

Inspector of the ACT Integrity Commission Annual Report

Transmittal Certificate

6 October 2020

Ms Joy Burch MLA
Speaker
Legislative Assembly for the ACT
London Circuit
CANBERRA ACT 2600

Dear Speaker

I present to you my Annual Report as Inspector of the ACT Integrity Commission for 2019-20.

It has been prepared to fulfil the requirements of s 7A of the *Annual Reports (Government Agencies) Act 2004*.

I certify the Annual Report 2019-20 is an honest and accurate account of the work of the Inspector's Office and that all material information on the operations of the Office has been included for the period from 1 July 2019 to 30 June 2020.

As I am an Officer of the Legislative Assembly, this report is not subject to the *Annual Reports (Government Agencies) Directions 2019*. Where relevant to my Office, I sought to include similar information in this report to that required under these directions.

Section 15 of the *Annual Reports (Government Agencies) Act 2004* requires that you present a copy of the Annual Report to the Legislative Assembly within 15 weeks after the end of the reporting year.

Yours sincerely



Michael Manthorpe PSM
Inspector of the ACT Integrity Commission

Contacting the Inspector

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The Inspector Annual Report 2019-20 is available on the website.

Credits

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Review by the Inspector

I am pleased to introduce my inaugural annual report as Inspector of the ACT Integrity Commission.

The ACT Integrity Commission (the Commission) is an independent body with the power to investigate corruption in ACT Government. My role as Inspector, which commenced on 1 July 2019, provides independent oversight of the Commission to provide assurance that the Commission is acting within its powers and provides public confidence in government integrity. In addition to being the Inspector of the Commission, I am also the ACT Ombudsman.

This year my Office implemented arrangements to support my new role as Inspector. We developed policies and procedures, monthly reporting and information sharing arrangements with the Commission, as well as information for the ACT community about how to make a complaint about the Commission.

People can access information on how to make a complaint about the Commission, including our complaint handling policy, on the ACT Ombudsman website. They can make a complaint using our online form and also contact us directly through our ACT Ombudsman phone line.

The Commission's focus in 2019-20 was on its operational set up and I appreciate the complexity of this task. I understand the Commission initially experienced delays and challenges in becoming fully operational and progressing its matters on hand.

It is crucial the Commission is sufficiently resourced to undertake its functions efficiently and effectively, and be able to maintain the independence and security of its activities.

I am pleased the Commission has made significant progress since commencing operations. It secured permanent premises, recruited staff, acquired secure information systems, is in the process of identifying suitable case management systems, developed relationship protocols with other oversight agencies, and developed policies and procedures for managing and investigating allegations of corrupt conduct. It also started implementing its corruption prevention and education strategy.

My Office has developed a productive and cooperative relationship with the Commission, and I appreciate the open and transparent manner in which the Commission provided information to my Office. I also met personally with both the Commissioner and the Commission's Chief Executive Officer to discuss our roles and areas of mutual interest.

I look forward to a continued relationship with the Commission, while at the same time providing independent oversight of its functions.

Michael Manthorpe PSM
Inspector

Organisational overview

Role of the ACT Integrity Commission

The ACT Integrity Commission (the Commission) is established under the *Integrity Commission Act 2018* (the Act) and commenced full operations on 1 December 2019. The Commission is an independent body with broad powers to:

- investigate alleged corruption in the ACT Government and public service
- refer suspected instances of criminality or wrongdoing to the appropriate authorities
- publish information about investigations publicly and conduct education programs
- strengthen public confidence in government integrity.

Role of the Inspector

The Inspector was set up to help improve public confidence and provide assurance that the Commission operates within its legislative powers. The Inspector's main functions, as set out in Part 5 of the Act are to:

- assess and report on the Commission's compliance with the Act, including conducting an annual operation review
- receive, investigate and assess complaints about the Commission and its staff
- make recommendations to the Commission or public bodies about practices or procedures in relation to the Act
- receive monthly reports from the Commission relating to its operations
- undertake other functions as prescribed by law.

The Inspector has broad powers under s 228 of the Act to:

- investigate any aspect of the Commission's operations or conduct of the commissioner or its staff
- have full access to records of the Commission
- require the Commission to provide information or produce documents
- refer matters to another public sector body or official
- recommend disciplinary action or criminal prosecution.

The ACT Ombudsman currently performs the role of Inspector in the ACT.

