



Mr Steve McGhie MP  
Chair  
Integrity and Oversight Committee  
Parliament House  
EAST MELBOURNE VIC 3002

Via Email: [ioc@parliament.vic.gov.au](mailto:ioc@parliament.vic.gov.au)

Dear Mr McGhie

**ACT INTEGRITY COMMISSION SUBMISSION TO THE INQUIRY INTO THE  
EDUCATION AND PREVENTION FUNCTIONS OF VICTORIA'S INTEGRITY AGENCIES**

I am writing to make a submission to the Parliament of Victoria Integrity and Oversight Committee *Inquiry into the Education and Prevention Functions of Victoria's Integrity Agencies*. Thank you for the opportunity to contribute to this Inquiry.

The ACT Integrity Commission's submission is attached, and I am available to appear before the Committee to answer any questions.

I can be contacted directly on [REDACTED]. Alternatively, should you have any questions, please contact [REDACTED], Senior Director Corruption Prevention and Education on [REDACTED] or via email, [REDACTED].

Yours sincerely

John Hoitink  
Chief Executive Officer  
ACT Integrity Commission

28 August 2020

## Introduction

The ACT Integrity Commission (the Commission) welcomes the opportunity to make a submission to the Parliament of Victoria Integrity and Oversight Committee *Inquiry into the Education and Prevention Functions of Victoria's Integrity Agencies* (the Inquiry).

To assist the Committee, this submission consists of three parts:

- Part 1 summarises the role and functions of the Commission
- Part 2 outlines the Commission's approach to corruption prevention and education, and
- Part 3 responds directly to several of the Inquiry's terms of reference as they relate to the corruption prevention and education functions of Victoria's integrity agencies, in particular, the Independent Broad-based Anti-Corruption Commission (IBAC).

## Role and functions of the ACT Integrity Commission

The *Integrity Commission Act 2018 (ACT)* (the IC Act) establishes the Commission and the position of Integrity Commissioner. The role of the Commission is to investigate, expose and prevent corruption and foster public confidence in the integrity of the ACT Government.

### **Functions**

The IC Act sets out the Commission's broad range of functions which include to:

- Investigate conduct that is alleged to be corrupt conduct
- Refer suspected instances of criminality or wrongdoing to the appropriate authorities
- Prevent corruption through research and mitigation efforts
- Publish information about its investigations including what lessons may have been learned during an investigation
- Provide education programs, and
- Foster public confidence in the Legislative Assembly and ACT public sector.

### **Powers**

To carry out its functions, the Commission is afforded a broad suite of powers similar to those of other Australian law enforcement agencies, including traditional policing tools and covert information-gathering powers. The Commission is also afforded coercive powers similar to those of a Royal Commission, including the power to compel people to attend examinations and answer questions, and the ability to issue notices to compel the production of information.

Having access to these powers allows the Commission to investigate matters flexibly, having regard to the circumstances of each matter. It also provides a mechanism to gain valuable insights into the methods, motivations and actions of people engaging in corrupt conduct which informs the Commission's corruption prevention and education work.

## Examinations

The Commission may hold an examination as part of an investigation. Examinations may be held in public or in private. The Commission may require witnesses to attend an examination to provide information, documents and things relevant to our investigation. Witnesses must attend an examination if summoned and comply with any directions which are part of the summons relating to confidentiality and other matters. Witnesses must answer questions and provide documents and things, even if doing so would tend to incriminate the witness or make them liable to penalty. Information obtained during an examination is not admissible against the witness in a criminal or civil proceeding, except in limited circumstances.

Failure to attend an examination, and failure to answer questions or provide documents and things may constitute an offence under the IC Act.

## ***Jurisdiction***

The Commission can investigate allegations of corrupt conduct made in relation to all current and former ACT public officials and ACT public sector entities. The IC Act defines a public official as any person who exercises an official function of the ACT or is acting in an official capacity for the ACT.

