

**ACT Public Sector Standards Commissioner**



**Submission to the Select Committee  
on an Independent Integrity Commission**

	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
SUBMISSION NUMBER	19
DATE AUTH'D FOR PUBLICATION	1/6/17

**May 2017**

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## **ACT Public Sector Standards Commissioner**

### **Submission to the Select Committee on an Independent Integrity Commission**

#### **Introduction**

This submission has been prepared for the Select Committee on an Independent Integrity Commission for the ACT.

It is recognised in the ACT Public Sector (ACTPS) that integrity, ethical behaviour and evidence based decision making is central to effective public administration and the delivery of quality public services. The ACTPS is committed to implementing a strong integrity and ethical framework which is enshrined in ACT public sector legislation, policies and practices.

The ACTPS supports the continuing improvement of these policies and practices to strengthen the accountability and integrity governance framework and decision making processes to ensure that ACT public servants are meeting community expectations and serving Canberrans in an effective and efficient way.

Steps have been taken to continue improving governance processes, whole of government community consultation and engagement, enable the release of government information and the rationale behind government decisions to increase transparency, accountability and integrity in government.

This submission outlines the current integrity-related 'oversight' bodies and their roles in the ACT, to ensure the Committee has a clear and full understanding of the existing integrity mechanisms. In a small jurisdiction, it will be important that any new proposed structure takes account of these roles.

A diagram of the ACT Integrity Framework is provided at [Appendix A](#).

A summary of the entities covered in this submission against the powers of a 'Model Commission' outlined in the Select Committee's issues paper, is provided at [Appendix B](#).

## Legislative Assembly and Parliamentary Integrity Bodies

Over time there have been a number of developments within the Legislative Assembly integrity framework. In 2013, Members of the Legislative Assembly re-committed to a Code of Conduct and the re-appointment of the Ethics and Integrity Adviser, the establishment of a new Commissioner for Standards and then from 1 January 2015, the development of a new central lobbyist register. All of these mechanisms have assisted in supporting a rigorous and robust integrity framework.

### Assembly Ethics and Integrity Adviser

The June 1999 Report of the Select Committee on the Report of the Review of Governance supported the adoption of a code of conduct and the appointment of an ethics commissioner for all Members of the ACT Legislative Assembly. This was referred to the Legislative Assembly's Standing Committee on Administration and Procedure, along with a discussion paper titled 'A Parliamentary Ethics Adviser for the ACT Legislative Assembly'.

A Code of Conduct for Members of the Legislative Assembly was agreed by the Legislative Assembly on 25 August 2005, on a motion of the then Speaker (Continuing Resolution 5).

Under Continuing Resolution 6A in 2008, the Legislative Assembly agreed to the Speaker appointing an Ethics and Integrity Adviser for members. The role of the Ethics and Integrity Adviser is to:

1. *Advise Members of the Legislative Assembly, when asked to do so by that Member, on ethical issues concerning the exercise of his or her role as a Member (including the use of entitlements and potential conflicts of interest).*
2. *[Give] advice that is consistent with any code of conduct or other guidelines adopted by the Assembly, but does not include the provision of any legal advice<sup>1</sup>.*

The Ethics and Integrity Adviser is required to: keep appropriate records of advice given to members; maintain the confidentiality of information; meet with the Standing Committee

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<sup>1</sup> Continuing Resolution 6A, Ethics and Integrity Adviser, ACT Legislative Assembly, [http://www.parliament.act.gov.au/in-the-assembly/standing\\_orders/continuing-resolution-6a](http://www.parliament.act.gov.au/in-the-assembly/standing_orders/continuing-resolution-6a)

on Administration and Procedure at least annually; and provide yearly reports to the Legislative Assembly.

In 2012 the Ethics and Integrity Adviser reviewed the Code of Conduct for Members of the Legislative Assembly with agreement from the Standing Committee on Administration and Procedure and the then Speaker<sup>2</sup>. This was subsequently updated in 2013 with a new Code of Conduct. At the time, the Legislative Assembly also agreed to the appointment of an independent Commissioner for Standards to investigate complaints about non-compliance with the Code of Conduct, on referral from the Speaker.

Under the existing continuing resolution, the advisory role of the Ethics and Integrity Adviser is to provide advice and counsel when the Adviser is asked to do so by a relevant Member.

### **Legislative Assembly Commissioner for Standards**

Other than motions of no-confidence and general scrutiny within the Legislative Assembly, there was no mechanism available for impartial external review of alleged breaches of the Code of Conduct prior to 2013.

To address this deficiency, the Commissioner for Standards was introduced in 2013 to provide a review mechanism and as an appropriate avenue for complaints against Members of the Legislative Assembly. Under Continuing Resolution 5AA, the Legislative Assembly resolved to establish and appoint a Commissioner for Standards.

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<sup>2</sup> Review of the Code of Conduct for Members of the Legislative Assembly, Ethics and Integrity Adviser, ACT Legislative Assembly, [http://www.parliament.act.gov.au/data/assets/pdf\\_file/0008/369980/ReviewCodeofConduct-July\\_2012.pdf](http://www.parliament.act.gov.au/data/assets/pdf_file/0008/369980/ReviewCodeofConduct-July_2012.pdf)

The important requirements of the continuing resolution are as follows:

- (4) *The functions of the Commissioner for Standards are to:*
  - (a) *investigate specific matters referred to the Commissioner—*
    - (i) *by the Speaker in relation to complaints against Members; or*
    - (ii) *by the Deputy Speaker in relation to complaints against the Speaker;*
  - (b) *report to the Standing Committee on Administration and Procedure.*
- (5) *Members of the public, members of the ACT Public Service and Members of the Assembly may make a complaint to the Speaker about a Member’s compliance with the Members’ Code of Conduct or the rules relating to the registration or declaration of interests.*
- (6) *If the Speaker receives a complaint about a Member pursuant to paragraph (5) and the Speaker believes on reasonable grounds that—*
  - (a) *there is sufficient evidence as to justify investigating the matter; and*
  - (b) *the complaint is not frivolous, vexatious or only for political advantage;**[the] Speaker may refer the complaint to the Commissioner for investigation and report<sup>3</sup>.*

A complaint made against the Speaker is considered by the Deputy Speaker and may be subsequently referred to the Commissioner for Standards. The same requirements apply to the Speaker when considering a complaint against the Deputy Speaker.

Consistent with the requirements of the Continuing Resolution 5AA, the Commissioner for Standards has developed a protocol for investigating complaints against members<sup>4</sup> along with some associated guidance material<sup>5</sup>.

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<sup>3</sup> Continuing Resolution 5AA, Commissioner for Standards, ACT Legislative Assembly, [http://www.parliament.act.gov.au/in-the-assembly/standing\\_orders/continuing-resolution-5aa](http://www.parliament.act.gov.au/in-the-assembly/standing_orders/continuing-resolution-5aa)

<sup>4</sup> Protocol for investigation complaints against member, Commissioner for Standards, ACT Legislative Assembly, [http://www.parliament.act.gov.au/data/assets/pdf\\_file/0006/715452/Commissioner-for-Standards-Protocol-for-investigation-complaints-against-Members-March-2015.pdf](http://www.parliament.act.gov.au/data/assets/pdf_file/0006/715452/Commissioner-for-Standards-Protocol-for-investigation-complaints-against-Members-March-2015.pdf)

<sup>5</sup> Complaining about a Member of the Legislative Assembly, ACT Legislative Assembly, [http://www.parliament.act.gov.au/data/assets/pdf\\_file/0006/634776/Commissioner-for-Standards-Fact-Sheet-May-2015.pdf](http://www.parliament.act.gov.au/data/assets/pdf_file/0006/634776/Commissioner-for-Standards-Fact-Sheet-May-2015.pdf)

The initial extensive consultation on the introduction of the Commissioner for Standards role saw robust debate within the Legislative Assembly for the preferred referral method of complaints. Given the anticipated frequency of allegations of breaches of the Code, it was determined that a referral vetting mechanism be implemented. The mechanism was that complaints would be received initially by the Speaker who, after assessing the complaints, would refer the complaints to the Commissioner for Standards if it was appropriate to do so.

However, since the Commissioner of Standards has been appointed, there have only been a small number of referrals. Given the sensitive nature of the complaints, there has been much discussion publicly and within the Legislative Assembly on the complaints handling process and the referral pathway. This resulted in the Legislative Assembly agreeing, on 16 February 2017, to the Standing Committee on Administration and Procedure inquiring into and reporting on strengthening the Commissioner for Standards' role by streamlining the referrals process for complaints against Members of the Legislative Assembly.

