

**2018**

**THE LEGISLATIVE ASSEMBLY FOR  
THE AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO  
SELECT COMMITTEE'S REPORT**

**Inquiry into an Independent Integrity Commission**

**Presented by  
Andrew Barr MLA  
Chief Minister**

## **Government Response to Inquiry into an Independent Integrity Commission**

### **BACKGROUND**

On 31 October 2017, the Select Committee on an Independent Integrity Commission released its report into their inquiry. The final report includes 79 recommendations covering jurisdictional matters, relationships with other integrity stakeholders, the power to hold public hearings, accountability and independence, staffing and resourcing requirements, application of other legislation and other matters.

The ACT Government is committed to establishing an Independent Integrity Commission which is broadly structured on those operating in similarly sized jurisdictions. The Select Committee report and recommendations will inform the establishment of a Commission.

### **SUMMARY OF GOVERNMENT RESPONSE**

This Government Response sets out the ACT Government's position on each of the Select Committee's 79 recommendations. In summary, the ACT Government:

- agrees or agrees in part to 25 recommendations;
- agrees in principle to 11 recommendations; and
- notes 43 recommendations.

Each recommendation will be considered in the drafting of the legislation.

### **Key aspects of the Government Response**

#### **Establishment of an integrity body**

The Select Committee recommends that the Government establish a standing ACT independent integrity body to investigate corruption in public administration and strengthen public confidence in government integrity.

The Government agrees with this recommendation, noting that the functions of the body must be delineated and clearly defined and cognisant of existing independent oversight bodies. When the new integrity body is established, the Government will undertake a longer term review to consider the interaction between existing oversight bodies to ensure the efficient and effective operation of these entities.

The Government is of the view that the ACT integrity body would focus on prospective and current matters, with limited ability to review retrospective or previous matters.

#### **Name of the integrity body**

The Select Committee recommends that a standing ACT independent integrity body should be named as an Anti-Corruption and Integrity Commission (ACIC).

The Government notes that the proposed acronym is the same as that of the Australian Criminal Intelligence Commission (ACIC). As part of developing the draft legislation, consideration will be given to the appropriateness of the name, particularly given that both bodies will be involved in the same field and there is potential for confusion about the roles of the two bodies.

### Jurisdiction and scope

#### *Public officials*

The Select Committee recommends that the substantive jurisdiction of an integrity body should cover all public officials. It proposes that public officials include all persons receiving a salary, wages or other payment from the ACT Government Service, its statutory authorities, agencies or boards. This would include parties delivering contracted work or services on behalf of government.

The Government agrees to this recommendation in part. The term 'public official' requires further examination. The Government is of the view that an ACT integrity body should have jurisdiction over public officials who hold positions of power and the ability to exert influence. This could include senior public servants and statutory office holders including boards, committees and tribunals (excluding the ACT Civil and Administrative Tribunal). All other public servants are covered within current misconduct and public sector investigative arrangements.

Further consideration of whether an ACT integrity body should have jurisdiction over the conduct of other third party contractors or consultants (not including ACT Policing) is needed and will be considered in the context of developing the enabling legislation.

#### *Members of the Legislative Assembly (MLAs), MLA staff and Judicial Officers*

The Government agrees with the recommendation for an ACT integrity body to have oversight over MLAs and their staff in relation to the most significant and serious allegations of corruption. The submission by the Clerk of the Legislative Assembly indicated that an ACT integrity body should not have the effect of displacing the Legislative Assembly's Commissioner for Standards, even though there may be some modifications to the existing parliamentary integrity arrangements with the establishment of an ACT integrity body. This matter will need further consideration.

The Government does not support the inclusion of judicial officers within the oversight of an ACT integrity body. It is the Government's view that there is already sufficient oversight through the Judicial Council and Judicial Commission. This model ensures that separation of powers is maintained. In February 2017, the Judicial Council was established to have jurisdictional responsibility for judicial officers, which includes Judges, Associate Judges, Magistrates and a Presidential Member of the ACT Civil and Administrative Tribunal.

It is important that the Judicial Council is given the opportunity to operate without compromising its judicial independence.

### *ACT Policing*

The Government agrees in principle that an ACT integrity body should have oversight of ACT Policing. This will be considered in the context of developing the enabling legislation.

Section 23 of the *Australian Capital Territory (Self-Government) Act 1988* prevents the ACT Legislative Assembly from making laws for the provision by the Australian Federal Police of police services to the Territory. Section 27 of the Self-Government Act provides that the Legislative Assembly cannot make laws that bind the Commonwealth without agreement from the Commonwealth and the amendment of Commonwealth legislation.

The Government will progress discussions with the Commonwealth to seek their agreement to any legislative amendments.

In the meantime, the Government is exploring avenues to enhance the transparency of existing oversight mechanisms including through improved reporting to the ACT from the Australian Commission for Law Enforcement Integrity (ACLEI) and the Commonwealth Ombudsman.

### Legislative considerations

A significant number of the Select Committee's recommendations detail specific aspects for inclusion into the enabling legislation. Further time is needed to consider these recommendations.

The Government will carefully review these recommendations and give appropriate consideration to them in the context of developing the enabling legislation.

### Review of Public Interest Disclosure Act 2012

The Select Committee recommends that the Government appoint an independent person to conduct a statutory review of the *Public Interest Disclosure Act 2012* (the PID Act).

The Government agrees with the Select Committee's recommendation to review the PID Act. Issues for consideration in the review include:

- relationships between existing integrity bodies in the ACT, including the sharing of information and the referral of complaints;
- oversight and accountability mechanisms; and
- identifying gaps in the current framework to determine solutions.

### Implementation timeframe

The Select Committee has recommended that the Government finalise the establishment of a standing ACT independent integrity body by the end of 2018.

The Government agrees in principle to this recommendation. The establishment of an integrity commission and developing its enabling legislation requires careful consideration. The Government agrees that draft legislation be referred to an Assembly Committee.

The Government will work towards draft legislation being forwarded to that Committee in 2018.

### Other matters

The Select Committee recommends that the Government appoint an independent reviewer to examine appointment terms for statutory officer holders in the ACT and make recommendations to strengthen integrity as it concerns appointment of these office holders.

All appointment terms for statutory office holders are included within their enabling legislation. The Government notes that the Public Sector Standards Commissioner can currently undertake this function at the direction of the Chief Minister. The Government will consider the possibility of exploring this review.

