

# Investigation into the dismissal of corruption reports by the ACT Integrity Commission

SPECIAL REPORT OF THE INSPECTOR OF  
THE ACT INTEGRITY COMMISSION

November 2023

Report of Inspector of the ACT Integrity Commission, Iain Anderson,  
under section 275 of the *Integrity Commission Act 2018*

REPORT NO. **4 | 2023**

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## EXECUTIVE SUMMARY

The ACT Integrity Commission (the Commission) is established by the [Integrity Commission Act 2018](#) (the Act) and commenced operations on 1 December 2019. It was created to deter and combat the risk of corrupt conduct in public administration, while also strengthening confidence in ACT governance and decision-making processes. The Act also established the position of Inspector to oversee the Commission's performance of this important role. The ACT Ombudsman is the Inspector of the Commission unless the Speaker of the Legislative Assembly appoints a person as Inspector.

My functions as Inspector are to:

- assess and report on the Commission's compliance with the Act
- receive and assess complaints about the Commission and its staff
- make recommendations to the Commission about its practices and procedures.

These functions reflect the critical importance of good administration and strong practices and procedures in maintaining public trust and confidence in the Commission.

In August 2022, my Office received a complaint from a former employee (the Complainant) of the Commission raising concerns about the Commission's practices and procedures for assessing corruption reports. In November 2022, following preliminary inquiries, my Office commenced an investigation of this complaint under section 264 of the Act. The investigation focused on the Commission's framework for assessing corruption reports and included examining samples of specific corruption reports that had been assessed and dismissed by the Commission. It also considered how the Commission addressed the Complainant's concerns when first raised during the course of the Complainant's employment with the Commission, as well as other questions identified in the course of the investigation with how the Commission disclosed information.

Our investigation identified gaps in how the Commission assessed and dismissed some corruption reports, including instances where the Commission did not follow its own practices and procedures, kept insufficient records of reasons for dismissing corruption complaints or disclosing information, and failed to consider appropriate mechanisms for external referral.

I am pleased the Commission acknowledges many of these issues and has commenced work to strengthen its practices and procedures for assessing corruption reports. At the same time, I consider further improvements can be made. Accordingly, I make seven recommendations intended to improve the Commission's policies, procedures and practices for:

- assessing corruption reports and determining appropriate actions
- making information disclosures
- ensuring sufficient records are kept of the reasons for decisions to demonstrate relevant considerations were made according to the requirements of the Act.

This is the first time I have exercised the power to prepare a special report under section 275 of the Act. That provision permits me to prepare a report for the Legislative Assembly at any time if I consider the report needs to be brought to the attention of the Legislative Assembly sooner than in my next annual operational review report. Given my next annual operational review report for the 2023-24 financial year is not due until October 2024, I saw merit in preparing a special report on this issue. In deciding to prepare this special report, I also considered the relevance of the findings from this investigation to recommendations I made to the Commission in 2022 and the potential advantages for the Commission in addressing these recommendations at the same time as it implements the 2022 recommendations.

I would like to thank the Commissioner, the Chief Executive Officer and all staff of the Commission who participated in this complaint investigation. My staff were supported at all times to undertake the investigation in a spirit of cooperation and openness.

## RECOMMENDATIONS

**Recommendation 1:** Where the Commission is satisfied on reasonable grounds that a corruption report does not justify investigation, the Commission should clearly articulate and record its reasons for dismissing the corruption report, including explaining how it reached the position that the particulars of each allegation met the grounds for dismissal under section 71 of the Act.

**Integrity Commission's response:** Agree.

**Recommendation 2:** The Commission should review corruption reports R21/0052, R21/0055, R21/0060, R21/0066 and R21/0067 to determine whether there were reasonable grounds to dismiss each report under section 71(3)(b) of the Act and provide the Inspector with the outcome of its reconsiderations.

**Integrity Commission's response:** Agree.

**Recommendation 3:** The Commission should provide the Inspector with the outcome of its reconsideration of corruption report R21/0065.

**Integrity Commission's response:** Agree.

**Recommendation 4:** The Commission should ensure that assessment of corruption reports is conducted in accordance with the Commission's policies and procedures.

**Integrity Commission's response:** Agree.

**Recommendation 5:** The Commission should update its policies and procedures to require the following steps be taken when deciding to disclose information to an information sharing entity under section 196 of the Act:

- identify the specific information approved for disclosure
- ensure all requirements for disclosing information under section 196 of the Act are met and sufficient records are made to demonstrate the reasons for decisions.

**Integrity Commission's response:** Agree.

**Recommendation 6:** The Commission should update its policies and procedures to require consideration of whether section 107 (Commission may refer corruptions reports to referral entity) or section 196 (Disclosure of information by Commission) is the appropriate mechanism to refer a corruption report to another agency, having regard to the intention of the referral. This should include appropriate practical guidance to assist staff in making or recommending correct decisions and keeping appropriate records of these decisions.

**Integrity Commission's response:** Agree.

**Recommendation 7:** The Commission should ensure that appropriate action is taken in response to concerns raised by staff about potential non-compliance with the Act or non-conformance with the Commission's policies and procedures. It may be helpful to develop policies and procedures to guide decision-making about such action.

**Integrity Commission's response:** Agree.

## Summary of Commission's response

The Commission agreed to all seven recommendations made in this report. The Commission advised that it has implemented recommendations 2 and 3 and is in the process of implementing the other recommendations.

The Commission's comments on this report are at **Appendix A**.

## PART 1: INTRODUCTION AND SCOPE OF INVESTIGATION

### Our role

1.1. The Inspector of the ACT Integrity Commission (the Inspector) provides independent oversight of the ACT Integrity Commission (the Commission) to give assurance the Commission is acting within its powers and to help maintain public confidence in government integrity.