The role of the ACT Ombudsman is to influence systemic improvement in public administration in the ACT, as well as providing assurance that ACT government agencies and other designated entities that fall within our jurisdiction act with fairness and integrity. A copy of our organisational chart¹ and the ACT Ombudsman 2019-20 Annual Report² can be accessed on the ACT Ombudsman website.

¹ See: <https://www.ombudsman.act.gov.au/dev/about-us/who-we-are?a=105930>

² See <https://www.ombudsman.act.gov.au/publications/reports>

Performance analysis

Implementation of new Inspector role

Inspector policies

In 2019-20, our Office focused on the development of policies to support the work of the Inspector. This included developing a complaint handling policy, internal complaint handling procedures and other procedures for Inspector staff, and personal interest guidelines for Inspector staff.

Complaint handling policy

The Inspector has powers under s 264(4) of the Act to make guidelines about how the Inspector is to handle complaints under the Act. These guidelines are embodied in the Inspector complaint handling policy, which was notified as an instrument on 4 July 2019.³

The purpose of the complaint handling policy is to outline, at a high level, how the Inspector will receive and manage complaints about the Commission. It is designed to ensure that complaints are handled fairly, efficiently and effectively. A copy of the policy is also available on our website.⁴

Internal standard operating procedures

Our Office developed internal standard operating procedures, to underpin the complaint handling policy. The procedures provide detailed advice for Inspector staff on how to receive, manage and investigate complaints about the Commission, including the process for answering and addressing phone calls related to the Inspector from the ACT Ombudsman phone line.

Declaration of interest guidelines

The Inspector is required, under s 251(4) of the Act, to publish personal interest guidelines, which outline personal interests that Inspector staff are expected to declare.

Our Office recognises that challenges and risks may arise in relation to potential conflicts of interest for Inspector staff who are also Commonwealth public servants.⁵ We published guidelines which provide advice and ACT specific examples and impose additional requirements for staff to declare personal interests to ensure any potential conflicts of interest are managed effectively.

The declaration of interest guidelines were notified as an instrument on 4 July 2019 and are available on our website.⁶

³ <https://www.legislation.act.gov.au/View/ni/2019-437/current/PDF/2019-437.PDF>

⁴ https://www.ombudsman.act.gov.au/_data/assets/pdf_file/0018/102636/Inspector-Integrity-Commission-Complaint-Handling-Policy-A1811676.pdf

⁵ The ACT Ombudsman is also the Commonwealth Ombudsman and all staff are Commonwealth public servants by virtue of s 30(2)(b) of the *Ombudsman Act 1989*

⁶ https://www.ombudsman.act.gov.au/_data/assets/pdf_file/0017/102635/Declaration-of-Interest-Guidelines-ACT-Ombudsman-A1805973.pdf

Inspector information for the ACT community

This year our Office focused on strategies to inform ACT residents about the role of the Inspector.

We established a dedicated Inspector webpage on the ACT Ombudsman website.⁷ The webpage includes information about the Commission and the role of the Inspector. Our Office published a factsheet⁸, and developed an Inspector complaint form⁹, both of which are available on our website.

We also set up a dedicated telephone line for members of the public to contact the Inspector.

Agency Engagement

Our Office developed a productive and cooperative relationship with the Commission. The Inspector met with the Commissioner and the Commission's Chief Executive Officer and we established regular liaison meetings to discuss operational issues and challenges.

The Inspector took opportunities to gain a better understanding of the role and the challenges it may present by meeting with the Parliamentary Inspector of the Western Australia Corruption and Crime Commission. The Inspector also attended the Conference of Inspectors and Parliamentary Commissioners in Melbourne in November 2019.

During 2019-20, Inspector staff worked with the Commission to develop:

- arrangements for the Commission to provide monthly reports to the Inspector under s 205 of the Act
- a relationship protocol with the Commission to assist both bodies to efficiently manage their respective statutory functions while avoiding delay or unnecessary duplication
- a draft memorandum of understanding with the Judicial Council to refer complaints about the conduct of ACT judicial officers between the two bodies (we expect to finalise this memorandum of understanding in early 2020-21)
- arrangements for the secure digital delivery and storage of protected and sensitive materials between the two bodies.

Complaint management

Any person can make a complaint to the Inspector about the Commission's operations, action by Commission staff or inaction by Commission staff.

We understand the Commission initially experienced delays and challenges in becoming fully operational and progressing its matters on hand, which has no doubt impacted the number of complaints received by both the Commission and the Inspector.