The Standing Committee on Administration and Procedure has asked for comments on the current process. It is understood that the ACT Government has provided a submission into this inquiry supporting a more direct referral model which would increase independence and impartiality while eliminating any potential political interference and bias. Under a more direct referral model, complaints could be referred to the Commissioner for Standards by anyone (members of the public, members of the ACT Public Service and Members of the Legislative Assembly) and not be limited to referrals from the Speaker (or Deputy Speaker). There would still be a need to assess whether there is sufficient evidence available to warrant an investigation and consider whether the complaint is not frivolous, vexatious or only for political advantage. The Commissioner for Standards is well placed to undertake this role.

Under the existing continuing resolution, the Commissioner is currently appointed by the Speaker with cross party consultation. Further consideration could be given on the appointment process of the Commissioner to strengthen independence and impartiality.

### **ACT Register of Lobbyists**

On 5 June 2014, the Standing Committee on Administration and Procedure presented a report titled 'Lobbyist Regulation', which provided advice to the Legislative Assembly about the possible application of a lobbyists register for the ACT. On 5 August 2014, the Legislative Assembly agreed to a motion of establishing a register of lobbyist in the ACT, together with the ACT Lobbying Code of Conduct which became Continuing Resolution 8AB.

In order to promote the benefits of lobbying and lobbying activities, the Legislative Assembly established the ACT Register of Lobbyists, which provides information to the Government and the public, on who is undertaking lobbying activities in the Territory with the ACT Government and who lobbyists represent in conducting their business.

From 1 January 2015 only lobbyists who are registered on the ACT Register of Lobbyists are able to contact a Member of the Legislative Assembly, their staff and contractors, or ACT Public Sector employees for the purpose of lobbying on behalf of a third party.

The ACT Register of Lobbyists ensures that a strong integrity framework is in place to support the work of the Members of the Legislative Assembly and to maintain community trust in the parliamentary processes. Lobbying is a legitimate activity and plays an important part of our democracy. It is the community's expectation that lobbying activities are carried out ethically and in a transparent way. The establishment of the ACT Register of Lobbyists supports good government, strengthens our parliamentary processes and improves accountability which Canberrans expect.

Under Continuing Resolution 8AC, the ACT Lobbyist Regulation Guidelines were agreed by the Legislative Assembly on 25 September 2014.

The Clerk of the Legislative Assembly is the Registrar of Lobbyists which has responsibilities under the ACT Lobbying Code of Conduct and the ACT Lobbyist Regulation Guidelines relating to the maintenance of the Register and registration decisions.

Under the 2016 Parliamentary Agreement for the 9<sup>th</sup> Legislative Assembly, there is a commitment to expand the scope of the ACT Lobbyist Register, through the Legislative Assembly process, to capture in-house government relations staff, industry associations, and project management liaison officers and companies, and conduct a review of its effectiveness after one year. As addressing lobbying concerns is a key policy lever to maintain community trust in the parliamentary processes, it is important that there is agreement on the definition of terms and threshold issues that expand the scope of the register. Ensuring stakeholders' fair and equitable access to the decision-making process balances policy debates and helps create more effective policies. Equity of who should abide by the standards and prohibitions is essential in order to improve probity, integrity and accountability in decision-making in the Territory.

## **Integrity within the ACT Public Sector**

The ACT Public Sector (ACTPS) is committed to upholding integrity and has in place a solid governance framework that ensures that integrity is valued and maintained across the organisation.

In 2016 the *Public Sector Management Act 1994 (PSM Act)* was amended to further embed the ACTPS Code of Conduct, Values and Signature Behaviours and establish an independent office of the Public Sector Standards Commissioner.

### **ACTPS Code of Conduct**

The ACTPS is committed to fostering and embedding positive workplace cultures that reflect the single enterprise structure established under the Head of Service in 2011. The ACTPS Code of Conduct<sup>6</sup> was released in October 2012 and comprises a suite of mutually reinforcing initiatives designed to address the standards, values, behaviour and integrity of our work and our people. The ACTPS values were introduced in the *Public Sector Management Standards* in July 2012.

The ACTPS Values and Signature Behaviours define the ACTPS as an organisation and are the touchstones by which employee behaviour is measured. The ACTPS Values and Signature Behaviours are Respect, Integrity, Collaboration and Innovation.

Under the ACTPS Signature Values and Behaviours, integrity means:

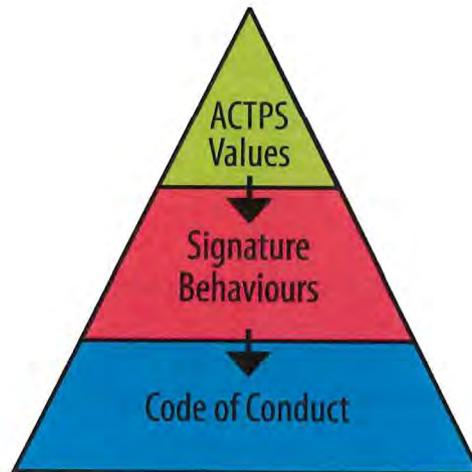
*... being apolitical, honest, dependable, and accountable in our dealings with ministers, the Parliament, the public and each other. It means recognising achievement, not shirking uncomfortable conversations and implies a consistency in our dealings with others.*

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<sup>6</sup> ACT Public Service, Code of Conduct – Respect, Integrity, Collaboration, Innovation:  
[http://www.cmd.act.gov.au/data/assets/pdf\\_file/0017/363230/codeofcond2012\\_2013edit\\_wtables.pdf](http://www.cmd.act.gov.au/data/assets/pdf_file/0017/363230/codeofcond2012_2013edit_wtables.pdf)

The ACTPS Code of Conduct expands and gives life to the ACTPS Values and Signatures Behaviours.

The below diagram outlines the hierarchy and relationships between the ACTPS Values, Signature Behaviours and the Code of Conduct:



Directorates and other public sector agencies arrange ACTPS ethics, values and governance training for their staff. The aim of this training is to provide employees with an understanding of the ACT Public Service's expectations in relation to workplace values and behaviour. By understanding and applying these values and behaviours, employees are well positioned to engage with their colleagues and customers, and to contribute to the sustainment of a positive workplace culture. All new ACTPS employees undertake online induction training which covers the ACTPS Respect, Equity and Diversity Framework, Code of Ethics, Code of Conduct and the Performance Framework. The induction aims to develop participants' skills in modelling and encouraging in others the highest standards of ethical conduct. This induction is complemented by directorate-specific induction arrangements including promoting ethical standards, assisting staff to avoid conflicts of interest, and modelling and fostering integrity of conduct.

## **ACTPS Integrity Policy including Senior Executives Responsible for Business Integrity and Risk (SERBIRs)**

The ACT Public Sector Integrity Policy<sup>7</sup> (2010) sets out the broad whole of government framework on the promotion of integrity across the sector. Directorates/agencies are required to implement the Integrity Policy to enhance integrity, to reduce the risk of fraud and corruption, as well as assist staff to make decisions in the reporting of fraud, corruption and other criminal offences affecting the Directorate. All staff have a responsibility to ensure that integrity risk assessments are conducted and where necessary fraud and corruption prevention strategies are implemented.

Part 2.3 (fraud and corruption) of the *Public Sector Management Standards 2006* (the PSM Standards), outlines the requirements for directorates/agencies to pursue a systematic approach to the promotion of integrity and control fraud and corruption.

Each Director-General (or Chief Executive) has a number of financial responsibilities under the *Financial Management Act 1996*. To meet these responsibilities, Director-General (or Chief Executive) financial instructions are established to ensure the efficient and effective financial management of the directorate/agency. Staff across the ACTPS are required to follow the principles and processes outlined in these financial instructions. Some of the Financial Instructions provide a step-by-step approach to the processes for enhancing integrity and are designed to assist staff in making decisions in relation to the reporting of fraud, corruption, and other criminal offences affecting the Government.

