

**VISITORS**  
**Mary MacKillop College**

**Madam SPEAKER:** Honourable members, I would like to draw your attention to another school group, the lovely students from Mary MacKillop College Year 7, accompanied by their teacher, Amy Sacagio. Welcome to Parliament House, I hope you enjoy your time here.

**Members:** Hear, hear!

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**Ms FYLES (Attorney-General and Justice):** Thank you, Madam Speaker. I too, would like to acknowledge the students in the gallery today from Mary MacKillop College. I know the Members for Brennan and Drysdale, two of our hard-working members in Palmerston might try and pop up to see you, but we are in the midst of a very important debate.

The bill we are debating today—the report back to the Assembly on the Northern Territory's first independent commissioner against corruption, providing openness and transparency back into the Northern Territory Government.

Over the last four chaotic years—I noticed that somebody tagged you in something on social media the other day that it was not that long ago that we had midnight coups. I think that sums up the past four years and our job, as a government and parliament, is to rebuild that trust with Territorians. A significant part of that is putting in place the legislation and an independent commission against corruption.

I would sincerely like to thank the committee members for this report here today. I would like to take the time to thank the Chair, an enormous challenge, Madam Speaker, not only being the Chair of a committee that has government and non-government members looking at legislation robustly, but the Chair of the first scrutiny committee looking at a piece of legislation.

The work that has been done through the leadership of that Chair will be easier for the next scrutiny of a bill. It is very difficult to go through that first, and I would like to thank the Member for Karama for her leadership. I know it has been an enormous burden on her since the bill was introduced. The organising, looking thoroughly through this and it is something she has done showing leadership.

I would also like to acknowledge the staff of the legislative Assembly. Being a new process, I know it has been frustrating at times, but we are here today, with this report back and it has thoroughly looked at this bill. I would like to thank all of the committee members.

It was pleasing to hear the Member for Araluen comment that it is a good piece of legislation, now that she has taken the time to look through that committee process in detail.

Members of the House will know that this bill was introduced under the previous process of the parliament and did not necessarily need to be referred to a scrutiny committee, but for us, as a government under the Chief Minister's leadership, we felt that it was very important. This bill, that is the basis of the Martin Report, has had an exposure draft piece of legislation for community consultation should go through the process so that Territorians know they have a robust bill in place. That is why, as the minister responsible; I referred that bill to the scrutiny committee.

I would like to speak in response to the Social Policy Scrutiny Committee in relation to its report titled, 'Inquiry into the Independent Commissioner Against Corruption Bill 2017'.

On 15 November 2017, the first report from our Assembly's new scrutiny committees was released and copies provided to all members.

I officially place on the record my thanks to the committee members, the Members for Karama, Namatjira, Katherine, Araluen and Spillett for their work on the bill and the report we have here before us today.

Our government takes our obligation to restore trust with Territorians very seriously, so they have confidence in the processes, that taxpayer dollars are spent in the best interests of Territorians.

I do not want to go back in time, we lived through that intimately in this Chamber and they wrote a book about it. But when you have comments from members of parliament saying that money opens doors, it is not a basis of trust with your community. People need to understand we have a huge responsibility. With the decisions, laws and budget allocations we make, people need to know we are making them in the best interests of the long-term future of Territorians, not the short-term interests of a few.

Restoring that trust is the obligation our government has to every Territorian who voted for and elected us. Implementing an Independent Commission Against Corruption with strong, clear powers of investigation will be key milestone on that path to restoring that trust and integrity to the Northern Territory government. This committee's report today assists the government in its goals. Our policy on an ICAC has been very clear from day one. Our government accepted, in principle, 50 of the 52 recommendations of the report by former Chief Justice, Commissioner Brian Martin AO QC, which was tabled in May 2016.

