



Submission by the  
ACT Ombudsman

**Select Committee on an Independent  
Integrity Commission – 2018**

INQUIRY

Submission by the ACT Ombudsman, Michael Manthorpe

**August 2018**



## Introduction and summary

Thank you for the opportunity to comment on the draft legislation currently before the Select Committee on an Independent Integrity Commission (the Committee). My comments relate to the ACT Government's exposure draft Integrity Commission Bill 2018 (the Bill).

My interactions with the previous Committee have highlighted the importance of ensuring that the proposed Integrity Commission (the Commission) is integrated into the existing integrity framework in the ACT. I welcome the engagement of senior government officials with my Office and me while the Bill was drafted.

I consider the Bill is overall a good framework for the proposed Commission, subject to the minor comments outlined below.

## Background

The purpose of the Office of the ACT Ombudsman is to:

- provide assurance that the organisations we oversight act with integrity and treat people fairly
- influence systemic improvement in public administration in the ACT.

We seek to achieve our purpose through:

- correcting administrative deficiencies through independent review of complaints about ACT Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive; and
- assisting people to resolve complaints about government administrative action.

The ACT Ombudsman's role is delivered by the Commonwealth Ombudsman under a Service Agreement between the ACT Government and the Commonwealth Ombudsman. Included among the responsibilities of the Commonwealth Ombudsman is that of providing oversight functions under various legislation that grants intrusive and often covert powers to certain law enforcement agencies. My role is to provide assurance to the government, Parliament and the public that these agencies are using their powers as Parliament intended, and if not, hold the agencies to account.

As the ACT Ombudsman, I have similar responsibility for inspecting the records of ACT Policing in relation to the administration of the Child Sex Offenders Register and use of certain covert and intrusive powers<sup>1</sup> under ACT legislation.

---

<sup>1</sup> These include powers to conduct controlled operations and use assumed identities and surveillance devices.

## Issues

### Oversight of covert and intrusive powers

The consequential amendments in the Bill allow the Commissioner to exercise powers under the following legislation:

- *Crimes (Surveillance Devices) Act 2010*
- *Crimes (Controlled Operations) Act 2008*
- *Crimes (Assumed Identities) Act 2009*.

Under these Acts, I have a statutory responsibility to inspect the records of ACT Policing pertaining to the use of these covert and intrusive powers. This Bill would extend the scope of my inspections to the Commission. Subject to the Commission's use of these powers, my Office will likely conduct an investigation of the Commission every 12 months post establishment of the Commission. My Office will discuss resourcing requirements for this function with the ACT Government.

As I have previously indicated, my Office is available to liaise with the Commission once established to advise on best practice in relation to developing a framework around the use of covert and intrusive powers.

### Inspector role

The Bill establishes the position of Inspector of the Commission. While the Bill provides for appointment of a former judge to this position, it also envisages that the Speaker may make arrangements for another person who already performs similar functions to carry out that role (clause 236(2)).

The Bill as currently drafted requires the Inspector's staff to be ACT public servants employed under the *Public Sector Management Act 1994* (clause 238). I suggest that an amendment be made so that if an arrangement is made with a person to carry out the role of Inspector under clause 236, that person would be able to engage staff under their own governing legislation.

### Mandatory corruption notification requirement

Clause 60(1) of the Bill provides for mandatory corruption notification requirements for the head of any public sector entity, which would include the Ombudsman. While it would be my intention to refer any matters involving serious corrupt conduct or systemic corrupt conduct to the Commission, the *requirement* to do so is incompatible with ss 9(3) and 33(7) of the Ombudsman Act. These sections state that any investigation by the ACT Ombudsman must be conducted in private and in such a manner as the Ombudsman thinks fit, and that the Ombudsman (or his staff) cannot be compelled by a person authorised under a law to disclose any information obtained under the Act.

Clause 62(6) provides that mandatory corruption notification directions do not apply to my Office. A similar exclusion from the mandatory corruption notification requirements would ensure consistency with the Ombudsman Act.