



OMBUDSMAN AN OFFICER OF  
THE ACT LEGISLATIVE ASSEMBLY 

# Inspector of the ACT Integrity Commission

COMPLAINTS HANDLING POLICY

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## Introduction

The ACT Integrity Commission (the Commission) is empowered to investigate corruption in public administration under the *Integrity Commission Act 2018* (the Act)<sup>1</sup>. This could include complaints about the conduct of public servants, Members of the Legislative Assembly (MLAs) or their staff, judicial officers and statutory office holders, both current and former.<sup>2</sup> The Commission can also proactively educate the public, or implement strategies to prevent corruption in the public service.<sup>3</sup>

The ACT Ombudsman is currently the Inspector of the Integrity Commission (the Inspector). The functions of the Inspector, as outlined in the Act include receiving, assessing and investigating complaints about the Commission or its members of staff, both current and former.<sup>4</sup>

## Purpose

The purpose of this 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.

**Note:**

- This policy is the *complaint investigation guidelines* which the Act enables the Inspector to publish under s264(4). More detailed procedural instructions will be made available to support staff managing the complaints function.

## Who can make a complaint

Any person can make a complaint to the Inspector.<sup>5</sup> It is anticipated the Inspector is likely to receive complaints from:

- people who have been the direct subject of investigations by the Commission
- the families and staff of those people, or
- complainants who are dissatisfied with the Commission's decision not to investigate their particular complaint or allegation.

People making complaints will be provided with information about the complaints handling process, and listened to and treated with respect by staff.

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<sup>1</sup> See s23 (1)(a) of the Act

<sup>2</sup> See ss9,12 and 57 of the Act

<sup>3</sup> See s3(1)(e) of the Act

<sup>4</sup> See s256(1)(b) of the Act

<sup>5</sup> See s257(1) of the Act

**Note:**

- There is no requirement for complainants to identify themselves. Anonymous complaints are specifically provided for under the Act. If a complaint is made anonymously, however, there is no obligation for the Inspector to keep the complainant informed of the progress of the complaint or about any investigation.<sup>6</sup>
- Where complaints are not anonymous, we will protect the identity of people making complaints where practical to do so, and consistent with our obligations under relevant privacy laws, secrecy provisions and/or confidentiality obligations.

## What can they complain about?

Complaints can be made about the exercise, or the failure to exercise, a power under the Act, by the Commission or *Commission personnel*, including because their conduct was:

- contrary to the law
- unreasonable, unjust, oppressive or improperly discriminatory
- based on improper motives
- an abuse of power, or
- otherwise improper.<sup>7</sup>

Commission personnel includes the Commissioner, a previous Commissioner, a staff member of the Commission (including contractors), or a previous staff member.<sup>8</sup>

## How is a complaint made to the Inspector?

The Inspector's preference is that complaints be made in writing and by email given the potential complexity of the complaint subject matter.

This is consistent with s258 of the Act which provides for:

- complaints to be made orally or in writing, using any form of electronic communication (i.e. telephone, email, fax or other electronic means)<sup>9</sup>
- the Inspector to:
  - put a complaint made orally in writing, or
  - require a complainant to do so before proceeding with an investigation.

**Note:**

- The complaints procedures will outline situations where an oral complaint will be accepted by the Inspector to ensure our services are accessible to vulnerable members of the ACT community.
- Complaints can subsequently be withdrawn under s268 of the Act.

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<sup>6</sup> See s259(3)(a) of the Act

<sup>7</sup> See s257 of the Act

<sup>8</sup> See ss47 and 256 of the Act

<sup>9</sup> See s258(1) of the Act

## Managing Commission complaints – An overview

The steps for managing a complaint to the Inspector about the Commission or its staff are as follows:

1. Acknowledge receipt and record complaint details
2. Establish that we have jurisdiction to accept the complaint
3. Complete an initial assessment of in jurisdiction complaints
4. Advise complainant of initial assessment outcome
5. Notify the Commission (*if appropriate*)
6. Investigate the matter (*if appropriate*)
7. Consider available outcomes (*if appropriate*)
8. Advise complainant of outcome
9. Advise Commission of outcome and make recommendations where appropriate

More detail about each step is provided below. Additional practical guidance for investigations, as well as the details of administration processes and templates for communication are, however, provided in the related procedural instructions.

### Step 1: Acknowledge receipt of the email and record complaint details

The Inspector or delegate will acknowledge receipt of email communication within two working days, and record the details of the complaint, providing it with a unique identifying number.