1.2. The *Integrity Commission Act 2018* (the Act) provides the Inspector powers to oversee the Commission, ensuring the Commission's compliance with its statutory powers. The Inspector's functions under section 227 of the Act include:

- to assess and report on the Commission's compliance with the Act
- to receive, investigate and assess complaints about the Commission and staff of the Commission
- to make recommendations to the Commission or public bodies about the practices or procedures in relation to the performance of functions under the Act.

1.3. Section 228 of the Act provides the Inspector with broad powers to carry out its functions under 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 about any matter relating to the Commission's operations or the conduct of the Commissioner or the staff of the Commission
- refer matters to another public sector body or official, and
- recommend disciplinary action or criminal prosecution.

1.4. Under section 264 of the Act, the Inspector may investigate a complaint to assess the conduct mentioned in the complaint or any other conduct relevant to the complaint. The Inspector has the power to do anything necessary and reasonable to investigate a complaint. Section 266 of the Act sets out the Inspector's powers in conducting an investigation,

including full and free access to records and the power to require the Commission or any Commission personnel to give information relevant to the investigation.

1.5. Section 275 of the Act provides the Inspector may at any time prepare a special report for the Legislative Assembly, if the Inspector considers the matter needs to be brought to the attention of the Legislative Assembly sooner than the next annual operational review report.

1.6. My investigation into this complaint concluded early in the 2023-24 financial year. The operational review report for this period is not scheduled to be given to the Legislative Assembly until October 2024. I consider the matters subject to this investigation should be brought to the attention of the Legislative Assembly sooner than that date (which would be more than 12 months after the investigation was completed) and I have prepared this special report on this basis. There are also potential advantages for the Commission in addressing these recommendations alongside the work it is undertaking to respond to earlier recommendations made in June 2022 (further discussed below).

## **Background to the investigation**

1.7. In August 2022, a former employee (the Complainant) of the Commission raised concerns about the Commission with my Office. The Complainant alleged that, while working at the Commission, they observed corruption reports not being properly assessed in accordance with the Act and raised concerns regarding the Commission's governance and procedures.

1.8. The Complainant specifically noted raising concerns with the Commission about 'approximately 5 reports' received within the 2020-21 financial year that were dismissed pursuant to sections 71(2) and 71(3)(b) of the Act. The Complainant outlined that one of their concerns was that the Commissioner was dismissing matters based on low detail or under provisions contrary to the facts of the matter. While the Complainant was not able to provide specific detail on all reports, they provided sufficient information to my Office to identify one report as corruption report R21/0065. The Complainant also noted concerns that the Commission was not documenting required information and the Commission's reporting was not accurate.

1.9. The Complainant reported that after raising their concerns to the Commission, they did not observe action by the Commission to address their concerns.

### ***Link with the Inspector's 2022 recommendations***

1.10. The Commission's assessment process has been previously considered by my Office. In June 2022, after investigating concerns raised by a complainant, the then acting Inspector provided the Commission with three recommendations to promote good administration and communication practices.

1.11. The recommendations made to the Commission in June 2022 were:

- **Recommendation 1:** the Commission review its Assessment Process Management procedure to ensure the Assessment Panel's considerations are fully documented and clear reasons for the Commission's decisions are recorded.
- **Recommendation 2:** the Commission ensure reasons are included, as required by section 72(1)(a)(ii) of the Act and are clearly and sufficiently explained, in

correspondence so that a reasonable person would understand the Commission's reasons for deciding to dismiss a corruption report.

- **Recommendation 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's *Better Practice Guide to Complaint Handling*.

1.12. The Commission agreed in part to recommendations 1 and 2 based on matters of principle and made no comment on recommendation 3. The Commission indicated it embraced the intent of the recommendations and intended to make changes in response to each. My review of the Commission's implementation of these recommendations is ongoing at the time of writing, with an update included in the annual operational review in my [Inspector of the ACT Integrity Commission Annual Report 2022-2023](#) in accordance with section 280(2)(c) of the Act.

1.13. This report considers the Commission's assessment of corruption complaints prior to our previous recommendations.

### **Investigation methodology**

1.14. After the complaint was received in August 2022, my staff interviewed the Complainant and obtained information relevant to the Complainant's observations from when working at the Commission.

1.15. On 4 November 2022, my staff wrote to the Commission to give notice that I had decided to investigate this complaint under section 264 of the Act.

1.16. On 25 November 2022, my staff sent the Commission a request for information relevant to investigating the complaint. As the Complainant could not recall all the specific reports they had raised concerns about, my staff reviewed the assessment process for a sample of corruption reports we selected by using the Commission's 2021-2022 Annual Report to identify corruption reports dismissed by the Commission under each provision of section 71(3) of the Act.

1.17. My staff sought documentation from the Commission to assess its recording keeping and justification to dismiss the sampled matters.

1.18. On 11 January 2023, the Commission provided my Office with the documents requested. The Commission also advised it would reconsider corruption report R21/0065 and undertook to inform me of the outcome of its reconsideration.

1.19. My staff reviewed the Complainant's concerns based on the information provided by the Commission on 11 January 2023. For this review, if a record ought to exist (based on similar observed Commission processes) and would ordinarily have been captured by my request for information but was not provided to my Office, it has been assumed that record did not exist. In its response to my request for information, the Commission noted that it interpreted the request for documents to relate to the later stages of the assessment process as opposed to any draft or preparatory work undertaken by Commission officers before the corruption report was sent to the Assessment Panel and as such did not provide documents that go to preceding work undertaken.



1.20. This report outlines the findings made in relation to the analysis of the sampled corruption reports obtained from the Commission and the Commission's management of the Complainant's concerns. The findings are focused on the Commission's assessment of corruption reports and the Commission's management of the Complainant's concerns.

