

Inspector of the
ACT Integrity Commission

Annual Report

2022–23



Transmittal Certificate

6 October 2023

Ms Joy Burch MLA
Speaker
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Madam Speaker

I present to you the Inspector of the ACT Integrity Commission 2022–23 Annual Report.

The report has been prepared to fulfil the requirements of section 7A of the *Annual Reports (Government Agencies) Act 2004* and section 283 of the *Integrity Commission Act 2018* (the Act). The report contains the Inspector’s annual operational review prepared under section 281 of the Act, as required by section 283(a) of the Act.

I certify the report is an honest and accurate account of the work of the Inspector and that all material information on the operations of the Inspector is included for the period 1 July 2022 to 30 June 2023.

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

Yours sincerely



Iain Anderson
Inspector of the ACT Integrity Commission

Contacting the Inspector

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Website www.ombudsman.act.gov.au/accountability-and-oversight/inspector-of-the-act-integrity-commission

This *Inspector of the ACT Integrity Commission Annual Report 2022–23* is available on the publications page at ombudsman.act.gov.au.

Credits

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Produced by the ACT Ombudsman, Canberra.

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Review by the Inspector

I am pleased to introduce the *Inspector of the ACT Integrity Commission Annual Report 2022–23*.

This year, the Inspector received 4 complaints about the Commission from members of the public and elected to formally investigate one complaint. This volume of complaints is consistent with the previous reporting period.

In addition, the Commission referred to the Inspector 3 corruption reports, received by the Commission involving the conduct of Commission staff, pursuant to s 105 of the Act. Two of the matters were assessed and closed and one remains under assessment.

In carrying out the Inspector's oversight function, I issued 5 requests for information to the Commission. These requests permit the Inspector to seek Commission information to further the Inspector's consideration of matters.

I commenced an investigation into a complaint that raised concerns about the Commission's practices and procedures for assessing corruption reports. This investigation was completed outside the reporting period for this Annual Report, and I will therefore report on this investigation separately. It is worth noting that one substantial investigation by my small team has an impact on my capacity to pro-actively undertake other initiatives as Inspector.

In my last annual report I mentioned that, following an investigation, I had provided the Commission with 3 recommendations about how the Commission communicates its decisions to dismiss corruption reports. During this reporting period, I commenced a formal review into the Commission's implementation of those recommendations.

The Inspector received and considered monthly reports from the Commission about its operational activities. Inspector staff conducted reviews of those activities to assess the Commission's compliance with the Act.

I observed a remarkable increase in the Commission's investigative activities, including a 60% increase in the rate of examination summons issued to persons to appear in private examinations and an 80% increase in confidentiality notices issued to persons.

The Commission issued 3 special reports and no investigation reports this year.

This year, I provided written submissions to the Review of the Integrity Commission Act 2018 and the Standing Committee on Justice and Community Safety's Inquiry into the Integrity Commission Amendment Bill 2022 (No 2).

Based on the information currently available to me, and subject to the fact that I have an outstanding investigation relating to this reporting period as referred to above, I have assessed the Commission operated within its powers and complied with the Act in 2022–23.



Iain Anderson
Inspector of the ACT Integrity Commission

Organisational overview

Role of the Inspector

The Inspector of the ACT Integrity Commission is established under the *Integrity Commission Act 2018* (the Act).

The Inspector was created to provide assurance that the ACT Integrity Commission (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, assess, and formally investigate 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 the Commission's staff
- have full access to the Commission's records
- 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 performs the role of the Inspector unless an Inspector is appointed, under s 229 of the Act. The role of ACT Ombudsman, and therefore Inspector, is performed by the Commonwealth Ombudsman unless another person is appointed to be ACT Ombudsman.¹ The Commonwealth Ombudsman receives funding to perform these functions under a Services Agreement with the ACT Government. In this report, references to the Office of the Commonwealth Ombudsman (the Office) include the Office in its capacity assisting the Commonwealth Ombudsman as ACT Ombudsman and Inspector.

The role of the ACT Ombudsman is to influence systemic improvement in public administration in the ACT and provide assurance that ACT Government agencies and other designated entities act with fairness and integrity. The ACT Ombudsman's annual reports can be accessed on the [publications](#) webpage at ombudsman.act.gov.au.²

People can access information on how to make a complaint about the Commission, including the Inspector's complaint handling policy, on the [Inspector of the ACT Integrity Commission](#) page at ombudsman.act.gov.au.³ Complaints can be made using our complaint form and by contacting us through our phone line on (02) 5117 3650.