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<sup>7</sup> ACT Public Service, Integrity Policy (2010)

[http://www.cmd.act.gov.au/data/assets/pdf\\_file/0006/187179/integritypolicy2010.pdf](http://www.cmd.act.gov.au/data/assets/pdf_file/0006/187179/integritypolicy2010.pdf)

Under the ACTPS Integrity Policy, the role of 'Senior Executive Responsible for Business Integrity and Risk' (SERBIR) is established. The SERBIR has primary responsibility for the implementation of the ACTPS Integrity Policy with some associated functions outlined in the Financial Instructions. SERBIRs are appointed by each directorate/agency to manage the integrity requirements under the PSM Standards which includes implementing integrity strategies and processes to detect and investigate fraud and corruption. In addition, the SERBIR deals with:

- Risk Assessment and Fraud and Corruption Prevention Planning;
- Reporting of Fraud and Corruption; and
- Dealing with Allegations.

Fraud and corruption against directorates or other parties is not tolerated in any form or degree across the ACTPS. Staff are encouraged to exercise diligence, probity and the highest level of ethics in fulfilling their duties and in all dealings. Regular training on ethics, risk management, fraud and corruption detection and prevention is undertaken across the ACTPS. The ACTPS Integrity Policy is currently being updated.

On an annual basis, directorates are required to report on fraud, risk and corruption for inclusion into the State of the Service Report. The purpose of reporting on fraud prevention and risk management in this way is to:

- articulate any changes in the overall levels of fraud, corruption and integrity across the ACTPS;
- alert the Head of Service and Public Sector Standards Commissioner (PSSC) to emerging risks; and
- summarise whole of government efforts to address fraud, risk and corruption.

According to the 2016 State of the Service Report:

- all directorates<sup>8</sup> reported that they had appointed a SERBIR throughout the 2015-16 reporting period;
- all directorates reported that a formal risk assessment had been undertaken in accordance with the Risk Management Standard during 2015-16;
- seven directorates identified that they had plans to review the risk assessment process within their directorate for the 2016-17 financial year. These directorates noted the timings and event triggers of these reviews included:
  - directorate restructure (including formation of a new directorate);
  - risk assessment processes updated on a bi-annual basis; and
  - review of risk assessment processes through an Audit Committee, or external organisation.
- all eight directorates had a current Fraud and Corruption Plan that had been reviewed in the past two years.

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<sup>8</sup> At the time of the 2016 State of the Service Report, there were eight directorates: Capital Metro Agency; Chief Minister, Treasury and Economic Development Directorate; Community Services Directorate; Education Directorate; Environment and Planning Directorate; Health Directorate; Justice and Community Safety Directorate; and Territory and Municipal Services Directorate.

Directorates were asked to rate a number of integrity risks within their directorate. The results of which are shown in Graph 1 below:

**Graph 1: Integrity Risks 2015-16**

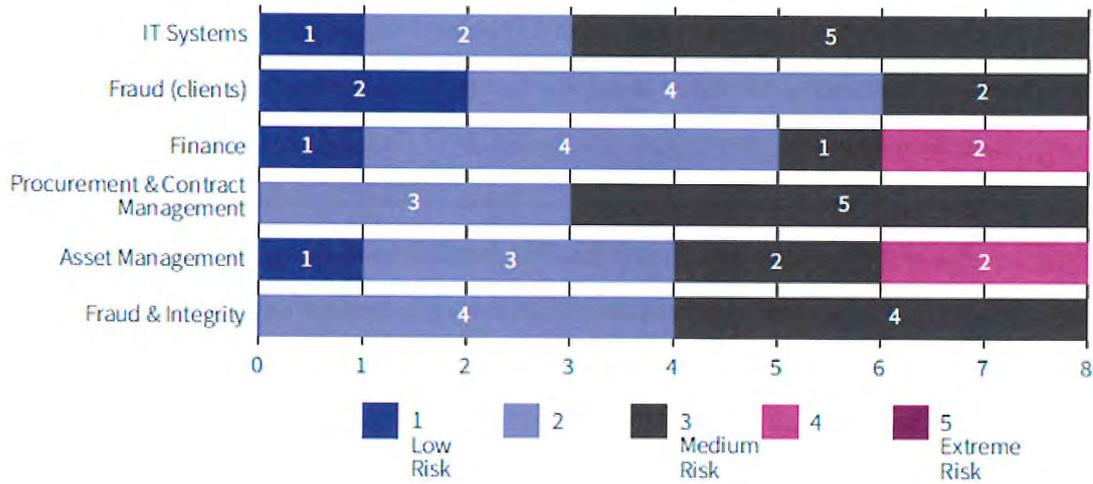


Table 1 below outlines the integrity risks for 2013-15 to 2015-16.

**Table 1: Integrity Risks 2013-14 to 2015-16**

	Low Risk 1 or 2			Medium Risk 3			4 or Extreme Risk 5		
	2013-14	2014-15	2015-16	2013-14	2014-15	2015-16	2013-14	2014-15	2015-16
Fraud & Integrity	8	8	4	6	6	4	1	0	0
Asset Management	8	6	4	5	7	2	2	1	2
Procurement & Contract Management	7	7	3	3	4	5	5	3	0
Finance	10	10	5	3	4	1	2	0	2
Fraud (clients)	13	7	6	1	7	2	1	0	0
IT Systems	6	8	3	8	5	5	1	1	0

All respondents; 2013-14 = 15, 2014-15 = 14, 2015-16 = 8

Table 1 above represents the risk ratings against different categories of business risk as reported by directorates for the last three financial years.

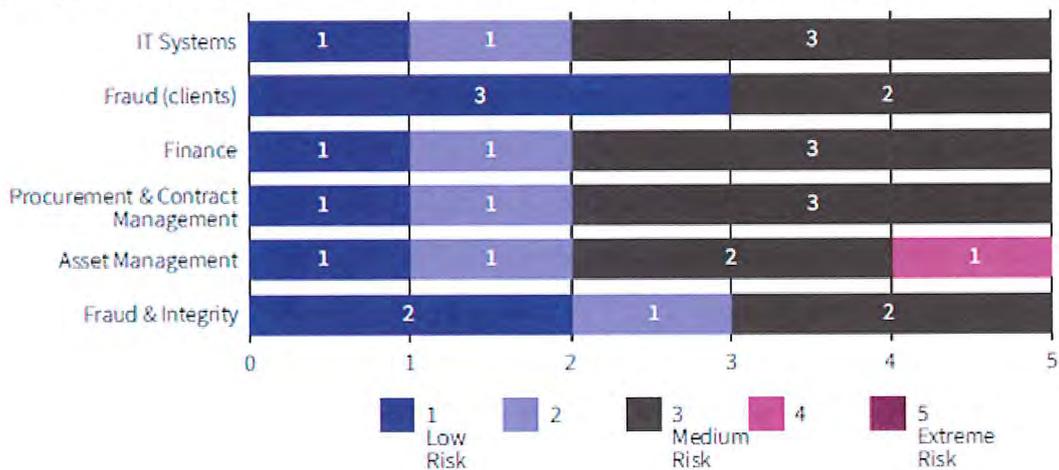
For the period 2013-14 to 2015-16:

- client fraud is the most frequently recorded response in the low risk category;
- IT Systems is the most frequently recorded response in the medium risk category;
- and
- procurement and contract management is the most frequently recorded response in the highest risk category.

For the 2016 State of the Service Report, seven ACTPS entities (outside the ACTPS directorates)<sup>9</sup> were asked whether a formal risk assessment had been undertaken during 2015-16 in accordance with the Risk Management Standard, with four entities responding yes.

In the 2015-16 reporting period, five entities reported that they had a current Fraud and Corruption Plan, and when asked if they had reviewed their Fraud and Corruption Plan within the past two years, all five entities reported yes. ACTPS entities were asked to rate a number of integrity risks within their entity. Five entities provided a response to this question, the results of which are shown in Graph 2.

**Graph 2: Integrity Risks identified by ACT Public Sector Entities 2015-16**



<sup>9</sup> At the time of the 2016 State of the Service Report, there were seven ACTPS entities: Office of Legislative Assembly, ACT Auditor-General's Office, ACT Electoral Commission, Calvary Health Care ACT, Canberra Institute of Technology, Cultural Facilities Corporation and Director of Public Prosecutions.

As shown in Graph 2 above, for the 2015-16 reporting period:

- client fraud was the most frequently recorded response in the low risk category;
- IT Systems, finance and procurement and contract management were the most frequently recorded responses in the medium risk category; and
- asset management was the most frequently recorded response in the highest risk category.

Risk management training is provided to staff across the ACTPS through the ACTPS Training Calendar and the ACT Insurance Authority (ACTIA). ACTIA also conduct tailored risk management training at the request of business units.