### **DETAILED RESPONSES**

The following section outlines the Government Response to each of the recommendations.

| Recommendation   | Government position         | Government response   |
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| <b>Jurisdictional integrity context</b>  |                             |   |
| <p><b>Recommendation 1:</b> The Committee recommends that the ACT Government establish a standing ACT independent integrity body to investigate corruption in public administration and strengthen public confidence in government integrity.</p>                              | <p>Agreed.</p>              | <p>The Government agrees with the recommendation to establish an ACT integrity body, noting that the functions of the Commission must be delineated and clearly defined to be cognisant of existing independent oversight bodies.</p> <p>When the new integrity body is established, the Government proposes to undertake a longer term review to consider the interaction between the existing oversight bodies to ensure they operate efficiently and effectively together.</p> |
| <p><b>Recommendation 2:</b> The Committee recommends that the ACT Government finalise the establishment of a standing ACT independent integrity body by the end of 2018.</p>   | <p>Agreed in principle.</p> | <p>The establishment of an ACT integrity body and developing its enabling legislation requires careful consideration. The Government agrees with Recommendation 3 that draft legislation be referred to an Assembly Committee.</p> <p>The Government will work towards draft legislation being forwarded to that Committee in 2018.</p>   |
| <p><b>Recommendation 3:</b> The Committee recommends that any proposed bill for the establishment of a standing ACT independent integrity body be referred to an ACT Legislative Assembly committee for inquiry and report.</p>  | <p>Agreed.</p>              |   |
| <b>Guiding principles informing elements of design, form, functions and powers</b>   |                             |   |
| <p><b>Recommendation 4:</b> The Committee recommends that a standing ACT independent integrity body should have as its primary objective(s) to investigate, expose and prevent corruption and foster public confidence in the integrity of the ACT Government. (p.171-185)</p> | <p>Agreed in principle.</p> | <p>The primary objective of the body will be considered in the context of developing the enabling legislation.</p>  |
| <p><b>Recommendation 5:</b> The Committee recommends that a standing ACT independent integrity body should have the following functions: (a) investigation, referral and reporting; (b) corruption prevention</p>  | <p>Agreed in principle.</p> | <p>The majority of integrity bodies across the nation have a focussed preventative and educative role in fostering ethical practices within the parliament and the public sector.</p>   |

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| <p>(including research and risk mitigation); and (c) public education. (p.187)</p>   |                        | <p>The Government agrees with the Committee that an integrity body should retain only the most significant and serious allegations of corruption, with the majority of matters being referred to other investigative entities. (quote 10.16, p.173)</p> <p>Referral protocols between the integrity body and other investigative bodies will be considered and established which do not jeopardise the independence or existing legislative responsibilities of these entities.</p> |
| <p><b>Recommendation 6:</b> The Committee recommends that the corruption prevention function of a standing ACT independent integrity body should include communicating and disseminating (as it concerns research, risk mitigation and prevention) lessons learned from investigation outcomes. (p.187)</p>  | <p>Agreed.</p>         | <p>It is important for the ACT public sector and parliament to learn lessons from the investigations undertaken by an integrity body and develop measures focussed on preventive action.</p>  |
| <p><b>Recommendation 7:</b> The Committee recommends that the public education function of a standing ACT independent integrity body should be focused on upholding and modelling high levels of probity and ethics together with communicating the outcomes of investigations, facilitating transparency, and awareness of corruption issues.</p> | <p>Agreed in part.</p> | <p>The Government acknowledges that an ACT integrity body may be a valuable educative body. Educative functions of an ACT integrity body would centre on the promotion of ethical behaviour and transparency, fostering high standards of behaviour of public officials, raising awareness about the impacts of corruption, and encouraging reporting.</p>  |
| <p><b>Recommendation 8:</b> The Committee recommends that the focus of a standing ACT independent integrity body should be on corruption and integrity connected with public administration.</p>   | <p>Agreed.</p>         | <p>The focus of an ACT integrity body will be determined in the development of enabling legislation.</p>  |
| <p><b>Recommendation 9:</b> The Committee recommends that a standing ACT independent integrity body should be named as an Anti-Corruption and Integrity Commission (ACIC) to ensure consistency with theory and practice and to accurately reflect its objectives, functions and relationships with other integrity stakeholders.</p>              | <p>Noted.</p>          | <p>The Government notes the proposed acronym is the same as that of the Australian Criminal Intelligence Commission (ACIC). Consideration will be given to the appropriateness of the name, particularly given that both bodies will be involved in the same field and there is potential for confusion between the two bodies.</p>   |
| <p><b>Jurisdiction and scope of conduct</b></p>  |                        |   |
| <p><b>Recommendation 10:</b> The Committee recommends that the substantive jurisdiction of an ACT Anti-Corruption and Integrity</p>  | <p>Agreed in part.</p> | <p>The Government will be explore appropriate threshold criteria where an ACT integrity body would focus only the most</p>  |

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| <p>Commission should cover all public officials. Public officials is to include all persons receiving a salary, wages or other payment from the ACT Government Service, its statutory authorities, agencies or boards. This would include parties delivering contracted work or services on behalf of government. (p.189-198)</p>   |                             | <p>significant and serious allegations of fraud and corruption of public officials.</p> <p>The term ‘public official’ requires further examination. An ACT integrity body would have jurisdiction over public officials who hold positions of power and the ability to exert influence. This could include senior public servants and public sector officials, and statutory office holders including boards, committees and tribunals (excluding the ACT Civil and Administrative Tribunal). Where the threshold criteria (allegations of fraud and corruption) is not met, Public servants are covered within current misconduct and public sector investigative arrangements.</p> <p>The ACT Public Sector is reviewing its integrity framework to ensure that it is contemporary and best practice.</p> <p>Recommendation 12 outlines the Government’s position on the oversight of the ACT integrity body over policing officers. Further consideration of whether an ACT integrity body should have jurisdiction over the conduct of other third party contractors or consultants (not including ACT Policing) will be undertaken in the context of developing the enabling legislation.</p> |
| <p><b>Recommendation 11:</b> The Committee recommends that in investigating possible wrongdoing or impropriety on the part of a public official in exercising their official functions that the substantive jurisdiction of an ACT Anti-Corruption and Integrity Commission may extend to the conduct of third parties, i.e., where the third parties’ conduct would give rise to (or could give rise to) wrongdoing.</p> | <p>Noted.</p>               |  |
| <p><b>Recommendation 12:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) should have oversight over policing officers funded to deliver services by and to the ACT taxpayer and community.</p>   | <p>Agreed in principle.</p> | <p>The Government agrees in principle to an ACT integrity body to have oversight of ACT Policing of the AFP. This will be considered in the context of developing the enabling legislation.</p>  |

