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Senate Standing Committee on Legal and Constitutional Affairs

PO Box 6100

Parliament House

Canberra ACT 2600

Dear Senator 

I am writing to provide the ACT Government submission to your Committee's inquiry into the *National Integrity Commission Bill 2018 (Cth)*; *National Integrity Commission Bill 2018 (No. 2) (Cth)*; and *National Integrity (Parliamentary Standards) Bill 2018 (Cth)*.

The purpose of the ACT Government submission is to draw to the attention of your Committee, key provisions of the most recent integrity commission legislation in Australia, the *Integrity Commission Act 2018 (ACT)*. The Act is available at <https://www.legislation.act.gov.au/a/2018-52/>.

The ACT Legislative Assembly passed the *Integrity Commission Act 2018 (ACT)* on 29 November 2018, after extensive consultation with stakeholders and two ACT Legislative Assembly Select Committee inquiries. The Act was modelled on similar legislation in other States and the Northern Territory and is compliant with the ACT's human rights legislation.

The ACT Integrity Commission, which will be operational from 1 July 2019, covers all ACT public officials including public servants, statutory office holders, officers of the Legislative Assembly, Members of the Legislative Assembly (MLAs) and their staff. Judicial officers and ACT Civil and Administrative Tribunal members, registrars and staff exercising judicial or quasi-judicial powers are also included in the definition of an ACT public official for the purposes of the Act.

The Commission will have the power to investigate matters that were subject to a previous inquiry. The legislation also requires mandatory reporting of corrupt conduct by all senior public servants, MLAs and chiefs of staff to Ministers and the Leader of the Opposition. Extending mandatory reporting obligations to persons beyond the head of a public sector agency is intended to create a higher level of accountability among ACT public sector leaders. The ACT Integrity Commission model also introduces a criminal offence for a mandatory reporter who fails to notify the Commission of serious or systemic corrupt conduct. This reflects the intent of the ACT Government to require ACT public sector leaders to maintain the highest ethical standards.

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The intended focus of the Commission is on current and emerging corrupt conduct. However, the Act has retrospective operation in circumstances where investigation is in the public interest and is appropriate in the circumstances. It is important the community has confidence that the Commission is not restricted from investigating past allegations of corrupt conduct that otherwise warrant investigation.

Your Committee could compare the definitions of corrupt conduct in clause 9 of the two National Integrity Commission Bills with the definitions of corrupt conduct in section 9, serious corrupt conduct in section 10 and systemic corrupt conduct in section 11 of the ACT legislation. The ACT definition of corrupt conduct is not strictly tied to conduct that amounts to a criminal offence, as it also captures conduct such as a serious disciplinary offences. This allows the Commission to investigate all possible instances of suspected corruption. The Commission's overarching obligation to prioritise serious or systemic corrupt conduct filters out low level misconduct best dealt with by existing agencies.

The Commission is able to refer matters to the ACT Director of Public Prosecutions, and is also able to make public findings of serious or systemic corrupt conduct following an investigation. The publication of findings of serious and systemic corrupt conduct in the public domain is key to maintaining community confidence in government. Criminal prosecution and integrity commissions necessarily operate using different standards of proof, different sets of evidence, and different procedural and evidentiary rules. Given these differences, prosecution following an Integrity Commission investigation may not occur or be successful. Public findings ensure community awareness of serious and systemic corrupt conduct in government is not contingent on subsequent prosecutions that may never eventuate.

The ACT Government also seeks to raise with your Committee the limitations of the *Law Enforcement Integrity Commissioner Act 2006* (Cth) referenced in the *National Integrity Commission Bill 2018* (Cth) and *National Integrity Commission Bill 2018 (No. 2)* (Cth) in respect of the oversight of policing services in the ACT.

The ACT Legislative Assembly Select Committee on an Independent Integrity Commission (October 2017) recommended the ACT Integrity Commission have oversight of police officers funded by the ACT Government to deliver policing services to the Territory (Recommendation 12). The Australian Federal Police (AFP) provide policing to the ACT under the Policing Arrangement and Purchase Agreement between the Commonwealth and the ACT Government. AFP officers providing services to the ACT community under these agreements are known as ACT Policing.

The Purchase Agreement includes cost estimates for each financial year until the expiry of the Agreement on 30 June 2021. Under the existing Police Purchase Agreement for 2017-21, the ACT Government will provide ACT Policing with approximately \$700 million in funding.

The Purchase Agreement clearly outlines key performance indicators — the ACT Government's expectations of delivering a professional, accountable and transparent policing services to the ACT and the Canberra community. Further information can be found on the Policing Agreement and Arrangements at: <https://police.act.gov.au/about-us>.

The *Australian Capital Territory (Self-Government) Act 1988* (Cth) prescribes the legislative, executive and juridical powers for the ACT and allows for the ACT Legislative Assembly to make laws for the peace, order and good government for the ACT. However, the Self-Government Act prevents

the Assembly from making laws for the provision of police services to the Territory by the AFP, including bringing ACT Policing within the scope of the ACT Integrity Commission. This limitation is understandably outside of the ACT Community's expectations for the adequate oversight of the people who are tasked with maintaining peace and order within the Territory. It is appropriate that ACT Policing fall within the jurisdiction of the ACT Integrity Commission. The inclusion of ACT Policing within the scope of the ACT Integrity Commission has tri-partisan support in the ACT.

During 2018, I wrote to then Prime Minister Malcolm Turnbull and Prime Minister Scott Morrison to pursue a commitment from the Commonwealth Government to amend the ACT Self Government Act to allow ACT Community Policing to be brought within the scope of the Commission. I have not received any formal agreement from the Prime Minister about these necessary amendments.

On 27 November 2018, the ACT Government presented an exposure draft *Integrity Commission (ACT Policing) Amendment Bill 2018* (ACT) to the ACT Legislative Assembly. This exposure draft bill proposes giving the ACT Integrity Commission oversight of ACT Policing within 12 months from commencement of the *Integrity Commission Act 2018* (ACT). The exposure draft *Integrity Commission (ACT Policing) Amendment Bill 2018* (ACT) is available on the ACT Legislation Register at https://www.legislation.act.gov.au/ed/db_59286/.

I would also like to raise with your Committee that there is limited transparency, reporting or flow of information from the Australian Commission for Law Enforcement Integrity to the ACT Government or the ACT Legislative Assembly in respect to ACT Policing. Should the National Integrity Commission have jurisdiction over ACT Policing, improved reporting to the ACT Government and the ACT Legislative Assembly is required.

Further information about the policy development undertaken by the ACT Government on the ACT Integrity Commission legislation is available at <https://www.cmtedd.act.gov.au/industrial-relations-and-public-sector-management/act-integrity-commission>.

I consent to the ACT Government submission being published on the Committee's website.

Yours sincerely

Andrew Barr MLA
Chief Minister

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