

The Commission for Integrity in Government Bill 1999

Report Number 18

Standing Committee on Justice and Community Safety

August 2001



Committee membership

Paul Osborne MLA (Chair)

John Hargreaves MLA (Deputy Chair)

Harold Hird MLA

Trevor Kaine MLA

Secretary: Fiona Clapin

Resolution of appointment

That—

The following general purpose standing committees be established to inquire into and report on matters referred by the Assembly or, matters that are considered by the committee to be of concern to the community...

...a Standing Committee on Justice and Community Safety to examine matters related to administration of justice, legal policy and services, registrar and regulatory services, electoral services, consumer affairs, corrective, emergency and police services and fair trading and any other related matter .

Terms of reference

Inquire into and report on the Commission for Integrity in Government Bill 1999.¹

¹ Minutes of Proceedings, 10 December 1999

Table of contents

THE COMMISSION FOR INTEGRITY IN GOVERNMENT BILL 1999	I
Committee membership	iii
Resolution of appointment	iii
Terms of reference	iii
SUMMARY OF RECOMMENDATIONS	5
INTRODUCTION	6
CONDUCT OF INQUIRY	7
GOVERNMENT POSITION ON THE BILL	7
COMMUNITY VIEWS ON THE BILL	8
MEETING WITH NSW ICAC AND NSW PARLIAMENTARY COMMITTEE ON ICAC	13
COMMITTEE VIEWS ON THE BILL	13
OTHER MATTERS	16

Summary of recommendations

Recommendation 1

The committee recommends that the Commission for Integrity in Government Bill 1999 not be proceeded with.

Recommendation 2

The committee recommends that the Government, in consultation with the Auditor-General, develop a model for a new function which provides for both (1) the investigation of complaints about behaviour lacking integrity and (2) an educative and preventative role in relation to behaviour lacking integrity.

Recommendation 3

The committee recommends that the Government in proceeding with the model suggested by the Auditor-General:

- **drafts legislation to clearly define the new role of the Auditor-General; and**
- **provide additional resources to the Auditor-General to allow him to undertake new responsibilities in anti-corruption complaint handling and prevention.**

Recommendation 4

The committee recommends that an Assembly committee inquire into and report on the reasons for the low conviction rates for those accused of child sexual assault in the ACT.

Introduction

1. On 10 December 1999 the Legislative Assembly referred the Commission for Integrity in Government Bill 1999 to the committee for inquiry and report.
2. The object of the bill, according to the explanatory memorandum, is to constitute a Commission for Integrity in Government for the ACT, and to confer on it wide powers, with special emphasis on:
 - investigating conduct lacking integrity or possible conduct lacking integrity where public officials are involved, either on a complaint or reference made to it or on its own initiative; and
 - educating public authorities and the community generally on the detrimental effects of public conduct lacking integrity and strategies to combat it.
3. ‘Conduct lacking integrity’ is defined in the bill as including (among other things) conduct that adversely affects, or could adversely affect, the honest or impartial exercise of official functions by a public official or a public authority. According to the explanatory memorandum, ‘it is immaterial whether the conduct is committed by a public official or anyone else’. Furthermore, conduct lacking integrity must be ‘such as could constitute or involve a criminal offence, a disciplinary offence or reasonable grounds for terminating the services of a public official’.
4. The bill provides for the appointment of a Commissioner who is to be responsible for the administration and affairs of the Commission. The Commissioner is to be assisted by one or more Assistant Commissioners and other staff. The Commissioner may not be removed from office except by an address of the Legislative Assembly.
5. The bill provides for:
 - an Operations Review Committee, whose function is to advise the Commissioner;
 - extending the responsibilities of the Standing Committee on Justice and Community Safety of the Legislative Assembly to include monitoring and review of the Commission’s functions; and

- the establishment of an Ethical Standards Council, comprising members of the Legislative Assembly and community members, whose function is to prepare draft codes of conduct for Assembly members, to carry out educative work relating to Assembly ethical standards, and to give the Assembly advice on such ethical standards.

Conduct of inquiry

6. The committee placed advertisements in local newspapers as well as writing to relevant community and professional organisations inviting submissions.
7. The committee exercised some caution in dealing with written submissions and oral evidence. With such an inquiry, it is inevitable that sensitive material would be presented. Two of the submissions remain confidential.
8. Seven submissions were received.
9. A private hearing was held on 13 August 2001.
10. The committee also held meetings with the NSW ICAC Commissioner, Ms Irene Moss, and the Chair of the NSW Parliamentary Committee on ICAC.

