



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

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Submission Cover Sheet

Inquiry into Financial Management Amendment Bill 2021 (No 2)

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Mrs Elizabeth Kikkert MLA

Chair
Standing Committee on Public Accounts
ACT Legislative Assembly
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By email: LACommitteePA@parliament.act.gov.au

Dear Mrs Kikkert,

Inquiry into Financial Management Amendment Bill 2021 (No 2)

I refer to your letter dated 9 December 2021, by which you invited me to provide the Standing Committee on Public Accounts with a submission on the Financial Management Amendment Bill 2021 (No 2) ('**Bill**') and its wider implications. Thank you for the opportunity to make a submission in respect of this Bill.

In my view, two issues arise for the Commission.

The first is that the Bill would appear to encroach upon the Commission's independence in a broad sense. The Commission's independence from government is enshrined in section 22 of the *Integrity Commission Act 2018* ('**Act**'), which provides that the Commission 'has complete discretion in the exercise of [its] functions'. This discretion is limited in only two ways: by the remaining terms of the Act, and because it is 'subject to...other territory laws'.

While the Commission is already subject to a number of Territory laws, there are important carve-outs in each that recognise the important public interest in the Commission being able to fully discharge its statutory functions. For example, while the *Freedom of Information Act 2016* (ACT) applies to the Commission, the Commission is exempt from the requirement to publicly release material (unless it is administrative in nature) because the Legislative Assembly has deemed that information 'contrary to the public interest to disclose'. This carve-out serves to preserve the Commission's ability to carry out its first function, being the investigation of alleged corrupt conduct (s 23(1)(a) of the Act).

By contrast, the Bill does not contain any carve-outs that give due recognition to the need for the Commission's functions to be carried out unhindered by government. Indeed, because the Commission's discretion is phrased as being subject to other Territory laws, in its present form, the Bill could have the potential effect of qualifying the present extent of the Commission's independent exercise of the Commission's statutory functions. This seems especially so when considered in a practical context, which gives rise to the second issue.

This issue concerns the ability of the Chief Minister, pursuant to clause 128(1) to 'determine a framework ... for evaluating whether services or works required by a public sector entity should be provided by the public sector or an external provider'.

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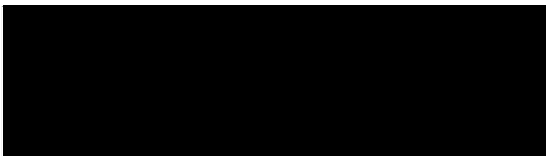
The issue here is that the Commission may require services in connexion with the exercise of its powers or operations which, given the nature of its functions, ought not, for independence and confidentiality reasons, be undertaken by a public sector entity. Examples are the provision of legal services, transcriptions of hearings, legal advice, IT systems incompatible with confidentiality requirements of operations, and IT systems inconsistent with obligations under the *Telecommunications (Interception and Access) Act 1979* (Cth). In addition, there might be occasions when the imposition of such a requirement might cause a direct conflict with a statutory function of the Commission (such as the investigation of alleged corrupt conduct involving the public entity providing a service to the Commission). It is imperative that a core component of the Commission's *raison d'être* not be undermined by what are essentially administrative arrangements concerning procurement sources.

I submit that sufficient carve-outs be included in the Bill to ensure that it does not impinge upon the Commission's independent discretion in s 22 of the Act. This could be achieved, for example, by inserting an exception or proviso clause 128 to enable the Commissioner to determine whether the provision of the service in question should be provided by a public sector entity, by reference to his or her determination in the particular case of the risk of compromising the functions of the Commission.

Of course, by no means every service, let alone works, provided by a public entity is problematic and it is not sought to excuse the Commission from compliance with the Framework in these cases.

I am happy to discuss these matters with the Committee if that would assist.

Yours sincerely



The Hon Michael F Adams QC
Commissioner