¹ See s 28 of the A.C.T. Self-Government (Consequential Provisions) Act 1988 (Cth), www.legislation.gov.au/Series/C2004A03702.

² ACT Ombudsman, publications, www.ombudsman.act.gov.au/publications

³ ACT Ombudsman, Inspector of the ACT Integrity Commission, www.ombudsman.act.gov.au/accountability-and-oversight/inspector-of-the-act-integrity-commission

Role of the ACT Integrity Commission

The Commission is an independent body established to investigate allegations of corrupt conduct in the ACT public sector. The functions of the Commission include to:

- investigate or deal with allegations of corrupt conduct in the ACT public sector, with a focus on serious and/or systemic corrupt conduct
- refer allegations of criminality or wrongdoing to the appropriate entity
- publish information about its investigations and findings
- ensure people who report wrongdoing are protected and treated fairly
- increase public confidence in the ACT Legislative Assembly and ACT public sector.

Performance analysis

Operation of the Inspector role

Inquiry into the Integrity Commission Amendment Bill 2022 (No 2)

In October 2022, the Standing Committee on Justice and Community Safety commenced an inquiry into the Integrity Commission Amendment Bill 2022 (No 2). The Bill proposed changes to permit the ACT Integrity Commission to lawfully intercept telecommunications. On 25 November 2022, in my capacity as ACT Ombudsman and Inspector, I made a written submission to the inquiry. My submission can be viewed [here](#).⁴

Independent Review into the Integrity Commission Act 2018

The Act requires the ACT Government to review the Act after its first 3 years of operation. Mr Ian Govey AM was appointed to lead the independent review of the Act.

As part of the review, discussion papers were published, seeking feedback on topics set out in the discussion papers. On 24 March 2023 and 2 June 2023, I made 2 written submissions to the review. My submissions can be viewed [here](#).⁵

Information for the ACT community

During the reporting period, improvements were made to the Inspector's webpage and web content was updated. We also undertook a major website refresh in 2023–24, which went live on 22 May 2023. The new website improves ease of navigation and information retrieval. The update improves our accessibility and assists us to promote awareness of the Inspector's role, functions and complaint process.

Telephone platform

In March 2023, the Office delivered an enhanced telephone service delivery platform to streamline our work and enhance our service to the public.

⁴ www.ombudsman.act.gov.au/_data/assets/pdf_file/0035/298961/ACT-Inspector-Submission_Inquiry-into-the-Integrity-Commission-Amendment-Bill-2022-No-2_25112022-A2345964.pdf

⁵ Submission No. 1: www.ombudsman.act.gov.au/_data/assets/pdf_file/0036/299718/24-March-submission-to-the-Independent-Review-of-the-IC-Act.PDF

Submission No.2: www.ombudsman.act.gov.au/_data/assets/pdf_file/0035/299717/2-June-submission-to-the-Independent-Review-of-the-IC-Act.PDF

Mandatory reporting of activities

Section 283 of the Act requires the Inspector's annual report to include the following information about material received from the Commission, and about the Inspector's activities:

- 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.

Referrals to the Inspector

The Commission must refer corruption reports about the Commissioner or staff of the Commission to the Inspector under s 105 of the Act.

In May 2023, the Commission sought advice from Inspector staff in regard to the threshold for referring a corruption report under this provision. Advice was provided that the referral threshold should be low and if in doubt, a corruption report should be referred.

The Inspector received 3 referrals in June 2023. These matters were assessed and 2 were finalised. The other matter remains under assessment. More information on these referrals is below (see *Complaints and referrals*).

Data - based on monthly reporting

In 2022–23, the Inspector received the following material from the Commission in relation to its activities. This material was provided as part of the Commission's monthly reporting under s 205 of the Act:

Commission activity	Section of Act	2020–21	2021–22	2022–23
Confidentiality notices	s.78 or s.79	39	66	119
Revocation of confidentiality notices	s.82	0	0	16
Preliminary inquiry notices	s.90	15	4	5
Examination summons	s.147	24	57	91
Video recordings and transcripts	s.158	11*	10	55

*The Inspector's 2021–22 Annual Report reported 6. The full number was identified after the Commission published its own annual report. The Commission subsequently provided the further 5 recordings to the Inspector.

