

Discussion Paper - Integrity Commission Powers

Issue	Questions	EDU Comments
<p><i>Telecommunication interception and access</i></p>	<p>1. Which of the options set out above are most appropriate for the Integrity Commission?</p>	<p>Nil comment</p>
	<p>2. If the Integrity Commission is able to conduct interception:</p> <p>a. Is additional oversight by the Inspector, as provided for by the current Bill, sufficient to cover protections regarding the right to privacy?</p> <p>b. Should a new position of a PIM (or similar) be provided separate to the Inspector?</p> <p>c. Is there a cost threshold where the value of interception as an investigative tool is outweighed by the cost to the public to facilitate interception?</p>	<p>Nil comment</p>
	<p>3. Are there further matters that the review should consider in relation to powers under the TIA Act?</p>	<p>Nil comment</p>
<p><i>Obtaining material in a person's 'custody'</i></p>	<p>4. Should the IC Act be amended to include material in a person's 'custody' as material that can be compelled for production?</p>	<p>Nil comment</p>
<p><i>Production in the course of an examination</i></p>	<p>5. Should the Integrity Commission be granted additional powers to be able to compel production of material in the course of a hearing or examination?</p>	<p>Nil comment</p>
<p><i>Amendment in relation to service periods</i></p>	<p>6. What service period should the IC Act provide for compliance with a summons to produce?</p> <p>a. Are the current service periods sufficient, too short, or too long, or too inflexible?</p>	<p>Nil comment</p>

	7. Should there be scope in the IC Act for the Integrity Commission to amend or vary service periods to extend or shorten the timeframe? If so, should this need to be agreed by both the notice recipient and the Commission?	Nil comment
<i>Allowing the Integrity Commissioner to determine questions of privilege</i>	8. Should the Integrity Commissioner be given the power to determine privilege claims? If so, are there safeguards that could be introduced to address procedural fairness concerns?	Nil comment
<i>Amendment to enable the Integrity Commission to request information from public officials</i>	9. Should section 89 should be broadened to include a larger range of public officials, or is the existing scheme sufficient (noting that the head of a public sector entity may seek assistance to comply with a notice)? a. If so, which public officials should be captured under section 89? For example, should section 89 be limited to members of the senior executive service? i. If section 89 is broadened to capture a larger group of public officials, should the Integrity Commission be required to report section 89 use to the Inspector? b. If section 89 were to be broadened, should section 89 be repealed and section 90 extended to compel information, documents, items and other things from any public official?	Nil comment
	10. Should there be an equivalent provision to section 89 for an investigation? a. If so, should it also be broad and include all public officials?	Nil comment
<i>Amendments to the preliminary inquiry framework</i>	11. Should the IC Act be amended to remove the ability to claim secrecy during a preliminary inquiry?	Nil comment
	12. Should the Integrity Commission have the ability to issue a confidentiality notice to any person during a preliminary inquiry?	Nil comment

	13. Are there any other considerations for the preliminary inquiry framework?	Nil comment
<i>Arrest warrant for witness not likely to appear</i>	14. Should the Integrity Commission be able to seek an arrest warrant for a witness prior to that witness failing to appear for their examination?	Nil comment
	15. If the proposed amendment was made, should the ability to seek the warrant prior to the notice's expiry be reliant on evidence that the person intends to abscond? a. Alternatively, should it be sufficient to shown that the person does not intend to appear before the Commission (regardless of whether they intend to remain in the ACT)?	Nil comment
<i>Warrant to search premises and authorise a search for items on a person</i>	16. Noting the current distinctions in the ACT framework, is it appropriate to provide a capacity for Integrity Commission investigators to conduct a frisk search on a person while executing a search warrant?	Nil comment
	17. Are there any implications in relation to the HR Act if the Commission's proposals were implemented?	Nil comment
	18. Should the IC Act provide the capacity for a Magistrate to consider authorising a Commission investigator to conduct a frisk search in the warrant's terms? a. If yes, should criteria be specified when a frisk search is authorised? For example, should the Commission need to provide evidence to the Magistrate that the subject of the warrant has previously been uncooperative with the Commission or other agencies.	Nil comment