1.21. During our analysis of records provided by the Commission, my staff identified some incidental matters not foreseen in the initial assessment, but relevant to the Inspector's functions. I considered it important to also consider those matters in this report.

### **Opportunity to comment on this report under section 277 of the Act**

1.22. Under section 277 of the Act, I am required to provide an opportunity to comment on the report, or part of the report, to any person or public sector entity the special report relates to. I have complied with this requirement and the comments received have been considered in preparing the report.

## **PART 2: OVERVIEW OF ACT INTEGRITY COMMISSION'S PROCEDURES FOR ASSESSING CORRUPTION REPORTS**

2.1. The Commission's complaint assessment process is guided by the Commission's suite of complaint assessment policy and procedures. These include the:

- Operations Manual, dated 1 December 2019
- Operations Manual, Assessment Process Management procedure AP01 (attaching the Assessment Panel Charter), dated 26 February 2020
- ACTIC Investigation and Assessment Policy Framework, dated 19 May 2020.

2.2. These policy and procedures outline the Commission's framework for receiving, assessing and managing corruption reports. The Assessment Process Management procedure states the primary purpose of the assessment process is to:

- determine whether any corrupt conduct, conduct connected with it or conduct liable to allow, encourage or cause the occurrence of corrupt conduct has likely occurred, is likely occurring or could be about to occur
- evaluate the nature and extent of any corrupt conduct to determine whether it is serious or systemic
- ensure the Commission is able to make appropriate decisions about its response to allegations of corrupt conduct.

2.3. The Commission's assessment team receives, assesses, and triages corruption reports received by the Commission. As part of the assessment process an Assessment Officer is responsible for preparing an assessment report. The assessment report records the allegation, analysis of information and recommended action. The Operations Manual sets out requirements for what must be included in the assessment report.

2.4. The Assessment Panel Charter sets out that the Commission's Assessment Panels are conducted by email unless otherwise directed. The assessment report is forwarded to the Assessment Panel. The Assessment Panel considers the assessment report and circulates comments by email, which are collated by the Assessment Manager. If consensus cannot be reached, then a face to face meeting is convened. The Assessment Panel collectively decides on what action the Commission ought to take, though the Commissioner remains the final arbiter.

2.5. Under the Commission's Assessment Panel Charter, there is discretion for matters not to be referred to the Assessment Panel if they are considered as information, feedback or outside the Commission's jurisdiction.

2.6. The Assessment Panel Charter outlines the members of the Assessment Panel consist of:<sup>1</sup>

- Commissioner
- Chief Executive Officer
- Senior Director, Investigations & Assessments
- Senior Director Legal
- Senior Director Corruption Prevention & Education.

2.7. The Assessment Panel members will sign off on the decision and record it within the assessment report. The Assessment Panel's decision should be recorded in the Commission's case management system and the decision provided to the Assessment Officer responsible for each matter. The Assessment Officer then advances the actions decided by the Assessment Panel.

## **PART 3: ISSUES ARISING OUT OF INVESTIGATION**

### **Insufficient records of the reasons for dismissing a corruption report**

3.1. I identified instances where information provided to my Office by the Commission did not clearly demonstrate the basis for dismissing a corruption report or the specific grounds relied upon. In some instances, it appeared that the grounds relied on may not have been the appropriate ground to dismiss the corruption report.

3.2. The Commission's assessment function is essential to ensuring corruption reports relating to serious or systemic corrupt conduct are properly and efficiently handled. Effective recording of processes undertaken and reasons for decision making are fundamental to accountability and transparency.

3.3. Due to the Commission's standing in the Territory's integrity framework, there is significant risk associated with not properly administering its function to the standard of good administrative practice.

3.4. In addition to the corruption reports discussed in more detail below, my staff reviewed the information summary recorded on the decision record for the following matters: R21/0060, R21/0066 and R21/0067. In each matter, I considered the information did not provide sufficient reasons to justify the decisions to dismiss each report based on section 71(3)(b) of the Act – that is, the subject matter of the corruption report is unrelated to the functions of the Commission – given each report included an allegation directed at a public sector entity within the Commission's jurisdiction.

3.5. I noted one additional instance (R21/0055), recorded as dismissed under section 71(3)(b) of the Act, which the complainant brought to the Commission's attention as

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<sup>1</sup> The Operations Manual states the Assessment Panel consists of the Commissioner and Chief Executive Officer (or delegates).

having no case decision record on file at the time of the complainant's complaint to the Commission.

**R21/0052**

3.6. In July 2021, an anonymous complainant provided information to the Commission that fire alarms in an identified high-rise complex were malfunctioning on a regular basis because of a defect and no enforcement action had been taken by ACT Fire and Rescue, the Fire Marshall and Building Inspectors despite the risk of having a high-rise complex without working fire systems.

3.7. This complaint was summarised by an Assessment Officer in an undated assessment panel report. The report notes the Assessment Officer was unable to determine if the building's fire marshal or building inspector met the definition of a Public Official in accordance with section 12 of the Act. The assessment panel report does not record consideration of whether the entities were public service entities in accordance with section 16 of the Act and is silent on the complainant's allegation that ACT Fire and Rescue were also taking no enforcement action. These are relevant considerations to determining whether there are reasonable grounds to suspect the conduct in the corruption report is corrupt conduct under section 9 of the Act and therefore can be investigated by the Commission.

3.8. The Assessment Officer recommended the Assessment Panel dismiss the corruption report:

For ease of administration, it is recommended the matter be dealt with under the Act and dismissed pursuant to s 71(2) and s 71(3)(h) as the lack of contact detail [sic] makes the report impracticable to be referred or investigated.