The Commission did not provide any other items that required the Inspector to report on them under s 283(1)(b) of the Act.

Providing reasons for activities

The Commission's monthly reports to the Inspector under s 205 of the Act must include the reasons for the Commission undertaking certain activities, such as issuing a preliminary inquiry notice or examination summons (reasons).

The 2021–22 annual report noted that, after discussions with the Commission, the Commission had advised the Inspector it had identified a legal issue with providing reasons (why a decision was made) to the Inspector. Following publication of the 2021–22 annual report, the Commission agreed to provide reasons as set out in s 205 of the Act.

The Commission has provided reasons for undertaking its activities this year. I consider this matter resolved. Receiving the Commission's reasons has assisted the Inspector with contextual information on each activity and sets out the Commission's considerations in exercising its powers.

Inspector's review of Commission activities

In 2022–23 staff of the Inspector conducted a detailed review of the following Commission activities. Inspector staff increased the review of activities in comparison to the previous reporting period:

- 6 recordings of private examinations
- 18 summonses issued by the Commission
- 17 confidentiality notices issued by the Commission.

I did not raise any concerns regarding the review of these activities during this period.

Complaints and referrals

In the 2022–23 reporting period, the Inspector:

- received 4 complaints under s 257 of the Act.
 - One complaint alleged the Commission was inappropriately dismissing corruption reports and not following procedure to assess corruption reports. The Inspector elected to investigate this matter (see *Investigations*).
 - One complaint alleged concerns with how the Commission was applying its industrial instrument and improper conduct of commission staff. After assessment, it was decided not to investigate this matter as it did not meet the threshold set by s 257(2)
 - One complaint from an anonymous complainant, who did not provide sufficient information to permit an assessment of their complaint.
 - One complaint related to the Commission's handling of a disclosure made under the *Public Interest Disclosure Act 2012*. After assessment, it was decided not to investigate this matter as it did not meet the threshold set by s 257(2).
- received 3 referrals from the Commission under s 105 of the Act.
 - One referral recorded a complainant's dissatisfaction with the Commission's decision to dismiss their corruption report. During communication with the Commission about the decision, the complainant alleged the Commission were corrupt. It was assessed and a decision made the complaint did not warrant investigation.
 - One referral related to a person being dissatisfied with the outcome of the Commission's decision made under the *Public Interest Disclosure Act 2012*. The person alleged the Commission did not properly investigate the matter. The Inspector's assessment of this matter had not been completed at the time of reporting.
 - One referral recorded a complainant's dissatisfaction with the Commission's decision to dismiss their corruption report. When communicating their dissatisfaction with the Commission, the Complainant alleged the Commission's process to form the decision to dismiss this report was improper. Staff of the Inspector reviewed the complaint and assessed it did not warrant investigation.

No other complaints were received in 2022–23 about the exercise of the Commission's powers.

Investigations

In 2022–23, I conducted one investigation of a complaint, under s 264 of the Act.

In August 2022, I received a complaint from a person raising concerns about the Commission's practices and procedures for assessing corruption reports.

In November 2022, following preliminary inquiries, we commenced an investigation in relation to this complaint, pursuant to s 264 of the Act. The investigation focused on the Commission's framework for assessing corruption reports and included examining samples of corruption reports that had been assessed and dismissed by the Commission. The investigation also considered how the Commission responded to concerns initially raised with the Commission and how the Commission managed referrals of information to other entities.

This investigation was finalised after the end of the reporting period. I will report on the outcome of this investigation in next year's annual operational review report or through a special report under s 275 of the Act, which allows for such a report if I consider a matter needs to be brought to the attention of the Legislative Assembly sooner than in the next annual operational review report.

I did not conduct an own initiative investigation, under s 265 of the Act, during the reporting period.

Recommendations, reports, and disclosures of information

In the 2021–22 annual report, I reported on 3 recommendations made to the Commission following a complaint investigation. The recommendations were that the Commission improve its communication with members of the public who had made corruption reports to the Commission, in particular through improvements to the Commission's reasons for dismissing a corruption report.