	<p>19. Are there any other options to ensure occupier compliance with search warrants? For example, should there be a penalty if the occupier or any person assisting the occupier knowingly withholds items that are captured under the search warrant?</p>	<p>Nil comment</p>
<p><i>Enabling the Integrity Commission to access employment records</i></p>	<p>20. Should the Integrity Commission have direct access to Chris21 employment records?</p> <p>a. Could confidence be adversely impacted if the framework were amended to allow the Commission access to HR21? If so, to what extent is this a problem?</p> <p>b. Are there any alternative options that would be feasible? For example, the Commission could enter into an MOU with the PSSC so that the PSSC is required to provide certain information to the Commission, such as residential addresses.</p>	<p>Nil comment</p>

Discussion Paper – Legal Representation and Privilege

Issue	Questions	EDU Comments
<i>The current legal assistance framework</i>	1. What arrangements should exist for legal assistance where a witness is summonsed to appear before the Integrity Commission?	Nil comment
	2. Should a person be entitled to seek their own legal assistance using public funds through the ACT Government? Should this extend to all people, including members of the public? a. Should there be limitations or caps on assistance in these scenarios? b. If a request for assistance is denied, or if the funding provided is limited, should there be an avenue for review?	Nil comment
	3. Should a witness provided with assistance be found to have committed an offence by a court be required to pay back any or all legal assistance funding provided by the Territory? a. Alternatively, if the Integrity Commission makes a finding that a person has engaged in serious and/or systemic corrupt conduct, should that person be required to repay legal assistance?	Nil comment
<i>Legal Professional Privilege</i>	4. Should the IC Act to abrogate legal professional privilege of the Territory where the advice was obtained as part of a public official's duties (and not for the purpose of Commission proceedings)? a. If the answer is yes: i. Are there situations where privilege should be maintained? For example, the IC Act could provide factors to retain privilege and the Supreme Court adjudicates whether those factors are present.	Nil comment

	<p>ii. Should privilege be maintained over information that was created prior to the amendment, or should legal advice provided previously also be abrogated?</p> <p>iii. Should restrictions apply on republication or other disclosure of information that is compelled by the Commission and that is otherwise subject to legal professional privilege?</p> <p>iv. Noting that section 270 of the IC Act mirrors the privilege abrogation provisions in section 175 in respect an investigation undertaken by the Inspector, should this also be amended to match any amendments to section 175 in respect of legal professional privilege?</p>	
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Discussion Paper – Confidentiality, Information Sharing and Wellbeing

Issue	Questions	EDU Comments
<p><i>Wellbeing and access to mental health care</i></p>	<p>1. Should people by default be allowed to speak with a mental health professional without breaching the terms of a confidentiality notice?</p>	<p>The Education Directorate recognises the distress that can be experienced by people subject to powers exercised by the Integrity Commission and supports legislative amendments that protect their wellbeing and mental health.</p> <p>The Education Directorate agrees that the range of permitted disclosures for confidential information should be expanded to allow people to speak with a mental health professional without breaching the terms of a confidentiality notice. This should be enacted with appropriate controls in place to manage any risk of disclosure of information between the mental health practitioner and client.</p> <p>The Education Directorate agrees that the inclusion of a support person should be a matter of routine. This is consistent with ACTPS practices when investigating allegations of misconduct and supports the notion of procedural fairness. We agree that there should be controls around who can be a support person with a signed confidentiality undertaking required. We do not support a vetting and approval process which seems and onerous and may create an unnecessary administrative burden.</p>
	<p>2. Should the IC Act include, as a default position, provision for a person to bring a support person to a private and/or public examination conducted by the Integrity Commission?</p> <p>a. If not, should a person be allowed to nominate a friend, relative or spouse to whom they can speak under the terms of the confidentiality notice (assuming that person is not also involved in the investigation)?</p> <p>b. If so, should the IC Act impose any limitations on who may act as a support person and the approval process for a specific identified individual?</p> <p>c. Should there be provision for an appropriate vetting and approval for a support person to attend an examination? d. Does the risk that a witness-selected support person could jeopardise the investigation require the setting up of a dedicated pool of counsellors or other qualified people who may act as a support person for a witness during an examination?</p>	
<p><i>Access to reimbursement for expenses</i></p>	<p>3. Should a regulation be made to trigger section 172 of the IC Act and implement the witness expense reimbursement scheme?</p>	<p>Nil comment</p>

