

INSPECTOR OF THE
ACT INTEGRITY COMMISSION

Annual Report

2021-22

Transmittal letter

7 October 2022

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

Dear Speaker

I present to you the Inspector of the ACT Integrity Commission's 2021–22 Annual Report.

The report fulfils the requirements of s 7A of the *Annual Reports (Government Agencies) Act 2004* and contains the Inspector's annual operational review, as required by s 280 of the *Integrity Commission Act 2018*.

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 2021 to 30 June 2022.

As I am an officer of the Assembly, this report is not subject to all of the requirements of the *Annual Reports (Government Agencies) Directions 2022*. Where relevant to my Office, I sought to include information similar to that required under these directions.

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

Enquiries about this report or requests for other information should be directed to:

Email actinspector@ombudsman.gov.au

Post GPO Box 442
 CANBERRA ACT 2601

Telephone 02 5119 5518

Further information about the Inspector is available at:

Website [Inspector of the ACT Integrity Commission](https://www.ombudsman.act.gov.au) webpage at **ombudsman.act.gov.au**

The Inspector of the ACT Integrity Commission Annual Report 2021–22 is available on the webpage at <https://www.ombudsman.act.gov.au/improving-the-act/inspector-of-the-act-integrity-commission>

Credits

Australian Capital Territory

ISSN 2652-760X

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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's 2021–22 Annual Report.

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.

The Commission is an independent body with the power to investigate alleged corruption within the public sector.

The Inspector's role is to assess and report on the Commission's compliance with the *Integrity Commission Act 2018* (the Act). This includes considering complaints about the Commission and its staff, receiving monthly reports from the Commission, and referring matters to other public bodies or officials. The Inspector has the power to access the Commission's records and can make recommendations about a range of matters, from practices and procedures to disciplinary action or criminal prosecution.

This year the Inspector received 5 complaints about the Commission and formally investigated 2 complaints. The Inspector received 12 monthly reports from the Commission about its activities and made several requests for information to inform the Inspector's oversight of certain activities. The Inspector made 3 recommendations focused on improvement of the Commission's communication and administration practices.

Based on the information available to me, I have assessed the Commission operated within its powers and complied with the Act in 2021–22.



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 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 pursuant to s 229 of the Act. In practice, the role of ACT Ombudsman, and therefore Inspector, is performed by the Commonwealth Ombudsman¹, who 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 2021–22 Annual Report² can be accessed on the [Reports](#) webpage at **ombudsman.act.gov.au**.

People can access information on how to make a complaint about the Commission, including the Inspector's complaint handling policy, on the [ACT Ombudsman](#) website at **ombudsman.act.gov.au**. Complaints can be made using our online form and by contacting us through our phone line on (02) 5119 5518.

¹ See s 28 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988* (Cth).

² ACT Ombudsman's Office, *Reports*, www.ombudsman.act.gov.au/publications/reports

Role of the ACT Integrity Commission

The Commission is an independent body with broad powers to:

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

Performance analysis

Operation of the Inspector role

Inspector policies and procedures

In the reporting period, the Office continued to refine the Inspector's policies and procedures, including for review and recording of the Commission's monthly reports to the Inspector under s 205 of the Act.

The Office developed and used an improved system to collate and record the reports and track the Commission's activities. The Office also drafted and tested additional standard operating procedures for the broader oversight functions during this reporting period.

Complaint handling policy

The Inspector has made complaint investigation guidelines under s 264(4) of the Act – the *Integrity Commission Complaint Investigation Guidelines 2019* – which set out how the Inspector handles complaints about the Commission. These complaint investigation guidelines are a notifiable instrument under s 264 (5) of the Act.

These guidelines are supported by internal standard operating procedures for Inspector staff to follow in receiving, managing, and investigating complaints about the Commission.

Declaration of interest guidelines

The Inspector must make and publish guidelines for staff of the Inspector about the personal interests the Inspector considers staff should declare under s 251 of the Act.

The *Integrity Commission Personal Interest Guidelines*³ made under s 251(4) of the Act provide advice to the Inspector's staff on their obligation to declare personal interests to ensure any potential conflicts of interest are managed effectively.

Information for the ACT community

All notices issued by the Commission must include information about the ability to complain to the Inspector and contact details for the Inspector.

There is an Inspector webpage on the [ACT Ombudsman](#) website, which includes a factsheet and Inspector complaint form.

A telephone line (02 5119 5518) and email address (actinspector@ombudsman.gov.au) is also available for members of the public to contact the Inspector with complaints or enquiries.

³ *ACT Integrity Commission Personal Interest Guidelines 2019*, <https://www.legislation.act.gov.au/ni/2019-438/>

Agency engagement

The Inspector and the Commission have a Relationship Protocol which includes a schedule of monthly meetings between staff of each office. Then Acting Inspector, Ms Penny McKay, also met with the Commissioner during the 2021–22 reporting period.

