

Australian Capital Territory

# Integrity Commission Complaint Investigation Guidelines 2019\*

Notifiable instrument NI2019–437

made under the

**Integrity Commission Act 2018, section 264 (Inspector's Complaint Investigation Guidelines)**

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## **1 Name of instrument**

This instrument is the *Integrity Commission Complaint Investigation Guidelines 2019*.

## **2 Commencement**

This instrument commences on the day after notification.

## **3 Inspector's Guidelines**

I make the Inspector's Complaint Investigation Guidelines as set out at schedule 1 to this instrument.

Michael Manthorpe

Inspector of the ACT Integrity Commission

1 July 2019

\*Name amended under Legislation Act, s 60

# **Inspector of the ACT Integrity Commission**

## **COMPLAINT-HANDLING POLICY**

**JULY 2019**

**POLICY NO. 2 2019**

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## Introduction

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

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

## Purpose

The purpose of this policy is to outline, at a high level, how the Inspector will receive and manage complaints about the Commission. It is designed to ensure that complaints are handled fairly, efficiently and effectively.

### Note:

- This policy is the *Complaint Investigation Guidelines* which the Act enables the Inspector to publish under s 264(4). More detailed procedural instructions will be made available to support staff managing the complaints function.

## Who can make a complaint?

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

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

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

### Note:

- There is no requirement for complainants to identify themselves. Anonymous complaints are specifically provided for under the Act.
- If a complaint is made anonymously, there is, however, no obligation for the Inspector to keep the complainant informed of the progress of the complaint or about any investigation.<sup>6</sup>

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<sup>1</sup> See s 23(1)(a) of the *Integrity Commission Act 2018* (ACT).

<sup>2</sup> Ibid ss 9, 12 and 57.

<sup>3</sup> Ibid s 3(1)(e).

<sup>4</sup> Ibid s 256(1)(b).

<sup>5</sup> Ibid s 257(1).

<sup>6</sup> Ibid s 259(3)(a).

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- Where complaints are not anonymous, we will protect the identity of people making complaints where practical to do so, and consistent with our obligations under relevant privacy laws, secrecy provisions and/or confidentiality obligations.

## What can they complain about?

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

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

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

## How is a complaint made to the Inspector?

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

This is consistent with s 258 of the Act which provides for:

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

### **Note:**

- The complaints procedures will outline situations where a verbal complaint will be accepted by the Inspector to ensure our services are accessible to vulnerable members of the ACT community.
- Complaints can subsequently be withdrawn under s 268 of the Act.

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<sup>7</sup> Ibid s 257.

<sup>8</sup> Ibid ss 47 and 256.

<sup>9</sup> Ibid s 258(1).

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## Managing Commission complaints

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

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

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

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

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

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

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

Complaints will be considered in jurisdiction if they:

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

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

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

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

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

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<sup>10</sup> Ibid ss 257(1) and 256.

<sup>11</sup> Ibid s 257(2).

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

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

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

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

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

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

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

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

#### *Restrictions on notification*

The above does not apply if:

- the complaint was made anonymously
- the complainant has asked in writing not to be kept informed
- if keeping a complainant informed:
  - is likely to endanger a person
  - is likely to adversely affect an investigation by the Commission or by our Office
  - would identify someone who has given information about the matter
  - could enable someone else to identify someone who gave information about the matter
  - would be contrary to a law in force.

Any written communications with the complainant must include a non-disclosure notice and a statement of permitted disclosure - see [Non-disclosure notices](#) below.

### Step 5: Notify the Commission

As a general rule, we will notify the Commission that we are investigating a complaint within **three working days** of the decision to investigate, unless the investigation is likely to be prejudiced by informing the Commission.<sup>16</sup>

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<sup>12</sup> Ibid s 271.

<sup>13</sup> Ibid s 259(1)(a).

<sup>14</sup> Ibid s 259(1)(b).

<sup>15</sup> Ibid s 259(1)(c).

<sup>16</sup> Ibid s 264(2).

## Step 6: Investigate the matter

Under s 264 of the Act, the Inspector or delegated officer may investigate a complaint in order to assess the conduct raised in the complaint, or any other relevant conduct. The Act also provides for the Inspector to do 'anything necessary and reasonable to investigate a complaint'.<sup>17</sup>

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

- section 266 requirements regarding the conduct of the investigation and access to records
- section 269 powers to ask for information, documents and other things.

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

### Important:

- Under s259(1)(b), complainants must be kept informed of progress with the investigation of their complaint **at least once every three months**, unless the restrictions on notification outlined above apply.
- If an investigation is discontinued at any stage, subject to above, the complainant must also be notified and given reasons for the decision.<sup>19</sup>
- Any written communications with the complainant **must** include a non-disclosure notice and a statement of permitted disclosure – see *Non-disclosure notices* and *Statement of permitted disclosures* below.
- Under s 265 of the Act, the Inspector can conduct an own motion investigation, even if no complaint has been made.

## Step 7: Consider available outcomes

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

## Step 8: Advise complainant of outcome

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

### Important:

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

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<sup>17</sup> Ibid s 264(3).

<sup>18</sup> Ibid s267.

<sup>19</sup> Ibid s 259(1)(d).

<sup>20</sup> Ibid s 259(1)(e).



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

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

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

### Note:

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

## Non-disclosure notices

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

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

### *Prohibited disclosures*

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

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

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<sup>21</sup> Ibid s 272.

<sup>22</sup> Ibid s 273.

<sup>23</sup> Ibid s 263.

<sup>24</sup> Ibid ss 260(1)(b) and 260(1)(c).

<sup>25</sup> Ibid s 262.

### ***Permitted disclosures statement***

Under s 261 of the Act, disclosures are generally permitted in the following circumstances.

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

Disclosures are also permitted if the information:

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

## **Referrals to other entities**

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

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

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

- law enforcement agency
- prosecutorial body.

## **Internal review**

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

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

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

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## Records

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

## Review of policy

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