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|   |               | <p>Section 23 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> (Cw) prevents the ACT Legislative Assembly from making laws for the provision by the Australian Federal Police of police services to the Territory. Section 27 of the Self-Government Act provides that the Legislative Assembly cannot make laws that bind the Commonwealth without agreement from the Commonwealth and the amendment of Commonwealth legislation.</p> <p>The Government will progress discussions with the Commonwealth to seek their agreement to legislative amendments.</p> <p>This recommendation may have implications for the ACT Ombudsman which will be considered further.</p> |
| <p><b>Recommendation 13:</b> The Committee recommends, as it concerns ACT Policing, that the enabling legislation for an ACT Anti-Corruption and Integrity Commission (ACIC), together with a Memorandum of Understanding with the Australian Commission for Law Enforcement Integrity (ACLEI), must:</p> <p>provide for the ACLEI to refer corruption matters relating to ACT Policing to the ACT ACIC;</p> <p>(a) provide for the ACLEI to refer corruption matters relating to ACT Policing to the ACT ACIC;</p> <p>(b) provide for the ACT ACIC to operate cooperatively with ACLEI and other agencies, including those in other jurisdictions for joint investigations and information sharing;</p> <p>(c) establish an appropriate framework for inter-agency coordination; and</p> <p>(d) establish an appropriate framework for information sharing to enable the exchange of relevant intelligence and documentation when an investigation is commenced.</p> | <p>Noted.</p> | <p>The Government is exploring avenues to enhance the transparency of existing oversight mechanisms including through improved reporting to the ACT from the Australian Commission for Law Enforcement Integrity (ACLEI) and the ACT Ombudsman.</p>   |

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| <p><b>Recommendation 14:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) have oversight over Members of the Legislative Assembly (MLAs), MLA staff, and Judicial Officers. (p.200-201)</p>   | <p>Agreed in part.</p> | <p>The Government agrees with the recommendation for an ACT integrity body to have oversight over MLAs and their staff in relation to the most significant and serious allegations of corruption. The submission by the Clerk of the Legislative Assembly indicated that an ACT integrity body should not have the effect of displacing the Legislative Assembly’s Commissioner for Standards, even though there may be some modifications to the existing parliamentary integrity arrangements with the establishment of an ACT integrity body.</p> <p>The Government does not support the inclusion of judicial officers or other officers, when exercising judicial or quasi-judicial powers, within the oversight of an ACT integrity body. There is sufficient oversight through the Judicial Council and Judicial Commission. This model ensures that separation of powers is maintained. In February 2017, the Judicial Council was established to have jurisdictional responsibility for judicial officers, which includes Judges, Associate Judges, Magistrates and a Presidential Member of the ACT Civil and Administrative Tribunal. In addition, the Courts control the behaviour of quasi-judicial officers exercising their powers.</p> <p>It is important that the Judicial Council is given the opportunity to operate without compromising its judicial independence.</p> |
| <p><b>Recommendation 15:</b> The Committee recommends, as it concerns Members of the Legislative Assembly (MLAs), MLA staff, and Judicial Officers, that the enabling legislation for an ACT Anti-Corruption and Integrity Commission (ACIC) must:</p> <ul style="list-style-type: none"> <li>(a) ensure that judicial independence and parliamentary privilege is maintained;</li> <li>(b) have regard to the separation of powers;</li> </ul> | <p>Agreed in part.</p> | <p>The Government agrees that parliamentary privilege must be being maintained with the establishment of an ACT integrity body. Clearly defined boundaries will be established between the powers of an ACT integrity body and parliamentary privilege.</p> <p>The Government will consider a process where conduct crosses over into other jurisdictions and the role of an ACT integrity body.</p>  |

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| <p>(c) with respect to parliamentary privilege, clearly define the boundaries between the powers of an ACT ACIC and parliamentary privilege;</p> <p>(d) include a legislated process to deal with items that might be subject to disputed claims of privilege;</p> <p>(e) make it clear that any code of conduct binding MLAs, MLA staff, and Judicial Officers augments and does not restrict the definition of corruption included in the Act; and</p> <p>(f) establish a process where conduct crosses over into other jurisdictions—that, an ACT ACIC shall first take the decision to proceed with an investigation. (p.201)</p> |                             |  |
| <p><b>Recommendation 16:</b> The Committee recommends, as it concerns the ACT Legislative Assembly, that the enabling legislation for an ACT Anti-Corruption and Integrity Commission (ACIC) specify the requirement for a Memorandum of Understanding (MOU) between the statutory head of the ACIC and the Speaker of the ACT Legislative Assembly on the execution of a judicially approved search warrant on the premises of the Legislative Assembly. (p.202)</p>   | <p>Agreed in principle.</p> | <p>There may not be a need within the enabling legislation to require the development of an MOU between the Speaker and the Integrity Commissioner on the execution of search warrants on the Legislative Assembly premises. This may be a matter between the Speaker and the Integrity Commissioner when the integrity body is established.</p> |
| <p><b>Recommendation 17:</b> The Committee recommends that the definition of ‘corrupt conduct’, as set out in Part 3 of the NSW Independent Commission Against Corruption Act 1988, should form the definition of ‘corrupt conduct’ in the enabling legislation of an ACT Anti-Corruption and Integrity Commission.</p>   | <p>Noted.</p>               | <p>The Government will consider the definition of ‘corrupt conduct’ as set out in Part 3 of the NSW <i>Independent Commission Against Corruption Act 1988</i>, along with definitions used within other jurisdictions, when developing the enabling legislation.</p>   |
| <p><b>Recommendation 18:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission’s (ACIC) scope of conduct be focused on investigating matters where they involve serious or systemic corruption. While the Committee believes that the focus should necessarily be on serious and systemic corruption, any legislation should not be drafted in a way that would unduly limit the scope of an ACT ACIC.</p>  | <p>Agreed in part.</p>      | <p>An ACT integrity body’s scope of conduct should focus on matters involving serious or systemic corruption. The full scope of an ACT integrity body will be determined in the development of establishing legislation.</p>   |
| <p><b>Recommendation 19:</b> The Committee recommends that the terms ‘serious’ and ‘systemic’ should each be defined in an ACT Anti-</p>  | <p>Noted.</p>               |  |

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| <p>Corruption and Integrity Commission’s enabling legislation—as follows:</p> <p>(a) ‘serious corruption’ should be defined as corrupt conduct that is likely to threaten public confidence in the integrity of government; and</p> <p>(b) ‘systemic corruption’ should be defined as it is in the Australian Commission for Law Enforcement Integrity (ACLEI) statute—that is, as a pattern of corrupt conduct.</p>   |         |   |
| <p><b>Recommendation 20:</b> The Committee recommends that the ACT Government take advice as to whether the concept of ‘corrupt conduct’ adopted in the enabling legislation of an ACT Anti-Corruption and Integrity Commission is reflected in the terms of offences under the Criminal Code 2002. If it is not reflected, the Committee recommends that the Code should be amended so that it defines in statute the new standard or offence of ‘corrupt conduct’.</p> | Noted.  |   |
| <p><b>Recommendation 21:</b> The Committee recommends that an investigation threshold of ‘reasonable suspicion’ (as per the Victorian Independent Broad-based Anti-corruption Commission Act 2011) of the occurrence of corrupt conduct be required for an ACT Anti-Corruption and Integrity Commission to commence an investigation.</p>  | Noted.  |   |
| <p><b>Recommendation 22:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission have the power to conduct preliminary investigations that do not include the use of coercive authority.</p>   | Noted.  |   |
| <p><b>Recommendation 23:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) must be visible, accessible and a contact point for: (a) citizens and public servants to make complaints and report corruption concerns; (b) referrals from within government (ACT Public Service); (c) referrals from other integrity stakeholders/bodies; and (d) referrals from other designated stakeholders.</p>                                  | Agreed. | <p>The Government agrees that an ACT integrity body will be the contact point for the stakeholders listed.</p> <p>To ensure that an ACT integrity body is visible and accessible, the Government will need to clearly define roles and responsibilities inside the ACT Public Service as a good governance process.</p> |
| <p><b>Recommendation 24:</b> The Committee recommends that complaints/referrals as received by an ACT Anti-Corruption and</p>  | Noted.  |   |

