



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

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Mr H Finlay
Committee Secretary
Select Committee on an Independent Integrity Commission 2018
GPO Box 1020
CANBERRA ACT 2601

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

Dear Mr Finlay,

INQUIRY INTO THE ESTABLISHMENT OF AN INTEGRITY COMMISSION FOR THE ACT

The ACT Law Society ('the Society') welcomes the opportunity to make a submission to the Select Committee on an Independent Integrity Commission 2018 ('the Committee'). We note that the Select Committee on an Independent Integrity Commission reported in October 2017 and that the Committee has since been established to examine, *inter alia*, the exposure draft of the Integrity Commission Bill 2018 (ACT) and the Anti-corruption and Integrity Commission Bill 2018 (ACT) ('the legislation').

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 has had the benefit of reading the ACT Bar Association's response to the Inquiry into the establishment of an Integrity Commission for the ACT ('the Inquiry'). The Society fully endorses the comments made by the ACT Bar Association.

The Society makes the following additional comments in relation to specific aspects of the legislation.

- The legislation displaces the general presumption that legislation operates prospectively.¹ The legislation should not apply retrospectively to conduct that would have been *corrupt conduct* (by a *public official* or a *public sector entity*) had the legislation been in force at the time that the conduct happened.² The legislation should not apply retrospectively to conduct that adversely affected, or that could have adversely affected (either directly or indirectly), the honest or impartial exercise of functions by a public official or a public authority.³ Additionally, the legislation should not apply retrospectively to conduct that impaired, or that could have impaired, public confidence in public administration.⁴

¹ *Legislation Act 2001* (ACT) s 75B(1).

² Integrity Commission Bill 2018 (ACT) cl 8(1); Anti-corruption and Integrity Commission Bill 2018 (ACT) cls 8(1)(a)-8(1)(b), 8(3).

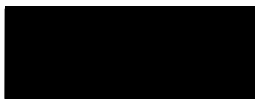
³ Anti-corruption and Integrity Commission Bill 2018 (ACT) cls 8(1)(c), 8(3).

⁴ *Ibid* cls 8(1)(d), 8(3).

- All legislative definitions should be drafted precisely in the enabling act. It is not appropriate that the legislative definitions for *public official*,⁵ *public sector entity*,⁶ *head of a public sector entity*,⁷ *relevant entity*,⁸ *referral entity*⁹ and *principal officer of a public authority*¹⁰ are further prescribed by regulation.
- The definition of *public official* should exclude the following: a judge,¹¹ a magistrate¹² or any other holder of judicial office¹³ and a presidential or a non-presidential member of the ACT Civil and Administrative Tribunal ('ACAT').¹⁴ Processes already exist in relation to complaints made about a *judicial officer* (a judge or an associate judge of the Supreme Court, a magistrate or a presidential member of the ACAT)¹⁵ and a non-presidential member of the ACAT. Complaints about a *judicial officer* (excluding a presidential member of the ACAT) are considered by the ACT Judicial Council.¹⁶ The ACT Attorney-General considers complaints made about a presidential member of the ACAT¹⁷ and the President of the ACAT considers complaints made about a member of the ACAT.¹⁸ In certain circumstances, a judicial commission may be appointed to examine a complaint in relation to a *judicial officer*.¹⁹
- The eligibility criteria for the appointment of the commissioner should include a person who has been a lawyer for at least ten years.²⁰
- The commission should not accept a complaint that is made anonymously.²¹

It is hoped that the comments outlined above are of assistance to the Committee. Please do not hesitate to contact the Society should you have any queries or require further information.

Yours sincerely,



(for) Sarah Avery

President

⁵ Integrity Commission Bill 2018 (ACT) cls 11(b)(viii), 11(c)(ix); Anti-corruption and Integrity Commission Bill 2018 (ACT) cl 10(k).

⁶ Integrity Commission Bill 2018 (ACT) cls 12(a)(v), 12(b)(iii).

⁷ Ibid cl 13(1)(e).

⁸ Ibid cl 57(4)(g).

⁹ Ibid cl 102(l).

¹⁰ Anti-corruption and Integrity Commission Bill 2018 (ACT) cl 12(8)(i).

¹¹ Integrity Commission Bill 2018 (ACT) cl 11(c)(v).

¹² Ibid cl 11(c)(vi).

¹³ Anti-corruption and Integrity Commission Bill 2018 (ACT) cl 10(d).

¹⁴ Integrity Commission Bill 2018 (ACT) cl 11(c)(vii); Anti-corruption and Integrity Commission Bill 2018 (ACT) cl 10(f).

¹⁵ *Judicial Commissions Act 1994* (ACT) s 2 (definition of 'judicial officer').

¹⁶ Ibid ss 14(1), 15(1).

¹⁷ *Judicial Commissions Act 1994* (ACT) ss 14(2), 15(2), 16A(1); *Judicial Commissions (Complaints- ACAT Presidential Members) Approved Protocol 2017 (No 1)*.

¹⁸ Australian Capital Territory Law Courts and Tribunal, *Complaints and Feedback Policy* (11 May 2017) <https://www.acat.act.gov.au/__data/assets/pdf_file/0007/1065436/Complaints-and-Feedback-Policy.pdf>.

¹⁹ *Judicial Commissions Act 1994* (ACT) ss 14(4), 16A(3)(b), 17(1), 17(3), 35J(1)(a).

²⁰ Integrity Commission Bill 2018 (ACT) cl 26(1); Anti-corruption and Integrity Commission Bill 2018 (ACT) cl 98(1)(e).

²¹ Integrity Commission Bill 2018 (ACT) cl 56(1)(c).