

18/654 - Integrity Commission Bill 2018 – Agreement to introduce in the Legislative Assembly and Government Response

Summary of Impacts

- There was an election commitment and Parliamentary Agreement commitment to establish an Integrity Commission. This was supported by the Government Response to the Select Committee’s inquiry which was released in February 2018.
- The Integrity Commission Bill 2018 (Exposure Draft) was tabled in the Legislative Assembly on 31 July 2018. The Exposure Draft was referred to the 2018 Select Committee Select Committee Inquiry into the establishment of an Independent Integrity Commission. The 2018 Select Committee also considered the Opposition Anti-Corruption and Integrity Commission Bill 2018 tabled in the Legislative Assembly on 6 June 2018.
- The 2018 Select Committee released their report by 31 October 2018 containing 57 recommendations.
- Amendments have been made to the Integrity Commission Bill 2018 to meet the Government Response to the 2018 Select Committee Report.
- The purpose of the Integrity Commission Bill 2018 is to establish the ACT Integrity Commission which has the functions of:
 - (a) investigating conduct that is alleged to be corrupt conduct; and
 - (b) referring suspected instances of criminality or wrongdoing to the appropriate authority for further investigation and action; and
 - (c) preventing corruption, including by—
 - (i) researching corrupt practices; and
 - (ii) mitigating the risks of corruption; and
 - (d) publishing information about investigations conducted by the commission, including lessons learned; and
 - (e) fostering public confidence in the Legislative Assembly and public sector.
- The Bill engages a number of rights protected under the *Human Rights Act 2004*, and has a number of safeguards to protect these rights or limit their impact.
- Funding in the order of \$8.4 million over four years has been provided by the Government in the 2018-19 Budget to establish the ACT Integrity Commission.

Key to impacts: Red – negative, Blue - neutral and Green - positive.

Social

Justice and rights	<p>The Bill engages a number of rights protected under the <i>Human Rights Act 2004</i> (HRA), including the following:</p> <ul style="list-style-type: none"> • supports section 19 – protection from torture, inhuman or degrading treatment <ul style="list-style-type: none"> ○ Detained persons are provided a specific process for making complaints to the Integrity Commission by virtue of provisions in existing legislation. The social benefit of this that it allows all people to make complaints to the Integrity Commission. • supports section 11 – right to family life and of children <ul style="list-style-type: none"> ○ A person that is subject to a confidentiality notice under the Bill has the right to disclose the matter to a domestic partner, if it is necessary to comply with the relevant document that the person has been or is proposed to be examined by the Commission, or has been asked to produce a document or thing to the commission. The social and administrative benefit of this is that it not only protects the right to family life, but also ensures that a person is able to comply with the relevant document and thus the Integrity Commission is able to carry out its functions. • limits section 8 – recognition and equality before the law <ul style="list-style-type: none"> ○ The Integrity Commission’s power to issue a preliminary inquiry summons may result in a summons being given to a person with disability or a child. Any disproportionate limit is mitigated by protections in the Bill which
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requires the Commission to consider the person's age and whether they are suffering from a mental impairments.