### Step 2: Establish that we have jurisdiction to accept the complaint

The Inspector or delegate will then consider whether or not the complaint received is within jurisdiction, and whether the complaint contains issues that need to be separately addressed.

Complaints will be considered in jurisdiction if they:

- are about one of the following:
    - a. a Commissioner (current or former)
    - b. a Commission employee, consultant or contractor (current or former)<sup>10</sup>.
- and
- relate to the exercise of (or failure to exercise) a legal function under the Act or under another law in force in the ACT.

This **may** include complaints that the action(s) of the Commission or its staff are:

- contrary to law
- unreasonable, unjust, oppressive or improperly discriminatory
- based on improper motives
- an abuse of power, or
- otherwise improper.

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<sup>10</sup> See ss257(1) and 256 of the Act.

This list is not exclusive so other matters can also be considered.<sup>11</sup>

If a complaint is considered to be out of jurisdiction, the complainant should be advised within five working days that the complaint has not been accepted and why.

### Step 3: Complete an initial assessment of in jurisdiction complaints

As outlined in detail in the procedural instructions, in jurisdiction complaints will be assessed to determine whether or not the complaint will be investigated. This will include consideration of:

- the seriousness of the complaint and the risks involved
- how the complainant is being impacted and any broader public health or safety concerns, and
- whether a resolution requires the involvement of other organisations

It will also involve an assessment of whether a referral to another entity is appropriate, together with relevant information as appropriate and necessary.<sup>12</sup> – see *Referrals to other entities* below.

We will address each complaint individually, in an equitable, objective and unbiased manner.

### Step 4: Advise complainant of initial assessment outcome

**Within two weeks of receipt of the complaint**, the complainant should be advised in writing whether the Inspector has decided:

- not to investigate the complaint – with reasons required to be provided<sup>13</sup>
- to investigate<sup>14</sup> - with next steps and timeframes for progress updates
- to refer the matter to another entity<sup>15</sup>

#### Important:

- Restrictions on notification - the above does **not** apply if:
  - the complaint was made anonymously
  - the complainant has asked (in writing) not to be kept informed or
  - if keeping a complainant informed:
    - is likely to endanger a person
    - is likely to adversely affect an investigation by the Commission or by our Office
    - would identify someone who has given information about the matter
    - could enable someone else to identify someone who gave information about the matter
    - would be contrary to a law in force.
- Any written communications with the complainant **must** include a non-disclosure notice and a statement of permitted disclosure – see *Non-disclosure notices* and *Permitted and prohibited disclosures* below.

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<sup>11</sup> See s257(2) of the Act.

<sup>12</sup> See s271 of the Act

<sup>13</sup> See s259(1)(a) of the Act

<sup>14</sup> See s259(1)(b) of the Act

<sup>15</sup> See s259(1)(c) of the Act

## Step 5: Notify the Commission

As a general rule, we will notify the Commission we are investigating a complaint, **unless** the investigation is likely to be prejudiced by informing the Commission.

If informing the Commission is	Then the Inspector
likely to prejudice the investigation	does not have to inform the Commission about our investigation <sup>16</sup>
not likely to prejudice the investigation	will inform the Commission <b>within 3 working days</b> of a decision to investigate

## Step 6: Investigate the matter

Under s264 of the Act, the Inspector or delegated officer may investigate a complaint to assess the conduct raised in the complaint, or any other relevant conduct. The Act also provides for the Inspector to do 'anything necessary and reasonable to investigate a complaint'.<sup>17</sup>

Investigations will proceed as outlined in our procedural instructions, which will be consistent with best practice principles, privacy legislation and the provisions of the Act including:

- s266 requirements regarding the conduct of the investigation and access to records, and
- s269 powers to ask for information, documents and other things.

The Commission and its personnel are expected to give the Inspector any assistance reasonably required to carry on an investigation.<sup>18</sup>

### Important:

- Under s259(1)(b), complainants must be kept informed of progress with the investigation of their complaint **at least once every three months**, unless the restrictions on notification outlined above apply.
- If an investigation is discontinued at any stage, subject to above, the complainant must also be notified and provided with reasons for the decision.<sup>19</sup>
- Any written communications with the complainant **must** include a non-disclosure notice and a statement of permitted disclosure – see *Non-disclosure notices* and *Statement of permitted disclosures* below.
- Under s265 of the Act, the Inspector can conduct an 'own motion' investigation, even if there is not a complaint made.

