



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON AN INDEPENDENT
INTEGRITY COMMISSION 2018

Mr Shane Rattenbury MLA (Chair), Ms Elizabeth Lee MLA (Deputy Chair)
Ms Bec Cody MLA, Mrs Vicki Dunne MLA, Mr Chris Steel MLA

Submission Cover Sheet

Inquiry into an Independent Integrity Commission 2018

Submission Number: 05

Date Authorised for Publication: 4 September 2018

Sensitive: Auditor-General

Mr Shane Rattenbury MLA
Chair
Select Committee on an Independent Integrity Commission 2018
Civic Square
Canberra ACT 2601

Dear Mr Rattenbury

Submission on an Independent Integrity Commission 2018

The ACT Audit Office (the Audit Office) appreciates the opportunity to make a submission to the Select Committee on an Independent Integrity Commission 2018.

In providing a response to the draft Bill, the Audit Office notes the independent operations of the Audit Office as outlined in section 7 of the *Auditor-General Act 1996*.

Section 7 of the *Auditor-General Act 1996* states:

Auditor-general—independence

(1) Subject to this Act and to other Territory laws, the auditor-general has complete discretion in the exercise of the auditor-general's functions.

(2) In particular, the auditor-general is not subject to direction from anyone in relation to—

- (a) whether or not a particular audit is to be carried out; or*
- (b) the way in which a particular audit is to be carried out; or*
- (c) the priority to be given to any particular matter.*

In both the draft *Integrity Commission Bill 2018* and the draft *Anti-corruption and Integrity Commission Bill 2018*, there are provisions for referring matters onto other entities (including the auditor-general) and working cooperatively with the Commission.

To provide for the continued independent operation of the Audit Office, it is recommended that these sections be reviewed and amended as detailed below.

Draft Integrity Commission Bill 2018

With respect to *Part 2.5 Cooperation with other entities*, the Audit Office notes that sub-clause 53(1) of Part 2.5 states:

The commission and public sector entities are to work cooperatively.

Sub-clause 54(1) further states:

*The commission may, at any time, enter into a **memorandum of understanding or agreement** with another entity to assist in—*

- (a) avoiding delay and unnecessary duplication of statutory functions; or*
- (b) efficiently managing the interaction of the statutory functions of the parties to the memorandum of understanding or agreement. **(bold emphasis added)***

The Audit Office works with all public sector entities to deliver its functions. However, this is done in an independent manner without explicit collaboration. Being independent is paramount to achieving the functions of the Auditor-General when reporting to the ACT Legislative Assembly. The Audit Office would anticipate a similar approach when working with the Commission, one which is based on effective communication. As such, the Audit Office notes that it is not willing to commit to developing a memorandum of understanding or agreement with the Commission.

With respect to *Division 3.4.2 Referring matters to another entity*, the Audit Office notes clause 103 provides that the Commission may refer a corruption report to a referral entity. Sub-clauses 103(3) and (4) note that the Commission must consult the referral entity and that nothing in the section requires the referral entity to deal with the corruption report.

Clause 104 Referral to referral entity – results and actions states:

(1) If the commission refers a corruption report to a referral entity, the commission may ask the referral entity to give the commission a written report about—

- (a) the results of the investigation; and*
- (b) any action taken, or proposed to be taken, in relation to the corruption report.*

*(2) This section **does** apply to a referral entity that is—*

- (a) the **auditor-general**; or*
- (b) the ombudsman; or*
- (c) the human rights commissioner. **(bold emphasis added)***

The Audit Office understands that it is a typographical error in sub-clause 104(2) to state that this section '**does** apply' (**bold emphasis added**) to the Auditor-General and that sub-clause 104(2) should state that the section '**does not** apply' to the Auditor-General. The Audit Office would endorse such an approach.

The explanatory note for clause 104 states:

Clause 104 Referral to referral entity—results and actions

*This clause enables the Integrity Commission to oversight a matter that has been referred to ensure that it is properly dealt with. **The Commission may ask referral entities to report on what outcome was taken and the action taken, or proposed to be taken, in relation to the corruption report.** (bold emphasis added)*

While the Commission cannot compel a referral entity to take any particular action in relation to a referral, the Commission retains the ability to investigate the matter itself and to make public comment in relation to whether a referral was dealt with. If an independent entity does not investigate a matter it has been referred, the Integrity Commission may decide this gives it good reason to investigate the matter itself, depending upon the seriousness of the matter and the Integrity Commission's priorities and resources.

If Clause 104 were to apply to the Audit Office, the Audit Office considers that these requirements remain in conflict with the independence requirements in the *Auditor-General Act 1996* as they enable the Integrity Commission to oversight and report on how a referral has been dealt with by the Audit Office.