	4. Should assistance be limited to those appearing before an examination, rather than witnesses who may only be required to produce documents to the Integrity Commission?	Nil comment
	5. Should financial assistance be limited to any specific categories (such as travel, costs in preparing documents)?	Nil comment
	6. At what rate should reimbursement be provided? For example, current DPP practice utilises the relevant ATO travel determination to calculate allowances. In Victoria, IBAC regulations allow reimbursement of lost wages at \$100 per hour, capped at \$600 per day, and all reasonable childcare expenses.	Nil comment
Information sharing	7. Should there be mandated situations or criteria where the Integrity Commission is obliged to share information with an appropriate entity? a. In what situations should this obligation exist? For example, where it is needed to prevent harm, to protect a vulnerable person, or the environment.	Nil comment
	8. Should a witness generally be entitled to know what matter their examination summons is referring to? a. In what situations should this information be able to be withheld? b. Where the Integrity Commission does withhold this information, should it be explicitly reported to the Inspector as part of the monthly reporting requirements under section 205 of the IC Act?	The Education Directorate agrees a witness should generally be entitled to know what matter their examination summons is referring to, on the basis that withholding this information may affect the mental health and wellbeing of a witness and provided they are bound by confidentiality undertakings. Exceptions might be where the disclosure means an unacceptable level of risk is presented.

	<p>9. Are there any alternative options to ensure witnesses can be well-prepared for an examination?</p> <p>c. For example, should the Commission be required to inform the Inspector they intend to withhold the information from the witness?</p> <p>i. If so, should the Inspector be required to approve this approach?</p>	<p>Where the Integrity Commission does withhold this information, it should be disclosed to Inspector as part of monthly reporting requirements to show trends in the extent of situations where witnesses don't know what their examination summons refers to.</p>
<p><i>Wellbeing requirements under the IC Act</i></p>	<p>10. Does the IC Act adequately provide for witness mental health and wellbeing, and if not, what measures should be included in the IC Act?</p>	<p>The current legislation does not adequately provide for witness mental health and wellbeing as it is not explicitly noted as a factor the Integrity Commission must have regard to when deciding whether it is reasonable to issue an examination summons.</p> <p>Consistent with the human rights focus of the ACT, appropriate measures to support mental health and wellbeing should include access to counsellors and psychologists being routinely offered and the ability for the Integrity Commission to revoke or amend an examination summons based on the circumstances of the witness. This should take into consideration, for example, the fitness of a witness to engage with an examination summons based on medical advice.</p> <p>The Education Directorate agrees the Inspector could assist in achieving better wellbeing g outcomes for witnesses through requiring the Inspector to consider the Commission's management pf mental health and wellbeing as part of the annual operational review of the Integrity Commission. This reporting should include data on the uptake of mental health and wellbeing offerings.</p> <p>The Education agrees there should be a legislative power for the Commission to revoke or amend the examination summons</p>
	<p>11. Should the Inspector be given oversight responsibilities for how the Integrity Commission deals with witness mental health and wellbeing? How could this best be implemented?</p>	
	<p>12. Should there be a legislative power for the Commission to revoke or amend the examination summons based on the circumstances of the witness, such as those with health or disability issues?</p>	

		<p>based on the circumstances of the witness, such as those with health or disability issues. As a human rights jurisdiction, other ways to undertake an examination to support the health of the witness should be considered.</p>
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Discussion Paper – Inspector and Oversight Paper