The Inspector received one complaint about the Commission and two enquiries relating to its Inspector function during this reporting period.

⁷ <https://www.ombudsman.act.gov.au/improving-the-act/inspector-of-the-act-integrity-commission>

⁸ <https://www.ombudsman.act.gov.au/act-inspector-of-the-integrity-commission?a=101520>

⁹ <https://www.ombudsman.act.gov.au/act-inspector-of-the-integrity-commission?a=101521>

Referrals to the Inspector

The Commission is required to refer corruption reports about its staff to the Inspector under s 105 of the Act.

No such referrals were received during 2019-20.

Mandatory reporting of Commission activities

The Commission is required to report to the Inspector on a monthly basis, as well as when certain actions occur. Consistent with the requirements of s 205 of the Act, the Inspector received seven monthly reports from the Commission in 2019-20 (noting full operations only commenced in December 2019).

Section 283 requires the Inspector to report on certain statistics provided in these reports in this annual report, and other matters including the number and a description of:

- referrals made to or by the Inspector
- matters notified to the Inspector as part of the Commission's monthly reporting under s 205
- complaints made to the Inspector
- investigations conducted by the Inspector
- recommendations made by the Inspector
- other information sharing entities to whom the Inspector has disclosed information
- Inspector special reports presented to the Legislative Assembly.

In 2019-20, the inspector received the following from the Commission:

- two confidentiality notices issued under s 78 (confidentiality notices for preliminary inquiries)

As noted above, the Inspector also received one complaint about the Commission which is being assessed.

Management of conflicts of interest

Under s 283(1)(e) of the Act, the Inspector must provide an assessment of how the Commissioner is managing conflicts of interest and comment on the number of times the Inspector inspected the Commission's conflict of interest register.

The Inspector is satisfied the Commission has taken appropriate steps to manage conflicts of interest.

The Inspector viewed the Commission's draft Conflicts of Interest Policy and Procedure which sets out:

- key principles
- how actual or perceived conflicts should be managed
- the responsibility of managers and staff
- detailed procedures for mitigating and disclosing conflicts of interest.

Commission investigations are conducted in accordance with the Commission's draft code of conduct. The Commission expects to finalise its code of conduct in early 2020-21.

The Inspector also viewed a copy of the Commission's conflict of interest register on one occasion in the reporting period. The register records:

- the name of the Commission staff member
- the nature of any actual, potential or perceived conflicts of interest
- the relationship of those interests to the Commission's activities or proposed activities
- date declared
- how the conflict was reported and to whom.

Annual operational review report

A copy of the Inspector's annual operational review report is attached to this report at **Appendix 1** as required under s 283(3) of the Act. This report assesses the Commission's compliance with the Act for 2019-20.

Other matters

As the Commission did not commence full operations until 1 December 2019, it is too early in the life of the Commission for the Inspector to comment on matters or make recommendations, including recommendations for changes to territory laws or for administrative action. The Commission has identified areas where the Act could be amended to clarify its powers or address gaps in the legislation. We understand the Commission raised these matters with the ACT Government.

Financial Management Reporting

In accordance with the Service Agreement between the Office of the Commonwealth Ombudsman and the ACT Government, the Office was provided with \$96,000 for the 2019-20 financial year to implement and perform functions as the Inspector of the ACT Integrity Commission.

**Inspector of the ACT Integrity
Commission – Annual Operational
Review of the ACT Integrity
Commission**

October 2020

Introduction

This annual operational review by the Inspector of the ACT Integrity Commission (the Inspector) is conducted under s 280 of the *Integrity Commission Act 2018* (the Act). It assesses the compliance of the ACT Integrity Commission (the Commission) with the Act for the period 1 July 2019 to 30 June 2020.

The ACT Ombudsman is currently the Inspector of the Commission. The functions of the Inspector, as outlined in s 227 of the Act include receiving, assessing and investigating complaints about the Commission or its members of staff, both current and former.¹⁰

While the Inspector function commenced on 1 July 2019, the Commission itself did not commence full operations until 1 December 2019. The short period the Commission has been fully functioning, and the associated time lag in the Commission receiving and investigating complaints and matters coming before the Inspector, limits the extent to which the Inspector can comment on the Commission's operations in this review.

The Commission has a broad range of functions, including 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 lessons learned during the course of an investigation
- provide education programs
- foster public confidence in the Legislative Assembly and ACT public sector.