Public Sector entities in the Commission's jurisdiction include, but are not limited to the following:

- A Legislative Assembly entity
- ACT Government directorates
- Statutory bodies
- Territory authorities and instrumentalities
- Territory-owned corporations (and their subsidiaries)
- Providers of public health services (including public hospitals); public transport; emergency services; public education; public housing; and gas, electricity and water supply (where exercising the functions is of a public nature), and
- ACT correctional centres and places of detention.

## ***Corrupt conduct***

Corrupt conduct is broadly defined in the IC Act to ensure the Commission can investigate and respond to a wide range of allegations. **Appendix A** contains the relevant provisions of the IC Act as they relate to defining corrupt conduct. The Commission's primary focus remains the type of conduct that, if proven, would bring the ACT's decision-making processes and reputation into serious disrepute.

The Commission prioritises the investigation of serious and/or systemic corrupt conduct. **Serious corrupt conduct** is conduct that is likely to threaten public confidence in the integrity of government or public administration in the ACT. **Systemic corrupt conduct** is corrupt conduct that reveals a pattern of corrupt conduct in one or more ACT public sector entities<sup>1</sup>.

## ***Reporting corrupt conduct***

Any person can report a matter to the Commission about conduct that may be corrupt conduct by a person or organisation falling within the Commission's jurisdiction. A person who reports a matter about suspected corrupt conduct is afforded certain protections under the IC Act against reprisal and

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<sup>1</sup> See ss. 10 and 11 of the *Integrity Commission Act 2018 (ACT)*.

detrimental action.

Importantly, the IC Act imposes a mandatory reporting requirement on certain public officials to report conduct that they suspect, on reasonable grounds to be serious or systemic corrupt conduct.

### Mandatory corruption notifications

Public officials subject to the mandatory corruption notification requirement include:

- Heads of public sector entities and senior executive service (SES) officers
- Certain statutory officers, including
  - the Auditor-General
  - the Ombudsman
  - the Electoral Commissioner, and
  - the Clerk of the Legislative Assembly, and
- Members of the ACT Legislative Assembly and their Chiefs of Staff.

While the mandatory corruption notification requirements differ slightly depending on the role performed by the public official, it is an offence if any public official subject to the mandatory notification requirement does not notify the Commission as soon as practicable of suspected serious or systemic corrupt conduct.

Reports can be made to the Commission orally or in writing.

### ***Report handling options***

The IC Act requires that any matter reported to the Commission must be investigated, referred or dismissed.

The decision to investigate – which could include the Commission undertaking a preliminary inquiry, refer or dismiss a matter is made by the Commission Assessment Panel comprised of the Integrity Commissioner, the Commission Chief Executive Officer, and the Senior Directors of Investigations, Legal, and Corruption Prevention and Education.

### ***Independence and oversight of the Commission***

The IC Act contains several provisions which ensure both the Integrity Commissioner and the Commission are empowered to perform the functions of the Commission independently.

The position of Integrity Commissioner is established as an independent officer of the ACT Legislative Assembly, and the Commission has complete discretion in the exercise of its functions, subject to the provisions of the IC Act and other relevant territory laws.

In recognition of the substantial powers afforded to the Commission, the IC Act establishes several oversight measures to ensure the Commission discharges its functions in accordance with transparency and accountability.

### Inspector of the ACT Integrity Commission

The Inspector of the ACT Integrity Commission (the Inspector) can receive and investigate complaints about the Commission and its staff. The Inspector also reports to the ACT Legislative Assembly on the Commission's compliance with the IC Act and other legislation relevant to the functions and powers afforded to the Commission. The Inspector may also make recommendations to the Commission and other public entities about the performance of the Commission's functions.



The Inspector is currently the ACT Ombudsman.

## Standing Committee on the Integrity Commission

The Standing Committee on the Integrity Commission has been established by the ACT Legislative Assembly to perform certain accountability and oversight functions of the Commission, including to:

- Examine matters related to corruption and integrity in public administration;
- Inquire into, and report on, matters referred to it by the Assembly or matters that are considered by the Committee to be of concern to the community;
- Monitor, review and report on the performance of the Commission and the exercise of the powers and functions of the Commission, including examining the annual reports, or any other reports, of the Commission.

The Committee is not authorised to investigate matters relating to certain conduct, or to reconsider a decision to investigate or otherwise, a complaint made to the Commission. Neither is it permitted to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to an investigation or complaint.

