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ACT
Policing

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Review of the ACT Integrity Commission

ACT Policing Submission

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INTRODUCTION

1. ACT Policing welcomes the opportunity to make a submission on the review of the ACT Integrity Commission (**Commission**) and the *Integrity Commission Act 2018* (ACT) (**IC Act**).
2. ACT Policing recognise that the Commission has covert and coercive powers for its ‘fact-finding’ function. ACT Policing acknowledge that these powers are necessary for investigating corrupt conduct, and to provide assurance and accountability to the ACT public sector.
3. ACT Policing and the Commission have a well-established working relationship under the agency referral provisions of the *IC Act*. In 2020, the Commission and ACT Policing entered into a Memorandum of Understanding (**MOU**) in relation to referred and joint investigations.
4. Since entering into the MOU, ACT Policing has assisted the Commission with a number of investigations. The shared investigative efforts and the referral mechanism in the *IC Act* have enabled both ACT Policing and the Commission to achieve individual and joint outcomes more effectively.

ARRANGEMENT BETWEEN AFP AND ACT POLICING

5. The *Australian Federal Police Act 1979* (Cth) gives rise to the legislative framework and the Purchase Agreement between the Australian Federal Police (**AFP**) and the ACT Government, for which the AFP provides policing services to ACT through ACT Policing.
6. As AFP employees, ACT Policing members are officers of the Commonwealth, and the AFP Commissioner has responsibility for the general administration and control of the operations of the AFP. As a result, ACT Policing members are subject to the same integrity framework as the AFP.
7. AFP has a robust internal anti-corruption process as well as external oversight by the Australian Commission for Law Enforcement Integrity (**ACLEI**). AFP and ACLEI have an established working relationship and have partnered in a number of corruption investigations.
8. Noting ACT Policing’s distinct arrangement with the AFP, a number of mandatory provisions in the *IC Act* are not binding on ACT Policing. As such, ACT Policing recognises that any broadening of the Integrity Commission’s powers with respect to disclosure, secrecy requirements, and mandatory reporting will not automatically apply to ACT Policing.

ACT POLICING AND INTEGRITY COMMISSION MEMORANDUM OF UNDERSTANDING

9. In 2020, ACT Policing and the Commission entered into a MOU for the purposes of establishing the framework for joint investigations and any referrals by the Commission to ACT Policing.
10. The MOU details how coordination is established, reducing risks in duplicating investigations, and outlining any information sharing capabilities between the Commission and ACT Policing.
11. Under the referral framework in the MOU, if a corruption incident occurs and a joint investigation is necessary, ACT Policing and the Commission are required to agree to a Joint Agency Investigation Agreement for the incident, detailing the roles, division of responsibilities and timeframes for the investigation. The content of the Joint Agency Investigation Agreements is agreed to between the Chief Police Officer and the Chief Executive Officer (**CEO**) of the Commission.
12. In practice, any responsibilities under a Joint Agency Investigation Agreement are assigned based on the expertise and resources of the agency.

INTERCEPTION POWERS

13. Currently, the Commission has surveillance powers under the *Crimes (Surveillance Devices) Act 2010* (ACT) (**CSD Act**). Any surveillance powers under the *CSD Act* are limited to data obtained from an installed surveillance device.
14. The AFP have broad interception powers under the *Telecommunications (Interception and Access) Act 1979* (Cth) (**TIA Act**). The AFP's surveillance powers under the *TIA Act* allow it to intercept telecommunications and access telecommunications intercepted by other agencies. ACT Policing also has powers under the ACT and Commonwealth *CDS Acts*.
15. The Commission is not recognised as an 'Enforcement Agency' under the *TIA Act*, and therefore, has no interception powers.
16. While the Commission can refer a matter to the AFP or ACT Policing under the *IC Act*, any telecommunication that is intercepted by the AFP or ACT Policing cannot be shared with the Commission.
17. ACT Policing supports broadening the Commission's surveillance powers to allow it to intercept telecommunication or access telecommunication intercepted by another agency. ACT Policing notes the Commission may not have the resources to build the infrastructure necessary for interception.¹ As such, the Commission may need to rely on other agencies, such as the AFP, to conduct interceptions.