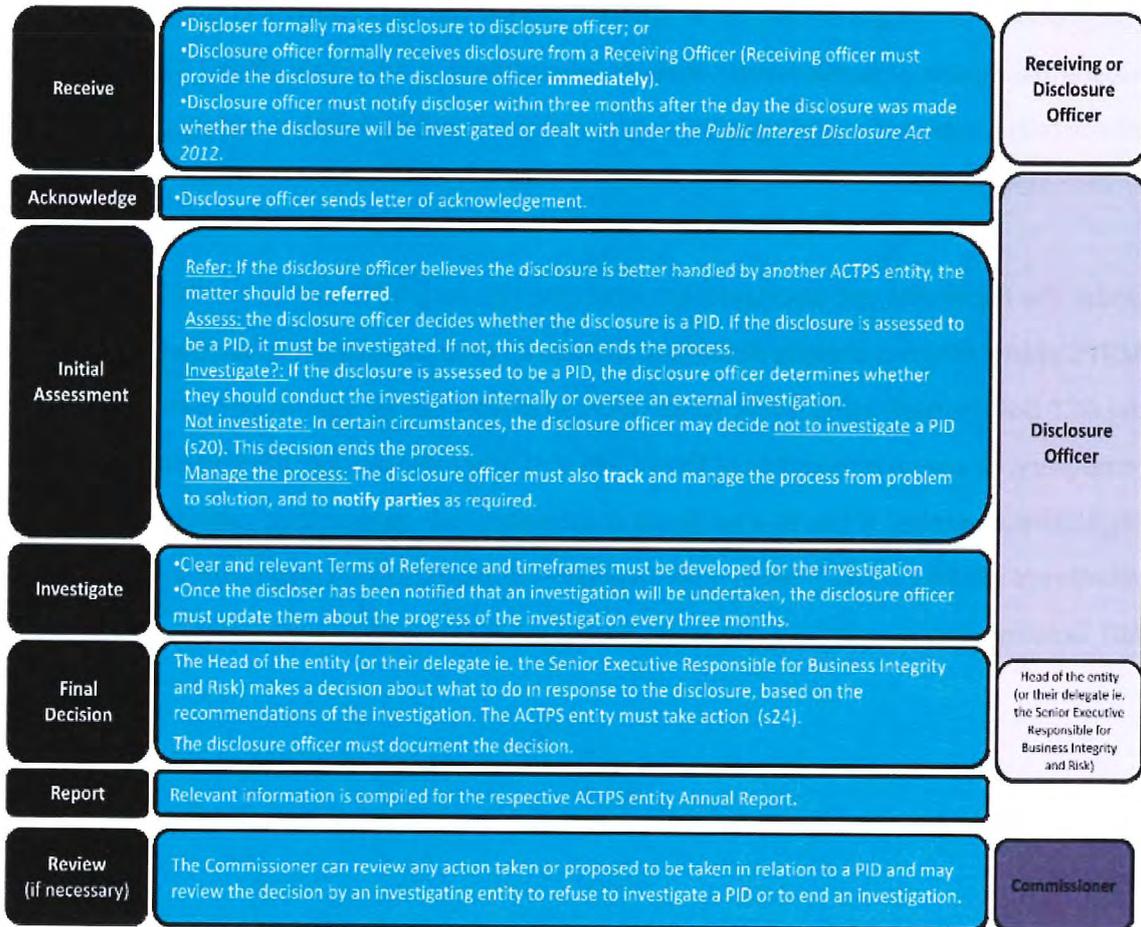
## **Public Interest Disclosures**

In the ACT a disclosure or complaint becomes a Public Interest Disclosure (PID) when it is about disclosable conduct which includes conduct that could amount to a criminal offence, give grounds for disciplinary action or amount to a serious malfeasance of public office (e.g. substantial misuse of public funds), maladministration that adversely affects a person's interests in a substantial and specific way, or danger to public health or safety of the environment.

Under the *Public Interest Disclosure Act 2012* (the PID Act), a PID can be made about an ACTPS entity, which is broadly defined to include anyone performing a function on behalf of the ACT Government using public funds. PID complaints can be against permanent, temporary, or casual employees of the ACTPS and other entities including Members of the Legislative Assembly. It can also be about contractors, sub-contractors, consultants and volunteers working on ACT Government sponsored projects or on programs funded by the ACT Government.

The procedure which is used when a PID has been received in the ACTPS can be viewed at Figure 1:

**Figure 1: Public Interest Disclosure Procedure**



Within the ACTPS, the Public Sector Standards Commissioner (PSSC) has broad oversight of all PIDs and directorates/agencies are required to notify the PSSC of any PID that is received. Other bodies that PIDs can currently be made to, include the Auditor-General and the ACT Ombudsman.

Under s28 of the PID Act, the PSSC has the following functions:

- a) *To give advice about public interest disclosures;*
- b) *To monitor the management of public interest disclosures by public sector entities;*
- c) *To review the way in which public sector entities investigate and deal with public interest disclosures generally, or particular public interest disclosures;*
- d) *To ensure just outcomes for people who make public interest disclosures, including by preventing and remedying the effect of detrimental action against people because of disclosures;*
- e) *To undertake, or coordinate the undertaking of, education and training programs about public interest disclosures.*

The PSSC also has legislative obligations under the *Safety, Rehabilitation and Compensation Act 1988 (Cwlth)*, *Freedom of Information Act 1989*, *Legal Aid Act 1977* and the *Legislative Assembly (Office of the Legislative Assembly) Act 2012*.

### **Public Sector Standards Commissioner**

The Public Sector Standards Commissioner (PSSC) is responsible for promoting, upholding and providing advice about public sector values and principles. The role of the PSSC is to ensure that ACT Public Servants uphold the highest ethical standards, complying with respect, equity and diversity principles and obligations under section 9 of the *Public Sector Management Act 1994* (the PSM Act). The role of the PSSC focuses on fostering a positive workplace culture and ensuring a high standard of behaviour is maintained across the ACTPS.

The PSSC is established under the PSM Act and PSM Standards and is a part-time office appointed by the Chief Minister. The PSSC has jurisdiction over ACT Public Servants and Public Sector Members. The provision of advice from the PSSC may include systemic or strategic recommendations or observations gained as part of an investigative process into

the misconduct of ACT Public Servants or complaints/public interest disclosures which have been received<sup>10</sup>.

Under s144 of the PSM Standards, the PSSC has the following functions:

- a) *To conduct investigations –*
  - i. *About a matter declared by the Chief Minister in the way prescribed; and*
  - ii. *Under an industrial instrument.*
- b) *To provide advice to the Chief Minister about matters arising from an investigation conducted by the PSSC;*
- c) *In connection with an investigation conducted by the PSSC – to promote and provide advice about public sector values, the public sector principles and the conduct required under the PSM Act.*

### **Professional Standards Unit**

The Professional Standards Unit (PSU) is responsible for investigating workplace complaints and allegations of misconduct across the ACTPS. The PSU is centrally located within the Workforce Capability and Governance Division in the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) and works under the auspices of the PSSC. Decisions on the investigation are usually made by a delegate of the PSSC.

The PSU was established in December 2015 following a whole of government review of misconduct investigations. Under this model, it is mandatory for all misconduct investigations to be managed centrally by the PSU except in cases where extenuating circumstances exist. This allows for streamlined investigation practices and ensures consistency in the investigative process across the ACTPS. The PSU also conduct continuous analysis for quality improvement purposes.

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<sup>10</sup> Changes to the PSM Act in 2016 established the PSSC to be independent of the ACTPS and the recruitment process for this part-time role is currently being undertaken.

Based on the information available, it appears that the ACTPS is unique and there is no other Australian jurisdiction that has a centralised professional standards investigation model. Generally, because of their size, investigations are managed by each relevant state/territory public service department.

The PSU undertakes misconduct investigations in accordance with the provisions set out in the relevant ACTPS Enterprise Agreement, the PSM Act and the PSM Standards for general staff as well as ACTPS executives.

The PSM Act and Enterprise Agreements are two employment-related industrial instruments that intersect in relation to investigations. General staff misconduct investigations are undertaken against the requirements of the Enterprise Agreements, while the PSM Act and Standards apply for senior executive service investigations.