## **Corruption Prevention and Education at the Commission**

Corruption prevention and education feature prominently in the IC Act as core functions of the Commission. As a new agency, the Commission's prevention and education work is still very much in its infancy, with the focus to date being to raise awareness amongst the broader ACT public sector of the Commission's role, functions and powers.

A key component of the Commission's early approach to raising awareness has been to develop and publish a Corruption Prevention and Education Strategy, which is available on the Commission's website. A copy of the strategy is also included at **Appendix B**.

The Strategy is both aspirational and descriptive. It aims to communicate the broad scope of the Commission's corruption prevention and education work, including our focus on research and analysis, awareness and education, and outreach and engagement. Importantly, the Strategy promotes corruption prevention as something which is undertaken via a partnership arrangement between the Commission and ACT public sector entities.

These entities are encouraged to identify, assess, and mitigate their corruption risks, with input and advice from the Commission as required. This approach ensures entities are continually building their anti-corruption capacity and capability to best target corruption vulnerabilities in their respective operating environments.

Consistent with the Commission's partnership approach to corruption prevention, the Commission will be hosting the inaugural Community of Practice for Corruption Prevention in September 2020. The Community of Practice consists of senior executives from across the ACT public sector with responsibility for integrity matters in their respective agencies.

The primary purpose of the Community of Practice will be to identify corruption risks, share information on anti-corruption initiatives, and work together across the ACT public sector to better counter integrity threats and ultimately strengthen the ACT Government's integrity systems.



This forum will also provide key insights for the Commission with respect to informing the corruption prevention and education forward work agenda, ensuring the Commission's continued focus on targeting resources where they will have the greatest impact.

Concurrently, the Commission is proactively engaging with entities where specific corruption vulnerabilities are observed. For example, the Commission disseminates monthly information briefs to relevant senior officials in ACT public sector entities on contemporary corruption issues, vulnerabilities and risks, identified during the Commission's investigatory and intelligence work.

The size and scale of the Commission's jurisdiction, coupled with the resources available to the Commission to perform its corruption prevention and education functions, demand an approach whereby the Commission targets its resources at areas where they will have the greatest impact.

Having adopted this approach, the Commission has been able to deliver just in time best-fit products, advice and services to its stakeholders. This approach is particularly important in establishing the Commission's value as a trusted anti-corruption adviser within the ACT public sector and broader ACT community.

Some of these products, including advice on higher-corruption risk functions in the public sector, mandatory reporting of corrupt conduct to the Commission, and common corruption risk concepts have been published on the Commission's website. Further products, including a series of corruption prevention videos are currently in development, to ensure information and advice provided by the Commission is accessible and digestible to a broad and diverse audience.

## Response to the Inquiry's Terms of Reference

*Note: unless otherwise specified, the Commission's responses to the Inquiry's terms of reference relate to the Independent Broad-based Anti-Corruption Commission (IBAC), noting IBAC's role, functions and powers are broadly consistent with those of the Commission.*

To assist the Committee, and in response to the Inquiry's terms of reference, the Commission makes the following comments, observations and recommendations.

### **1. The Victorian legislative framework, with regard to the education and prevention functions of Victoria's integrity agencies.**

The Commission does not make any specific comments with respect to the Victorian legislative framework applying to Victoria's integrity agencies, except to provide examples relating to the Commission's own legislative arrangements and their impact to date on the performance of the Commission's functions.

#### Corruption Prevention and Education as prescribed functions of the *Integrity Commission Act 2018*

As mentioned in part 2 of this response, corruption prevention and education are prominent functions of the Commission, as contained in the IC Act. The benefits of this are two-fold:

- i. Firstly, corruption prevention and education functions are afforded the same level of statutory and practical importance as the Commission's investigatory functions. Consistent with better practice, this approach recognises the benefits of targeting anti-corruption measures and controls in a systemic and holistic manner.