¹ Integrity Commission Powers Discussion Paper

18. To note, there will likely be costs to the Commission in relation to accessing AFP interception architecture and resources to monitoring interception material. Further, should a brief of evidence be required there are costs associated with transcripts of said material.
19. ACT Policing's view is that any telecommunication interceptions conducted jointly by ACT Policing and the Commission should be discussed between the Chief Police Officer and the CEO of the Commission, and detailed in the Joint Agency Investigation Agreement for each incident.
20. In circumstances where no joint taskforce is in place and the Commission becomes a recognised agency, intercepted material would be shared under Section 68 of the *TIA Act*; the Commission would be listed as an 'eligible agency' which "may receive lawfully interception information for certain circumstances".
21. ACT Policing agrees that providing the Commission with interception powers can strengthen the Commission's investigations and promote public trust in the ACT Public Service.

INFORMATION SHARING

22. ACT Policing supports increasing the information sharing capabilities between government agencies and referral entities, including the sharing of intercepted telecommunications. ACT Policing agrees that broader scope for information sharing will benefit the provision of appropriate support and protection services to the ACT community.
23. ACT Policing notes the Discussion Paper *Confidentiality, Information Sharing and Wellbeing* provides four examples of when information sharing is advantageous, including where an employee is:
 - a. Financially abusing a person they are assisting;
 - b. Mistreating clients;
 - c. Disposing of waste in a manner that is damaging the environment; and
 - d. Abusing a child.
24. ACT Policing welcomes discussion on establishing an appropriate information sharing framework, including the circumstances giving rise to information sharing and potential guidelines on any discretionary disclosures.
25. ACT Policing notes that more comprehensive information sharing capabilities between ACT Policing and the Commission can better inform ACT Policing of existing criminal/corruption trends, outcomes, and legislative gaps.

ARREST POWERS

Amendment to extend the time for which a person can be held

26. In Discussion Paper *Integrity Commission Operational Matters*, the Commission proposes to amend the period of time in which an arrested person is to be brought before an examiner from 'immediately' to 'as soon as practicable'.
27. Under section 160 of the *IC Act*, a magistrate is responsible for issuing the arrest warrant. ACT Policing have obligations under the *Magistrate Court Act 1930 (ACT) (MCA)* to bring an arrested person before the Magistrate Court as soon as practicable. Once before the Magistrate Court, it is the decision of the presiding Magistrate to determine whether the person arrested remains in custody; in which case, they are transferred to ACT Corrective Services.
28. ACT Policing recognise the gap identified by the Commission, however, have concerns in relation to the powers police have to extend the time in which a person is detained, noting the requirements under the *MCA*. ACT Policing propose that section 160 of the *IC Act* be amended to parallel the conditions under the *MCA* and that any further detention where the Commission is not immediately available be determined by the Magistrate.
29. In practice ACT Policing believe the apprehension of the subject would entail a coordinated approach between the Commission and police. It is therefore likely that the examiner would be readily available during the subject's appearance before the magistrate to argue why the subject should be detained for the purpose of examination.
30. ACT Policing proposes the Commission consider including a framework for coordinating arrests under the MOU, or addressing the issue on a 'needs' basis as agreed to under a Joint Agency Investigation Agreement.

Arrest warrant for witnesses 'likely' not to appear at an examination

31. Discussion Paper *Integrity Commission Powers* propose an amendment to allow the Commission to apply for an arrest warrant if the witness is 'likely' not to comply with their examination summons. ACT Policing understands the intention of the proposal is to prevent a witness from absconding to another jurisdiction to elude investigation.
32. ACT Policing notes the human right concerns with broadening the Commission's powers to apply for an arrest warrant where a witness is only 'likely' not to attend an arrest warrant. ACT Policing proposes any concerns in relation to the reasonableness of restrictions of the subject's human rights would be balanced by the necessity to justify the 'likelihood' to a magistrate. ACT Policing notes there have been no arrest warrants for failure to attend an examination ordered by the Magistrate Court.