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| <p>Integrity Commission (ACIC) are to be triaged using set criteria—such as: dismiss/refer/investigate. The triage criteria as detailed in the Victorian Independent Broad-based Anti-corruption Commission Act 2011 are a useful reference point.</p>   |                |  |
| <p><b>Recommendation 25:</b> The Committee recommends that confidentiality requirements are to apply to all complaints and referrals as received by an ACT Anti-Corruption and Integrity Commission (ACIC) until such time as the Commission decides to conduct public hearings or report. (p.209-210)</p>   | <p>Agreed.</p> | <p>Maintaining confidentiality allows integrity bodies to continue covert investigations.</p>  |
| <p><b>Recommendation 26:</b> The Committee recommends that mandatory reporting should apply within the ACT Public Service—such that Directors-General (and equivalents) have a duty to notify an ACT Anti-Corruption and Integrity Commission of any information or allegation that raises a corruption issue in his or her agency. Further, these requirements for mandatory reporting should be accompanied by the development of guidelines to assist those to whom mandatory reporting provisions apply. (p.210)</p>             | <p>Noted.</p>  | <p>The Government is not convinced that mandatory reporting is required where Directors-General find information or allegations that may raise a corruption issue. If significant and serious allegations of corruption are found of senior executives, Directors-General may refer the matter to the ACT integrity body. Other matters will be dealt with through existing processes.</p> |
| <p><b>Recommendation 27:</b> The Committee recommends that where Directors-General (and equivalents) knowingly or wilfully fail to comply with an ACT Anti-Corruption and Integrity Commission’s duty to notify it of any information or allegation that raises a corruption issue in their agency, penalties should apply. (p.211)</p>  | <p>Noted.</p>  | <p>See response to recommendation 26.</p>  |
| <p><b>Recommendation 28:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) should be empowered to take steps to protect the safety of anyone providing assistance to it or anyone consequently at risk. Appropriate provisions should be put in place to ensure protection of complainants or persons making reports, for example, protection from reprisals and victimisation. The Committee considers that these protections would be consistent with protections in other legislation.</p> | <p>Noted.</p>  | <p>Protection of public servants in the workplace, including consistent protections aligning with Part 7 of the <i>Public Interest Disclosure Act 2012</i>, will be considered as part of the drafting of the enabling legislation.</p>  |

| <b>Relationships with other integrity stakeholders</b>  |        |  |
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| <p><b>Recommendation 29:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) as informed by its purpose, should have a role in fostering public confidence in an integrity context and bring an authoritative leadership, organising and coordinating focus to the ACT public sector and parliamentary integrity framework.</p>  | Noted. |  |
| <p><b>Recommendation 30:</b> The Committee recommends, as it concerns relationships with other integrity stakeholders, that an ACT Anti-Corruption and Integrity Commission’s (ACIC) enabling legislation, at a minimum, should:</p> <p>(a) provide for the ACIC to operate cooperatively with other integrity agencies, including those in other jurisdictions—for joint investigations or information sharing with these jurisdictions;</p> <p>(b) provide an appropriate framework for inter-agency coordination;</p> <p>(c) detail information sharing provisions to enable the exchange of relevant intelligence and documentation when an investigation is commenced;</p> <p>(d) provide for appropriate referral mechanisms which allow the ACIC to refer matters to other bodies, that fall outside its jurisdiction and scope of conduct;</p> <p>(e) provide the ACIC, in referring matters to other integrity stakeholders, with power to give directions and guidance with regard to the conduct of the matter and to require the agency to provide a report as to the investigation undertaken and its results;</p> <p>(f) include, where the ACIC refers a complaint or report concerning an MLA to the Commissioner for Standards to specify that the Commissioner be obligated (as opposed to compelled) to provide a report as to the outcome of the referral. The ACIC will be able to report publicly that it has made such a referral and this will leave the onus on the ACT Legislative Assembly to explain what has happened to the referral; and</p> | Noted. | <p>Should an ACT integrity body refer a matter to another integrity stakeholder, it is the Government’s view that it should then be the responsibility of that integrity stakeholder to follow up the matter from this point.</p> <p>The Government does not believe it is appropriate to afford an ACT integrity body with power to give directions and/or guidance to other integrity stakeholders on how to handle a matter that has been referred, as this encroaches on the independence of other integrity stakeholders. Neither does the Government believe that an integrity stakeholder should be required to provide a report as to an investigation undertaken.</p> <p>As noted by the ACT Ombudsman, affording an ACT integrity body power to ‘give directions and guidance’ to the Ombudsman and ‘requiring’ the Ombudsman to report on the conduct of their investigations would restrict the legislated power of the Ombudsman to:</p> <ul style="list-style-type: none"> <li>• use discretion in deciding whether or not to investigate a matter and to conduct an investigation (section 6 of the <i>Ombudsman Act 1989</i> (the Ombudsman Act)); and</li> <li>• conduct investigations in private and in such a manner as the Ombudsman thinks fit (section 9(3) of the Ombudsman Act).</li> </ul> |

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| <p>(g) include, where the ACIC refers a complaint or report concerning a member of the Judiciary to the Judicial Council, to specify that the Judicial Council be obligated (as opposed to compelled) to provide a report as to the outcome of the referral. The ACIC will be able to report publicly that it has made such a referral and this will leave the onus on the Judicial Council to explain what has happened to the referral.</p>  |                             | <p>The Government suggests that relationships between an ACT integrity body and other integrity stakeholders are founded on consultation rather than direction, and that any referrals to integrity stakeholders are ‘for consideration’ rather than ‘for action’.</p> |
| <b>Powers</b>  |                             |  |
| <p><b>Recommendation 31:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission have own motion powers for the purposes of investigating, exposing and preventing corruption and fostering public confidence in the integrity of the ACT Government.</p>  | <p>Agreed in principle.</p> | <p>The full scope of an ACT integrity body, including own motion powers, will be determined in the development of establishing legislation.</p>  |
| <p><b>Recommendation 32:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission have powers to: (a) require attendance by witnesses and compel answers to questions; (b) apply for warrants to search properties and seize evidence; and (c) apply for warrants to engage in covert tactics—including: listening devices and optical surveillance.</p>  | <p>Noted.</p>               |  |
| <p><b>Recommendation 33:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission’s (ACIC) enabling legislation must contain mechanisms to ensure procedural fairness and to guard against its investigative and coercive powers being abused. This should include safeguards to avoid any unwarranted violation of personal rights of a person under investigation; and placing reasonable limits on the circumstances in which such powers can be exercised. This should include:</p> <ul style="list-style-type: none"> <li>(a) requiring that when witnesses are summonsed that they be given notice of the subject matter that will be discussed (provided it does not unduly prejudice the investigation);</li> <li>(b) ensuring that warrants that are issued for an ACIC investigation are issued by the Courts rather than the Commission itself;</li> </ul> | <p>Noted.</p>               |  |