### **Misconduct**

Within the ACTPS, under the relevant Enterprise Agreement, misconduct includes any of the following:

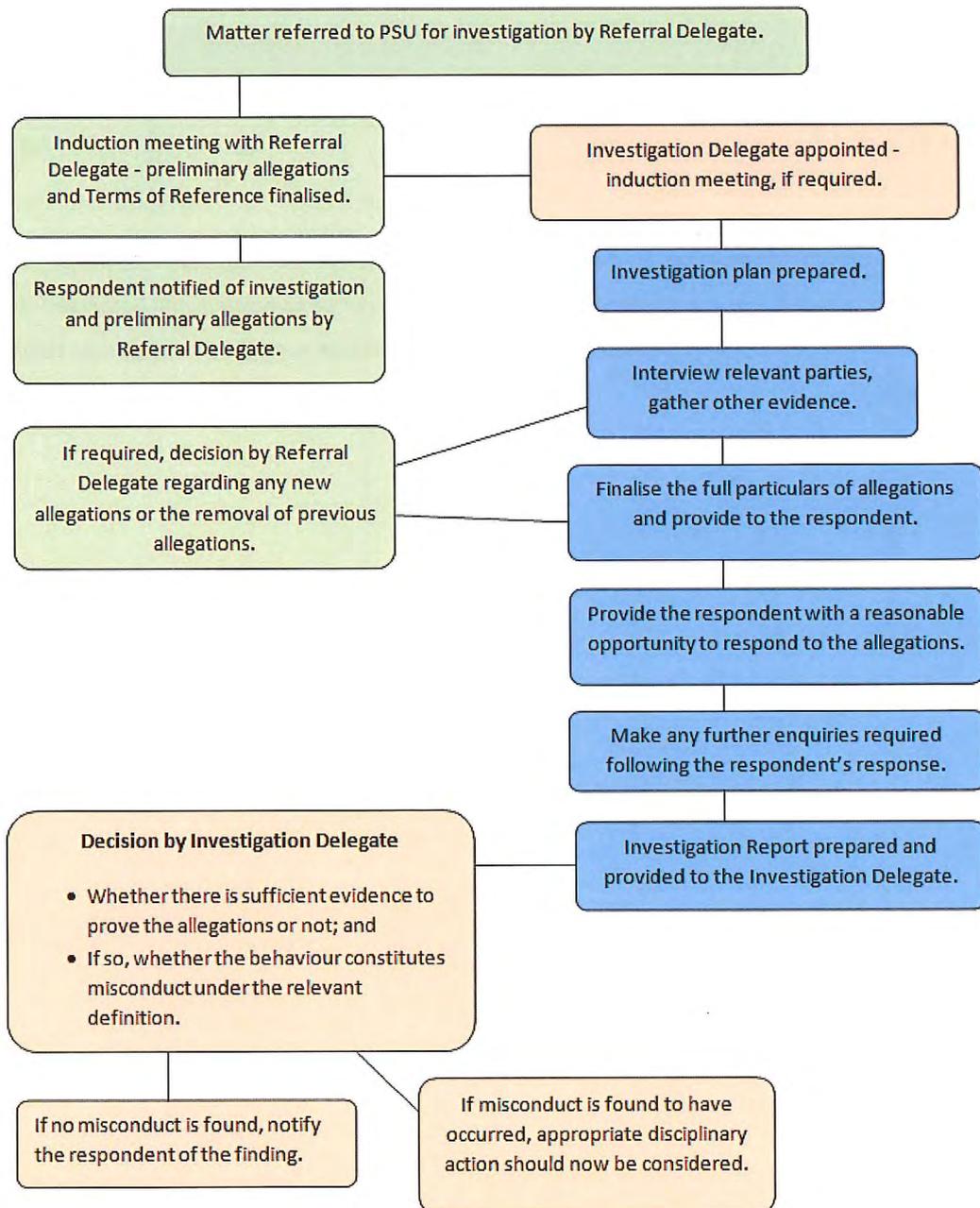
- a) the employee fails to meet the obligations set out in section 9 of the PSM Act 1994 (this includes bullying and harassment or discrimination);*
- b) the employee engaged in conduct that has brought, or is likely to bring, the Directorate or the ACTPS into disrepute;*
- c) a period of unauthorised absence and the employee does not offer a satisfactory reason on return to work;*
- d) the employee is convicted of a criminal offence or where a court finds that an employee has committed an offence but a conviction is not recorded, taking into account the circumstances and seriousness of the offence, the duties of the employee and the interests of the ACTPS and/or of the Directorate;*
- e) the employee fails to notify the Head of Service of criminal charges in accordance with the process outlined in clause H11; or*

*f) the employee makes a vexatious or knowingly false allegation against another employee.*

Misconduct of such a nature that, if proven, is considered to be inconsistent with the continuation of that employee's employment may be classified as serious misconduct and may result in the employee's dismissal.

The investigation process as undertaken by the PSU is outlined in Figure 2:

**Figure 2: Professional Standards Unit Investigation Flowchart**



The PSU, on behalf of the PSSC, conducts a number of misconduct, complaint or PID investigations in any given financial year.

Table 2 below outlines the number of investigations conducted in the last three financial years:

**Table 2: Professional Standards Unit Investigations Conducted 2014/15 – 2016/17**

<b>Financial Year:</b>	<b>2014/15</b>	<b>2015/16<sup>11</sup></b>	<b>2016/17 (YTD<sup>12</sup>)</b>
Referrals Received	31	64	57
Misconduct Investigations Completed	32	42	59

*Note: due to the length of investigations and when referrals are received, investigations may not be completed within the same financial year (e.g a referral received in April may not be completed until December). This can result in discrepancies between the number of referrals received and the number of investigations completed in any given year.*

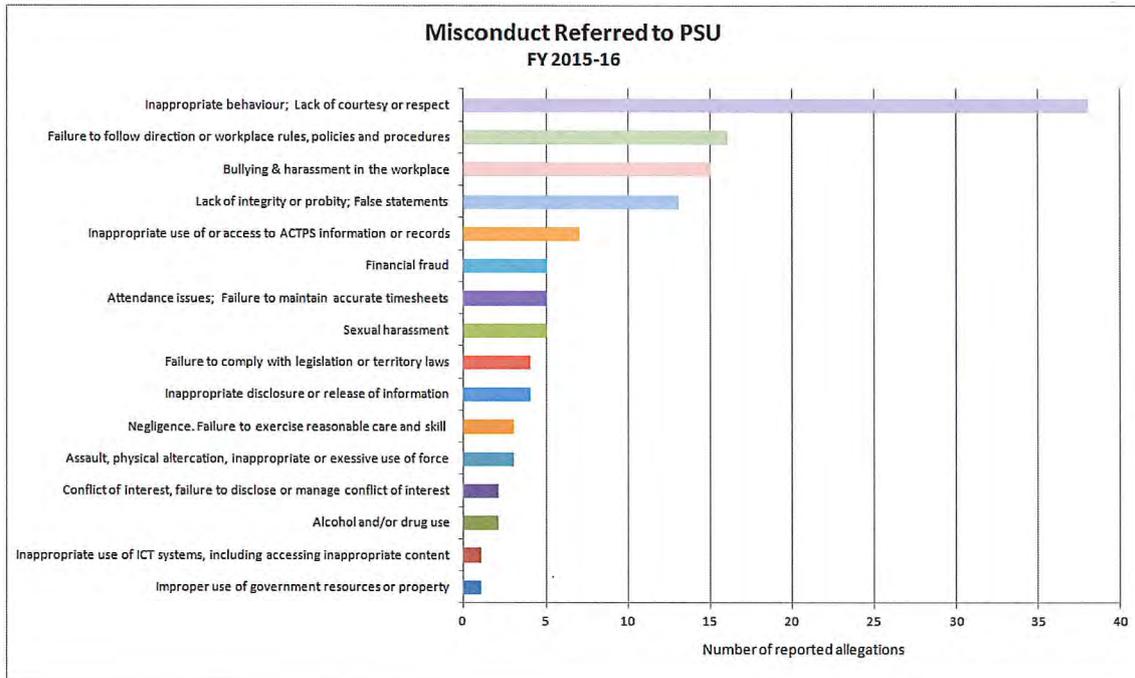
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<sup>11</sup> Figures for the part-year 2015/16 and 2016/17 reflect that all investigations are now undertaken through the PSU. These are not comparable with the non-centralised model which existed before PSU was established in December 2015.

<sup>12</sup> These figures are up until 30 April 2017.