Government position on the bill

11. The Government submission rejected the bill on the basis that it would not be cost-effective and there was no evidence that corrupt activity existed in the ACT.²

² ACT Government, Submission

Community views on the bill

12. The inquiry attracted submissions from the Auditor-General and the Ombudsman and from aggrieved members of the community.

13. The submissions generally expressed support for the establishment of a function or body to address corruption issues, including both investigative and preventative functions.

14. The **Auditor-General** submitted that in his view, the functions outlined in section 14, which are the proposed functions of the Commissioner are ‘unarguably functions which should be able to be conducted as and when needed in the ACT public sector’.³

15. The Auditor-General suggested that the following questions would need answers before a new authority was established to undertake the functions created:

1. are there ACT agencies or bodies which currently have the legislative authority to carry out all or most of the proposed Commission’s functions?;
2. if the answer is yes, are the legislatively authorised agencies or bodies effectively conducting the functions?; and
3. if the answer to 2 is no, can the reasons for the functions not being effectively conducted be addressed so that the functions can be effectively conducted in the future?⁴

16. The Auditor-General further submitted that while investigating corrupt conduct is not specifically identified in the *Auditor-General Act 1996*:

the generality of the Auditor-General’s legislated functions authorise the Audit Office to investigate, make recommendations and publicly report on corrupt conduct. In fact the Audit Office’s procedures include being alert to identify potentially corrupt activities during its performance audits.

³ Auditor-General, Submission, p1.

⁴ *ibid*

17. The Auditor-General explained the reasons why conducting investigations into corrupt conduct is within his legislative authority:

The Auditor-General Act includes a function for the Auditor-General 'to promote public accountability in the public administration of the Territory' (section 10(a)).

Undetected corrupt acts are clearly a public accountability issue. Therefore investigating potentially corrupt actions falls within the Auditor-General's authority.

The Act also includes a function to 'do anything incidental or conducive to any of the Auditor-General's functions' (section 10(f)).⁵

18. The Auditor-General noted that his method of meeting his legislated functions include conducting performance audits, which are defined very broadly, in his legislation.

19. The Auditor-General therefore concluded that the combination of the legislated functions and the broad definition of a performance audit provided him with wide ranging authority to examine allegedly corrupt activities by individual public officials.

20. He also advised the committee that he has not to date performed investigations of corrupt conduct to the extent or in the manner envisaged in the bill.⁶

21. The Auditor-General suggested that if the Legislative Assembly wished the Auditor-General to undertake investigatory activities into allegations of corrupt conduct, his powers would need to be extended and more resources provided.⁷

22. In a private meeting with the committee, the Auditor-General said the extent of fraud in the ACT public service is unknown but he was in the process of surveying departments to ascertain the extent of the problem as part of a planned performance audit.

⁵ Auditor-General, Submission, p2.

⁶ *ibid*, p3.

⁷ *ibid*.

23. He provided the committee with a copy of a letter to the Chief Executive Officer of the Chief Minister's department advising he was considering undertaking a performance audit of fraud and corruption prevention in the ACT public sector and the extent of detected fraud and prevention.

24. **The Ombudsman** submitted that:

My office exists to help the public to secure accountability in the provision of public services; in principle, I therefore support measures aimed at securing a high standard of probity and integrity in public life.

However, I think it is a question for political judgement whether the model proposed by the Bill is necessary and proportionate to the needs of the ACT.

The model is an ornate one that may be costly in operation and that may conflict with civil liberty and other values and with the functions of other agencies. For example, the Bill would deal with conduct that could presently be handled as an investigation by my office, a review by the Auditor-General, a criminal investigation, a disciplinary process or through the civil courts. It would enable immunities to be issued without regard to the factors normally considered by the Director of Public Prosecutions.

As well there is a risk, in a relatively small jurisdiction such as the ACT, that the standing Commission would find a need to justify its continuing existence.⁸

25. The Ombudsman suggested the following alternatives be considered:

- amendments to the *Public Interest Disclosure Act 1994* or other legislation; or
- whether the Executive or the Assembly could be empowered to enable a corruption investigation body be formed from time to time to deal with specific matters on reference.⁹

26. The Ombudsman also expressed concern that clause 12 of the bill would require him to disclose any suspicion on reasonable grounds of

⁸ Commonwealth Ombudsman (ACT), Submission, p1.