Since coming to government, we have worked aggressively to develop legislation as quickly as possible, also ensuring that our community of Territorians were involved along the way. In the case of an ICAC bill, draft legislation was released for public scrutiny in June 2017. Consultation meetings were held across the Northern Territory, not just in the Top End, but through Central Australia, Tennant Creek, Katherine and the rural area. Madam Speaker, you approached me about making sure there was consultation in the rural area and we happily obliged ...

**Madam SPEAKER:** We had one.

**Ms FYLES:** It was pleasing to hear of the attendance at those consultations.

Comments came to the government from stakeholders, experts and individuals – everyone had their say. That process led to changes and improvement in the bill that led us to being in a position in August 2017 to introduce that bill into the Northern Territory parliament.

Subsequently, in accordance with our reforms to open parliament to the people, the bill was referred to the Social Policy Scrutiny Committee for an inquiry. The strength of the new process was there for all Territorians to see when the committee held a public hearing on 9 October 2017. At that public hearing, we heard experts from the independent integrity agencies from interstate and the Department of Attorney-General and Justice rigorously discuss the bill. The process of testing the bill, its proposed operation, its specific wording, making sure Territorians are getting legislation they can be confident in and will be fit for purpose – strong and fair.

I take this opportunity to thank a number of witnesses who appeared at the committee whose testimony was of great value. In particular, I thank on behalf of the government those anti-corruption commissioners from interstate who testified, including Hon Bruce Lander QC from South Australia, Mr Alan MacSporran QC from Queensland and Mr Richard Bingham from Tasmania. I also thank the Ombudsman, Peter Shoyer, Commissioner for Public Employment, Craig Allen, Commissioner for Public Interest Disclosures, Ms Brenda Monaghan, for their appearances and submissions.

I also make special mention and offer my thanks to my department staff for their work during the committee's inquiry. The member for Araluen and members of that committee acknowledged the hard work led by Caroline Heske, senior policy lawyer with the department. This has been a huge body of work which has come at great demand on some individuals. The Department of Attorney-General and Justice has felt the burden of that. This scrutiny committee process is new. We did not have a road map of how it would work. So, there were at times questions and information requested, establishing what is the best pathway going forward. I thank the Department of Attorney-General and Justice, led by Greg Shanahan, for all the work in explaining the bill and providing information. It was a key part in the report we have heard today.

The Social Policy Scrutiny Committee has subsequently made 14 recommendations in relation to this bill. I have had a chance to review their report and those recommendations will provide this Assembly with a response to each of those recommendations. In short, the government will be accepting many of the recommendations from the Social Policy Scrutiny Committee, but there are a couple we will not be accepting. I have flagged that. Media interest has been intense since the report was published last week.

I will take the time now to speak to each individual recommendations.

Recommendation 1 recommends the Committee recommends that the Legislative Assembly pass the Independent Commissioner Against Corruption Bill 2017 with the proposed amendments as set out in the schedule in Chapter 4.

The government welcomes the committee's support for the bill. As I said, we will be accepting some of the recommendations but not all.

Recommendation 2 recommends that to avoid any ambiguity, clause 12 (1) (a) (i) be amended, removing the words 'illegality or'. The government does not accept this recommendation. The government does not believe there is any ambiguity in the word illegality and I believe most Territorians would be of the same view. Both the Department of the Attorney-General and Justice and the Office of Parliamentary Council have advised the council it is a word that has well known plain and ordinary meaning, namely 'unlawfulness' or 'conduct contrary to law'.

Recommendation 3 recommends that to avoid any ambiguity, the words 'other entity' in clauses 18 (1) (c) (iv), 18 (3) (b), 18 (4) and the clause 4 (g) of schedule 1 be removed and replaced with the words, 'referral entity'. The government accepts this recommendation and the change will be adopted. Upon receiving the full report from the committee and discussion it with my parliamentary colleagues, as well as the advice of the department. I have had amendments drafted which I will ask the Legislative Assembly to circulate as soon as possible so that members have consideration of those before their second reading speeches so as they go into debate they can understand technically exactly what the government is proposing in accepting the reports for this.