3.9. The Assessment Panel considered the assessment report 17 weeks after receiving the complaint. Contemporaneous notes made of the Assessment Panel meeting indicate the Commission's jurisdiction particularly in relation to ACT Fire and Rescue was discussed. This provides some evidence the panel had an awareness that ACT Fire and Rescue was a relevant entity to the corruption report, despite not being referred to in the assessment panel report.

3.10. In terms of the outcome of the Assessment Panel's considerations, contemporaneous notes from panel members state:

- The then Solicitor to the Commission: 'Questions of JD and the matter should come to the legal team and further work can be done to work out if within JD by looking at regulation.' (I have inferred JD to be short for jurisdiction.)
- The then Chief Executive Officer: 'ACT fire and rescue. Agree to dismiss, lack of information. Agree with referral to Worksafe ACT.'

3.11. My Office was not provided with any further information with respect to the Assessment Panel's considerations. It is not clear whether the matter was referred to the Commission's legal team.

3.12. The Assessment Officer recorded the decision on the corruption report as 'Dismiss pursuant to s 71(2), s 71(3)(h), disclose to Worksafe ACT under s 196 of the Act.' Section 71(2) of the Act provides the Commission must dismiss a corruption report if satisfied on reasonable grounds that the corruption report does not justify investigation. Reasonable grounds include, under section 71(3)(h), 'if the corruption report is a corruption

complaint and the complainant has not disclosed the complainant's name and contact details—the Commission is reasonably satisfied that the lack of information makes it impracticable for the corruption report to be referred or investigated’.

3.13. I consider that reliance on section 71(3)(h) of the Act to dismiss the report conflicts with the analysis in the assessment panel report, which centred on whether the entities were public officials or not. It is not clear what was meant by ‘for ease of administration’ as stated in the assessment officer’s recommendation to the assessment panel. Further, I consider there was no evidence before me outlining why the information was insufficient to be investigated, noting the Act permits reports to be made anonymously.

### **R21/0065**

3.14. In August 2021, an anonymous complainant alleged an intimate relationship between a senior ACT Public Servant and a private entity that resulted in the public sector entity not carrying out its functions in respect of the private entity.

3.15. This corruption report was dismissed by the Commissioner under section 71(3)(b) of the Act. This indicates the Commission was satisfied that the corruption report did not justify investigation on the grounds that the subject matter of the corruption report is unrelated to the functions of the Commission. However, there were no recorded reasons for the decision other than a reliance on this subsection of the Act. No records were provided to my Office demonstrating whether the Commissioner had regard to any additional information beyond a one sentence summary of the corruption report on the decision record.

3.16. There was no evidence before me to assess what informed the Commissioner’s decision that the corruption report was unrelated to the functions of the Commission. The decision record signed by the Commissioner makes it evident the allegations were directed toward a public official and a public entity.

3.17. The Commission has advised it will reconsider this corruption report (see further discussion below and Recommendation 3).

**Recommendation 1:** Where the Commission is satisfied on reasonable grounds that a corruption report does not justify investigation, the Commission should clearly articulate and record its reasons for dismissing the corruption report including explaining how it reached the position that the particulars of each allegation met the grounds for dismissal under section 71 of the Act.

**Recommendation 2:** The Commission should review corruption reports R21/0052, R21/0055, R21/0060, R21/0066 and R21/0067 to determine whether there were reasonable grounds to dismiss each report under section 71(3)(b) of the Act and provide the Inspector with the outcome of its reconsiderations.

## **Assessment of corruption reports not in accordance with the Commission’s policies and procedures**

3.18. My Office identified instances where the Commission’s assessment of corruption reports did not comply with requirements set out in the Commission’s Operations Manual and Investigation and Assessment Policy Framework.

3.19. The Operations Manual and Investigation and Assessment Policy Framework provide advice to staff on how the Commission deals with corruption reports.

3.20. The application of these documents by all staff, is essential in ensuring consistent standards, quality outcomes and transparent decision making.

### ***R21/0052 and R21/0086***

3.21. Section 1.6.2 of the Commission's Operation Manual sets out the requirement for the Assessment Officer to prioritise each matter. Where the matter is assigned a 'normal' prioritisation 'the matter will be dealt with within 28 days.' If the Commission assigns a high or urgent prioritisation, this provides for an assessment in less than 28 days. In the case of R21/0052 the assessment report was provided to the Assessment Panel 17 weeks after complaint receipt. For R21/0086, this took 32 weeks.

### ***R21/0052***

3.22. The case of R21/0052, the corruption report was not given an assessment prioritisation rating (as required under the Operations Manual). The assessment report noted 'serious fire safety issues which could pose a substantial risk to residents...' I found that, although the Commission believed there were potentially serious fire safety concerns and took initial steps to disclose this information to the appropriate entity in the end a timely disclosure of this information did not occur.

3.23. I also found the assessment report for this matter did not comply with the requirements set out in 1.7 of the Operations Manual – the following assessments were not included, or not sufficiently recorded, in the assessment panel report or elsewhere:

- whether the allegations fell within the jurisdiction of the Commission
- the reasoning for the Assessment Officer's recommendation
- a description and reasons for whether the corruption report is credible; corrupt conduct is likely to have occurred, or will be engaged in; and whether the alleged corrupt conduct, if proven is serious and/or systemic
- an assessment prioritisation rating
- the Assessment Panel's decision (signed by members of the Panel) with the date of decision.