Annual Operational Review matters

In assessing the Commission's compliance with the Act and undertaking the annual operational review, the Inspector must consider:

- the Commission's management of conflicts of interest including:
 - any conflicts of interest reported to the Inspector
 - the Commission's conflicts of interest register
 - any suspension of a commissioner or ending of a commissioner's appointment that relates to a conflict of interest
- whether the Commission and its staff acted within power and in compliance with the Act and any other relevant Acts
- whether the Commission has implemented previous recommendations made by the Inspector
- any other matters the Inspector considers relevant.

¹⁰ See *Integrity Commission Act 2018* s 256(1)(b).

Conflicts of interest – s 280(2)(a)

All conflicts of interest must be disclosed and effectively managed. Conflicts of interest are not wrong in themselves.¹¹ It is how they are managed that is important. All conflicts of interest must be disclosed and effectively managed.

The Inspector is satisfied the Commission has appropriate policies and procedures in place to manage actual or perceived conflicts of interest. The Inspector viewed the Commission's draft Conflicts of Interest Policy and Procedure which sets out:

- principles
- how actual or perceived conflicts should be managed
- the responsibility of managers and staff
- detailed procedures for mitigating and disclosing conflicts of interest.

The Commission provided its draft conflict of interest policy to the Inspector. The policy is currently being finalised by the Commission's Senior Management Group.

The Inspector also viewed a copy of the Commission's conflict of interest register in the reporting period. The register records:

- the name of Commission staff member
- the nature of any actual, potential or perceived conflicts of interest
- the relationship of those interests to the Commission's activities or proposed activities
- the date declared
- how the conflict was reported and to whom.

The Commission has not reported any conflicts of interest to the Inspector under s 31 of the Act. In the reporting period, a Commissioner's appointment has not been suspended or ended due to a conflict of interest.

Whether the Commission and members of staff of the Commission acted within legislative power—s 280(2)(b)

During the reporting period, the Inspector did not receive any complaints or reports that the Commission had not acted within its powers. The Commission has policies and procedures in place, including an Investigation and Assessment Policy Framework to ensure the Commissioner and staff act in compliance with the law.

On the basis of the information available, the Inspector is satisfied the Commissioner and staff acted within the Commission's powers and in compliance with the Act and other relevant Acts.

Implementation of recommendations made by the Inspector—s 280(2)(c)

During the reporting period, the Inspector did not make any recommendations that required implementation by the Commission.

¹¹ A conflict of interest exists where it appears likely that an employee could be influenced or perceived to be influenced by their personal interests. Conflicts of interests may be real, apparent or potential.

Other relevant matters—s 280(2)(d)

Commission operations

The Commission did not commence full operations until 1 December 2019 with its operational start date delayed from the initial proposed date of 1 July 2019.

The Commission's focus in 2019-20 was understandably on its operational set up, which included hiring staff, securing permanent premises, acquiring information technology and case management systems and developing policies and procedures for managing and investigating allegations of corrupt conduct.

As at 30 June 2020, the Commission had 76 complaints on hand, of which two progressed to a full investigation and 14 preliminary inquiries. In the reporting period, the Inspector received one complaint about the conduct of the Commission or its members of staff.

Implementation challenges

We understand the Commission initially experienced delays and challenges in becoming fully operational and progressing its matters on hand, which has no doubt impacted the number of complaints received by both the Commission and the Inspector.

In our view, the Commission has made significant progress since commencing its operations. It has now secured permanent premises, recruited eight permanent staff members and some temporary staff, is acquiring secure information and case management systems and has developed relationship protocols with other oversight agencies. The Commission developed, and is implementing, its corruption prevention and education strategy, which is publicly available on the Commission's website.

The Commission developed an Investigation and Assessment Policy Framework, setting out the process and minimum standards for the Commission's assessment and investigation functions. It has a corporate procedure governing the way in which complaints about the conduct of its investigations are handled, to ensure complaints are dealt with in a timely, appropriate, fair and transparent way.

The Commission also acquired an independent system for the secure digital delivery and storage of protected and sensitive materials to investigate matters and work effectively with other oversight agencies. We understand the Commission is progressing relevant information sharing protocols with agencies and other oversight bodies which we support.

Our Office considers the Commission has made good progress in terms of setting itself up in an appropriate manner to ensure that it can undertake its statutory functions in a manner consistent with the provisions and objects of the Act. It will remain crucial that the Commission is sufficiently resourced to undertake its functions efficiently and effectively.