



Submission to the inquiry into the establishment of an independent integrity commission for the ACT

Addressed to:

Committee Secretary
Select Committee on an Independent Integrity Commission

committees@parliament.act.gov.au

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Contact details

Email: secretary@scienceparty.org.au

Postal address: PO Box 20409, World Square NSW 2002

Phone: 0400 168 441 (Andrea Leong, Policy Officer)

Confidentiality

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The body of this submission does not need to be kept confidential and may be made public.

Summary

The Science Party thanks the committee for the opportunity to comment on this matter.

Basing the proposed Independent Integrity Commission (IIC) for the ACT on existing successful models shows the best promise for an effective anti-corruption strategy. The Science Party's recommendations are largely based on the NSW ICAC, with modifications based on correcting or minimising recognised flaws.

The model outlined below suggests essential elements, checks and controls; and the requirements for appropriate funding.

Recommendations

An IIC established for the ACT should have:

- Three Commissioners;
- Broad investigative scope;
- Ability to enforce its rulings and warrants;
- A hardened data repository and public access to public interest information;
- Clear independence and separation from the mechanism of government; and
- Appropriate funding.

Responses to terms of reference:

1. The appropriateness of adapting models operating in other similarly-sized jurisdictions.

Ensuring the independence of an IIC for the ACT should be pursued as a goal that can only be achieved by the application of proven or demonstrated powers and resourcing that is capable of uncovering wrongdoing in service to the public and corruption in office.

The size of the jurisdiction should only provide a guide to resourcing levels, not to the individual components and the interaction of these components within the commission's infrastructure. These are detailed below in the Science Party's submission.

The favoured model is similar to the NSW Independent Commission Against Corruption (ICAC). The use of Commissioners, coercive powers and a broad mandate can and should be adopted. Jurisdictional population should only determine the number of support staff required to perform their duties "without fear or favour".

(a) The personnel structure of the commission to ensure the appropriate carriage of workload.

- The Science Party has seen the effectiveness of the NSW ICAC structure in its previous, single-commissioner model, and has confidence in the effectiveness of the current three-commissioner model. The Science Party highly recommends that the IIC be headed by a minimum of three Commissioners to improve the judgement of the commission.
- The Commissioners will each require a staffed office including research officers, investigators and access to legal counsel. Some investigations will require travel and additional staff to address these additional requirements.
- One or more courts will need to be provided if existing courts do not have the capacity to accommodate IIC proceedings. If a court(s) is required, these should include staff, registrars and potentially junior judges.
- It is envisioned that the IIC would also possess a small group of enforcement officers with policing powers. Whilst they would be required to work with other policing bodies, they would also be able to act independently under warrant by the commission.
- Reports of misconduct or corruption should be handled by an office with a minimum number of core staff and the ability to grow or shrink a casual workforce depending on cyclical or topical peaks and troughs.
- A permanently employed IT group should maintain servers and provide document retrieval, archiving and backups. This group should be responsible for the security, encryption and protection of the commission's data. Data and processing capability should be held and secured in-house (even though the physical equipment may be at a remote site). The integrity of the commission precludes the use of outside entities—public or private (including cloud services)—from custodianship or processing of IIC data.
- Data entry (except court transcriptions), the media group and Archives should report to the IT group. Management of all levels of the IT group should be drawn exclusively from the ranks of current or former IT hands-on technicians.
- A media group will need to handle recording and transcriptions. Media should be word searchable where possible. Media group management should only be undertaken by current or former media professionals.
- Archives would hold and publish the public records and IIC transparency records. An essential role of this component would be to act as a public repository of the pecuniary interests of all elected officials (in accordance with the current legislation). This could include scanned documents but, regardless of the format of the original document, these records should ideally be made available online in a machine-readable word-searchable format.

In addition to staff required for the Commission itself, oversight would require (following the ICAC model) a Parliamentary Committee and an Inspector (with their office and staff). The Office of the Inspector should be adequately staffed to respond to FOI requests in a timely manner.

As the IIC would not report to any Minister or be under any externally imposed directives, this Parliamentary oversight and the Office of the Inspector would be essential.

(b) Governance and funding that delivers independence.