### ***R21/0065***

3.24. The Commission's internal process is for the Assessment Panel to consider an assessment panel report that has been prepared by an Assessment Officer and submit a recommendation to the Commissioner for decision. In this instance, it appears this process was not followed. Two days after the allegation was received by the Commission, an Assessment Officer made contemporaneous notes of a meeting held with 'JH' (the then Chief Executive Officer) and the 'Commish' (the Commissioner). It is not clear whether these notes relate to the Commission's consideration of this matter or not as the content of the notes was generic.

3.25. On the same day of this meeting, the Commissioner recorded his decision to dismiss the corruption report under section 71(3)(b) of the Act and disclose information to another ACT public service entity under section 196 of the Act.

3.26. Approximately a week after the Commissioner's decision, a Senior Assessment Officer wrote to the Assessments Manager seeking approval to conduct open-source

enquiries in relation to the corruption report. The Assessments Manager responded advising that the matter had been dismissed by the Commissioner under section 71(3)(b) of the Act as there was 'just not enough in this report to progress it.'

3.27. A few days later, the Assessment Panel met to consider the 'Commissioner's decision for info.' Attached to the agenda was a copy of the Commissioner's signed decision form. Notes provided to the Inspector from the Assessment Panel meeting either do not include any reference to this corruption report or were not legible.

3.28. Ten months after the corruption report was received, an internal email was sent by an Assessments Officer to the Senior Director of Investigations and Assessments. It is not clear what prompted this renewed interest in the corruption report after it was seemingly dismissed by the Commissioner 10 months earlier. The Assessments Officer queries whether the decision to dismiss the matter should be reviewed and sought approval to conduct open-source enquiries to test the information contained in the corruption report. The Assessment Officer also queried the merits of providing the allegation to the other ACT public service entity. The Assessments Officer undertook to update the draft section 196 letter and provide for clearance.

3.29. The Senior Director advised he would discuss the matter with the Commissioner. No further information was provided to the Inspector outlining any further action in respect of this complaint.

3.30. The assessment process in this case is a significant departure from the Commission's Investigation and Assessment Policy Framework and Assessment Process Management procedure. My Office was not provided evidence to demonstrate an Assessment Panel was formed and considered the corruption report prior to the Commissioner's dismissal of the matter. The Assessment Process Management procedure permits for a matter to not be referred to the Assessment Panel if the matter is outside of the Commission's jurisdiction. I consider this matter was within the Commission's jurisdiction and therefore not a matter for which this provision could be applied.

3.31. The Commissioner's decision to dismiss the corruption report was subsequently presented to an Assessment Panel. I question the value of this process. The existence of a hierarchical imbalance between the Commissioner and other panel members is less likely to encourage panel members to disagree with a decision already made by the Commissioner.

3.32. I was also concerned the corruption report was dismissed without conducting any enquiries or analysis. There were several fundamental, open source and/or covert enquiries that could have been carried out to better inform an Assessment Panel as suggested by an Assessment Officer after the Commissioner's decision had been made.

3.33. Due to the seriousness of the allegations, the senior level of the public official subject to the allegations and the risk the conduct was ongoing, I am of the view that, at the very least, some enquiries should have been conducted in line with 1.7.1 of the Operations Manual. This part of the Operations Manual requires an Assessment Officer to assess a matter in the context of any relevant open-source information such as social media, media reports or the relevant public authority's website. The Assessment Officer should also consider whether the corruption report is credible, whether the allegations fall within the jurisdiction of the Commission and include the reasoning for dealing with the corruption report. It further specifically notes that the authorised officer may require additional

information, background or intelligence to make an informed recommendation and therefore may request further assessment enquiries.

3.34. I note the Commission's correspondence of 11 January 2023 advised the Commission had decided to reconsider this matter and that reconsideration was underway. I welcome that decision.

**Recommendation 3:** The Commission should provide the Inspector with the outcome of its reconsideration of corruption report R21/0065.

**Recommendation 4:** The Commission should ensure that assessment of corruption reports is conducted in accordance with the Commission's policies and procedures.

### **Insufficient records of decisions to disclose information**

3.35. My Office identified instances where information provided did not demonstrate the reasons on which the Commission decided information met the requirements for disclosure under section 196 of the Act.

3.36. Section 196 of the Act allows the Commission to disclose information to an information sharing entity if the Commission considers the information is relevant to the exercise of the functions of the information sharing entity and the disclosure of the information to the information sharing entity is appropriate.

#### ***R21/0052***

3.37. In this instance, it was decided that the corruption report would be disclosed to WorkSafe ACT under section 196 of the Act.

3.38. My Office reviewed internal Commission correspondence from November 2021 which indicated conversations with WorkSafe ACT had occurred. Primary records of the conversations with WorkSafe ACT were not provided to my Office. In internal email correspondence, Commission staff advised the Commissioner of WorkSafe ACT had indicated:

- she would need the corruption report to determine whether any action could be taken by WorkSafe ACT, as the build was completed 12 months ago
- the corruption report should be sent to ACT Building and Compliance for its consideration due to the significant risk to the safety of the residents.

3.39. It was proposed by Commission staff to prepare a disclosure letter to the Commissioner of WorkSafe ACT and ACT Building and Compliance.

3.40. In response, the then Solicitor to the Commission noted that any disclosure under section 196 of the Act would require the Commission to be satisfied that the agencies are an 'information sharing entity' within the meaning of section 196(3) of the Act. The then Chief Executive Officer stated:

It seems to me that we should supply it to [redacted] and her entity considering she is an independent authority. Anything she does with the information would be up to her.

3.41. It is unclear what provision of the Act, or other authority, the then Chief Executive Officer relied on to form this view. Whether an entity is an 'independent authority' is not a relevant consideration to determining whether the entity can be considered an 'information sharing entity' under section 196 of the Act.