Recommendation 4 recommends that: (a) clause 22 be amended to include a corporations law displacement provision for the purpose of the *Corporations Act 2001* Commonwealth section 5G in relation to the section 1317AE of that act to accommodate corporations that fall within the bill's definition of a public body, noting that the commencement of the provision is subject to agreement by the Commonwealth states and the ACT (b) the government commence processes to enable a comprehensive corporations law displacement provision to be enacted.

The government accepts these recommendations but notes there is a technical issue with making changes to the bill. The Northern Territory is a signatory to the Corporations Agreement 2002 and so is obliged to first seek approval at an intergovernmental ministerial council for corporations' law displacement provision. The government will now seek that approval, consequently it is anticipated that the committee's recommendation be enacted by an amendment to the ICAC consequential and related amendments bill 2017 which at this state will be available, as I understand, for passage in the February sittings of this Assembly.

Recommendation 5 recommends that the bill be amended to give witnesses a right to apply for a direction for a private hearing or nonpublication under clause 46 and require that the ICAC advise witnesses in the notice requiring attendance and in an open session before giving evidence of (a) their right to make application before or during an open session for direction under clause 46 regarding directions for a private hearing, nonpublication and (b) their rights and clauses 83 and 84 regarding privilege against self-incrimination.

The government accepts this recommendation in principle. The government will move amendments that provide a right to make an application and have it heard in private and for witnesses to be informed of this fact. However, the drafting of this provision has also been improved as the government's amendment will also make it clear that the ICAC has the discretion to refuse to hear a request in private where the ICAC has reason to believe that the request is vexatious or without merit. This is an important tool to control strategic obstructive use of this right.

Recommendation 6 recommends to minimise the risk of unnecessary legal challenges and clause 49 be amended to include (a) a clause equivalent to 51 (3) to include an express power to make comment on findings in an investigation and report (b) the corresponding limitations of an equivalent clause 51 (4) regarding making findings of offences and breaches of discipline. The government accepts this recommendation and it will be adopted.

Recommendation 7 recommends that (1) clauses 67 and 68 be amended by removing the words, 'justice of the peace', and replacing them with the words, 'judicial officer', (2) the Department of the Attorney-General and Justice undertake a review of processes for the issuing of search warrants in the Northern Territory. In relation to the first point, the government accepts the recommendation as we believe this will very likely reflect the process of the ICAC. However, even though the second point is a broad request for review and beyond the scope of the actual bill, the government disagrees with the committee's views concerning warrants and the process currently used in the Northern Territory.

This government has always been very clear about giving police the tools they need to protect our community. Access to Justices of the Peace, particularly in the remote regions of the Territory is important to the

Territory's law enforcement. The government does not believe we should be making changes in one bill that essentially will make it harder for our police to keep our communities safe.

Recommendation 8 recommends that to avoid any potential of legal challenge clause 82 be amended by removing the words facing or facing criminal proceedings, for the government accepts this recommendation and thanks the committee for pointing this out.

Recommendation nine states that the committee alerts the Assembly to specifics of the privilege against self-incrimination by allowing the ICAC to pass compelled self-incriminating evidence onto a prosecuting authority as provided for in clause 81.6. It also recommends that the Assembly consider whether the removal of this fundamental right against self-incrimination is justified.

This recommendation does not involve any recommended change to the bill, however, I do wish to note that the Martin Report specifically recommended that the derivative use of evidence be exclusively permitted. I would also note that the ICAC bill restricts the ICAC from asking questions of a witness after they have been charged with an offence. It therefore protects the rights of an accused more effectively than a mere restriction on passing evidence to the prosecution after a person has been questioned post charge.

Recommendation 10 recommends that clause 12.3 be amended to add certain words so that it could read as follows:

Despite subsection one unsatisfactory conduct does not include any conduct engaged in by a judicial officer in the performance of judicial functions or by a member of the Legislative Assembly.