Minimum resourcing should not fall below a predetermined minimum level required to maintain the core components described in the previous section.

All Commissioners should receive equal funding and remuneration. Remuneration, once initially set, should be reviewed on a regular basis and modified by an Arbitration hearing. The suggested review frequency should be every 2 years. Provision should be made to appoint acting Commissioners, should one or more be temporarily unable to fulfil their duties. No Commissioner vacancy should be left unfilled for more than 3 months.

Administrative responsibility and costs should rest equally with each Commissioner's office. Policy should be set jointly by consensus. Budget estimates should be provided annually and funding provided on this basis. Provision must be made to ensure adequate ongoing funding and to prevent it being crippled by withdrawal of funding, but no mechanism is suggested here.

Commissioners should be free to undertake preliminary investigations in an unfettered manner and with the commission's full powers. Should the preliminary investigation not produce supporting evidence or credible suspicions, two commissioners can jointly veto carrying the investigation to a formal state. Preliminary investigations should be of a short but reasonable duration, though not fixed.

No external governance or direction should be necessary or permitted. Review and credible sanctions should only be possible via the Office of the Inspector or the Parliamentary review process.

(c) The powers available to a commission.

The IIC should be able to investigate any credible reports of failure of government integrity or outright criminal action. It should be able to issue surveillance, search and arrest warrants and legally coerce witnesses to provide testimony.

Government data (e.g. emails, departmental accounts) are considered ACT Government property and would not be subject to warrant or any right to withhold from a Commissioner. This should

apply even if the data comes from a department not under investigation (e.g. audit findings, internal discussions).

The Science Party is fundamentally opposed to the routine collection and retention of citizens' telecommunications metadata. However, should this scheme be in place, the commission should have access to the data, restricted by existing legislation and on the condition that it can justify, through an internal application process, that (a) it is reasonable to believe a crime or corruption has occurred, and (b) access to the metadata being sought would be relevant to the investigation at hand.

Software tools should be provided to perform all necessary data mining, analysis and correlation for the required investigation. Should metadata retention remain sanctioned in law, the IIC would serve as a major metadata abuse watchdog.

The commission's powers should extend to (but not be limited to) procurement, service and regulatory arms of government, elected officials, public institutions, outsourcers, vendors and government funded private organisations.

(d) The educative functions of a commission.

The Commissioners' offices should provide basic guidelines on probity, and legal and ethical concerns related to an organisation or individual's (e.g. employee, vendor, inspector) relationship to Government.

Public domain data deemed to be of public interest, or required to be made public by legislation, can be published on the IIC website. One such database may be the register of politicians' pecuniary interests.

The major educative outcome of a strong, fair and effective IIC would be in its deterrent effect.

(e) Issues regarding retrospectivity, including human rights, and the timeframes around which former actions can be assessed.

The Science Party is not providing a response to this item at this time.

(f) The relationship between any commission and existing accountability and transparency mechanisms and bodies in the ACT.

The IIC would exist to examine the accountability and transparency of government and related bodies in the ACT; it would not report to them or be subject to them. The proposed IIC needs to be independent of these bodies, and the proposed accountability of the IIC has been outlined above.

(g) Any other relevant matter.

Public accessibility and ability to make complaints

Offices should be located within the ACT and in close proximity to Parliament. The public should have ready access to the IIC both physically or by standard communication channels (e.g. phone, post, or email). No Statutory Declaration or legal instrument should be required to report suspicion of abuse. Trained and experienced staff must be provided to process all reported issues in a timely manner. Confidentiality of sources must be protected and witness protection offered when deemed necessary.

All credible allegations must be investigated, but not all investigations must be based on allegations received.

Submitting vindictive or repeated vexatious allegations should be considered an offence and a waste of the commission's limited resources.

Attempts to thwart or pervert the course of an investigation must be regarded as an offence of the highest order.

Whilst the IIC would continue receiving reports, no public investigation of political Parties or candidates should be launched once an election is called, but existing investigations or hearings should continue unchecked. During this period, should evidence emerge or an investigation reach fruition and a determination is made by a Commissioner that criminal charges should be laid, they should be laid.