Additionally, it enables the Commission to work with public sector entities to develop anti-corruption measures which balance prevention measures with investigatory responses - ensuring integrity systems are purpose-built for their operating environments – environments which vary significantly given the diversity of functions performed by the ACT public sector, and

- ii. Secondly, the Commission's corruption prevention and education functions are drafted in a manner whereby they provide a sufficiently broad scope to ensure the Commission can develop and deliver best-fit anti-corruption responses without being locked into a prescribed approach.

### Information sharing between the Commission and other public sector entities

In the context of a Commission investigation or preliminary inquiry, the IC Act provides the Commission with the power to request information, including documents and other things from public sector entities, where the Commission determines said information is relevant to the investigation or preliminary inquiry.

The Commission has experienced mixed results to date with respect to its ability to access and share information from and with other public sector entities in a timely manner. This is due, in part, to the relatively recent introduction of the Commission – and the Commission's broad suite of information-gathering powers – into the ACT Government jurisdiction. In some cases, the Commission's requests for information have been queried or delayed because of an entity's interpretation of other legislation, policy or directions.

A core component of the Commission's education approach relates to informing public officials of the Commission's powers, and the interaction of Commission functions with other legislative instruments. However, building capability across the ACT public sector in this regard will take time.

The Commission raises this issue to demonstrate to the Committee the benefits of expressing clear legislative provisions enabling information sharing with and between integrity agencies. The Commission recommends the Committee consider whether the existing Victorian legislative framework is optimised to allow integrity and law enforcement agencies to share information freely where it is appropriate and beneficial to do so, including to inform prevention and education work.

The Commission similarly recommends the Committee consider whether any current legislative provisions unnecessarily inhibit or restrict reasonable information sharing between integrity, law enforcement and oversight agencies for the purpose of improving prevention and education initiatives.

#### **Case Study**

The Australian Government has taken steps to improve information sharing between government entities, with the passage in late 2018 of the Crimes Legislation Amendment (Powers, Offences and Other Measures Bill 2018 (the CLAPOOM Bill) which amongst dealing with other matters, specifically provides for the collection, use and disclosure of information for the purpose of preventing corruption against the Commonwealth.

2. **The current policies, practices and activities of IBAC regarding the exercise of their education and prevention functions.**

The Commission's interaction with IBAC's corruption prevention and education functions occurs primarily in two ways:

- i. As a consumer of the corruption prevention information, products and advice produced by IBAC, and
- ii. As a partner agency and fellow corruption prevention practitioner, in conjunction with Australia's other federal, and state and territory anti-corruption agencies.

IBAC's approach to corruption prevention and education is highly regarded by the Commission. IBAC consistently produces contemporary high-quality corruption prevention materials. Of note is IBAC's use of various media formats to communicate corruption-related concepts in simple terms, ensuring information is readily accessible for a broad and diverse audience.

Noting the Commission is still in the process of developing its suite of corruption prevention and education materials, the Commission will often refer its stakeholders to IBAC's comprehensive range of prevention products, confident in the knowledge that IBAC's materials are both relevant and contemporary.

The Commission also considers IBAC's outreach and engagement via social media as being at the forefront of Australia's anti-corruption agencies. IBAC regularly refreshes the content on its social medial platforms, ensuring their audience remains actively engaged via the delivery of new material on a consistent basis. The Commission intends on launching its own social media presence in due course and will likely seek input from IBAC with respect to their approach to social media management.

As members of the anti-corruption agency community in Australia, IBAC and the Commission are represented by relevant senior prevention and education officers on the Corruption Prevention Practitioner's Forum (the Forum). The Forum is a biannual meeting of corruption prevention practitioners from each of Australia's federal, and state and territory anti-corruption agencies.

The Forum provides practitioners with the opportunity to draw insights and better practice advice from their counterparts. This ensures local initiatives – including those developed for the Victorian community – benefit from the collective expertise of corruption prevention practitioners nationwide.

### **3. Best practice with respect to IBAC's education about, and prevention of, corruption and other misconduct, drawing on interstate and international experience.**

With respect to better-practice corruption prevention and education, the Commission provides the following comments based on its own experiences delivering prevention and education functions, in addition to drawing from other relevant domestic and international approaches to prevention and education.