It is with all due respect that the government rejects this recommendation. The government has been crystal clear. The ICAC will be able to investigate everyone involved in the Northern Territory government. Every member of the Northern Territory Public Service or spending the NT public's money including members of parliament. Politicians, judges, public servants, police, local councils and contract service providers of these public service organisations all need to be held to account. Organisations that are recipients of substantial government grants may also be investigated in relation to the expenditure of government money.

The government will not be making an amendment like this which would undermine the public's confidence in the ICAC legislation, and it was very interesting to hear the comments from the Member for Nelson a little earlier trying to blame the media that this has been raised through the media. The media has focused on this. She made the comments that she was trying to blame the media for focussing on it.

**A member:** Member for Araluen; you said Member for Nelson.

**Ms FYLES:** Sorry. Member for Araluen. If I am going to lay blame I should do it at the correct person. I wanted to get the Member for Nelson back in here.

The Member for Araluen it was very interesting to hear her trying to lay blame for the media for focussing on it. I think, we need to make sure that the public has confidence in this ICAC. We cannot undermine that confidence. Perhaps, if she had not been off in Canada or Bangladesh or wherever she has been travelling to lately she could have been listening to Territorians about their concerns the need for this ICAC to be open, to represent Territorians and that is what this is about.

We will not be accepting that recommendation and I am critical of the Member for Araluen, not the Member for Nelson, for trying to blame the media for focussing on it. The committee has raised a point but as a government with all due respect we will not accept that because Territorians need to have confidence and there needs to be no measures in place that would undermine the public's confidence in this ICAC legislation.

Recommendation 11 recommends that the clause 112.2 be amended such that the appointment of the ICAC by the administrator can be made only after an advisory panel chaired by a former supreme court judge including the Solicitor-General for the Northern Territory and the Chief Executive of the Department of Attorney-General and Justice makes a recommendation to the Assembly committee or if there is no Assembly committee the Legislative Assembly. The Assembly committee or if there is no Assembly committee the Legislative Assembly makes a recommendation to the Administrator.

The government does not accept this recommendation. The bill already contains a range of measures to safe guard the independence of the ICAC's appointment and eligibility including requiring the Legislative Assembly to vote on the proposed appointee.

This amendment would also create legal confusion, particularly the use of the specific words ‘the Department of the Attorney-General and Justice’. The Department of the Attorney-General and Justice is an entity which only exists by virtue of the Administrative Arrangement Orders. This process currently being followed for selection of the first ICAC is the process proposed in this first amendment anyway.

Recommendation 12 recommends that clause 136 be amended to

- (a) empower the inspector to make general reports to the minister or the designated oversight committee when the inspector is of the view that the annual evaluation would be an insufficient tool to communicate concerns; and
- (b) require the ICAC minister to table a copy of any such reports in the Legislative Assembly within six sitting days of receipt.

The government will adopt this recommendation in substance. The government will move amendments inserting provisions into clauses 139 and 140 rather than clause 160.

Recommendation 13 recommends that clause 160 be amended to include a provision for the transfer of all records from the Office of the Commissioner for Public Interest Disclosures to the ICAC.

**Mr KIRBY:** A point of order, Madam Speaker! I request an extension of time for the member, pursuant to Standing Order 43.

Motion agreed to.

**Ms FYLES:** The government accepts this recommendation. To make that clear, we are discussing Recommendation 13.

I thank the committee for noting this issue.

Recommendation 14 recommends that the reference to section O in clause 129(1)(f) be amended to section 105, and that the numbering of subsequent clauses be corrected to remove duplication of clause 1F. This is a typographical error and we thank the committee for drawing the government’s attention to it. We accept the recommendation.

Now that I have spoken in detail, I think I have highlighted to the Assembly the value of this scrutiny committee’s work. It is not a rubber stamping process. It is important that we take a moment to take a look at that.

The committee has taken an in-depth look—I thanked the officials from interstate and the experts who have provided advice. They have come up with a number of recommendations that give us a stronger bill.