SEARCH POWERS

33. Under the *IC Act*, an investigator of the Commission may enter premises at any reasonable time if the premises are public, enter any premise with the occupier's consent, or enter premises under a search warrant. The *IC Act* is silent on powers to conduct physical searches of a person's body.
34. Discussion Paper *Integrity Commission Powers* propose to expand the investigator's search powers to enable the investigator to conduct frisk searches.
35. ACT Policing supports the expansion of an Investigator's power to frisk search a person as this removes the requirement for police to attend a matter that may not be referred to police.
36. ACT Policing notes that search powers in the *IC Act* are conferred on the investigator. As police and the Commission may conduct investigations concurrently, jointly or subsequently upon the conclusion of either agency's investigation, ACT Policing would emphasise the requirement for any search by an investigator, including a search of a person, be conducted lawfully. It would be expected that evidence obtained from a lawful search would be disclosed to police under the MOU, should criminal activity be identified; its lawful discovery rendering it admissible in civil and criminal proceedings.

RECRUITMENT

37. ACT Policing supports removing the criteria that a person cannot be recruited by the Commission if they had been an ACT public servant in the last 5 years (**5-year criteria**).
38. ACT Policing recognise that certain prior employment relations or public roles may result in perceived biases or conflict of interests. As such, ACT Policing supports retaining sufficient caveats and safeguards to preserve the independence of the Commission.

WELLBEING

Nominated Support Person

39. ACT Policing supports a wellbeing-centric approach to investigations, noting that the *IC Act* provides the Commission with coercive powers.
40. ACT Policing supports allowing witnesses to an examination access to a support person during the course of the examination.
41. In AFP and ACT Policing's internal review, a support person may be nominated to support the person being interviewed. ACT Policing understand the wellbeing impact of corruption examinations, and agree that any investigation framework should consider the health and wellbeing of the person subjected to the examination.

42. For criminal matters, particularly where vulnerable people are involved, ACT Policing is obliged to provide the interviewed person with an 'interview friend'. ACT Policing has an established Better Practice Guide in relation to the provision of an 'interview friend' which can likely be shared with the Commission should it propose to adopt a similar framework.

Reimbursements

43. ACT Policing support providing witnesses to examinations with access to reimbursements for certain expenses.
44. ACT Policing believes that the reimbursement framework adopted should be in line with the reimbursement framework for criminal matters. ACT Policing notes the impact of court attendance on vulnerable persons or persons with specific responsibilities (e.g. a single parent). Since non-attendance at an examination can result in arrest and a criminal charge, ACT Policing supports providing greater financial assistance to witnesses.

PRIVILEGE

45. In relation to the Commission determining matters of privilege, ACT Policing supports the position which promotes the Commission's independence and integrity in the eyes of the public. Noting that the Commission is also the investigator, ACT Policing is not supportive of the Commission determining questions of privilege.
46. Noting that the safeguards and powers of the Commission in a corruption investigation are different to those of the police in a criminal investigation, ACT Policing is concerned that any further powers conferred on the Commission may inadvertently affect police investigations. As such, ACT Policing welcomes further consultation on matters relating to abrogating legal privilege.

CONCLUSION

47. ACT Policing and the Commission have a well-established investigative relationship. ACT Policing propose gaps identified in the Discussion Papers can likely be appropriately addressed under the MOU between ACT Policing and the Commission, or through the development of subsidiary documents to detail more prescriptive elements of the relationship
48. Where appropriate, ACT Policing recommend that the Commission draw upon existing capabilities in the ACT Public Sector prior to any legislative change to expand its powers.
49. ACT Policing further recommend that any amendments to the *IC Act* consider preserving the independence of the Commission as a matter of policy.