⁹ *ibid*

“any conduct lacking integrity” and this would potentially compromise the work of his office by discouraging some people from coming forward with complaints and information. He also was of the view it may make it difficult for him to conduct his investigations in private.¹⁰

27. He argued that the role of informing the Commission would be inconsistent with his function of investigating, forming opinions and, if warranted, making reports and recommendations. He suggested that performance of that role would render redundant the present provisions which require him, where evidence of misconduct is of sufficient force, to bring the evidence to the attention of a Chief Executive or Minister and in line with procedural fairness, expressing a critical opinion.¹¹

28. Two further submissions were received by the committee supporting the establishment of an integrity body with the legislative power to act upon complaints against members of the AFP and the AFP itself. One indicated that outsourcing to the NSW ICAC or the NCA could be considered as an option for the ACT.¹²

29. Dissatisfaction with the conduct of the AFP, the DPP and the Ombudsman in relation to a case cited lead to support of the legislation in one instance.

30. The committee notes from the Ombudsman’s report into complaints about the standard of investigation into the alleged criminal offences found that there were “omissions at an operational level that could have justifiably caused a person.....to lose some confidence in the way her son’s case was handled”¹³. The Ombudsman’s report summarised the allegations of the person who made the submission as:

1. The AFP failed to use the most appropriately skilled investigators, and instead used members of Internal Investigations who were untrained;

¹⁰ ibid

¹¹ ibid, p2.

¹² Submission No 6, p1.

¹³ Correspondence from the commonwealth Ombudsman to the AFP Commissioner dated 23 September 1997.

2. The Internal Investigation members were not sufficiently aware of, and did not sufficiently adhere to (a) law relating to children's evidence and (b) obligations to victims of crime;

3. Internal Investigations failed to report alleged criminal offences which occurred in NSW to the NSW Police at a reasonable time;

4. The AFP failed to provide ... with outcomes of a second investigation by Internal Affairs into her, within a reasonable time; and

5. Internal Investigations conducted this investigation in a way that prevented her from giving her account of why the counter allegations were made.¹⁴

31. The other supportive submission raised issues related to child sexual assault investigation and legal processes and stated that in its view a Commission "is desperately needed in the ACT".¹⁵

32. The submission referred to matters which have 'highlighted failure by significant authorities and persons in positions of authority and trust who had carriage of matters that should have been brought before the Courts. It involves legislated bodies whose operational decisions put people at risk, especially children'. The submission named the following as persons whose acts or omissions between 1994 and 2001 as having 'caused problems':

- the ACT Attorney-General;
- servants or agents of the Australian Federal Police;
- servants or agents of the Commonwealth Ombudsman;
- servants or agents of the Director of Public Prosecutions;
- an ACT magistrate; and
- numerous members of the legal profession.¹⁶

¹⁴ *ibid*, p2.

¹⁵ United Nations Association, Submission, p1.

¹⁶ United Nations Association, Submission, p2.

33. The committee also received two other submissions which it resolved to keep confidential. Because of the confidential status of these submissions it is not possible to summarise their contents here. The committee has, however taken account of the contents of these submissions in formulating recommendations in this report.

Meeting with NSW ICAC and NSW Parliamentary Committee on ICAC

34. Committee members met with NSW ICAC on Thursday 12 June 2001 and with the NSW Parliamentary Committee on ICAC on Friday 13 June 2001.

35. The most important messages received in these meetings were:

- the bill in its current form (being based on the NSW legislation) would probably exceed the needs of the ACT, a much smaller jurisdiction and would not be cost-effective;
- it was important to identify the extent of the corruption problem in the ACT and to be very clear about our objectives;
- the NSW ICAC is more focused on trying to change systemic corruption rather than pursue prosecutions;
- the whole definition of what is corrupt is problematic; and
- the need for caution in establishing an ICAC-type body because once it is established the political reality will mean it can never be abolished and there is great difficulty in rationalising its functions.

Committee views on the bill

36. The committee considers the current system has failed to provide an appropriate entity where aggrieved individuals can go and be confident their complaints will be properly considered and a determination made as to whether there is any substance. There is a need for some additional body to provide a service so that complainants feel they have had a fair hearing.

37. However the committee is of the opinion that the arrangements proposed in the bill under consideration are more complex than necessary and would possibly not be cost-effective. Further, in the absence of any data relevant to the ACT, the committee is doubtful whether there would be sufficient work to justify such a complex system, in its current form.

Recommendation 1

38. The committee recommends that the Commission for Integrity in Government Bill 1999 not be proceeded with.

39. Although not supporting this bill, the committee has identified the need for further work in the ACT to counter corruption and promote integrity in the behaviour of public officials. This work requires a twofold response.