Graph 3 shows the breakdown of investigations undertaken in the 2015-16 financial year by the type of investigation conducted:

**Graph 3: Professional Standards Unit: Investigations by Type 2015-16**



As can be observed from Graph 3, the majority of investigations the PSU oversees are misconduct or HR investigations associated with inappropriate behaviour and not corruption related investigations which may fall within the scope of an Integrity Commission. The majority of investigations involve respondents holding positions below the senior officer grade level (e.g. non-managerial staff). If there is evidence to suggest corrupt activity or a possible criminal offence, the matter is referred to ACT Policing, or the Director of Public Prosecutions where a crime has been committed.

## **Powers**

Under s110 of the PSM Standards, the PSSC has the following powers when conducting an investigation:

- a) *Inspect, or enquire into, the operations of any part of the service;*
- b) *Enter, at any time, premises (other than residential premises) occupied by an officer or employee in connection with the officer's or employee's employment;*
- c) *Access records about employment in the service;*
- d) *Require a person to appear before the PSSC to give evidence by:*
  - i. *Taking an oath;*
  - ii. *Answering a question;*
  - iii. *Producing a stated document or other relevant thing.*

## **Referral lines**

Under the PSM Act, the PSSC may conduct investigations on referral from the Chief Minister. The PSSC can also receive referrals from ACTPS agencies and directorates to conduct misconduct and other investigations.

Under the PID Act, *any person* suspecting a misuse of public resources or with information that indicates questionable activity relating to the work of an entity can make a disclosure. As such the PSSC may receive a PID complaint from any person including ACTPS employees, contractors, other entities and members of the public.

Currently the PSSC also maintains informal relationships with the Auditor-General and the ACT Ombudsman with respect to the co-ordination of PIDs across the service.

## Reporting requirements

The PSSC is required to report any issues arising from investigations to the Chief Minister.

The PSSC also prepares an annual report which is incorporated into the annual ACTPS State of the Service Report. This report provides statistics on the number of complaints and PIDs received by the PSSC for that reporting year.

In recent years, the number of complaints referred to the PSSC has been decreasing which can be observed in Table 3:

**Table 3: Public Sector Standards Commissioner Complaints Received 2013/14 – 2016/17**

Complaints	2013/14	2014/15	2015/16	2016/17 (YTD <sup>13</sup> )
Alleged bullying and harassment	9	3	2	0
Alleged misuse of public funds/influence	0	0	2	1
Referred for further Investigation	0	1	4	1
Other	25	15	9	12
<b>Total Complaints received</b>	<b>34</b>	<b>19</b>	<b>17</b>	<b>14</b>

Generally, misconduct investigations and complaints relate to poor decision-making often due to staff capability issues, errors in judgement or poor administrative practices. This lessens the integrity and confidence in the ACTPS. It is rare for decisions to have been made for private benefit. Occasionally complainants do not accept that government policy has changed and perceive that corruption is at hand.

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<sup>13</sup> These figures are up until 30 April 2017.

Table 4 outlines the number of alleged PID referrals received by the PSSC in the last three financial years:

**Table 4: Public Sector Standards Commissioner Public Interest Disclosure Referrals 2014/15 – 2016/17**

Referrals	2014/15	2015/16	2016/17 (YTD <sup>14</sup> )
Alleged criminal conduct	3	1	0
Referred to directorate/entity for clarification or investigation	4	7	5
Other/Various	5	4	9
<b>Total alleged PID notifications</b>	<b>12</b>	<b>12</b>	<b>14</b>

*Note: the total number of PIDs received as outlined in Table 4 include PIDs made directly to the PSSC and notification of PIDs received by ACTPS agencies, the Auditor-General and the ACT Ombudsman.*

Of the numbers outlined in Table 4, the number of alleged PIDs received by the Auditor-General and the ACT Ombudsman over the last 2 financial years can be viewed as Table 5:

**Table 5: Alleged PIDs received by Auditor-General and ACT Ombudsman between 2014/15 – 2015/16**

Financial Year	2014/15	2015/16
Auditor-General	3	4
ACT Ombudsman	1	2

As can be observed from the tables above, only a minority of alleged PID referrals are classified as ‘alleged criminal conduct’ which is likely to meet the threshold for referral to an Integrity Commission. Generally PIDs that fall within the realm of alleged criminal conduct relate to breaches of law such as misuse of public funds or maladministration. During an investigation, if the PSSC suspects criminal conduct has occurred, the PSSC will refer the case to ACT Policing.

<sup>14</sup> These figures are up until 30 April 2017.

It should be noted that the ACTPS refers any suspected criminal conduct to ACT Policing; not all cases will reach threshold for a PID (i.e. the threshold for a PID involves a substantial misuse of public funds).

### **Independent Reviewer – Government Campaign Advertising**

The Independent Reviewer – Government Campaign Advertising (the Independent Reviewer) is established under the *Government Agencies (Campaign Advertising) Act 2009* (the Advertising Act). Under s13 of the Advertising Act, the Independent Reviewer has the following functions:

- 1. To review proposed government campaigns to ensure campaigns comply with the Advertising Act;*
- 2. To report to the responsible person and the Legislative Assembly the result of each review.*

Under the Advertising Act, the Independent Reviewer must review government campaigns that are likely to exceed \$40,000 or government campaigns that are of a sensitive subject matter to ensure compliance with the Advertising Act.

The [Government Agencies \(Campaign Advertising\) Guidelines 2010 \(DI2010-134\)](#) were established under the Advertising Act and provide government agencies with the basic principles to be observed. The Chief Minister, Treasury and Economic Development Directorate has responsibility over the application and operation of these Guidelines.

The Independent Reviewer is appointed by the Chief Minister with approval of two-third majority resolution of the Legislative Assembly.

The Independent Reviewer plays an important role in ensuring that government advertising is not used for political party purposes. Under the Government Agencies (Campaign Advertising) Guidelines, something is 'party political' if it is designed to promote, advance or

enhance a political party's reputation, rather than informing the public on government policies, programs and services.

## **Integrity in the Public Sector (Justice Related Entities)**

There are a number of justice related entities with investigatory or review powers under their enabling legislation. Consideration of these entities and their relationships or interaction with a proposed Integrity Commission will need to be undertaken as part of the Select Committee's deliberations.

### **1. ACT Civil and Administrative Tribunal**

The ACT Civil and Administrative Tribunal (ACAT) was established under the *ACT Civil and Administrative Tribunal Act 2008* (the ACAT Act) and has jurisdictional purview over a number of areas including:

- a) civil disputes claiming amounts of not more than \$25,000;
- b) applications for declarations of debts of not more than \$25,000; and
- c) reviews of administrative decisions.

ACAT has various functions under multiple Acts including:

- appeals for review of administrative decisions (various authorising laws);
- appointment of a guardian or financial manager (*Guardianship and Management of Property Act 1991*);
- complaints about the supply of energy and water by ACT utilities providers (*Utilities Act 2000*);
- discrimination complaints referred by the Human Rights Commission (*Human Rights Act 2005*);
- disputes about common boundaries/fences (*Common Boundaries Act 1981*);
- orders related to mental health assessments, treatment and care (*Mental Health Act 2015*);

- various orders, including to terminate a lease, enforce compliance with terms and resolve bond disputes (*Residential Tenancies Act 1997*);
- orders relating to assessments of damage to a unit titled building (*Unit Titles Act 2001*);
- various orders, including to compel a party's action or inaction, require compliance with the Act, affect resolutions of a body corporate or executive committee meeting, vary or repeal strata rules and orders allowing access to certain records or information (*Unit Titles (Management) Act 2011*); and
- various orders, including to allow renovation or alteration of fixtures/fittings, about the effect of village rules (i.e legal validity, unjust or harshness), requiring an operator to maintain or replace capital items and to approve amendments to recurrent charges (*Retirement Villages Act 2012*).

### **Powers**

ACAT has various powers as prescribed under authorising law as well as the following under the ACAT Act:

- a) where the Act or authorising law does not prescribe a procedure, ACAT may decide its own procedure in relation to a particular matter in a hearing or step in dealing with an application (s23);
- b) ACAT may make rules in relation to the practice and procedure of the ACAT and its register (s24);
- c) ACAT may inform itself in any way it considers appropriate in the circumstances (s26);
- d) where appropriate, ACAT may take all reasonably practicable steps to resolve matters arising in an application before the application is heard (s31).

### **Referral lines**

ACAT can receive applications from any persons for civil disputes and administrative appeal applications. They can also receive referred discrimination complaints via the Human Rights Commission.

## **Reporting requirements**

Section 51 of the ACAT Act requires the President of ACAT to report any disclosures of Tribunal member interests and following actions to the Attorney-General within 31 days of the end of a financial year.