During 2021–22, Inspector staff worked with the Commission to maintain arrangements for:

- the Commission to provide monthly reports to the Inspector under s 205 of the Act
- secure digital delivery and storage of protected and sensitive materials, and
- other emerging operational activities for each office.

Mandatory reporting of activities

Section 283 of the Act requires the Inspector’s annual report to include the following information about material it has 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 is required to refer corruption reports about the Commissioner, or a member of the Commission’s staff, to the Inspector under s 105 of the Act.

The Inspector received one such referral in 2021–22. This was treated as a complaint to the Inspector and is described further below. Following assessment and consideration of this complaint, staff of the Inspector determined, in accordance with s 259 of the Act, that no further action was warranted by the Inspector in relation to the complaint.

Data - based on monthly reporting

In 2021–22, 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 the Act | 2020-21 | 2021-22 |
|----------------------------------|--------------------|---------|---------|
| Confidentiality notices | s 78 or s 79 | 39 | 66 |
| Preliminary inquiry notices | s 90 | 15 | 4 |
| Examination summons | s 147 | 24 | 57 |
| Video recordings and transcripts | s 158 | 11* | 10 |

*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 made no reports or referrals against the other categories 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.

Receiving details of the Commission's reasons provides the Inspector with context and sets out the Commission's considerations in exercising its powers.

In September 2021, the Office asked the Commission to provide reasons for all notices from the start of 2021–22 onwards, to deepen the Inspector's understanding of the Commission's exercise of powers and assist with assessing the Commission's compliance with the Act.

While the Commission's November 2021 report subsequently included reasons for 2 notices, after November 2021, the Commission advised the Inspector it had identified a legal issue with providing information about reasons to the Inspector. Staff of the Inspector continued to engage with the Commission to resolve this issue, but it was not resolved until after the end of the 2021–22 financial year. The Inspector will therefore include further consideration of any of the Commission's reasons provided after the 2021–22 reporting period in the Inspector's 2022–23 annual report.

Further information and review

In 2021–22 staff of the Inspector conducted a detailed review of 3 of the Commission's examination videos. No concerns were identified.

Staff of the Inspector noted that 3 of the examination summonses issued by the Commission to individuals in 2021–22 did not state the nature of the matters about which the individuals were to be questioned, which is permitted under s 148(2) of the Act in limited circumstances. The staff sought information from the Commission about the basis for not including this information under s 148(2). The Commission provided documentation to the Inspector during the 2022–23 reporting period, which was being considered by Inspector staff at the time this report was prepared.

Complaints and investigations

In the 2021–22 reporting period, the Office:

- received 5 complaints about the Commission under s 257 of the Act
- finalised 6 complaints (1 complaint was carried over from 2020–21)
- completed 2 formal complaint investigations (the Inspector's first formal complaint investigations)
- made 3 recommendations to the Commission (the Inspector's first formal recommendations) to influence improvements, with a focus on promoting good administration and communication practices (the Commission's implementation of these recommendations will be monitored and reported on in 2022–23).

No complaints were on hand at the end of the 2021–22 financial year.

Of the 6 complaints finalised in 2021–22:

- 3 complaints related to a decision by the Commission to dismiss a person’s corruption report.
 - This is the most common type of complaint the Inspector receives.
 - The Inspector does not usually investigate formally unless there are issues or allegations of conduct that are contrary to law, unreasonable, improper or an abuse of power, within the scope of s 257(2) of the Act.
 - For 2 of these 3 complaints, the Inspector’s decision was not to investigate the complaint formally.
 - One of the 3 complaints was formally investigated. Following the investigation, 3 recommendations were made to the Commission about administration and communication.
- One formal complaint investigation was undertaken that related to an administrative oversight by the Commission. The issue was resolved promptly, and the Inspector made no recommendations to the Commission in relation to this investigation.
- One complainant was referred to another regulatory body better able to deal with the issues being raised. This complaint was not formally investigated by the Inspector.
- One complaint related to alleged corrupt conduct by a staff member of the Commission in the context of a decision by the Commission.
 - This matter was initially received by the Inspector as a notification by the Commission under s 105 of the Act. The allegations were made in part with reference to s 8 of the *Public Interest Disclosure Act 2012* (ACT). While Inspector staff did not determine that it amounted to disclosable conduct, PIDs about the Commission are taken to be complaints to the Inspector (s 26A(3) of that Act).
 - The complainant provided limited information about the alleged corrupt conduct. The conduct was alleged to be in the course of the staff member’s duties, and the complainant was unhappy about an outcome.
 - A complaint was recorded and further information was sought from the complainant but was not forthcoming. The complaint was therefore taken to have been withdrawn, and the Inspector determined no further action was warranted.