#### Delivering 'best-fit' prevention and education initiatives

The Commission's Corruption Prevention and Education Strategy commits the Commission to delivering prevention and education functions which are fit for purpose and deliver the greatest impact. Focusing on the delivery of initiatives which target specific public officials, operating environments and/or functions helps to improve the likelihood that said initiatives will be effective in achieving their stated objectives.



The Australian Commission for Law Enforcement Integrity describes this method as the ‘Three Lens Approach’, whereby prevention initiatives consider corruption risk from the perspective of the person (or individual), place (environment or location), and purpose (functions or duties performed)<sup>2</sup>.

Consistent with the ‘best-fit’ approach to prevention and education, the Commission recommends that agencies remain flexible when considering the skills, knowledge and experience required to deliver their respective prevention and education functions.

Corruption prevention is itself multi-disciplinary in nature, with inspiration, theory and practice emerging across many distinct disciplines, including management, sociology, psychology, behavioural economics, criminology and others. Similarly, corruption prevention practitioners emerge from a variety of professional backgrounds, including policy design, human resources, law enforcement and the legal profession.

The Commission contends that the ability of practitioners to contextualise and synthesise information from a variety of disciplines and apply them in an anti-corruption context, rather than relying on ‘one best way’ of doing things, may assist in the delivery of unique and bespoke prevention and education solutions which are fit for purpose and highly effective.

#### Resourcing the prevention and education functions of integrity agencies

Traditionally, integrity agencies have prioritised their investigatory functions over prevention and education, with resources and budget allocated accordingly<sup>3</sup>. The Commission is unaware of a standard or consistent methodology regarding the allocation of resources to prevention and education functions, however a 2018 Transparency International guide for anti-corruption agencies recommends that a prevention budget of 5% or more of the total agency budget is considered ‘high’<sup>4</sup>. This suggests prevention and education budgets are likely to constitute only a very small percentage of the overall budget of anti-corruption agencies.

Rather than seeking additional allocation of resources, which may prove difficult to justify from a cost-benefit perspective<sup>5</sup>, the Commission contends that anti-corruption agencies are more likely to scale their prevention and education activities according to their allocated resources. This approach does not inhibit the delivery of ‘best-fit’ prevention and education initiatives, however the opportunity cost – which may manifest as serious corrupt conduct and/or significant reputational damage to the affected entity – may substantially outweigh the initial investment required for an effective prevention response.

As such, the Commission recommends the Committee consider whether the resources allocated to the prevention and education functions of Victoria’s integrity agencies are appropriate for agencies to effectively deliver these functions, consistent with the expectations of the Victorian Parliament and the Victorian community.

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<sup>2</sup> See: <https://www.aclei.gov.au/corruption-prevention/key-concepts/glossary>

<sup>3</sup> See: [https://www.griffith.edu.au/\\_data/assets/pdf\\_file/0025/726244/Ch5.-Preventing-corruption-DRAFT-FOR-COMMENT.pdf](https://www.griffith.edu.au/_data/assets/pdf_file/0025/726244/Ch5.-Preventing-corruption-DRAFT-FOR-COMMENT.pdf)

<sup>4</sup> See: [https://www.transparency.org/files/content/activity/2018\\_Revised\\_ACA\\_Implementation\\_Guide.pdf](https://www.transparency.org/files/content/activity/2018_Revised_ACA_Implementation_Guide.pdf)

<sup>5</sup> See: [https://www.griffith.edu.au/\\_data/assets/pdf\\_file/0025/726244/Ch5.-Preventing-corruption-DRAFT-FOR-COMMENT.pdf](https://www.griffith.edu.au/_data/assets/pdf_file/0025/726244/Ch5.-Preventing-corruption-DRAFT-FOR-COMMENT.pdf)