Information about the Commission's implementation of these recommendations is included in the annual operational review report at **Appendix 1**.

The Inspector did not make any new recommendations about practices or procedures, under s 272, or any recommendations that the Commissioner or Commission staff be investigated, under s 273.

The Inspector did not complete a special report under the Act during the reporting period.

No disclosures of information were made by the Inspector to information sharing entities, under s 274 of the Act.

Inspections of the Commission's conflicts of interest register

Under s 283(1)(e) of the Act, this report must include the number of times during 2022–23 the Inspector inspected the Commission's conflict of interest register and the Inspector's assessment of how the Commission is managing conflicts of interest (see also **Appendix 1**).

Staff of the Inspector conducted one inspection of the conflicts of interest register. The register contained declarations made by Commission staff between 1 July 2022 and 31 December 2022. The register did not contain any declarations made by the Commissioner.

The inspection of the conflicts of interest register revealed staff of the Commission are declaring conflicts of interest.

Staff of the Inspector provided feedback to the Commission suggesting the Commission's conflicts of interest policy and procedure should be updated to better reflect changes to the operational environment. The Commission promptly updated this policy and provided the Inspector with a copy for review.

The Commission's updated conflicts of interest policy and procedure will better assist Commission staff in providing guidance on how to identify and report conflicts of interest and decision makers advice on how to manage the declared conflicts of interest by Commission staff.

Further information about the Commission's management of conflicts of interest is included in the annual operational review report at **Appendix 1**.

Recommendations for change to territory laws or administrative action

Under s 283(2)(b) of the Act, I must provide any recommendations for change to Territory laws or administrative action I consider should be made.

I do not have any recommendations for change to territory laws or administrative action.

During the reporting period I provided 2 written submissions to the *Review of the Integrity Commission Act 2018* providing suggestions on amendments to the Act.

Annual operational review report of the Commission

A copy of the Inspector's annual operational review report for 2022–23, which assesses the Commission's compliance with the Act, is required under s 283(2) of the Act to be included in the Inspector's annual report. It is included at **Appendix 1**.

Financial management reporting

In accordance with the Services Agreement between the Office and the ACT Government, the Office was given \$217, 392 (exclusive of GST) in 2022–23 to implement and perform functions as Inspector.

This funding was the equivalent of approximately 1.7 full-time equivalent (FTE) employees and did include standard staffing oncosts.

The FTE for staffing for the Inspector function will remain stable in the 2023–24 Budget.

Appendix 1—Annual operational review report

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

October 2023

Introduction

This annual operational review by the Inspector of the ACT Integrity Commission (the Inspector) is prepared in accordance with s 281 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 2022 to 30 June 2023.

The ACT Ombudsman is the Inspector of the Commission. The functions of the Inspector, as outlined in s 227 of the Act, include receiving, assessing, and formally investigating complaints about the Commission or its staff.⁶

Annual operational review matters

In assessing the Commission's compliance with the Act for the purposes of this 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 its 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.

Conflicts of interest – s 280(2)(a)

Under s 280(2)(a) of the Act, in assessing the Commission's compliance with the Act for the purpose of this annual operational review, the Inspector must consider the Commission's management of conflicts of interest.

The Inspector's annual report for 2022–23 noted Inspector staff performed an inspection of the Commission's conflicts of interest register. The register recorded disclosures made by staff of the Commission and no disclosures made by the Commissioner between 1 July 2022 and 31 December 2022.

The Commissioner did not declare any conflicts of interest in writing to the Inspector pursuant to s 31(2) of the Act during this reporting period. Section 31(2) requires the Commissioner to declare a conflict of interest – defined as a financial or other personal interest that conflicts or may conflict, or may be perceived to conflict, with the Commissioner's functions – to the Speaker and the Inspector in writing, including disclosing the nature of the interest and conflict or potential conflict.

The Inspector is aware that during the reporting period the Commission entered into a contract with a former staff member for consultancy services. At the time of preparing this annual operational review, the Inspector had sought further information from the Commission about this procurement and is awaiting the Commission's response.

⁶ See s 256(1)(b) of the Integrity Commission Act 2018.

Commissioner's conflict of interest – 2021–22

The Inspector's 2021–22 annual report (page 13) referred to a conflict of interest that arose in 2021–22 and which was declared by the Commissioner in 2022–23, pursuant to s 31(2) of the Act. At the time of preparing the 2021–22 annual report, the Inspector's assessment of the management of that conflict had not been completed.