Issue	Questions	EDU Comments
<p><i>Information the Integrity Commission must provide the Inspector</i></p>	<p>1. Should section 205 be amended to explicitly require that the Integrity Commission must provide information to support its reasons for issuing a notice?</p>	<p>Nil comment</p>
	<p>2. Should legal professional privilege be available to the Commission as a ground for refusing to provide information requested by the Inspector?</p> <p>a. If no, should clarification be provided in the IC Act that the Inspector should have full access to information of the Commission, including information subject to a claim of legal professional privilege?</p> <p>b. If no, should clarification be provided in the IC Act that legal professional privilege is not taken to be waived by the Commission in circumstances where the Commission provides such information to the Inspector for the purpose of the Inspector’s functions?</p>	<p>Nil comment</p>
<p><i>14 days’ notice for a public hearing</i></p>	<p>3. Should the IC Act require the Integrity Commission to provide the Inspector with at least 14 days’ notice of any intended public examination to give the Inspector increased time to consider a notice from the Commission?</p>	<p>Nil comment</p>

Discussion Paper – Integrity Commission Purpose and Jurisdiction

Issue	Questions	EDU Comments
<p><i>Mandatory Corruption Referrals</i></p>	<p>1. Should the IC Act not require reporting where a report on the same matter is known to have been made to the Commission?</p>	<p>The Education Directorate strongly agrees the IC Act should not require reporting where a report on the same matter is known to have been made to the Commission. To date, this requirement has created confusion for mandated reporters across the ACTPS and the duplication of reporting risks distorting data on reporting that may undermine public confidence. For consistency, the IC Act could be amended to align with the <i>Children and Young People Act 2008</i>, where the requirement for mandatory reporting of child abuse does not apply where someone else has made a report on the same grounds.</p>
<p><i>Interaction of reporting requirements under IC Act and Public Sector Management Act 1994</i></p>	<p>2. Is the current interaction between section 9 of the PSM Act and section 62 of the IC Act incompatible or capable of improvement?</p> <p>3. Should the IC Act impose a positive duty on all public officials to report corrupt conduct?</p> <p>4. Should the PSM Act definition of ‘public sector member’ be aligned with that of ‘public official’ in the IC Act?</p>	<p>The Education Directorate does not agree with the Integrity Commission that the current interaction between section 9 of the PSM Act and section 62 of the IC Act is incompatible as these two reporting requirements serve different purposes and differentiates between the requirement of all public servants to report <u>suspected fraud and maladministration</u> to the Head of Service and the IC Act requirement for all senior executives and heads of public sector entities to report <u>suspected serious and/or systemic corrupt conduct</u> to the Commission.</p> <p>The Education Directorate does not support an amendment to the IC Act to impose a positive duty on all public officials to report serious and/or systemic conduct, rather than limiting the obligation to heads of public entities and senior executives. The Education Directorate notes the 2018 Select Committee</p>

		<p>considered this matter and deemed that current requirements for mandatory reporting were sufficient and sees the benefits of reserving this obligation for suitably senior and experienced officers. The current requirements do not preclude any person from reporting suspected corrupt conduct to the Commission.</p> <p>Aligning the PSM Act definition of ‘public sector member’ with that of ‘public official’ in the IC Act may be undesirable given the differences in objectives of the reporting objectives of both Acts.</p>
<i>Referrals and assessment of matters</i>	5. Would any of the above options be worth adopting to streamline the existing process and improve assessment timeframes?	<p>The Education Directorate supports action to streamline the existing referral and assessment process and improve timeframes.</p>
	6. Alternatively, are there other mechanisms to seek to ensure timely assessment of referrals made to the Integrity Commission?	<p>Option 2, based on the South Australia model and leveraging the Professional Standards Unit as a triage function for matters that fall within the PSSC’s jurisdiction, has merit. This would simplify, clarify and streamline reporting requirements for ACTPS staff.</p>
<i>Clarifying interaction with clause H7.1 of the ACTPS Enterprise Agreements</i>	7. What factors should the review consider in relation to this proposal?	<p>The considerable overlap between the corrupt conduct and misconduct definitions has created challenges and confusion for staff.</p>
	8. Is legislative amendment required to address this issue?	<p>Given it may be difficult and inappropriate to amend an enterprise agreement, the review should consider the potential to manage the risk of a PSSC jeopardising a corruption investigation through an agreement of memorandum of understanding under section 56 of the IC Act. This option could support effective coordination between the PSSC and the</p>