3.42. We found that although the Commission had been advised there was a substantial risk to residents, it did not act to urgently disseminate the information to the appropriate entity. It is not clear to me, from the information provided by the Commission, whether any information was ultimately disclosed to WorkSafe ACT or ACT Building and Compliance. My Office was not provided a copy of a signed disclosure letter or other documentary evidence to support a formal disclosure was made and to what entity. I provided the Worksafe ACT Commissioner an opportunity to comment on this proposed report, under section 277 of the Act. She advised that she did not seek to have the corruption report disclosed to her, and the corruption report was not disclosed to her.

3.43. On the material provided to my Office, it appears there were discussions with WorkSafe ACT about the nature of the corruption report when considering the formal disclosure of information. The Commission should be mindful to not disclose Commission information to an outside entity otherwise than in accordance with the Act.

#### ***R21/0086***

3.44. In October 2021, an anonymous complainant alleged to the Commission that media releases published on an ACT political party's public website were written by ACT Government public servants and rebranded as political media releases with no author named. It was alleged the media releases were produced with public service resources.

3.45. The Assessment Panel met to consider the corruption report 32 weeks after it was received. Contemporaneous notes made by the then Solicitor to the Commission recorded:

Assessments to write 3 line letter – language needs to be in notices. Complaint made and dismissed but bring to your attention.

3.46. The Assessment Panel's decision record noted:

R21-0086 - Agree with recommendation. Dismiss pursuant to s 71 (2), s 71 (3) (d) and (f). Additional action: Draft a letter to [ACT political party] advising of the information received by the Commission.

3.47. On the records available, it does not appear the decision to disclose information to the ACT political party was in fact implemented.

3.48. Almost six months after the Assessment Panel's decision, the then Director of Assessments wrote to the Chief Executive Officer and raised concerns with the Assessment Panel's decision, namely that:

The assessments team doesn't hold any information in relation to the 'why' a letter would be drafted to the [ACT Political Party] advising them of the information received by the Commission. Additionally, it is my understanding that to "advise of information received by the Commission" would need to be done pursuant to section 196 of our Act – Disclosure of information by Commission. The statutory tests for which are:

- The information is relevant to the exercise of the functions of the information sharing entity; and
- The disclosure of the information to the information sharing entity is appropriate.



I am concerned that the sharing of this information does not meet these statutory tests. Additionally, because it is not common practice for the Commission to inform subject entities the Commission has received a report about them, such a disclosure creates a risk of perceived partiality towards a political party.

I recommend the decision to disclose information contained in R21/0086 to the [ACT Political Party] expunged from the decision record.

3.49. The Chief Executive Officer agreed with the analysis, but did not agree to expunge the record, instead asking for the revised decision to be noted on the file, by way of attaching the email.

3.50. I found there was no legislative authority to support the Assessment Panel's decision to disseminate Commission information to the ACT political party, an entity that does not satisfy the definition of an 'information sharing entity' under section 196(3) of the Act.

3.51. I agree with the Chief Executive Officer's approach and note the proper action is to not expunge a record. Rather, it is appropriate to ensure clear records are kept of decisions made and, where decisions are revised, the reasoning for that revised decision.

#### **R21/0065**

3.52. In this instance, the Commissioner decided to refer the matter to an information sharing entity under section 196 of the Act, however this did not appear to occur. Based on the records provided, it is not clear whether elements of the information contained in the corruption report or all the information in the corruption report was intended to be disclosed to the entity. The correlation between the information to be disclosed and the functions of the entity was not recorded by the Commission.

3.53. The Commission advised it will reconsider this corruption report.

**Recommendation 5:** The Commission should update its policies and procedures to require the following steps be taken when deciding to disclose information to an information sharing entity under section 196 of the Act:

- identify the specific information approved for disclosure
- ensure all requirements for disclosing information under section 196 of the Act are met with sufficient records to demonstrate the reasons for this decision.

#### **No consideration of the appropriate mechanism for external referral**

3.54. I found no indication in any records that the Commission turned its mind to referring corruption reports discussed in this report to another entity under section 107 of the Act, which provides for referral where it would be more appropriate for another entity to investigate the matter.

3.55. I am of the view that section 196 of the Act is an enabling provision to facilitate disclosure of information to entities that meet the definition of an information sharing entity under the Act where it is relevant to their functions. Where the Commission is of the view that it would be more appropriate for the subject matter of a corruption report to be

investigated by another entity, it should instead turn its mind to whether the requirements under section 107 of the Act are met.

3.56. In several instances a decision was made to disclose information in a corruption report to another entity under section 196 of the Act without consideration as to whether section 196 or section 107 of the Act was the appropriate mechanism for referral to a public sector entity (R21/0065, R21/0052). We observed that the Commissioner's decision record template only provides for a field for a matter to be considered for referral under section 196 of the Act. There was also no information to indicate that the Commission considered whether it would be appropriate to refer the complaint to a referral entity under section 107 of the Act to investigate the subject matter of the corruption report.

**Recommendation 6:** The Commission should update its policies and procedures to require consideration of whether section 107 or section 196 is the appropriate mechanism to refer a corruption report to another agency, having regard to the intention of the referral. This should include appropriate practical guidance to assist staff in making or recommending correct decisions and keeping appropriate records of these decisions.

### **Inadequate handling of staff concerns**

3.57. In July 2022, the Complainant raised concerns to the then Chief Executive Officer about the Commission's decisions to dismiss some corruption reports under section 71(3)(b) of the Act (that is, on the grounds that the subject matter is unrelated to the functions of the commission).

3.58. These concerns were initially directed towards the assessment of corruption report R21/0066. In summary, these concerns were:

- an assessment panel report was not completed for the corruption report
- the complaint related to conduct of unidentified public officials and was relevant to a function of the Commission
- the Commissioner 'was only given a short once (sic) sentence summary of the matter'.