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| <p>(c) any action to engage in covert tactics should be subject to obtaining a warrant through a judicial officer;</p> <p>(d) as it concerns engaging in a controlled operation—that detailed and prescriptive criteria should be included in any legislation which permits the ACIC to engage in these activities and that punitive measures should also be in place to protect against unauthorised controlled operations in connection with an ACIC’s work;</p> <p>(e) evidence gathered about unrelated third parties should form no part of an ACIC’s investigation (unless it is relevant to the investigation);</p> <p>(f) that evidence given by a suspect under compulsion cannot be used against that suspect in any subsequent prosecutions; and</p> <p>(g) if proceedings are proceedings for an indictable offence, an ACIC must, to the extent it thinks it is necessary to do so, ensure that the accused’s right to a fair trial is not prejudiced.</p> |                |  |
| <p><b>Recommendation 34:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission’s enabling legislation must provide that the protections afforded by legal professional privilege and privilege against self-incrimination respectively are waived in circumstances where the Commission uses its power to compel the production or giving of evidence. (p.222-223)</p>  | <p>Agreed.</p> | <p>The Government supports the view that protections afforded by legal professional privilege and privilege against self-incrimination must be waived where an ACT integrity body uses any power to compel the production or giving of evidence.</p> |
| <p><b>Recommendation 35:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission is not bound by the rules of evidence and can inform itself on any matter in such a manner as it sees fit.</p>   | <p>Noted.</p>  | <p>The Government notes this recommendation is very broad. Consideration of appropriate protocols and protections may be required. This may be an issue when seeking information/ documents of other integrity bodies.</p>                           |
| <p><b>Recommendation 36:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) should not have the power: (a) to engage in integrity testing; and (b) arm its officers.</p>  | <p>Noted.</p>  |  |

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| <p><b>Recommendation 37:</b> The Committee recommends, to ensure consistency with the powers of the Australian Commission for Law Enforcement Integrity (ACLEI), where it concerns conduct of ACT Policing officers, that an ACT Anti-Corruption and Integrity Commission have the power to engage in integrity testing.</p>  | <p>Noted.</p>  |   |
| <p><b>Recommendation 38:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission have the power to make findings of fact that corruption has occurred and that such a finding is not to be taken as a finding of guilt. (p.225)</p>   | <p>Agreed.</p> | <p>The Government agrees that an ACT integrity body is not considered a court exercising criminal jurisdiction. The body will not be able to convict or punish individuals. As a result, there is no requirement for the body to have judicial safeguards. An ACT integrity body is likely to have the power to make findings of fact in relation to corrupt conduct. Reaching formal determinations of law including findings of criminal guilt are for the courts and judiciary to determine.</p> |
| <p><b>Recommendation 39:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission’s enabling legislation must explicitly restrict the Commission from reaching formal determinations of law, including findings of criminal guilt, as this would usurp the judicial role and violate the separation of powers.</p>   | <p>Agreed.</p> | <p>See response to recommendation 38.</p>   |
| <p><b>Recommendation 40:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission institute an Exoneration Protocol that can be accessed in circumstances where an individual is subsequently exonerated or cleared of any personal corruption—after a finding of corruption. The Protocol amongst other things should include:</p> <ul style="list-style-type: none"> <li>(a) a mechanism for public acknowledgement of the exoneration or clearance of any person if corruption is not found after the person’s reputation has been attacked publicly; and</li> <li>(b) the development of guidelines to govern such a process.</li> </ul> | <p>Noted.</p>  |   |

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| <p><b>Recommendation 41:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission should not have powers to make disciplinary decisions nor manage a mediation program.</p>   | <p>Agreed.</p>              | <p>The Government agrees with the Committee’s recommendation and notes that the roles and responsibilities of an ACT integrity body must be clearly defined to work with, and complement, existing internal processes, rather than duplicating investigations which could result in different findings due to the scope of powers.</p> <p>The Government notes that if an ACT integrity body had powers to make disciplinary decisions and/or manage a mediation program, this would shift the scope of the body to include legal proceedings. This would arguably create the potential for conflict of interest should an investigative arm determine and impose sanctions, potentially having an effect on the rights of a person under investigation.</p> |
| <p><b>Recommendation 42:</b> The Committee recommends that where an ACT Anti-Corruption and Integrity Commission refers a complaint or report to an integrity counterpart it should be informed (where applicable) of the outcome of any disciplinary proceedings.</p>                                   | <p>Noted.</p>               | <p>The Government will give further consideration to how this may work in practice in the development of establishing legislation. Consideration will be given to any potential implications for section 9 of the <i>Public Sector Management Act 1994</i>.</p>  |
| <p><b>Recommendation 43:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission should have the power to take action for, and where applicable take action against any contempt of the Commission (subject to parliamentary privilege).</p>                                   | <p>Noted.</p>               |  |
| <p><b>Recommendation 44:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission should not have the power to take action against a person for an act or omission where it is established that there was a reasonable explanation for the act or omission concerned.</p>       | <p>Noted.</p>               |  |
| <p><b>Recommendation 45:</b> The Committee recommends than an ACT Anti-Corruption and Integrity Commission be empowered to refer suspected instances of criminality to appropriate authorities, subject to existing legal restrictions against reliance on derivative evidence by those authorities.</p> | <p>Agreed in principle.</p> |  |

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| <p><b>Recommendation 46:</b> The Committee recommends that sufficient resources need to be provided to the ACT Office of the Director of Public Prosecutions to manage any increase in workload that may arise in connection with referrals from an ACT Anti-Corruption and Integrity Commission.</p>  | <p>Noted.</p> |   |
| <p><b>Recommendation 47:</b> The Committee recommends that enabling legislation for an ACT Anti-Corruption and Integrity Commission include provisions that: (a) will regulate the manner in which evidence is gathered and shared with other agencies so as to improve the prospects of that material being used in subsequent prosecutions and to minimise any risk that such evidence will be misused; and (b) set out a mechanism for timely communication between the Commission and the ACT Director of Public Prosecutions to assist in pursuing matters of mutual interest.</p>  | <p>Noted.</p> |   |
| <p><b>Recommendation 48:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) should have the power to publicly report the findings that result from any investigation, including findings of serious and systemic corruption and their relevant factual foundations. The power to report should include:</p> <ul style="list-style-type: none"> <li>(a) powers to report and bring to the attention of the Assembly and the public findings and recommendations in relation to specific investigations;</li> <li>(b) a statutory power of ‘follow-up’—the ability to report publicly on the Government’s compliance (or lack thereof) with past reports and recommendations;</li> <li>(c) power to make a special (confidential) report to the designated Assembly oversight committee—where the statutory head of the ACIC considers that the disclosure of the information in a report to the Assembly would, on balance be contrary to the public interest; and</li> <li>(d) power to decline to report a matter which, in the opinion of the statutory head of the ACIC, should remain confidential.</li> </ul> | <p>Noted.</p> | <p>Appropriate protocols will need to be established to any public reporting of findings, so as not to prejudice investigations or actions by other bodies.</p> |

