

19 May 2017

Secretary  
Select Committee on an Independent Integrity Commission  
Legislative Assembly for the ACT  
GPO Box 1020, CANBERRA ACT 2601

Dear Mr Rattenbury, *Shome*

Please find enclosed a copy of the submission from UnionsACT to the Select Committee regarding the proposed establishment of an Independent Integrity Commission.

UnionsACT is the peak council representing 24 unions and over 33,000 working people, their families and communities. One hundred thousand more have their conditions of employment shaped by the work of our affiliates. More than 15,000 Canberrans support the work we do through our community campaigning.

We have a long and proud history of independently and fearlessly advocating on behalf of union members, and our mission is to improve working standards and living standards for all working people.

As the leading voice for working people in the ACT, UnionsACT is pleased to make this submission to the Select Committee into the establishment of an independent integrity commission.

I am pleased to provide this submission to the Select Committee, and I hope it proves informative in your deliberations.

Yours sincerely



**Alex White**  
Secretary  
UnionsACT



# UNIONSACT SUBMISSION TO SELECT COMMITTEE INQUIRY INTO AN INDEPENDENT INTEGRITY COMMISSION

## ABOUT UNIONSACT

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As the leading voice for working people in the ACT, UnionsACT is pleased to make this submission to the Select Committee into the establishment of an Independent Integrity Commission.

UnionsACT has consulted closely with affiliates, and we support the detailed submission made by the Community and Public Sector Union (PSU).

## NEED FOR TRANSPARENCY

UnionsACT supports in principle the establishment of an Integrity Commission, with a focus on identifying

and exposing serious corruption amongst elected officials, senior public servants and political party officials.

We note that the NSW Independent Commission Against Corruption has exposed serious wrongdoing, corrupt behaviour and a culture of corruption in elements of all major political parties. This includes misuse of donations, misuse of public office and, in the case of the NSW Liberal party, money laundering.

UnionsACT also supports calls by various groups, including by the Australian Council of Trade Unions, for the establishment of an independent federal anti-corruption commission.

### ***Political donations***

There is a strong need for greater transparency in political donations, especially through real-time disclosures by political parties and candidates, and scrutiny of who donates and why. UnionsACT believes that if corporations are permitted to donate to political parties, they must meet appropriate environmental social, labour relations, human rights, transparency and ethical standards in their business dealings.

### ***Integrity Commission as preventative***

UnionsACT is not convinced at this time that there is strong evidence of serious corruption or a culture of corruption in the ACT amongst elected officials, senior public servants or political party officials. We believe that existing standards and processes within the ACT Public Service, including the Public Sector Management Act and Public Service Standards Commissioner, have been adequate. Nonetheless, corruption does not stop at state borders. A strong regime of transparency would ensure that serious corruption is not imported into the ACT. We therefore see the establishment of an Integrity Commission is therefore an important preventative measure.

## **ASSEMBLY PRIORITIES**

While reiterating our support for an Integrity Commission, UnionsACT wishes to place on record our concern at significant resources, time and energy being invested in the potential establishment of a Commission.

In other jurisdictions, some event or finding has typically prompted the establishment of an anti-corruption commission. There is no evidence of serious or widespread misconduct by elected officials or public servants in the ACT. Absent evidence of the kinds of misconduct or corrupt behaviour seen in other jurisdictions, UnionsACT believes that ACT public servants, elected officials and political party officials are entitled to the presumption that they are acting properly, lawfully and in the public interest.

There is evidence however of widespread lawless and illegal conduct by employers within the ACT,

including contractors of the ACT Government, who flout ACT and Federal laws with few or no consequences. UnionsACT does not make this claim lightly; it is a claim based on evidence presented at numerous court hearings, inquiries and investigations, including by police, the Fair Work Ombudsman, independent inquiries, Senate inquiries and more.

UnionsACT notes and supports the ACT Government and Assembly initiated inquiry into insecure work and the labour hire industry. There is substantial evidence in the ACT and other jurisdictions of widespread, systemic and severe exploitation of workers, unlawful underpayments, unlawful work-safety practices, non-payment of superannuation, avoidance of payroll tax and other illegal behaviour.

There is a far greater prevalence of this type of serious unlawful behaviour, with severe adverse effects on a large number of people in the ACT. Nevertheless, UnionsACT is constantly advised that there is no funding available for greater protections, inspections or enforcement to address real and known unlawful behaviour. This reflects, in our view, misplaced priorities within the ACT Assembly.

## **FUNCTIONS OF A COMMISSION**

UnionsACT supports an Integrity Commission with a remit to investigate serious or systemic corrupt behaviour, or misconduct, of an elected official, public servant, political party official, or contractor engaged to provide a public service.

The Commission should then make referrals to another, appropriate, entity for prosecution or sanction.

The Commission should not make public findings.

### **What behaviour should be subject to scrutiny**

The Commission should be concerned with serious or systemic corrupt behaviour or misconduct.