We will not change the fundamental basis of this bill; that is why we have rejected the recommendation regarding members of this Assembly. It needs to be clearly in place that the ICAC can decide if it investigates, how it investigates, whether it refers to another government entity or what decision. It is up to the ICAC to make that decision. It is not for politicians in this House to put that in place in the legislation.

In summary, in relation to the recommendations of the committee, the government has adopted the following positions. There are 14 recommendations, two of which do not seek any legislative amendments. Of the 12 legislative amendments the government accepts, in principle, nine recommendations.

As I have stated to the House, I will move amendments to implement those changed. The government does not accept three of the proposed legislative amendments.

Following on from this discussion, there is a crucial point which should be clear. The independence of the committee and examining this bill. The committee includes the Members for Spillett and Araluen, along with three government members, but they have formed their views on this bill independently. They have not been interfered or suggested changes. They have been allowed to go away and do their work.

I thank them for their time. It was a big body of work to undertake. I note that not all the members are Darwin based, so it has meant they have needed additional time away from their electorates, but their constituents should know they have undertaken an important role in establishing the Northern Territory’s first independent commissioner against corruption.

As a government we let parliamentary committees do their work. We let them work independently, report and make recommendations. As a government we look through those recommendations and seek further advice around practicality, the legal implications and if they align with what we want to implement.

We are willing, as a government to debate our policies, not just to shut down differing viewpoints or roll people in midnight coups if we do not like what they say. We are open and transparent and will continue to consult across the Northern Territory, and with members of this House, to make sure we have those views coming through.

We take seriously the development of important policies and value the input of others.

As I conclude, I would like to again thank the committee the Legislative Assembly staff and the department of Attorney-General staff for their work. Territorians can have absolute confidence in this Legislative Assembly passing this ICAC bill either today or later this week. We will have public administration in the Northern Territory that will be able to be investigated by a truly independent body with strong powers. That is what Territorians want. They want to trust that decisions are made in the long-term interests of Territorians, not the short-term interests of a select few.

I will be looking forward to the debate and the passing of the ICAC bill today or later in the week.

Motion agreed to; report noted.

**INDEPENDENT COMMISSIONER AGAINST CORRUPTION (CONSEQUENTIAL AND RELATED AMENDMENTS) BILL  
(Serial 35)**

Continued from 19 October 2017

**Mr McCARTHY (Housing and Community Development):** Madam Speaker, that is the slowest jump in the history of the Northern Territory Legislative Assembly. For those that are not able to see it, the reason is that I was waiting the normal protocol of the House, for the Leader of the Opposition to jump and respond to this very important passage of legislation. The leader has chosen not to jump and I could think of some reasons why.

I am honoured to rise and support the Independent Commissioner Against Corruption Bill 2017. I thank my colleagues and the Attorney-General for the opportunity to talk about this important matter.

This is a piece of legislation fundamentally about restoring the community's trust in government and public institutions. During the disastrous CLP government, we saw the kind of destructive havoc that can be wrought on the hearts and minds of Territorians.

This bill is about trust. Let me tell you, nobody trusted that previous mob. We saw how a completed disregard for due process and transparency at precisely the time when the public were crying out for it, saw a government get turfed out after just one term.

We on this side of the House have long been advocates of a fully independent ICAC, something the CLP, incredibly, never supported for the Northern Territory. It is unfortunate that these are the lengths we need to go to in order to protect Territorians from corruption.

People were sick of the previous CLP government with its conga line of scandals. The fish rots from the head, the culture of the previous CLP government was poisonous and the relief for thousands of Territorians at the end of their reign was real. Nobody trusted the CLP. There was no trust even amongst themselves.

There were a series of serious and legitimate questions raised by Territorians and rather than swift action, we instead saw public meltdowns from the then treasurer on radio, about why an ICAC was not needed.

When dragged to the table to kick off the process, the CLP proposed a toothless tiger, subservient to them to investigate only matters that would benefit them politically.

We are now doing it properly. This ICAC is the real thing.