## **2. Boards of Inquiry**

Section 5 of the *Inquiries Act 1991* (the Inquiries Act) allows the Executive to appoint one or more people as a Board of Inquiry to inquire into a matter stated in the instrument of appointment.

A Board of Inquiry has the power to hold public hearings and require a person to appear to give evidence, take an oath, answer a relevant question or produce a stated document or other relevant thing. A Board of Inquiry may delegate any of its functions with written consent of the Chief Minister. Section 18(c) of the Inquiries Act allows a Board to do whatever it considers necessary or convenient for the fair and prompt conduct of the inquiry.

A Board of Inquiry must submit its report to the Chief Minister, either on the date fixed for submission or as soon as practical after the completion of its inquiry. The Chief Minister may present a copy of a report or part of a report submitted to the Legislative Assembly. If the Chief Minister does not publish a Board's report or present a copy to the Legislative Assembly, the Chief Minister must provide a written explanation to the Legislative Assembly on the first sitting day one month after the report was received.

### **3. Human Rights Commission**

The ACT Human Rights Commission (the HRC) is established under the *Human Rights Commission Act 2005* (the HRC Act) and has legislative obligations under this Act and a range of other operational Acts<sup>15</sup>. The HRC comprises the President and Human Rights Commissioner; the Children and Young People Commission and Public Advocate; the Health Services Commissioner, Disability and Community Services Commissioner and Discrimination Commissioner; and the Victims of Crime Commissioner.

The primary role of the HRC is to resolve complaints and promote rights from all parts of the community about:

- services (including for people with a disability, health services, services for children and young people and services for older people);
- complaints about acts or omissions relating to the Privacy Principles under the Health Records Act including providers refusing to access health records; and
- discrimination complaints.

The Public Advocate's role is to monitor the provision of services for people experiencing vulnerability, and provide oversight in respect of the systems that support and respond to the needs of people experiencing vulnerability.

The Victims of Crime Commissioner (VOCC) advocates for the rights and interests of victims of crime both individually and systemically.

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<sup>15</sup> Legislation applicable to the HRC include: *Human Rights Act 2004*; *Health Records (Privacy and Access) Act 1997*; *Children and Young People Act 2008*; *Corrections Management Act 2007*; *Mental Health (Secure Facilities) Act 2016*; *Mental Health Act 2015*; *Victims of Crime Act 1994*; *Victims of Crime (Financial Assistance) Act 2016*; *Guardianship and Management of Property Act 1991*; *Powers of Attorney Act 2006*; *Family Violence Act 2016*; *Court Procedures Act 2004*; *Domestic Violence and Protection Orders Act 2008*; *Health Practitioner Regulation National Law (ACT)*; *Health Practitioner Regulation National Law (ACT) Act 2010*.

Under the HRC Act, the HRC has the following functions:

- a) Consideration of complaints (effectively an investigation);
- b) Conciliation of complaints (a statutory form of mediation);
- c) Report to the Attorney-General on systemic matters relevant to jurisdiction;
- d) Promote service improvements;
- e) Provide government and community education; and
- f) Jointly considers complaints with Australian Health Practitioner Regulation Agency in relation to registered health practitioners.

The HRC also has functions under:

- the *Human Rights Act 2004*, including to:
  - a. Review the effect of laws (and facilities) on human rights; and
  - b. Seek to intervene in court proceedings involving human rights;
- the *Mental Health Act 2015*, including to:
  - c. Intervene in court proceedings and represent the interests of vulnerable parties in those proceedings;
  - d. Monitor service systems for people experiencing vulnerability; and
  - e. Be notified of parties with legal disabilities in certain legal proceedings and act as litigation guardian (Public Advocate);
- The *Victims of Crime (Financial Assistance) Act 2016*, including to:
  - f. Promote the interests of victims of crime; and
  - g. Administer the Victims Financial Assistance Scheme; and
- the *Mental Health (Secure Facilities) Act 2016*, including to:
  - h. Visit and inspect closed environments and related records such as segregation orders;
  - i. Receive data on care and protection action, allegations and care plans regarding children and young people.

The HRC and Commissioners in the HRC may also have legislative functions under other operational Acts.

### **Powers**

Under the HRC Act, the HRC can:

- a) require a person to provide information or produce a document or thing; and
- b) require a person to attend before an interviewer to answer questions relevant to the consideration.

Failure to respond to either a request for information or appear is an offence, although that is subject to the person having a reasonable excuse.

Under the *Corrections Management Act 2007*:

- a) The Human Rights Commissioner, at any reasonable time, has the power to enter and inspect the Alexander Maconochie Centre as well as inspect the register of detainees, strip and body searches register, use of force registers; and record of disciplinary action;
- b) accredited persons (defined to include the Human Rights Commissioner and Public Advocate) are to have adequate opportunities for contact with detainees and to have protected communication with detainees;
- c) the Human Rights Commissioner and Public Advocate have the ability to inspect corrections policies that have been excluded from notification.

Material obtained through the exercise of such powers is largely inadmissible in later civil or criminal proceedings against the person.

Under the *Human Rights Act 2004*, the HRC can:

- a) seek leave to intervene in court proceedings; and
- b) review the impact of laws on human rights.

Under the *Mental Health Act 2015*:

- a) the Public Advocate may inspect certain premises and have access to persons at those premises (mental health facilities);
- b) the Public Advocate must be given a copy of certain documents under the Mental Health Act;
- c) the VOCC and Public Advocate can provide views to ACAT regarding forensic mental health orders;
- d) the Public Advocate and Discrimination Commissioner are entitled to appear and give evidence in proceedings before ACAT involving electroconvulsive therapy; and
- e) appeals from ACAT to the Supreme Court can be made by the Discrimination Commissioner.

The HRC and Commissioners in the HRC may also have legislative powers under other operational Acts.

### **Referral lines**

The HRC can receive referrals from any persons including but not limited to members of the community who believe they have been discriminated against; children and young people; vulnerable members of the community; registered health practitioners; and receivers of services including those relevant to the jurisdiction of the HRC provided by Government.

### **Reporting requirements**

Complaints investigated by the HRC are closed by providing the relevant parties with a final report. The HRC can release a report to anyone.

The HRC, under its own initiative, gives the Minister a written report about any matter of public importance related to the HRC, the HRC's functions or a matter that may be complained about under the HRC Act.

Under the *Human Rights Act 2004*, if the Human Rights Commissioner undertakes a review into the effect of territory law on human rights, the Commissioner can report in writing to the Minister on the results of the review.

#### **4. ACT Official Visitor Scheme**

The ACT Official Visitor Scheme (the OV Scheme) provides a monitoring and complaints system for entitled people in a visitable place, who are dependent on the service provider or accommodation manager supporting them. The ACT has Official Visitors (OVs) for Children and Young People, ACT Health (Mental Health), Corrections, Disability and Housing (Homelessness) who visit people staying in institutions owned, operated or funded by the ACT Government (known as a visitable place). In respect to Corrections and Children and Young People, the OV Scheme also provides for Aboriginal and Torres Strait Islander OVs. OVs aim to safeguard standards of treatment and care and advocate for the rights and dignity of people being treated under operational Acts. The objective of the OV Scheme is to detect and prevent systemic dysfunction in the specified environments.

The OV Scheme is established under the *Official Visitor Act 2012* (the OV Act). OVs are appointed under the respective operational Acts<sup>16</sup> by the Attorney-General for terms of up to three years.

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<sup>16</sup> OVs are appointed under the *Official Visitor Act 2012*; the *Children and Young People Act 2008*; the *Mental Health (Treatment and Care) Act 1994*; the *Corrections Management Act 2007*; the *Disability Services Act 1991*; and the *Housing Assistance Act 2007*.