40. **Firstly** there is a need for further development of an appropriate mechanism for examination of citizens' complaints against public officials. The model proposed by the Auditor-General appears to have some merit. It would be much more cost-effective than the model proposed in the bill.

41. The case studies presented to this committee (particularly those in submissions from Ms Wilkinson and the United Nations Association) illustrate the need for some sort of additional function so that individuals have an avenue for complaints about the conduct of the police, the Director of Prosecutions and other public officials.

42. The fact that both Ms Wilkinson (a police officer) and the mother of the fifteen-year old girl mentioned in paragraphs 37-38 (a social worker) are professional women who understand the workings of the legal system but could not find anywhere to get a fair hearing about their grievances indicates there is a problem in the ACT.

43. The committee is aware that there may be other aggrieved citizens with similar complaints, who did not know about this inquiry. This inquiry was advertised in local newspapers but neither Ms Wilkinson, Mr Rowe nor the mother of the fifteen-year old girl saw the notice. All three became aware of this inquiry through other means.

44. The committee therefore encourages the Government and future parliamentary committees to undertake further investigations about the extent of behaviour lacking integrity in ACT public officials. The

performance audit being undertaken by the Auditor-General should provide useful information in this regard.

45. One of the suggestions made to the committee about the form which such an investigatory body could take was that investigation work could be outsourced to the police. The evidence provided to this committee makes it clear that this is not a viable option as no doubt many of the complaints may be against the police. The Auditor-General would be a much more suitable body to take on this new role.

46. The **second** area where work is required is in preventing behaviour lacking integrity through education and other means. The committee was very impressed with the work done in this respect by the NSW ICAC and believes the ACT Government could benefit from their publications and approaches.

Recommendation 2

47. The committee recommends that the Government, in consultation with the Auditor-General, develop a model for a new function which provides for both (1) the investigation of complaints about behaviour lacking integrity and (2) an educative and preventative role in relation to behaviour lacking integrity.

Recommendation 3

48. The committee recommends that the Government in proceeding with the model suggested by the Auditor-General:

- drafts legislation to clearly define the new role of the Auditor-General; and**
- provide additional resources to the Auditor-General to allow him to undertake new responsibilities in anti-corruption complaint handling and prevention.**

Other matters

49. This inquiry has revealed problems with the management of child sexual assault cases by ACT agencies and the police. While this committee is not equipped to make any judgements about the specific claims made by Ms Wilkinson and the mother of the fifteen year old girl, the Ombudsman has acknowledged some problems in relation to Ms Wilkinson's case.

50. The committee has been concerned for some time about problems related to child sexual assault prosecutions. *The Canberra Times* recently reported that ACT courts have not made any convictions for child sexual assault cases in the last year.¹⁷ In the last year, the Director of Public Prosecutions has failed to obtain a conviction for seven consecutive cases.

51. The committee is concerned that this apparent low conviction rate may be attributable to problems with either the practices of the Australian Federal Police or with problems with the current laws and procedures.

52. The committee urges the Government to investigate the reasons for the low conviction rates for those accused of child sexual assault.

53. It would also be appropriate for an Assembly committee to investigate this matter in the next Assembly in consultation with the police, advocates for child complainants, Canberra Rape Crisis, the Director of Public Prosecutions, magistrates and judges and lawyers. It would be useful if such an inquiry compared ACT conviction rates with those in other jurisdictions to help identify problems peculiar to the ACT.

Recommendation 4

The committee recommends that an Assembly committee inquire into and report on the reasons for the low conviction rates for those accused of child sexual assault in the ACT.

¹⁷ The Canberra Times, Tuesday 19 June 2001.

Acknowledgements

54. The committee is especially grateful for those individuals who made submissions. The committee is mindful that some of the cases involved very sensitive issues and very much appreciates the input.

55. The committee also acknowledges the assistance provided by ICAC Commissioner Irene Moss (and her staff) and The Hon John Hazistergoff (Chair of the NSW Parliamentary Committee on ICAC).

Paul Osborne MLA

Chair

29 August 2001

APPENDIX –Submissions and hearing details

Submissions

1. ACT Government
2. Confidential
3. Confidential
4. Auditor-General
5. ACT Ombudsman
6. Ms Ursula Wilkinson
7. United Nations Association

Private hearing- 13 August 2001

Mr John Parkinson (Auditor-General) and Mr Roderick Nicholas
(Auditor-General's Office)

Mr David Rowe (United Nations Association) and the mother of a fifteen
year old girl