		<p>Commission and would allow for a head of service decision about what is best for the workplace in specific instances.</p> <p>Consideration should be given to situations where referral to the PSSC could jeopardise a potential IC investigation for corruption. Can there be exceptions for when not to report to PSSC?</p>
<p>Limiting investigations to serious and/or systemic corrupt conduct</p>	<p>9. Should the jurisdiction of the Integrity Commission be amended so that only matters which demonstrate serious or systemic corrupt conduct fall within its remit?</p>	<p>The Education Directorate believes the jurisdiction of the Integrity Commission should be amended so that only matters which demonstrate <u>serious or systemic corrupt</u> conduct fall within its remit. This is consistent with the model utilised under the <i>National Anti-Corruption Commission Act 2022</i> and may make other proposals for additional powers and investigative tools (e.g. powers under the <i>Telecommunications (Interception and Access) Act 1979</i> (Cth), or abrogating legal professional privilege) more appropriate and compatible with human rights as they would only be used in investigation of serious matters.</p> <p>This also recognises other existing oversight functions in the ACT including the PSSC, ACT Ombudsman, ACT Auditor General's Office and ACT Human Rights Commission.</p> <p>Legislative clarity is needed as to what constitutes 'serious or systemic corrupt conduct'.</p>
<p>Coverage of MLA conduct</p>	<p>10. Are the current provisions in the IC Act and other legislation sufficient to ensure broad enough coverage of MLA conduct is captured under the IC Act?</p>	<p>Nil comment</p>

Discussion Paper – Integrity Commission Operational Matters

Issue	Questions	EDU Comments
<p><i>Allowing former ACT public servants to work at the Integrity Commission</i></p>	<p>1. Should the prohibition on the Integrity Commission hiring staff who are, or have been in the last five years, public servants be removed? Which of the options listed above would be preferable?</p> <p>a. If the proposal is accepted, what protections should be put in place to ensure that conflicts of interest are adequately addressed?</p>	<p>Yes, prohibition on the Integrity Commission hiring staff who are, or have been in the last five years, public servants should be removed as existing arrangements have limited the recruitment pool for the Commission and has likely hampered the Commission’s efficiency.</p> <p>Controls should be put in place to manage any conflicts of interest. For example, if an employee of the Integrity Commission has previously worked in Education Directorate they would be precluded from involvement in assessment of any referrals/matters relating to the Education Directorate for first 12 months of employment.</p> <p>MLAs should wait out a period (12-24 months) before applying for IC employment. Full and frank disclosure of current alliances and memberships is also needed.</p>
	<p>2. Are there categories of employees that should be restricted from employment at the Integrity Commission, such as MLAs or their staff?</p> <p>a. If so, should the restriction apply only for a limited time and/or only to high-level positions?</p>	
<p><i>Amendment to extend time in which arrested person can be held</i></p>	<p>3. Should the Integrity Commission’s proposal be dealt with through legislative amendment to allow for the detention of people subject to a warrant until they can be brought before the Commission, or should it be dealt with through the Commission’s operational practices?</p> <p>a. For example, is it preferable that the Commission coordinate the arrest warrant’s execution with ACT Police to ensure the person is capable of being brought immediately before the Commission for examination at time of execution?</p> <p>b. Is it preferable for the Commission to convene after hours rather than detaining a person?</p>	<p>Nil comment</p>