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| <p><b>Recommendation 49:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) be provided with exceptions to public disclosure in the form of reporting where disclosure, based on a public interest test, would compromise an ongoing investigation, place an individual in danger, or prejudice an upcoming judicial proceeding.</p> | <p>Noted.</p>         |  |
| <p><b>Recommendation 50:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) have the power to deal with vexatious complainants. This power should take the form of the statutory head of the ACIC having discretion to not proceed where there are reasonable grounds to believe that a complaint is vexatious.</p>                  | <p>Noted.</p>         |  |
| <p><b>Recommendation 51:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission have the power to impose appropriate penalties on those complainants, who knowingly or wilfully make false or misleading claims or complaints.</p>  | <p>Noted.</p>         | <p>The Government will give further consideration to how this recommendation may impact existing ACT Public Service disciplinary processes, including its own responsibilities should it an ACT Public Service officer/employee be penalised.</p> <p>See Government response to recommendation 41.</p>   |
| <p><b>Recommendation 52:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission (ACIC) should not be limited as to the timeframes around which former actions can be assessed; but is of the opinion that the operational focus of an ACT ACIC should largely be prospective and focused on current matters.</p>                                | <p>Agreed in part</p> | <p>The Government is of the view that the ACT integrity body should focus on prospective and current matters, with limited ability to review retrospective or previous matters. It is a general principle in the ACT that legislative provisions do not commence retrospectively if they operate to the disadvantage of a person by adversely affecting the person's rights or imposing liabilities on the person.</p> |
| <p><b>Power to hold public hearings</b></p>  |                       |  |
| <p><b>Recommendation 53:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission's enabling legislation refer to examinations (public and private) as opposed to hearings (public and private) to reinforce the investigatory proceeding that applies.</p>   | <p>Noted.</p>         |  |

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| <p><b>Recommendation 54:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission should have the power to hold public examinations. The decision on whether to hold public or private examinations should be informed by a public interest test.</p>  | <p>Noted.</p> |  |
| <p><b>Recommendation 55:</b> The Committee recommends that when determining whether a public or private examination should be held, the following should be considered by an ACT Anti-Corruption and Integrity Commission in making that decision:</p> <ul style="list-style-type: none"> <li>(a) the benefit of exposing to the public, and making it aware, of corrupt conduct;</li> <li>(b) the seriousness of the allegation or complaint being investigated;</li> <li>(c) any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an examination); and</li> <li>(d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.</li> </ul> | <p>Noted.</p> |  |
| <p><b>Recommendation 56:</b> The Committee recommends that the statutory head of an ACT Anti-Corruption and Integrity Commission, as it concerns a decision to hold a public examination be subject to a statutory requirement to 'sign a statement explaining why the public interest outweighs the potential for prejudice or privacy infringements', provide a copy to the person to be the subject of the examination, and give that person the opportunity to 'make representations as to why the statement may be incorrect'.</p>   | <p>Noted.</p> |  |
| <p><b>Recommendation 57:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission be required to conduct its examinations, especially those open to the public, in accordance with Lord Justice Salmon's principles of fair procedure for public inquiries.</p>  | <p>Noted.</p> |  |

| <b>Accountability and independence</b>  |                        |  |
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| <p><b>Recommendation 58:</b> The Committee recommends that the statutory head of an ACT Anti-Corruption and Integrity Commission be designated as an Officer of the Assembly.</p>   | <p>Agreed.</p>         | <p>The Government acknowledges the need for independence of such a body and supports the requirement that the head (Integrity Commissioner) of an ACT integrity body be an Officer of the Assembly.</p>  |
| <p><b>Recommendation 59:</b> The Committee recommends, as it concerns an ACT Anti-Corruption and Integrity Commission’s (ACIC) relationship with the ACT Legislative Assembly, that it be pursuant to the Officer of the Assembly framework and include the following requirements:</p> <p>(a) the ACIC to be oversighted by, and required to report to, an Assembly standing committee. The standing committee to be a committee established pursuant to Standing Order 215 (not Standing Order 16). The Committee to be chaired by a non-government member, its membership to be representative of the Assembly and the secretary to the Committee should not be a statutory office holder;</p> <p>(b) involvement by the Assembly (a combination of the Assembly as a whole and the relevant Assembly standing committee) in the appointment and dismissal of the statutory head of the ACIC; and</p> <p>(c) involvement by the Assembly (a combination of the Assembly as a whole and the relevant Assembly standing committee) in the approval of the budget for the ACIC. (p.252)</p> | <p>Agreed in part.</p> | <p>The Government is supportive of an ACT integrity body being established under the Officer of the Legislative Assembly framework joining the Clerk and Office of the Legislative Assembly, the Auditor-General and the Electoral Commissioner.</p> <p>The Government is generally supportive of an ACT integrity body being subject to parliamentary oversight either through the Legislative Assembly’s Standing Committee on Justice and Community Safety or a new Standing Committee.</p> <p>The terms and conditions of the Integrity Commissioner, including appointment and dismissal arrangements, will be consistent with the Officer of the Legislative Assembly framework.</p> <p>As the ACT integrity body will be subject to the Officer of the Legislative Assembly framework, the budget for the ACT integrity body will follow the same requirements as the Auditor-General, the Electoral Commissioner and the Office of the Legislative Assembly under the requirements of section 20AB and 20AC of the <i>Financial Management Act 1996</i>. The first budget to establish the ACT integrity body will initially be sponsored by the Government.</p> |