- limits section 12 – right to privacy and reputation
 - The limitation on the right to privacy and reputation will not be arbitrarily provided that they are just, reasonable in the circumstances and proportionate to the end sought. The Bill limits the right to privacy of the Integrity Commissioner. Interests, both personal and financial, must be disclosed to the Speaker of the Legislative Assembly. The purpose of the limitation is to act as a check on the Commissioner's conduct. It is a proportionate limitation as the role they are carrying out is of a public nature and thus it is in public's interest that the information be disclosed.
 - Other limitations on the right to privacy, such as the issuance of a witness summons to any person allows the Commission to discharge the significant public interest in determining whether an investigation to uncover corruption is warranted. The public interest in limiting the right to privacy and reputation, specifically in a preliminary inquiry stage is important, to ensure any allegations are substantiated before a subsequent invasion of a persons' privacy takes place during an investigation. Public funds should not be spent on expensive coercive investigations into allegations that are unsubstantiated and do not meet the definition of serious corrupt conduct or systemic corrupt conduct.
 - Any limitations placed on the right to privacy and reputation of the Bill are balanced with safeguards in place to ensure the Commission is able to carry out its investigatory duties. A balance must be achieved between the public interest in exposing corruption in public administration and the public interest in avoiding undue prejudice to a person's reputation. The safeguards implemented in the Bill ensure that the limitation has not only an administrative benefit but also a public interest benefit.
- limits section 13 – freedom of movement
 - Similar to above, a person may be issued with a summons to attend a preliminary inquiry at a specific place and time. The public interest behind the limitation is to ensure the Commission has the power to determine whether an investigation to uncover corrupt conduct is warranted.
- limits section 15 – right to association
 - The limitation imposed on the Commissioner from undertaking any work or unpaid activity that is inconsistent with their functions is needed to promote independence and public confidence in the position. The social and administrative benefit of the limitation is that without it, there may be legitimate public concern if the Integrity Commissioner were engaging in an activity that was inconsistent with their functions.
- limits section 16 – freedom of expression
 - The right to freedom of expression may only be limited where a person is given a confidentiality notice or suppression order covering restricted information that cannot be disclosed. Additionally, the Supreme Court may waive a person's right to claim journalist privilege in a preliminary inquiry summons or examination if the public interest in disclosing the matter outweighs the privilege protecting it. This is an important limitation on the administration of the Commission, specifically where confidentiality notices or suppression orders are given; the Commission must be able to conduct its investigation without information being disclosed to the public. Other jurisdictions waive journalist privilege from being claimed during a corrupt conduct investigation, however, the Bill ensures that this right is not automatically waived but the application of the privilege will be determined by the Supreme Court. The administrative benefit of this limitation ensures the Commission is able to carry out its functions efficiently and

	<p>appropriately. Additionally, the Commission will take into consideration the impact disclosure of any information will have only public perceptions.</p> <ul style="list-style-type: none"> • limits section 17 - participation in public life <ul style="list-style-type: none"> ○ The purpose of this limit is to ensure any person who is appointed to the role of Integrity Commissioner is free from perceived conflict of interest in the position they hold. The administrative and public interest benefits of this limitation is that because the Integrity Commissioner will have jurisdiction over MLAs and their staff, it is of utmost importance there is no actual or perceived conflict of interest. The additional social benefit of this is that it will result in higher public confidence. • limits section 18 - right to liberty <ul style="list-style-type: none"> ○ The Integrity Commission has the right to apply for a warrant to arrest a witness who fails to appear at a public examination. The purpose of the limitation is to ensure the Commission is able to properly discharge its function of examining witnesses in public examinations that have information relevant to an investigation of corrupt conduct. The safeguards in place ensures that the arrest will not be unlawful or arbitrary. • limits section 21 - right to fair trial <ul style="list-style-type: none"> ○ The Integrity Commission has discretion in determining whether examinations will be heard in public, or in private. The decision to hold a public trial may limit the right under s 21 (HRA), however, the limit is proportionate to the Integrity Commission's work. The Commission is not a court or tribunal that conducts a trial for the purposes of the HRA and thus the right may only be indirectly engaged. However, in deciding whether an examination be heard publically, a public interest test must be undertaken. • limits section 22 - rights in criminal proceedings. <ul style="list-style-type: none"> ○ The limitation of this right is needed to ensure the investigative work of the Commission is not improperly interfered with. While an evidential onus, rather than a strict liability offence, would be less restrictive on the right to be presumed innocent (as found in s 22 of the HRA) it would not be as effective in prosecuting the proposed offences. Additionally, while a strict liability offence limits the range of defences that may be available for a person accused of an offence. Depending on the particular circumstances of each case, a number of defences under the <i>Criminal Code 2002</i> (the Code) applies. <p>The Bill has a number of safeguards to protect rights under the <i>Human Rights Act 2004</i>. The above limitations, alongside other examples, and the safeguards implemented in the Bill are outlined in detail in the explanatory statement.</p>
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Economic

<p>ACT Government Budget</p>	<ul style="list-style-type: none"> • Funding in the order of \$8.4 million over four years has been provided by the Government in the 2018-19 Budget to establish the ACT Integrity Commission.
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Environmental

Nil impact.