



# Elizabeth Lee MLA

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Shadow Treasurer

Shadow Minister for Housing Affordability and Choice

Shadow Minister for Climate Action, Energy and Emissions Reduction

Shadow Minister for Economic Development, Tourism and Major Projects

Mr Peter Cain MLA

Chair

Justice and Community Safety Committee (Legislative Scrutiny Role)

ACT Legislative Assembly

Canberra ACT 2601

By email: [scrutiny@parliament.act.gov.au](mailto:scrutiny@parliament.act.gov.au)

Dear Mr Cain,

## Response to Scrutiny Report 23

I write in response to the committee's comments in Scrutiny Report 23 regarding the *Integrity Commission Amendment Bill 2022 (No. 2)* (the Bill).

In my view the Bill satisfies the preconditions for the ACT Integrity Commission (the Commission) to be declared an eligible authority per Part 2-5, Section 35 of the *Telecommunications (Interception and Access) Act 1979 (Cth)* (the TIA Act).

With regard to the committee's request for further information on the Bill's potential limitation of certain human rights, the Bill may limit a person's or persons' human rights in criminal proceedings under Section 22 of the *Human Rights Act 2004* (HRA Act). I draw to the committee's attention the importance of the inspector's role in safeguarding the privacy and human rights of all persons, including those who may be subject to telecommunications interception warrants, making the proposed penalties for failing to comply with inspection requirements, or unlawful disclosure of intercepted material, necessary and proportionate measures, particularly due to their likely deterrent effect. Further, they are both clearly articulated, narrowly targeted measures that would apply only in rare and exceptional cases.

As a corollary of the passage of the Bill, and subsequent recognition under the TIA Act, there is the potential for a person's or persons' right to privacy to be affected as defined in Section 12 under the HRA Act. However, this would only be the case if telecommunications interception were undertaken unlawfully or arbitrarily. I am satisfied that the warrant application and issuance process is rigorous, and the inspection powers and reporting requirements for various parties in the Bill and the TIA Act contain sufficient checks and balances to safeguard this right and ensure any interceptions are undertaken lawfully.

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The TIA Act – with which the ACT Integrity Commission must comply should it be recognised as an eligible authority – contains stringent requirements for the consideration and preservation of privacy. For example, Part 2-5, Section 46, dealing with the issue of warrants, specifies that the Judge or AAT member issuing the warrant shall have regard to the degree to which a person's or persons' privacy would be interfered with by telecommunications interception, the gravity of the conduct under investigation, and the relevance of intercepted material to an investigation, among other criteria.

Part 5-3, Section 189, specifies that the Commonwealth Minister must take into account the privacy of users of telecommunications systems when making a determination in relation to interception capabilities. And Part 4-1, Section 180F, defines the criteria that must be considered by an authorised officer prior to legally sharing intercepted material to an enforcement authority, including the effect on the privacy of a person or persons as a result of disclosure.

I would also bring to the committee's attention the length of time eligible authorities of other Australian states and territories recognised under the TIA Act have been in compliance with the TIA Act, in some cases for a number of decades. It is not unreasonable to consider the Commission similarly capable of compliance with the TIA Act.

Finally, there are no alternative means available to the Commission that would provide the same capability effect as telecommunications interception. This is a critical tool required by the Commission to properly investigate allegations of maladministration or corruption.

For all of the reasons stated above, I believe that any potential limitations on human rights under the HRA Act would be restricted, necessary and proportionate.

I trust this response satisfies the committee's comments in relation to the Bill, however I welcome any further feedback or queries from the committee should they arise.

Yours faithfully,

**Elizabeth Lee MLA**  
Leader of the Opposition

14 December 2022