3.59. The Complainant also provided the then Chief Executive Officer with a table of four other corruption reports (R21/0055, R21/0060, R21/0065, and R21/0067) where they believed the report may have been incorrectly dismissed under section 71(3)(b) of the Act.

3.60. In reviewing material provided by the Commission in response to the request for information, my staff sighted the decision records for four of these reports (no decision record was requested for R21/0055) and confirmed the decision records included a one sentence summary of the matter which appeared to be the basis of the Commissioner's decisions to dismiss these reports. No records were provided to my Office to indicate any further information was provided to the Commissioner prior to his decision or whether verbal briefings occurred.

3.61. The former Chief Executive Officer has advised that he took various actions with respect to issues raised by the complainant about the assessment process. My Office was not provided with any documentation to validate any actions the then Chief Executive Officer took in response to the concerns the complainant raised. The records we were provided with by the Commission about the particular assessments in question do not make

apparent that any actions were being taken. I am concerned with an apparent lack of any demonstrable action by the Commission to address staff concerns of this nature.

**Recommendation 7:** The Commission should ensure that appropriate action is taken in response to concerns raised by staff about potential non-compliance with the Act or non-conformance with the Commission's policies and procedures. It may be helpful to develop policies and procedures to guide decision-making about such action.

# APPENDIX B: INTEGRITY COMMISSION'S RESPONSE



Our Ref: REC23/318971  
Your Ref: A2345152

Mr Iain Anderson  
Inspector of the ACT Integrity Commission  
Office of the Commonwealth Ombudsman  
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Via email [actinspector@ombudsman.gov.au](mailto:actinspector@ombudsman.gov.au)

## PROPOSED SPECIAL REPORT – INVESTIGATION INTO THE DISMISSAL OF CORRUPTION REPORTS BY THE ACT INTEGRITY COMMISSION, REPORT NO. 1/2023

I refer to your letter dated 16 August 2023, in which you provided me with a draft copy of the outcome of your investigation of a complaint made to you, pursuant to s 264 of the *Integrity Commission Act 2018* (the Act) and invited me to provide written comments about the proposed report.

I note that you will consider any comments I provide in finalising this report.

In addition, you invited me to identify any factual errors contained in the proposed report and to indicate for each of these seven recommendations, whether the Commission accepts or does not accept the recommendation and for each accepted recommendation, an estimate of the Commission's timeframe for implementation.

I have not identified any material factual errors. Attachment A to this letter outlines my response to each recommendation and where necessary, the timeframe for implementation, noting that the Commission has, to a substantial degree already addressed the issues covered in the recommendations relating to policy and practice, including recommendations 1, 4, 5 and 6.

### Context and Commentary

Notwithstanding the Commission's acceptance of each of the recommendations (as outlined in Attachment A) I wish to place on record the broader context and difficulties the Commission's assessment function faced in its earlier years of operation. This is important as the scope of your investigation and its findings relate to a sample of corruption reports dealt with by the Commission in the 2021-22 financial year. Those difficulties related to:

- Insufficient development of policies to guide Commission staff with the practical application of the Act, including how the factors in section 71(3) are applied to the circumstances of each corruption report and the level of detail required to explain decisions on how corruption reports should be dealt with. Two practical approaches to the lack of formal documentation of policies were taken. The first was that I had frequent discussions with the then Assessments Manager and members of the Assessments Team to clarify the requirements of Assessment (also called Panel) Reports and the criteria for dismissal, referral or investigation, including where a preliminary inquiry might be appropriate; the second was that the Assessments Manager was present at Panel meetings, attended by me, the Solicitor, the Directors of Investigations and Corruption Prevention and Engagement, where the assessment reports were discussed and, ultimately decided by me along with appropriate explanations. Not only did this process ensure that assessments were appropriately considered, it provided explanations that it was expected (and, in fact were) on-related to the Assessments Team.

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Assessment reports were circulated before the Panel meetings and the Solicitor brought to the attention of the Panel the legal basis, considering the statutory elements of corrupt conduct and the prerequisites for preliminary inquiries and investigations, of any decision. Discussion at the Panel meetings elicited relevant facts if more detail was required. Some decisions were made by me outside Panel meetings where the issues were simple, and no further delay was necessary.

- Insufficient resourcing of the assessment function, coupled with difficulties with recruiting individuals with the requisite skills.
- Insufficient management oversight of the volumes of corruption reports on hand and proactive management of backlogs, partly due to inadequate business systems with little management reporting capability.
- The overarching context of a new organisation, operating in the period of COVID lockdowns, which made it more difficult to build and share knowledge and to bed down the policies, processes, and requirements for the Commission's assessment function whilst also developing processes for managing investigations and undertaking investigations.

Notwithstanding these difficulties, there was in fact a process in place to carefully consider corruption reports. Every corruption report received consideration by me, with all relevant inputs obtained from the Solicitor to the Commission, the panel and/or the assessment manager. Therefore, due consideration was given to all corruption reports and as I was the final decision maker, a consistent approach to determining whether to dismiss, refer or investigate a matter occurred. I do, however, acknowledge that there were deficiencies in the Commission's record keeping and some uncertainty in the application of section 71 of the Act.

As you acknowledge in the executive summary of your report, the Commission has worked to significantly strengthen its practices and procedures for assessing corruption reports and recording outcomes, so its internal practices in relation to the assessment functions have evolved. This evolution has included:

- the implementation of a senior role at Director level which is solely responsible for leading and managing the assessment function in the first half of 2022-23.
- the implementation of an Assistant Director role at SOG C level to increase management oversight and to handle complex matters.
- achieving a full staffing complement of three assessment officers; and
- finalised standard operating procedures, including new templates to record recommendations and reasons for decisions.

