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24 January 2022

Mrs Elizabeth Kikkert
Chair, Standing Committee on Public Accounts
Legislative Assembly of the ACT
GPO Box 1020
CIVIC ACT 2601

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

Dear Mrs Kikkert

Inquiry into Financial Management Amendment Bill 2021 (No 2)

Thank you for your letter of 9 December 2021 seeking my views on the Financial Management Amendment Bill 2021 (No 2).

As you are aware, the Office of the Commonwealth Ombudsman (the Office) currently performs the role of the ACT Ombudsman and is a Commonwealth government entity that is required to comply with Commonwealth legislation. The Services Agreement between the Australian Capital Territory and the Commonwealth of Australia 1 July 2020 to 30 June 2025 recognises '[t]his includes the resource management framework, which governs how officials in the Commonwealth public sector use and manage public resources' (para 2.2, attached).

As an Officer of the ACT Legislative Assembly, the provisions in the current Bill would require the ACT Ombudsman to evaluate whether certain services or works should be provided by the public sector (which we presume is defined to be the ACT Public Service) or an external provider, in accordance with an insourcing framework to be formulated by the Chief Minister. The Chief Minister would be able to direct the ACT Ombudsman in fulfilling this requirement.

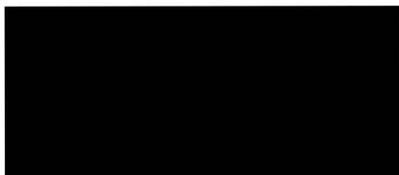
The Office recognises it has obligations under ACT legislation and follows ACT government processes, such as those set out in the ACT Cabinet Handbook and the Assembly Process Handbook (see para 2.3 of the Services Agreement). However, the insourcing requirement in this Bill presents a particular difficulty for the Office because of its dual roles in the ACT and Commonwealth.

The insourcing requirement would likely conflict with Commonwealth government procurement and resource management legislation and rules. For example, the Commonwealth Procurement Rules relating to open tenders require an open approach to market, but if we also need to comply with an insourcing framework, there may need to be restrictions on potential suppliers. Likewise, the capacity of the Chief Minister to direct the Office in how it fulfils insourcing requirements has the potential to result in conflicting responsibilities for the Office.

We also note that many of our procurements serve more than one area of the Office's work. Putting conflicting Commonwealth responsibilities aside, we are uncertain how the Office could implement ACT Ombudsman specific requirements in practice. For example, if we wish to upgrade an Office-wide database that services all our offices across Australia, it is unclear whether we could be compelled to prefer ACT public sector agencies over a private sector company.

For these reasons I consider the Office, as a Commonwealth government entity, is not well placed to comply with the requirements of this Bill and I seek an exemption from the new Part outlined in the Bill. This could be achieved by amending section 4 of the *Financial Management Act 1996* (ACT) to exclude the ACT Ombudsman from the operation of Part 9A in circumstances where the Office of the ACT Ombudsman is held by the Office of the Commonwealth Ombudsman.

Yours sincerely



Penny McKay
Acting Ombudsman

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