

A2343265

2 June 2023

Mr Ian Govey AM
Independent Reviewer, *Integrity Commission Act 2018*

By email: icactreviewsecretariat@act.gov.au

Dear Mr Govey

Review of the *Integrity Commission Act 2018* – Discussion papers

Thank you for the opportunity to provide a written submission on the discussion papers developed to consider amendments proposed to the *Integrity Commission Act 2018 (IC Act)*.

As the Inspector of the ACT Integrity Commission (**the Inspector**), I make the following comments on the topics most relevant to the Inspector.

1. Integrity Commission Powers

This paper considers proposals for new powers for the Integrity Commission (**the Commission**), including examining the adequacy of existing investigative powers in response to calls from the Commission for enhanced powers under the IC Act and the *Telecommunication (Interception and Access) Act 1979 (Cth) (TIA Act)*, and draft legislation introduced into the ACT Legislative Assembly to facilitate requirements for the Commonwealth to consider provision of telecommunication intercept capabilities.

In relation to designating the Commission under the TIA Act, I wish to reiterate the matters raised in my submission to the ACT Legislative Assembly in November 2022, and in my submission to you on 24 March 2023:

- I do not have a view on whether the Commission should be permitted to intercept telecommunications, as in my view this is a policy matter for the Legislative Assembly and for the Commonwealth Attorney-General.
- I note most state integrity commissions have access to these powers under the TIA Act and complementary state legislation.
- If the ACT Ombudsman and Inspector are to become responsible for overseeing the Commission's use of telecommunications interception powers under the TIA Act, the ACT Ombudsman and Inspector would require additional funding, as the new activities contemplated by such oversight could not be absorbed within existing resources.

2. Confidentiality, information sharing and wellbeing

This discussion paper explores information sharing with witnesses, wellbeing and witness welfare. In my previous submission of 24 March 2023, I supported a focus on the welfare of witnesses involved in integrity agency investigations.

Under s 148(2) of the IC Act, the Commission may withhold the reason for issuing an examination summons if it considers on reasonable grounds that this information would likely prejudice an investigation or be contrary to the public interest. The discussion paper includes a proposal that the Commission be required to report to the Inspector when this information has been withheld, or alternatively, that the Inspector be informed that the Commission intends to withhold this information before issuing an examination summons.

The Commissioner is required to include in their monthly report to the Inspector information regarding each examination summons issued under s 147 of the IC Act (s 205(h) of the IC Act) but is not currently required to provide a copy of each examination summons issued. In practice, however, the Commissioner does include copies of each examination summons in their monthly report, which effectively provides me visibility over s 148(2) of the Act where I can see if reasons have been withheld.

Amending s 205(h) of the IC Act to specify the Commissioner must provide a copy of the examination summons would ensure continued visibility of the Commissioner's application of s 148(2) of the IC Act and other procedural information relevant to the summons and is useful for my oversight function.

3. Inspector and oversight

Information the Integrity Commission must provide the Inspector

Proposed amendment to s 205 of the IC Act

Section 205 of the IC Act requires the Commission provide the Inspector with the reasons a particular summons is issued. I note the paper discusses a proposal to amend s 205 to explicitly require that the Commission must also provide information to support its reasons for issuing a summons.

The Inspector has an existing power under s 266 of the IC Act to full and free access of all the Commission's records. I do not seek for the Commission to be required as a matter of course to provide information to support its reasons for issuing every summons under s 205, given I can request this information if I desire it.

Legal professional privilege

The discussion paper asks whether a claim of legal professional privilege (LPP) should be available to the Commission as a ground for refusing to provide information requested by the Inspector. I do not support this proposal. I reiterate my previous submission of 24 March 2023 in which I suggested that s 270 of the IC Act be amended to put beyond doubt that a claim of LPP cannot be used as a ground for refusing to provide material lawfully requested by the Inspector.

I believe that it is highly desirable to remove any doubt about whether a claim of LPP can be used as a ground to refuse to comply with a lawful request by the Inspector. Otherwise, there remains the possibility that a person might at some time decline to provide documents due to privilege, which has the capacity to delay an investigation by the Inspector. The Investigator requires full and free access to all relevant information in order to properly conduct investigations.

Inclusions in the annual operational review

The discussion paper requests feedback on whether additional elements of the Commission's operations should be reflected in the Inspector's annual operational review. I note the Inspector has an existing power under s 280(2)(d) of the IC Act to consider any relevant matters not listed and so in

my view explicitly providing for specific additional elements to be included in the annual operational review is not necessary. If, however, significant additional matters were required to be reviewed by the Inspector by expansion of the mandatory matters for the annual review, additional resourcing may be required to enable the Inspector to carry out the expanded review.

4. Operational matters

This paper explores operational proposals from the Commission including relaxing s 50(2) of the IC Act which provides that the Commission must not appoint a person that has been an ACT public servant in the preceding 5 years. The Commission has suggested that where it proposes to appoint a person who has been an ACT public servant within the preceding 5 years, it should consult with the Inspector.

Section 251(2) of the IC Act places the same eligibility criteria on staff of the Inspector. If a change is made to s 50(2) of the IC Act, consideration could be given to amending s 251(2) to retain consistency across the two provisions.

I do not believe it is necessary to be consulted on any appointment of former ACT public servants the Commission proposes to make. As a general rule, employment decisions are an internal matter for the Commission.

Should there be a change to s 50(2) of the IC Act, I would seek assurance that the Commission has rigorous policies in place that provide guidance on any additional and emerging risk and the management of staff conflicts of interest.

Additional powers

Finally, I would like to reiterate my previous submission in which I suggested that if the Commission is granted any additional powers, or if you recommend that it gain additional powers, s 205 of the IC Act should be amended to expressly require the Commission to include material related to the use of any such additional powers in its monthly reports to the Inspector.

I would be happy to provide you with further information or answer any questions about the points raised in this submission.

Yours sincerely



Iain Anderson
Inspector of the ACT Integrity Commission