The personal interest declared by the Commissioner under s 31(2) of the Act related to his personal friendship with a person engaged by the Commission via a single source procurement to provide expert advice to the Commission on an employment-related matter.

While the procurement was undertaken by the then CEO, rather than the Commissioner, the Commissioner's personal friend was the only person from whom the Commission requested a quote and followed the Commissioner recommending that person as someone suitable to give expert advice on the matter. The cost of the engagement was \$2,310 (GST inclusive).

The Inspector sought information from the Commission about the manner in which it managed the conflict of interest declared by the Commissioner. After consideration of that information and further engagement with the Commission, the Inspector provided suggestions to the Commission about steps the Commission could have taken, and should take in the future, to reduce the risk of perceived conflicts of interest in connection with such procurement activities.

Specifically, the Inspector suggested that the Commission should use competitive procurement processes for such contracts in the future; and if it considers a single source procurement is necessary for reasons including urgency, the Commission should ensure the single source procurement excludes any persons in relation to whom the Commission has declared a conflict of interest under s 31(2) of the Act.

While the value of the contract in this case was small, the Inspector considers it imperative to maintaining public trust and confidence in the Commission that the Commission take all reasonable steps to avoid perceived conflicts in connection with procurement.

The Inspector sought comments from the Commission on this proposed report. The Commissioner expressed his views that:

- the matter was complicated and involved issues of considerable delicacy, with serious adverse risks for the reputation of the Commission and, potentially, for individuals concerned
- the experience and qualifications of the person engaged for the retainer were virtually unique
- it was appropriate to retain the services of an appropriately qualified consultant by single select in light of the urgency of the matter and manage the conflict of interest by directing that the process be undertaken independently of himself and the CEO should exercise his own judgment
- there is no reason to think the CEO failed to exercise his own independent judgment.

We accept the Commissioner's account that, after recommending his personal friend should be considered, he withdrew from any decision-making role and directed the CEO to exercise his own independent judgment.

While it was open to the CEO to pursue a sole select process based on urgency, we are not convinced the person engaged, while highly suitable to perform the role, was uniquely qualified for this role. We stand by our earlier suggestion that the Commission ensures the single source approach does not involve a personal relationship that could create the perception of a conflict.

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

The Commission has policies and procedures in place, including an Investigation and Assessment Policy Framework, to support the Commission and its staff to comply with the law and good practice.

Based on the information currently available, and subject to the fact that there is an outstanding investigation relating to this reporting period, the Inspector is satisfied the Commission and its staff acted within its powers and in compliance with the Act and other relevant laws during 2022–23.

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

As reported in last year’s annual operational review report, in 2021–22 the Inspector made 3 recommendations to the Commission. Specifically, the following 3 recommendations were made after the investigation of a complaint concerning the Commission’s communication of reasons for dismissing corruption reports:

1. The Commission review its Assessment Process Management procedure to ensure reasons are clearly recorded for decisions made by the Assessment Panel and the Assessment Panel’s considerations are more fully documented.
2. The Commission ensure reasons are included, as required by s 72(1)(a)(ii) of the Act and are clearly explained in correspondence advising a person of the Commission’s decision to dismiss a corruption report.
3. The Commission review its processes and procedures in relation to communication with complainants, noting the suggestions included in Part 6, Step 6 of the Commonwealth Ombudsman – Better Practice Guide to Complaint Handling.

During 2022–23, the Inspector commenced a review of the Commission’s implementation of these recommendations. Information was sought from the Commission to assess how effectively it has implemented the recommendations.

The Inspector received the requested information in May 2023. At the time of preparing this report, it has not been possible for staff of the Inspector to complete a review of all the information provided. We expect to complete a final assessment and report on it in next year’s annual operational review report.

For the purposes of this annual operational review report, I acknowledge the Commission has made some progress in updating its practices and procedures to address the recommendations and expect this work will continue in 2023–24.

Other relevant matters—s 280(2)(d)

During the 2022–23, the Inspector sought information from the Commission on a range of matters and had frequent and productive engagement with the Commission. We will continue to engage with the Commission to seek the information required to inform the Inspector’s oversight function.