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| <p><b>Recommendation 60:</b> The Committee recommends that the appointment of an Integrity Commissioner for an ACT Anti-Corruption and Integrity Commission should comply with the following requirements:</p> <ul style="list-style-type: none"> <li>(a) a single Commissioner model;</li> <li>(b) appointment as an independent statutory officer;</li> <li>(c) appointment for a fixed term between 5–7 years non-renewable;</li> <li>(d) appointment by the ACT Legislative Assembly—pursuant to the Officer of the Assembly framework;</li> <li>(e) to be qualified for appointment as Commissioner the person must be a former Judge of a Supreme Court or the Federal or High Court, or be a legal practitioner of not less than ten years standing;</li> <li>(f) no age restriction should apply; and</li> <li>(g) the Commissioner must not be a former or current Member of the Legislative Assembly, or any other Australian Parliament.</li> </ul> | <p>Agreed.</p>         | <p>The Government supports the notion that the appointment of the Integrity Commissioner be in alignment with that of the current Officers of the Legislative Assembly (Auditor-General, ACT Ombudsman) and its framework.</p> <p>The Government notes the requirements put forward by the Committee and agrees that these requirements will assist in ensuring that the Commissioner position be occupied by an individual with the relevant skills and experience while maintaining a necessary level of independence.</p> <p>The Government is considering whether the Integrity Commissioner should be a full-time or part-time role.</p>   |
| <p><b>Recommendation 61:</b> The Committee recommends that the following additional requirements should be applied as it concerns the appointment of an Integrity Commissioner for an ACT Anti-Corruption and Integrity Commission:</p> <ul style="list-style-type: none"> <li>(a) the Commissioner to have a legislative duty to avoid actual or perceived conflicts of interest. A legislative direction may be appropriate for consequences to follow if the existence of a conflict of interest (real or perceived) is established;</li> <li>(b) that the appointee not have (or had) any political affiliations; and</li> <li>(c) appointments to the position should not be permitted from the ranks of existing ACT Government public servants or those who have been public servants in the ACT Public Service for a period of 10 years previously.</li> </ul>   | <p>Agreed in part.</p> | <p>The Government agrees that there is an imperative to ensure the role of the Integrity Commissioner cannot be, or be perceived to be, compromised by conflicts of interest. While it is likely that the occupant of this statutory office will be a “public sector member” under the <i>Public Sector Management Act 1994</i> and accordingly the public sector values and conduct requirements will apply, this can reasonably be reinforced in the primary legislation. Also given the role is likely to examine allegations made against senior public officials including MLAs and senior bureaucrats, it is equally important that the impartiality of the role is unquestioned.</p> <p>However the suggestion that any future appointment to the Integrity Commissioner position cannot have been an ACT public servant in the last 10 years may be unreasonable. This restriction has not been placed on any other ACT statutory</p> |

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|   |                      | officer holder. The Government acknowledges the importance of independence in the role.  |
| <b>Recommendation 62:</b> The Committee recommends that the enabling legislation for an ACT Anti-Corruption and Integrity Commission should provide for the appointment of an acting commissioner to act as Commissioner during any period for which there is no person appointed as commissioner or the Commissioner is absent from, or unable to discharge, official duties. A consultative process with the ACT Legislative Assembly pursuant to the Officer of the Assembly framework should be used with regard to proposals for acting arrangements.  | Agreed in principle. | The Government shares the view that provision needs to be made for acting arrangements in the event of an absence of the Integrity Commissioner. If the role of a Deputy Integrity Commissioner role was established, arrangements could be made for a standing acting arrangement to be put in place for the exercise of the powers and functions of the Integrity Commissioner. Any person acting in the role of Integrity Commissioner should meet all of the same threshold requirements as the substantive appointee. |
| <b>Recommendation 63:</b> The Committee recommends that the enabling legislation for an ACT Anti-Corruption and Integrity Commission should provide for the suspension and removal of the Commissioner. The process should comply with the following requirements:<br>(a) suspension and removal of the Commissioner to be pursuant to the Officer of the Assembly framework;<br>(b) be in accordance with specified criteria—including: for misbehaviour; for physical or mental incapacity, if the incapacity substantially affects the exercise of the Commissioner’s functions; if the Commissioner becomes bankrupt or personally insolvent; or if the Commissioner has been guilty of corrupt conduct ; and<br>(c) the procedures for either suspension or removal of the Commissioner should ensure procedural fairness. | Agreed.              | The Government acknowledges the need to set out the factors that may necessitate the removal or suspension of the Integrity Commissioner in the establishing legislation. Having any such suspension or removal requirements aligned with other Officers of the Legislative Assembly provides for an appropriate level of assembly consultation and consensus.   |
| <b>Recommendation 64:</b> The Committee recommends that funding arrangements for an ACT Anti-Corruption and Integrity Commission (ACIC) should be pursuant to the Officer of the Assembly framework.  | Agreed in principle. | The Government agrees that the Officer of the Legislative Assembly funding arrangements are appropriate to apply to the Integrity Commission. To ensure independence and that there is no impediment to the operation of the Commission in the formative stages, an initial funding arrangement could be entered into for a period of two years. This funding arrangement could then be reviewed for adequacy by an Assembly Committee.  |

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| <p><b>Recommendation 65:</b> The Committee recommends that the accountability and oversight regime for an ACT Anti-Corruption and Integrity Commission (ACIC) must include:</p> <p>(a) oversight by a relevant Assembly standing committee—broad oversight role and broad mandate to ‘monitor and report’ on the performance and functions of an ACIC;</p> <p>(b) oversight by an inspector/inspectorate type mechanism—to receive and investigate complaints concerning any aspect of an ACIC’s operations or any conduct of its officers; and</p> <p>(c) oversight of the ACIC’s exceptional powers—in the form of monitoring, review and report. (p.257-261)</p> | <p>Agreed in part.</p> | <p>(a) See the response to recommendation 59 in relation to the Government’s position on the parliamentary oversight of an ACT integrity body by a Standing Committee.</p> <p>(b) In addition to oversight by a Standing Committee, more time is needed to further consider whether another oversight mechanism is warranted through an Inspector or Inspectorate which would receive and investigate complaints in relation to the operations of the ACT integrity body or its officers. If required, a part-time oversight model could be explored.</p> <p>(c) The Government is supportive of the recommendation that there be an oversight role in relation to the use of exceptional powers by an ACT integrity body (such as engaging in covert tactics under warrant).</p> <p>This specialised oversight may fall within the scope of the Commonwealth Ombudsman’s inspections regime. The Government may explore possible options with the Commonwealth Ombudsman and any oversight role of exceptional powers.</p> |
| <p><b>Recommendation 66:</b> The Committee recommends that a part-time Inspector be appointed to: (a) provide oversight as it concerns complaints relating to any aspect of an ACT Anti-Corruption and Integrity Commission’s (ACIC) operations or any conduct of its officers; and (b) to conduct a review of the operations (in the form of monitoring, review and report) of an ACT ACIC at a minimum every 12 months. (p.257-262)</p>   | <p>Noted.</p>          | <p>(a) See the response to recommendation 65(b). More time is needed to further consider this requirement.</p> <p>(b) A review of the operations of an ACT integrity body could be undertaken by the relevant Standing Committee which has parliamentary oversight of the ACT integrity body. The frequency of this review could be considered in this context.</p> <p>The staffing requirements and proposed structure of the of an ACT integrity body will be carefully considered in the context of developing the enabling legislation and its Budget.</p>  |