## Step 7: Consider available outcomes

Following an investigation, the Inspector or a delegated officer will consider the available outcomes and make a final assessment as outlined in detail in the procedural instructions.

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<sup>16</sup> See s264(2) of the Act

<sup>17</sup> See s264(3) of the Act.

<sup>18</sup> See s267 of the Act.

<sup>19</sup> See s259(1)(d) of the Act.

## Step 8: Advise complainant of outcome

Unless the restrictions on notification outlined above apply, the complainant must be advised that an investigation has been completed and notified of the outcome.<sup>20</sup> At this time, the complainant will also be advised of their internal review options – see *Internal review* below, and any alternative avenues for them to seek further action.

### Important:

- Any written communications with the complainant **must** include a non-disclosure notice and a statement of permitted disclosure – see *Non-disclosure notices* below.

## Step 9: Advise Commission of outcome and make recommendations where appropriate

There is no legislative requirement for the Inspector to advise the Commission of the outcome of a complaints investigation. This will, however, be done under policy unless the Inspector considers there are good reasons **not** to do so.

The Inspector **may** also at this time make a recommendation to the Commission under section 272 of the Act about its practices or procedures in relation to its exercise of functions under the Act.

### Note:

- The Inspector has power to make recommendations to the head of a public sector entity or the relevant Assembly committee about practice or procedures at any time.<sup>21</sup>
- The Inspector can also make a recommendation to the Speaker that a special investigator be appointed to investigate the Commissioner or a member of staff of the Commission if information is available which, if true, tends to show corrupt conduct by one of these individuals.<sup>22</sup>

## Non-disclosure notices

Section 260 of the Act requires the Inspector to provide a non-disclosure notice when giving information to the complainant, including under section 259 regarding progress with complaints investigations. This notice must:

- make the recipient aware that disclosing information from the Inspector **may be an offence** under the Act and penalties may apply<sup>23</sup>
- include a statement outlining any **permitted** and any **prohibited** disclosures<sup>24</sup>, and
- explain that the notice will expire when revoked or 3 years after the day it is issued.<sup>25</sup>

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<sup>20</sup> See s259(1)(e) of the Act.

<sup>21</sup> See s272 of the Act.

<sup>22</sup> See s273 of the Act

<sup>23</sup> See s263 of the Act

<sup>24</sup> See ss260(1)(b) and 260(1)(c) of the Act.

<sup>25</sup> See s262 of the Act



### *Prohibited disclosures*

Consistent with the Act, the Inspector may indicate that disclosure of information is prohibited because it would be likely to prejudice:

- an investigation
- a person's safety or reputation, or
- the fair trial of someone who may be charged with an offence.

### *Permitted disclosures statement*

Under s261 of the Act, disclosures are generally permitted in the following circumstances:

<b>If the person receiving the notice</b>	<b>Disclosure may be made to</b>
does not speak or understand English	an interpreter for translation purposes
has low levels of literacy	an independent person to assist
has a mental, physical or other impairment that prevents them from understanding the notice	an independent person to assist
is under the age of 18 years	a parent, guardian or independent person
wishes to obtain legal advice or representation about the complaint, the notice or any obligations arising under the Act	a lawyer for the purpose of receiving legal advice or representation

In addition, disclosures are permitted if the information:

- was disclosed to a lawyer in order to receive legal advice or representation
- was disclosed by such a lawyer in order to comply with their professional obligations
- has already been published by the Inspector, or
- is otherwise authorised or required to be disclosed by the Act.

## **Referrals to other entities**

The Inspector or delegate can refer a complaint to any of the following bodies (referral entities):

- the Commission
- the Public Sector Standards Commissioner, or
- the Legislative Assembly Commissioner for standards.

If a complaint indicates or alleges criminal conduct, a referral can also be made to a:

- law enforcement agency or
- prosecutorial body.

## Internal review

If a complainant disagrees with our final decision after it is made, they can ask us to review it. Such requests must be made in writing within three months of our decision being made.

Matters will only be reviewed once, and the complainant will need to explain how or why they believe the Inspector reached the wrong decision in their written request.

The procedural instructions will outline the processing steps for such internal reviews.

## Records

The Inspector will keep comprehensive records of how we manage complaints to assist with any internal review practices, and ensure that outcomes are properly implemented, monitored and reported.

## Review of policy

This policy will be reviewed six months after the commencement of the operation of the Inspector and then on an annual basis to ensure the effectiveness and efficiency of our complaints management system. These reviews will take into account feedback received from staff, the Commission and complainants.