No other complaints were received in 2021–22 about the Commission’s exercise of powers or its conduct of examinations.

Recommendations, reports, and disclosures of information

The 3 recommendations made to the Commission during 2021–22, following a formal complaint investigation, focused on improving the Commission’s communication with members of the public who have made corruption reports, including through the provision of reasons.

While the recommendations arose from a specific formal complaint investigation, the Inspector considers implementation of these recommendations will benefit all members of the public who contact the Commission through clearer communication.

The Inspector will monitor the Commission’s implementation of the recommendations in 2022–23.

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

No disclosures of information were made by the Inspector in 2021–22 to information sharing entities under s 274 of the Act.

Management of conflicts of interest

Under s 283(1)(e) of the Act, this report must include the number of times during 2021–22 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**).

During 2021–22, staff of the Inspector carried out 2 inspections of the Commission’s conflict of interest register. In August 2021, the Inspector reviewed a copy of the Commission’s conflict of interest register for Commission staff for the 2020–21 financial year. A further inspection of the register was conducted in February 2022, to review information for the period 1 July 2021 to 31 December 2021.

Based on these inspections, staff of the Inspector were satisfied the Commission’s register demonstrated active reporting and consideration of conflicts of interest by staff of the Commission during the relevant period. The Inspector will undertake further inspections of the register in 2022–23.

Under s 31(2)(b) of the Act, the Commissioner also has a personal duty to disclose to the Inspector, in writing, any financial or personal interests of the Commissioner that may conflict, or be perceived to conflict, with the Commissioner’s functions.

The Commissioner reported one such personal interest for 2021–22, though notice of the interest was received by the Inspector after the end of the reporting period. Specifically, on 15 July 2022, the Commissioner wrote to the Inspector to report a personal interest under s 31(2)(b) of the Act, noting that, while the interest was first identified in May 2022, due to an administrative oversight at the Commission the letter notifying the Inspector was not sent until July 2022.

At the time of preparing this report, the Inspector had sought further information from the Commission about the management of this potential conflict and is awaiting the Commission’s response. Accordingly, any further assessment of the Commission’s management of this potential conflict of interest will be addressed in the Inspector’s 2022–23 annual operational review.

Annual operational review report of the Commission

A copy of the Inspector’s annual operational review report for 2021–22, 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 and 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 \$105,269 (exclusive of GST) in 2021–22 to implement and perform functions as Inspector.

This funding was the equivalent of approximately 0.8 of a full-time equivalent (FTE) employee and did not include standard staffing oncosts.

An increase of approximately 0.9 FTE for staffing for the Inspector function was requested in the ACT Ombudsman’s 2022–23 funding proposal and was approved by the ACT Government in the 2022–23 Budget.

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

October 2022

Introduction

This annual operational review by the Inspector of the ACT Integrity Commission (the Inspector) is conducted under s 280 of the *Integrity Commission Act 2018* (the Act). It assesses the compliance of the ACT Integrity Commission (the Commission) with the Act for the period 1 July 2021 to 30 June 2022.

The ACT Ombudsman is currently the Inspector of the Commission. The functions of the Inspector, as outlined in s 227 of the Act, include receiving, assessing, and formally investigating complaints about the Commission or its staff.⁴

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.

As noted above in the Inspector's annual report for 2021–22, the Commissioner notified the Inspector of one personal interest under s 31(2)(b) of the Act, and staff of the Inspector undertook 2 inspections of the Commission's conflict of interest register during the reporting period under s 32.

The inspections of the register demonstrated active reporting and consideration of conflicts by staff of the Commission and revealed no matters of concern regarding compliance with the Act.

While the Commissioner's notice of a personal interest under s 31(2)(b) was received by the Inspector outside the reporting period, the Inspector is satisfied the Commissioner provided a reasonable explanation for the delay and does not consider it amounts to non-compliance.

The Inspector has sought further information from the Commission about the management of the potential conflict arising from the Commissioner's declared personal interest, and is awaiting the Commission's response. Accordingly, any further assessment of the Commission's management of this matter will be addressed in the Inspector's 2022–23 annual operational review.

⁴ See s 256(1)(b) of the *Integrity Commission Act 2018*.

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 available, the Inspector is satisfied the Commission and its staff acted within its powers and in compliance with the Act and other relevant laws during 2021–22.

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

During the 2021–22 reporting period, the Inspector made 3 recommendations to the Commission. In 2022–23, the Inspector will monitor the Commission’s implementation of these recommendations.

No other recommendations have been made to the Commission.

Other relevant matters—s 280(2)(d)

During the 2021–22 reporting period, the Inspector sought information from the Commission on a range of matters, including the Commission’s management of investigations. In 2022–23, the Office will continue to engage with the Commission and seek information as needed, to inform the Inspector’s oversight activities.