Serious refers to the nature of the misconduct or behaviour, not necessarily the participants. The misconduct should be wilful, deliberate and have significant adverse impacts, involve substantial loss or damage, or involve unlawful behaviour attracting a term of imprisonment of greater than three years.

Systemic refers to misconduct that is widespread, involves a number of individuals, or has occurred over a significant period of time.

UnionsACT believes that simple misconduct should not be within the scope of the Commission; there are other more appropriate means to investigate, address, prevent and sanction misconduct. This is especially the case for public servants, whose conduct (and the management of misconduct) is set out in the Public Sector Management Act, with codes of conduct and a Public Sector Standards Commissioner.

The mere act or allegation of misconduct by a person, for example a contravention of a code of conduct that is grounds for disciplinary action, should be more properly addressed through existing processes and mechanisms.

### **Who should be subject to scrutiny?**

UnionsACT believes that an Integrity Commission should be limited to investigating the conduct of elected public officials (that is, members of the ACT Assembly), public servants, political party officials, and non-government contractors engaged to provide public services.

### **Contractors**

A growing proportion of public sector work is now being conducted by private-sector contractors and non-government charitable organisations. These entities are not subject to the transparency obligations or public sector standards that are applied to the ACT Public Service.

UnionsACT notes that there is evidence of systemic lawlessness and illegal behaviour by numerous businesses contracted to provide goods and/or services to the ACT Government. This lawless behaviour includes numerous violations of the Fair Work Act, the ACT Work, Work Health and Safety Act, Long Service Leave Act, and others.

UnionsACT supports the view of the CPSU that the conduct of individuals outside the public service, who are performing or undertaking public services or providing a service to the ACT Government, should be included within the scope of the Integrity Commission. This would include the majority of companies providing works and services currently covered by the Government Procurement Act.

***Investigation, not prosecution or sanction***

UnionsACT believes that an Integrity Commission should be principally an investigatory body.

The power to prosecute and issue penalties/sanctions is more appropriately the role of the courts, or another relevant entity.

The experience in NSW and other jurisdictions is that the ability for a Commission to make public findings can have serious adverse consequences for individuals. This can amount to a penalty, even if a court later finds that the individual committed no wrongdoing. UnionsACT therefore does not support an ACT Integrity Commission to have powers to make public findings.

**POWERS AVAILABLE TO A COMMISSION**

UnionsACT is strongly of the view that the use of any power by an Integrity Commission must be subject to oversight and review. This could be judicial; it could also include review by the Auditor General. The review and oversight should be independent of political institutions. Use of powers, especially coercive powers, must also be required to be reported, e.g. to the ACT Assembly.

***Coercive powers***

UnionsACT supports a Commission with strong powers of investigation. We are wary of a Commission with wide-ranging coercive powers; in our view these powers best reside with a body that also has prosecutorial powers.

The integrity commission should principally be an investigatory body. If the commission were granted coercive powers, they should be limited to an investigatory function, e.g., powers that allows it to:

- Seek information;
- Require the provision of documents.

There should be limits or thresholds to these powers, requiring a “belief based on reasonable grounds”. Use of coercive powers should be proportionate. Similarly, use of information obtained by coercive powers should be restricted to a proper purpose. Use the any coercive power should be subject to review and reporting requirements.

**RELATIONSHIP BETWEEN A COMMISSION AND EXISTING ACCOUNTABILITY AND TRANSPARENCY MECHANISMS AND BODIES IN THE ACT**

UnionsACT is wary of a Commission with broad powers to initiate its own investigations. Should it be granted such powers, the decision should be subject to review and oversight.

The CPSU submission, for example, suggests that self-initiated investigations could require approval by multiple commissioners or senior staff. Alternatively, the Integrity Commission could have multiple commissioners to divide assessment and investigation functions.

UnionsACT is of the view that the principle means by which the Commission initiate an investigation be by referral. The referral could be from the range of

existing bodies and commissions within the ACT, for example:

- The ACT Auditor General
- The Public Sector Standards Commissioner
- The ACT Electoral Commissioner
- The ACT Ombudsman
- The ACT Assembly Commissioner for Standards
- The ACT Assembly

UnionsACT supports the establishment of penalties for providing false or knowingly misleading claims or complaints.

## VEXATIOUS CLAIMS

UnionsACT is concerned that the Commission not spend time or resources considering minor or vexatious complaints. This could include members of the public making unfounded, frivolous or unmeritorious allegations about public servants when the individual opposes a legitimate government decision or action. Sensational reporting in the media about government actions, especially in a small jurisdiction, heighten this risk.



### CONTACT US

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Trades & Labour Council of the ACT **ABN 31 724 041 495**

UnionsACT acknowledges that Canberra has been built on the land of the Ngunnawal people.

We pay respect to their Elders and recognise the strength and resilience of Aboriginal and Torres Strait Islander peoples.