	c. Could keeping a person in detention be allowed only where there are grounds for believing the person may leave the jurisdiction or destroy evidence?	
	4. If the proposal is implemented, should there be a time-limit on the person's detention in police custody? a. If so, what is the appropriate amount of time of detention?	Nil comment
<i>Loss of immunity for prior inconsistent statement</i>	5. Should the circumstances where a witness would lose derivative use immunity for a prior inconsistent statement, be expanded? If so, how and with what limitations? a. In particular, are there any other risks or consequential issues if the proposal were implemented that would make a change unnecessary or undesirable?	Nil comment
<i>Who must receive a draft copy of an Integrity Commission report?</i>	6. Is the current framework outlining who should receive a copy of an investigation or special report adequate? a. If not, what are the appropriate limitations on who should receive a copy of a report? For example, should provision of the report be limited to those directly named in a report? b. Alternatively, should a broader range of people be sent a copy of the report, but not be permitted to provide comment unless they have a direct interest in the report (for example, as in practice in Victoria)?	The current framework outlining who should receive a copy of an investigation or special report is too broad and doesn't specify who receives the report. There should be absolute clarity on this and it should not just be at the discretion of IC, this would be too ambiguous. If a person is directly named in the report, the default should be to receive a copy of text to make sense of the material surrounding one's name.
<i>Shortening timeframe to comment on reports</i>	7. Is the current six-week timeframe an appropriate amount of time to comment on a report, or could it be reduced to say four weeks without unfairly limiting the ability to consider a report?	Nil comment

	8. Should the IC Act afford greater scope for flexibility within the response timeframe? a. For example, should the legislation require that the Integrity Commission provide a reasonable amount of time to respond to the report?	
<i>Interaction between Corrections Management Act 2007 and Integrity Commission Act 2018</i>	9. Should the IC Act be amended to give effect to Option 1 or Option 2?	Nil comment
	10. Are there any other relevant matters to be considered in relation to detainees appearing before the Integrity Commission?	Nil comment
<i>Limit the scope of disclosure to a court</i>	11. Should the scope of disclosure to a court be further limited under the IC Act to reflect the Integrity Commission's proposal?	Nil comment
<i>Extending disclosure protections for complainants beyond initial corruption complaint</i>	12. Does the IC Act currently provide satisfactory protections for complainants?	Nil comment
	13. Are there unintended consequences of extending continued immunity to complainants beyond the initial disclosure?	Nil comment
	14. Alternatively, should the IC Act be amended to reflect the apparent intent outlined in the explanatory statement, in that immunity would apply only once the Integrity Commission assesses the complaint as genuine?	Nil comment
<i>Amendment to enable exercise of power to issue production or attendance notice where 'reasonably</i>	15. Should the wording in sections 90 and 147 of the IC Act be changed to 'reasonably required' rather than 'necessary'?	Nil comment

<i>required' rather than when 'necessary'</i>		
Minor Operational Proposals	A1- Include 'restricted information' in the 'protected information' definition	Nil comment
	A2- Insert a general exception to secrecy requirements to allow the Integrity Commission to share information where appropriate	Nil comment
	A3- Expand the range of permitted disclosures under section 199 to include persons assisting the person to whom the notice applies	The Education Directorate supports this proposed amendment as the benefit of ensuring procedural fairness for a person named in the report outweighs risk of jeopardising the investigation.
	A4- Amendment to s221(a) to require the Integrity Commission not to publish information that would jeopardise an investigation under the IC Act	Nil comment
	A5- Amendment providing for notice that transmission prior to attendance is permitted	The Education supports this proposed amendment to ensure a notice to attend is clear and unambiguous on what grounds a person can be excused.
	A6- Electronic lodgement of privilege claims	Nil comment

	A8*- Amendment to require reputational repair where the person cleared of any wrongdoing	Nil comment
	A9- Frequency of reports to the Inspector	Nil comment
	A10- Remove the requirement to disclose information to a court in compliance of another law in force in the Territory, and provide the Commissioner discretion to disclose protected information if it is in the public interest.	Nil comment
	A11- Clarifying the Commissioner/CEO 'head of service' powers for the purposes of the Public Sector Management Standards 2016	Nil comment
	A12 – Introduction of a provision to allow a person other than the notice recipient to comply with the notice	Nil comment
	A13- Electronic document transmission to the Integrity Commission	Nil comment
	A14- Eligibility for Integrity Commissioner and Acting Integrity Commissioner	Nil comment

	A15- Amendments to the <i>Freedom of Information Act 2016</i>	Nil comment
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