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| <p><b>Recommendation 67:</b> The Committee recommends that the eligibility criteria, and process for appointment, and dismissal, of a part-time Inspector for an ACT Anti-Corruption and Integrity Commission (ACIC) should mirror that which applies for the ACIC's Integrity Commissioner.</p>   | <p>Noted.</p>               | <p>The Government will give consideration to eligibility criteria, appointment, and dismissal processes should a part-time Inspector be established.</p>  |
| <p><b>Recommendation 68:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission should be subject to annual reporting requirements as per the Annual Report (Government Agencies) Act 2004. In addition, the annual report should contain, amongst other things, detailed information as it concerns matters referred and investigated by the ACIC during the reporting period. The reporting requirements as detailed in section 76 of the Independent Commission Against Corruption Act 1988 (NSW) are instructive.</p> | <p>Noted.</p>               | <p>The Government notes the Committee's recommendation and will consider the appropriateness of an ACT integrity body preparing an Annual Report in line with the <i>Annual Report (Government Agencies) Act 2004</i> during the development of enabling legislation.</p> |
| <p><b>Recommendation 69:</b> The Committee recommends that the enabling legislation of an ACT Anti-Corruption and Integrity Commission must be reviewed every five years after commencement of the Act. The Report on the Review should be presented to the ACT Legislative Assembly within three months after the Review has started and be referred to the relevant Assembly oversight committee for inquiry and report.</p>   | <p>Agreed in principle.</p> |   |
| <p><b>Staffing and resourcing</b></p>  |                             |   |
| <p><b>Recommendation 70:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission's specialised investigative capability services should be purchased from a state-based anti-corruption body; and that an arrangement is in place that provides for these services on an as-needed basis.</p>  | <p>Agreed in principle.</p> |   |
| <p><b>Recommendation 71:</b> The Committee recommends that the statutory head of an ACT Anti-Corruption and Integrity Commission be permitted to engage persons on terms and conditions the statutory head sees fit. In any determination of the terms and conditions on which staff could be engaged, it would be appropriate</p>   | <p>Noted.</p>               | <p>The staffing requirements and proposed structure of an ACT integrity body will be carefully considered in the context of developing the enabling legislation and its Budget.</p>   |

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| <p>for the statutory head to have regard to the general terms and conditions of employees of the ACT Public Service (ACTPS).</p>  |               |  |
| <p><b>Recommendation 72:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission’s (ACIC) enabling legislation should include a provision recognising that the staff assisting the statutory head of the Commission are not subject to the direction of any person other than the statutory head, or a person authorised by the statutory head in relation to matters dealing with investigative functions and duties performed pursuant to the ACIC’s enabling legislation.</p>  | <p>Noted.</p> | <p>The Government notes this recommendation is similar to current arrangements in place for other ACT statutory authorities.</p>   |
| <p><b>Recommendation 73:</b> The Committee recommends that appointments to senior management positions within an ACT Anti-Corruption and Integrity Commission should not be permitted from the ranks of existing ACT Public Service (ACTPS) employees or those who have been public servants in the ACTPS for a period of 10 years previously. Further, appointment terms for these positions should be for fixed terms (with the possibility of extension).</p>  | <p>Noted.</p> | <p>The Government notes that placing such restrictions on staffing may be problematic and cause difficulties attracting suitable applicants to potential roles. Further, it may be difficult to set fixed employment terms for staff.</p> <p>The Government will consider the Committee’s recommendation and will investigate whether other jurisdictions have implemented such restrictions in their legislation.</p> |
| <p><b>Recommendation 74:</b> The Committee recommends that the following employment provisions and special conditions should apply to staff working for an ACT Anti-Corruption and Integrity Commission (ACIC):</p> <ul style="list-style-type: none"> <li>(a) staff to have a legislative duty to avoid actual or perceived conflicts of interest. A legislative direction may be appropriate for consequences to follow if the existence of a conflict of interest (real or perceived) is established;</li> <li>(b) staff not to have (or had) any political affiliations;</li> <li>(c) former AFP or ACT Policing police officers are not eligible for appointment to positions within an ACT ACIC;</li> <li>(d) staff to be subject to certain confidentiality requirements. Current or former staff members must not record, divulge or</li> </ul> | <p>Noted.</p> |  |

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| <p>communicate any information acquired in the course of carrying out their duties, except in the performance of those duties; and</p> <p>(e) eligibility for employment to be subject to security clearance/assessments.</p>  |         |   |
| <b>Application of other legislation</b>  |         |   |
| <p><b>Recommendation 75:</b> The Committee recommends that further work be undertaken to identify appropriate exemptions for an ACT Anti-Corruption and Integrity Commission from the operation of the Privacy Act 1988.</p>   | Noted.  |   |
| <p><b>Recommendation 76:</b> The Committee recommends that an ACT Anti-Corruption and Integrity Commission be required, in consultation with the Office of the Privacy Commissioner, to develop and publish information handling guidelines.</p>   | Agreed. |   |
| <p><b>Recommendation 77:</b> The Committee recommends that further work be undertaken to identify appropriate exemptions for an ACT Anti-Corruption and Integrity Commission (ACIC) from the operation of the Freedom of Information Act 1989.</p>   | Noted.  |   |
| <p><b>Recommendation 78:</b> The Committee recommends that the ACT Government appoint an independent person to conduct a statutory review of the <i>Public Interest Disclosure Act 2012</i> (the PID Act). The Review, amongst other things, should consider:</p> <p>(a) any potential conflict of interest (real or perceived) as it concerns decision makers and disclosure officers under the PID Act;</p> <p>(b) the findings of the Moss Review examining the operation of the Commonwealth <i>Public Interest Disclosure Act 2013</i> as it concerns the strengthening of that legislation to achieve the Act's integrity and accountability aims;</p> | Agreed. | <p>The Government agrees with the Committee's recommendation to review the <i>Public Interest Disclosure Act 2012</i>.</p> <p>Issues for consideration in the review include:</p> <ul style="list-style-type: none"> <li>• relationships between existing integrity bodies in the ACT, including the sharing of information and the referral of complaints;</li> <li>• oversight and accountability mechanisms; and</li> <li>• identifying gaps in the current framework to determine solutions.</li> </ul> |

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| <p>(c) the matters raised in submission No. 3 (as detailed in paragraph 3.162) to the Inquiry as it concerns the PID Act;</p> <p>(d) application of the PID Act to any future ACT Anti-Corruption and Integrity Commission (ACIC)—in particular, its articulation with any protected disclosure provisions that may apply to any informants providing assistance to the ACIC or anyone consequently at risk; and</p> <p>(e) the suitability of an ACT ACIC for the purposes of receiving disclosures pursuant to the PID Act.</p> |                |   |
| <b>Other matters</b>  |                |   |
| <p><b>Recommendation 79:</b> The Committee recommends that the ACT Government appoint an independent reviewer to examine appointment terms for statutory officer holders in the ACT and make recommendations to strengthen integrity as it concerns appointment of these office holders.</p>  | <p>Agreed.</p> | <p>The Government notes that the Public Sector Standards Commissioner can currently undertake this function at the direction of the Chief Minister.</p> <p>All appointment terms for statutory office holders are included within their enabling legislation.</p> |