I therefore request that the following commentary is included in a text box under the executive summary of your report, as part of the Commission's response.

**Commission Comments**

The Commission acknowledges that it faced difficulties with the operation of the assessment function, including during 2021-22 financial year, the period on which the findings of this report are based. These difficulties included insufficient resourcing to handle the volume of corruption reports received during the period of COVID lockdowns and immaturity in the Commission's policies and practices relating to the assessment of corruption reports.

Notwithstanding these difficulties, there was in fact a process in place to carefully consider, with personal guidance from the Commissioner to the Assessments Team in what was needed for corruption reports. Every corruption report received consideration by me, with all relevant inputs obtained from the Solicitor to the Commission, and the other members of the Assessments Panel, which included relevant Directors, including assessment manager. Therefore, due consideration was given to all corruption reports, with explanations provided for my decisions and, thus, a consistent approach to determining whether to dismiss, refer or investigate (and, in some cases, to

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conduct a preliminary inquiry as to a matter occurred. I do, however, acknowledge that there were deficiencies in the Commission's record keeping and some (inconsequential) uncertainty in the application of section 71 of the Act.

Notwithstanding these difficulties, I am satisfied that every corruption report received appropriate consideration and appropriate decisions made to either dismiss, refer, or investigate a corruption report or conduct a preliminary inquiry.

The Commission has invested significant effort throughout 2022-23 financial year to address the recording keeping, resourcing and internal guidance issues, including the creation of a new leadership role in the structure, additional assessment officers and the development of detailed formal standard operating procedures.

In closing I am confident that the Commission has significantly matured its assessment function. Assessment officers, in performing this function, are deepening their knowledge of the relevant provisions of the *Integrity Commission Act 2018* and enhancing their ability to make considered and sound recommendations to the Commission's Assessment Panel and myself as the decision maker.

Yours sincerely,

The Hon Michael F Adams KC  
Commissioner

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**Attachment A - Response to the Inspector's draft special report into the Investigation into the dismissal of corruption reports by the ACT Integrity Commission**

**Recommendation 1:** Where the Commission is satisfied on reasonable grounds that a corruption report does not justify investigation, the Commission should clearly articulate and record its reasons for dismissing the corruption report, including explaining how it reached the position that the particulars of each allegation met the grounds for dismissal under s 71 of the Act.

**Commission's response:** Agree. The Commissioner's recently finalised internal guidance documents for assessing corruption reports recognise the requirement for assessment officers to clearly record the recommendations and decisions made in respect of each corruption report, including the reasons why corruption reports are dismissed. These internal guidance documents are provided in Attachment B. A best practice guide for assessment officers will supplement these documents and is under development and will be finalised by 30 November 2023.

**Recommendation 2:** The Commission should review corruption reports R21/0052, R21/0055, R21/0060, R21/0066 and R21/0067 to determine whether there were reasonable grounds to dismiss each report under s 71(3)(b) of the Act and provide the Inspector with the outcome of its reconsiderations.

**Commission's response:** Agree. The Commission has conducted a review of these matters, the outcomes of which are documented in Attachment C.

**Recommendation 3:** The Commission should provide the Inspector with the outcome of its reconsideration of corruption report R21/0065.

**Commission's response:** Agree. The response to the reconsideration of corruption report R21/0065 was provided to you on 19 September 2023.

**Recommendation 4:** The Commission should ensure that assessment of corruption reports is conducted in accordance with the Commission's policies and procedures.

**Commission's response:** Agree. The Commission has recently updated its internal guidance documents for staff involved in assessing corruption reports. The Commission will conduct training of those staff to ensure understanding of and compliance with those guidelines. The Commission will also ensure it conducts regular refresher training for staff who participate in assessing corruption reports.

**Recommendation 5:** The Commission should update its policies and procedures to require the following steps to be taken when deciding to disclose information to an information sharing entity under s 196 of the Act:

- identify the specific information approved for disclosure
- ensure all requirements for disclosing information under s 196 of the Act are met and sufficient records are made to demonstrate the reasons for decisions.

**Commission's response:** Agree. The Commission has developed its policies to clarify when it is appropriate to disclose information under s 196 of the Act, under s 107 and under s 71(4) (see Attachment D). The Commission is in the process of developing guidance material, including

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templates to record considerations in respect of the relevance and appropriateness of disclosure, to ensure that internal decision minutes identify the specific information to be disclosed, to document decisions and to create a central register of all disclosures made under s 196. This work will be completed by 30 November 2023.

**Recommendation 6:** The Commission should update its policies and procedures to require consideration of whether s 107 or s 196 is the appropriate mechanism to refer a corruption report to another agency, having regard to the intention of the referral (see Attachment D). This should include appropriate practical guidance to assist staff in making or recommending correct decisions and keeping appropriate records of these decisions.

**Commission's response:** Agree. See response to recommendation 5 above. Commission policies are in the process of being updated to clarify when it is appropriate to refer corruption reports for potential investigation by other entities, under either s 71(4) or s 107 of the Act.

**Recommendation 7:** The Commission should ensure that appropriate action is taken in response to concerns raised by staff about potential non-compliance with the Act or non-conformance with the Commission's policies and procedures. It may be helpful to develop policies and procedures to guide decision-making about such action.

**Commission's response:** Agree. The Commission's Fraud and Corruption Control Policy outlines specific processes for the reporting of concerns by staff that fit within the definition of potential fraudulent or corrupt conduct. However, the Commission agrees that it should have a specific policy for handling concerns raised by staff and will commit to developing such a policy by 31 December 2023.

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Please note: Attachments B, C and D referred to in the Commission's response have not been included under section 276 of the Act as it would be contrary to the public interest.