Clause 105 Referral to referral entity—withdrawal of referral

(1) If the commission refers a corruption report to a referral entity, the commission may, at any time—

- (a) decide to investigate the corruption report; and*
- (b) by written notice to the referral entity (a withdrawal notice), withdraw the referral.*

(2) If a referral entity receives a withdrawal notice, the referral entity must—

- (a) cease its investigation of the referred corruption report; and*
- (b) give the commission any evidence the referral entity has in its possession or control that relates to the referred corruption report; and*
- (c) cooperate with the commission, and give all reasonable assistance requested by the commission, in relation to the referred corruption report.*

*(3) This section **does** apply to a referral entity that is—*

- (a) the chief police officer;*
- (b) the **auditor-general**;*
- (c) the ombudsman;*
- (d) the public sector standards commissioner;*
- (e) the Legislative Assembly commissioner for standards;*
- (f) the Speaker;*
- (g) the Deputy Speaker;*
- (h) the human rights commissioner. (bold emphasis added)*

The explanatory statement notes:

Clause 105 Referral to referral entity—Withdrawal of referral

This clause allows the Integrity Commission to withdraw referrals from certain referral entities. Where the Integrity Commission has made a referral to which this section applies, it may determine to investigate the corruption report under Division 3.4.1 of this Bill (Starting an investigation), and withdraw the referral by providing written notice to the person or body to whom the referral was made.

Where a person or body receives notice of such a withdrawal, it must cease its investigation of the referred complaint or notification, and provide the Integrity Commission with any evidence it has in its possession or control, and cooperate with the Integrity Commission and ensure its officers provide all reasonable assistance requested by the Integrity Commission, in relation to the complaint or notification that was referred.

*There are some referral entities where a referral **cannot** be withdrawn by the Integrity Commission – these are outlined in sub-clause 3.*

The Audit Office understands that it is a typographical error in sub-clause 105(3) to state that this section ‘does apply’ (**bold emphasis added**) to the Auditor-General and that sub-clause 105(3) should state that the section ‘does not apply’ to the Auditor-General. The Audit Office would endorse such an approach.

Draft Anti-corruption and Integrity Commission Bill 2018 (proposed by Mr Alastair Coe, MLA)

Division 4.7 of the Bill relates to *Referrals to other relevant authorities*. It is noted that the auditor-general is given as an example of a relevant authority.

Division 4.7, sub-clause 65(1) notes that the Commission may at any time refer a matter to a relevant authority.

Sub-clause 65(3) states:

The commission must not refer a matter to a relevant authority under subsection (1) unless the commission has—

- (a) consulted the relevant authority; and*
- (b) considered any views of the relevant authority about the referral.*

The Audit Office notes that this provision deals with the proposed Commission’s ability to refer matters (or reports) to relevant authorities (or referral entities). This section would be strengthened by the inclusion of a statement similar to that in sub-clause 103(4) of the *Draft Integrity Commission Bill 2018*, which deals with corruption reports. Sub-clause 103(4) in the *Draft Integrity Commission Bill 2018* states:

Nothing in this section requires the referral entity to deal with the corruption report.

Clause 66 provides that the Commission may give directions to a relevant authority in relation to how a matter is dealt with and reporting requirements. Sub-clause 66(2) states:

A relevant authority is not obliged to comply with a direction of the commission to the extent that compliance is beyond the power, or incompatible with the functions, of the relevant authority that the relevant authority is not required to oblige with a direction of the commission.

Clause 67 requires a relevant authority to give the Commission a report on how a matter has been dealt with. Clause 68 then further states that the Commission may take further action if dissatisfied with the authority's action in relation to the matter including providing a report to the relevant Minister.

It is the view of the Audit Office that these sections are in conflict with the independence requirements of section 7 of the *Auditor-General Act 1996*.

Clause 151 Cooperation with other entities refers to entering arrangements with other entities. Sub-clause 151(1) states:

(1) The commission must ensure that the commission's functions are exercised in a way that does not delay or unnecessarily duplicate the exercise of functions by the following entities:

(a) a person exercising a function under—

*(i) the **Auditor-General Act 1996**; or*

*(ii) the **Ombudsman Act 1989**; (bold emphasis added)*

(b) the public sector standards commissioner;

(c) a police officer investigating a fraud or other criminal matter.

(2) The commission may enter into an arrangement with an entity mentioned in subsection (1) to assist in—

(a) avoiding delay and unnecessary duplication of statutory functions; or

(b) efficiently managing the interaction of the statutory functions of the parties to the arrangement.

Example—arrangement

an arrangement with the auditor-general to conduct an audit of the role of statutory office-holders, including their governance and administrative arrangements and compliance with legislation (bold emphasis added)

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132)

As with similar clauses in the proposed draft *Integrity Commission Bill 2018*, the Audit Office is not willing to commit to entering into such an arrangement with the Commission. In particular, the example arrangement cited in the draft Bill conflicts with the independent role of the Audit Office in determining which audits are undertaken by the Audit Office. The Audit Office recommends this example be removed.

Thank you again for the opportunity to provide comments on the draft Bill. If you have any further questions please contact Ms Hayley Tonkin (Principal, Performance Audits) on 6205 1097 or myself on 6207 0833.

Yours sincerely



Mr Ajay Sharma
Acting Auditor-General
28 August 2018