## Appendix A – Extract from s9 of the *Integrity Commission Act 2018 (ACT)* - Meaning of *corrupt conduct*

### 9 Meaning of *corrupt conduct*

- (1) For this Act, *corrupt conduct* is conduct—
  - (a) that could—
    - (i) constitute a criminal offence; or
    - (ii) constitute a serious disciplinary offence; or
    - (iii) constitute reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of, a public official; and
  - (b) that is any of the following:
    - (i) conduct by a public official that constitutes the exercise of the public official's functions as a public official in a way that is not honest or is not impartial;
    - (ii) conduct by a public official or former public official that—
      - (A) constitutes a breach of public trust; or
      - (B) constitutes the misuse of information or material acquired by the official in the course of performing their official functions, whether or not the misuse is for the benefit of the official or another person;
    - (iii) conduct that adversely affects, either directly or indirectly the honest or impartial exercise of functions by a public official or a public sector entity;
    - (iv) conduct that—
      - (A) adversely affects, either directly or indirectly the exercise of official functions by a public official or public sector entity; and
      - (B) would constitute, if proved, an offence against a provision of the [Criminal Code](#), chapter 3 (Theft, fraud, bribery and related offences);
    - (v) conduct that involves any of the following:
      - (A) collusive tendering;
      - (B) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety, protect the environment or facilitate the management and commercial exploitation of resources;
      - (C) dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage;
      - (D) defrauding the public revenue;
      - (E) fraudulently obtaining or retaining employment or appointment as a public official;
    - (vi) conduct engaged in by a person in relation to conduct mentioned in subparagraphs (i) to (iv) (the *primary conduct*), that would constitute an



offence against the [Criminal Code](#), part 2.4 (Extensions of criminal responsibility) on the basis that the primary conduct is an offence, whether or not the primary conduct is in fact an offence.

- (2) For subsection (1) (a) it does not matter if—
- (a) proceedings or action in relation to the conduct can no longer be taken; or
  - (b) the conduct happened outside the Territory.

**Example—par (a)**

Action for a disciplinary offence may no longer be taken as the person who engaged in the conduct has resigned.

- (3) In this section:

***criminal offence*** means a criminal offence under the law of the Territory or under any other law relevant to the conduct in question.

**Examples—criminal offences**

offences in the [Criminal Code](#), ch 3 (Theft, fraud, bribery and related offences), including:

- pt 3.2 (Theft and related offences)
- pt 3.3 (Fraudulent conduct)
- pt 3.4 (False or misleading statements, information and documents)
- pt 3.5 (Blackmail)
- pt 3.6 (Forgery and related offences)
- pt 3.7 (Bribery and related offences)
- pt 3.8 (Impersonation or obstruction of territory public officials)
- pt 3.8A (Cheating at gambling).

***serious disciplinary offence*** includes—

- (a) any serious misconduct; or
- (b) any other matter that constitutes or may constitute grounds for—
  - (i) termination action under any law; or
  - (ii) a significant employment penalty.

***serious misconduct***—see the [Fair Work Regulations 2009](#) (Cwlth), section 1.07 (Meaning of *serious misconduct*).



## Appendix B – ACT Integrity Commission Corruption Prevention Strategy

### CORRUPTION PREVENTION AND EDUCATION STRATEGY

*The role of the ACT Integrity Commission is to **investigate, expose and prevent corruption** and foster public confidence in the integrity of government.*

#### OUR APPROACH

WE WORK IN PARTNERSHIP WITH OUR STAKEHOLDERS TO UNDERSTAND AND PREVENT CORRUPTION

WE ANTICIPATE AND RESPOND TO THE NEEDS OF THE ACT GOVERNMENT AND THE ACT COMMUNITY

WE DELIVER BEST-FIT CORRUPTION PREVENTION PRODUCTS AND SERVICES

#### OUR WORK

##### RESEARCH AND ANALYSIS

Environmental scans

Analysis of complaints, notifications and ACTIC investigations

Awareness surveys

Corruption prevention impact assessments

##### AWARENESS AND EDUCATION

Corruption vulnerabilities briefs for public sector entities

Specialist reports

Prevention tools and products

Educational materials and campaigns

##### OUTREACH AND ENGAGEMENT

Presentations to public sector agencies and the public

National and international collaboration

Agency promotion and marketing

Presentation and attendance at national and international conferences

#### OUR VISION

*To be recognised as a leader and trusted advisor in the development of practical, best-fit corruption prevention initiatives which promote and enhance the integrity of government.*