Adviser in the Legislative Assembly, the Public Sector Standards Commissioner, and codes of conduct applicable to Members and staff of the Assembly and within the ACT Public Service.
5. There is no evidence of which I am aware that would suggest that this established matrix of institutions and mechanisms is beset by systemic or major failures.
6. Nevertheless, one would be exceptionally naïve to believe that the current matrix could not be supplemented or enhanced to better safeguard integrity in ACT public administration.
7. For these reasons, I would support the creation of an Independent Integrity Commission in the ACT provided that it:
 - 7.1. was truly independent;
 - 7.2. optimised the benefits of existing institutions and mechanisms;
 - 7.3. avoided unwarranted violation of personal rights; and
 - 7.4. was reasonably affordable.
8. In my view, such a Commission would:
 - 8.1. be established by an Act of the Assembly;

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8.2. be headed by a Commissioner appointed by and accountable to the Assembly (through a standing committee established under the Commission Act), rather than to the Executive;

8.3. be led by a Commissioner of sufficient stature to warrant the respect and cooperation of all levels of the ACT administration;

8.4. have jurisdiction in respect of all "public office holders":

8.4.1. whether in the Assembly, the judiciary or the public service broadly defined;

8.4.2. whether full- or part-time;

8.4.3. whether appointed under statute, employed or engaged under contract;

8.4.4. Whether remunerated or honorary; or

8.4.5. to the extent that they may exercise powers conferred under a statutory licence,

but would not otherwise have jurisdiction in respect of actions taken in the private sector;
and

8.5. be supported by such staff as might be appointed by the Commissioner within resources appropriated by the Assembly and in respect of whom the Commissioner would have "head of service" powers comparable to those under the Public Sector Management Act.

9. The Commission would have the following roles:

9.1. to promote recognition, both publicly and amongst holders of public office, of the need for integrity in ACT public administration;

9.2. to periodically review and report to the Assembly on the effectiveness of existing ACT institutions and mechanisms insofar as they impact on integrity in ACT public administration;

9.3. to develop and publish recommended best practice standards for integrity in ACT public administration;

9.4. to provide integrity advice to those ACT public office holders who seek it;

9.5. to act as a "clearing house" for the lodgement of complaints about a lack of integrity in ACT public administration – complaints so lodged would then be referred to the ACT institution best equipped to investigate and resolve those complaints;

9.6. to refer to other ACT institutions of its own motion concerns it may have about a lack of integrity in ACT public administration;

9.7. to monitor the investigation and resolution of matters so referred and of complaints lodged directly with other institutions;

9.8. to itself investigate and seek the resolution of complaints where:

9.8.1. there is no existing institution with relevant jurisdiction or investigatory power; or

9.8.2. where the Commission is satisfied that a relevant existing institution is not addressing a complaint as effectively or strenuously as it should; and

9.9. to report to the Assembly at least annually.

10. The Commission's role would thus be to supplement and enhance the effectiveness of existing ACT institutions and mechanisms, rather than to replace them. The Commission would not have a power of direction over other institutions, but it would be able to make recommendations to them or, in a worst case, report to the Assembly on perceived shortcomings in the performance of their integrity role.
11. Investigation by the Commission itself would be a "last resort". Where a complaint fell within the jurisdiction of an existing institution, the clear expectation would be that it would be handled by that other institution in the first instance, and that the Commission would step in only where that other was not addressing the complaint as effectively or strenuously as the Commission believed it should.
12. In those cases where Commission investigation was warranted, the Commission would have power to:
 - 12.1. apply to a Judge of the Supreme Court for a search warrant;
 - 12.2. summon a person to appear before it to give evidence and/or produce documents;
 - 12.3. require a person so summoned to give evidence on oath or affirmation;
 - 12.4. require a person so summoned to answer questions put to them by the Commission;
and
 - 12.5. direct a person to not discuss their summons, attendance or evidence with other persons.
13. Failure of a person to attend when summoned, or to answer questions or produce documents when so required, would constitute offences, as would the giving of false or misleading evidence or the breach of a Commission direction. A summoned person would not be excused from answering questions or producing documents on the grounds that to do so would tend to incriminate them, but evidence so given would not be able to be used in criminal proceedings other than for an offence against the Act establishing the Commission. Persons appearing before the Commission, whether under summons or otherwise, would be entitled to be represented by a legal practitioner or, with the agreement of the Commission, by another person of their choosing.
14. The Commission would not be prohibited from referring to other institutions or itself investigating actions occurring prior to the coming into effect of the Commission Act. However, while retrospective examination of past events would be permitted, the sanction applicable for any adverse action found would be that applicable at the time the action was taken.
15. A clearly contentious issue would be whether or not the Commission was to be empowered to conduct public hearings. I perceive no objection to public hearings where their purpose fell within paragraphs 9.1-9.3 above. However, I remain to be convinced that public hearings are

necessary to ensure the effectiveness of Commission investigation of complaints or allegations.

16. Such hearings, involving exercise of the Commission's coercive powers, risk unwarranted damage to the reputation and livelihood of potentially innocent persons who are the subject of such complaint or allegation, or who may be subjected to attack by those defending those accused. Moreover, members of the public who may have relevant knowledge may be more often discouraged from disclosing that information in a highly public forum than they may be encouraged to come forward with it.
17. In my view, at this stage the better course would be that the presumption of innocence should prevail and investigation should remain "behind closed doors" unless and until criminal charges are laid in a court of competent jurisdiction.
18. Where the Commission was satisfied, after an investigation by it, that the evidence warranted the laying of criminal charges, it would not undertake prosecution itself but would be required to refer all evidence (whether accusatory or exculpatory) to the Director of Public Prosecutions who would retain his or her usual discretion as to whether or not to lay charges and as to the conduct of any trial.
19. Where the Commission was satisfied, after an investigation by it, that evidence gathered by it warranted some other action (for example, disciplinary action under the Public Sector Management Act or the revocation of a statutory licence), the Commission would be permitted to convey that evidence to the relevant institution empowered to take that action. It would then be up to that other institution to comply with the principles of procedural fairness and other obligations in respect of the taking of that other action.
20. In my view, the proposals set out above would deliver an Independent Integrity Commission that:
 - 20.1. was truly independent;
 - 20.2. built on and optimised the benefits of the existing matrix of ACT institutions and mechanisms that already play a role in safeguarding integrity in ACT public administration;
 - 20.3. was appropriately empowered to perform its functions without unwarranted violation of personal rights; and
 - 20.4. should require only modest funding.

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for the Australian Capital Territory

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