OVs have the following functions under s14 of the OV Act:

- a) to visit visitable places for the operational Act;*
- b) to report to the operational Minister about visits undertaken on non-complaint visitable places;*
- c) to receive and consider complaints from entitled people, and others, on their behalf;*
- d) to be available to talk with entitled people and anyone else who has a concern about an entitled person or a visitable place; and*
- e) to exercise any other function given to an official visitor under the Act, an operational Act or another territory law.*

The OV Act also establishes the Official Visitor Board (the OV Board) which is responsible for management of the OV Scheme. The OV Board is chaired by the Public Trustee and Guardian and comprises at least one commissioner from the Human Rights Commission and two OVs as elected by the OVs. The OV Board has the following functions under s22C of the OV Act:

- a) to arrange training for official visitors;*
- b) to facilitate interaction between official visitors;*
- c) to arrange for provision of administrative assistance to official visitors; and*
- d) to exercise any other function given to the board under the Act, an operation Act or another territory law.*

## **Powers**

OVs have the following powers under various sections of the OV Act:

- An OV for an operational Act may, at any reasonable time, enter a visitable place for the operational Act following a complaint or at the OV's own initiative.
- They also have the power to inspect records required to be kept by the visitable place and any health records of an entitled person (with the entitled persons' consent).
- It is a criminal offence for a person in charge of a visitable place to refuse or neglect to provide assistance to the OV, or to hinder or obstruct the OV.
- An OV may ask an OV for another operational Act for assistance.

## **Referral lines**

Complaints are dealt with in accordance with complaint guidelines for each operational Act (which are disallowable instruments). Typically the guidelines provide for referral to other oversight and advocacy agencies (e.g. the Public Advocate, the ACT Ombudsman etc).

## **Reporting requirements**

OVs report to their relevant operational Minister about visits undertaken and on non-compliant visitable places. Complaint guidelines also provide for non-compliant places to be reported to the relevant Director-General, the Public Advocate and the OV Board.

OVs report quarterly to their relevant operational Minister but can also be given to the relevant Director-General, Public Advocate and the OV Board. These reports must summarise:

- the number of complaints received by the OV;
- the action taken on the complaints; and
- the number and kinds of matters referred to another investigative entity.

The OV Scheme is expected to be reviewed in 2017 to determine whether it is achieving its aims.

## **5. Inspectorate of Custodial Services (Proposed)**

An Inspectorate of Custodial Services (an Inspectorate) is a Government commitment. The Justice and Community Safety Directorate (JACSD) is progressing work on developing the Inspectorate, an independent statutory body focusing on performance standards in custodial facilities and the rights of people in detention. It is anticipated that the Inspectorate will have jurisdiction over custodial services such as prisons, court transport vehicles, court cells and possibly the youth justice centre.

The proposed powers and functions of an Inspectorate would include:

- a) visiting and examining any correctional centre at any time;
- b) having full access to the records of any correctional centre;
- c) requesting correction officers to attend interview to answer questions and produce evidence relating to any relevant matter;
- d) referring matters relating to a correctional centre to other appropriate agencies for considered action; and
- e) reporting, and making recommendations, to the relevant Minister.

It is likely that the Inspectorate will be able to conduct thematic inspections, possibly hold critical incident review functions and be able to receive referrals from the Minister or a senior public servant with responsibility for the facility.

The Inspectorate could also serve as an element of the ACT's national preventative mechanism (NPM) for the Optional Protocol to the Convention Against Torture (OPCAT). OPCAT establishes a regime for the preventative inspection and monitoring of places of detention by an international, multi-disciplinary group (the Subcommittee on the Prevention of Torture) and by a local statutory oversight body or NPM bodies.

The Commonwealth is facilitating a cross-jurisdictional working group to plan for ratification of the OPACT by December 2017. The Commonwealth has announced that the Commonwealth Ombudsman will coordinate the NPM using a network of state and territory agencies from 1 July 2017, although the NPM is unlikely to be operational until 2020.

## **Judiciary - Judicial Council and Judicial Commission**

The *Judicial Commissions Act 1994* establishes the Judicial Council (the Council) and the Judicial Commission (the Commission). The Judicial Council and Judicial Commission have jurisdictional purview over judicial officers (defined in the legislation as Judges, Associate Judges, Magistrates and Presidential Member of ACAT)<sup>17</sup>.

The Council receives, examines and refers complaints regarding the behaviour or physical or mental capacity of judicial officers. If the Council is satisfied on reasonable grounds that a complaint is wholly or partially substantiated, the Executive must appoint a Commission to examine the complaint.

### **Powers**

Both the Council and a Commission can:

- a) appoint a lawyer to assist it who may examine or cross-examine a witness at a hearing;
- b) the head of Council/presiding member of a Commission may require a person to appear at a hearing to give evidence and/or produce a stated document or other thing relevant to the hearing;
- c) the head of Council may require a witness appearing at a hearing before the Council to give evidence to do one or more of the following:
  - a. take an oath;
  - b. answer a question relevant to the hearing;
  - c. produce a stated document or other thing relevant to the hearing.

The Council is not bound by rules of evidence, but may inform itself of any matter it considers appropriate and do whatever it considers necessary or expedient for the fair and expeditious conduct of the complaint examination.

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<sup>17</sup> Note: there is no jurisdictional purview over the ACAT President however s16 of the Act provides for a Protocol to be developed with the Attorney-General for the ACAT President.

The presiding member of a Commission may issue a search warrant, if there are reasonable grounds, to enter and search a premises and seize things of the relevant kind. The Council or Commission may also request a judicial officer undergo a medical examination.

### **Referral lines**

A Council or Commission can receive a complaint from any person. The Legislative Assembly may pass a resolution to appoint a Commission.

### **Reporting requirements**

The Council reports to the Executive while the Commission reports to the Attorney-General.

## Other Relevant Bodies

There are other independent bodies that are in place relevant to the ACT's existing integrity framework including the Officers of the Legislative Assembly (Ombudsman, Auditor-General and Electoral Commissioners) and the Australian Commission for Law Enforcement Integrity, which provides oversight for ACT Policing in the Australian Federal Police and other law enforcement entities such as Immigration and Border Protection.

## Auditor-General

The Auditor-General for the ACT is established under the *Auditor-General Act 1996* (the AG Act) as an independent officer of the Legislative Assembly, appointed by the Speaker, on behalf of the Territory. Under the AG Act, the Auditor-General has the following functions:

- a) *to promote public accountability in the public administration of the Territory;*
- b) *to audit annual financial statements of the Territory, directorates and territory authorities;*
- c) *to audit the accounts and records in relation to any person, body or thing ascertained in accordance with the regulations; and*
- d) *to conduct performance audits in relation to any person, body or thing ascertained in accordance with the regulations.*

The Auditor-General also has responsibilities under the *Financial Management Act 1996*, the *Public Interest Disclosure Act 2012*, the *Government Procurement Act 2001* and the *Territory-Owned Corporations Act 1990*.

The Auditor-General promotes accountability and performance in the ACT Public Sector through performance and financial audits. The Auditor-General reports to the Legislative Assembly and may do so at any time on matters arising in connection with the exercise of the Auditor-General's functions.

## **ACT Ombudsman**

The ACT Ombudsman is established under the *Ombudsman Act 1989* as an independent officer of the Legislative Assembly. Under an arrangement between the ACT Government and the Australian Government, the Commonwealth Ombudsman also performs the role of the ACT Ombudsman.

The ACT Ombudsman investigates complaints from individuals who have been unable to resolve problems with other ACT Government agencies. The ACT Ombudsman can deal with most complaints involving administrative actions of agencies including requests made under the *Freedom of Information Act 1989* and the *Public Interest Disclosure Act 2012*.

Through the powers given to the Commonwealth Ombudsman, the ACT Ombudsman also has jurisdiction to handle complaints against ACT Policing (Australian Federal Police). The ACT Ombudsman conducts police investigations under the *Crimes (Child Sex Offenders) Act 2005*, the *Crimes (Controlled Operations) Act 2008*, the *Crimes (Assumed Identifies) Act 2009* and the *Crimes (Surveillance Devices) Act 2010*. The ACT Ombudsman is also authorised to investigate complaints about, or issues relating to ACT tertiary public education providers including the Canberra Institute of Technology and the University of Canberra.

## **Committee Considerations**

### **Relationship with current mechanisms**

As part of the inquiry into an Integrity Commission, it would be useful for the Select Committee to consider how an Integrity Commission will operate within the other ACTPS integrity mechanisms and bodies that already exist. In particular, notwithstanding the contribution and effectiveness of the current Legislative Assembly Ethics and Integrity Adviser, given the supporting nature and subsequent advent of the Commissioner for Standards role coupled with the potential establishment of an Integrity Commission, there remains some questions on the ongoing role and scope of the Ethics and Integrity Adviser.

### **Threshold Levels and Jurisdiction**

Critical to the introduction of an Integrity Commission into the existing integrity mechanisms within ACTPS will be the definition of 'corruption' and threshold considerations. The Select Committee is encouraged to carefully consider the definition of corruption, what constitutes serious breaches of integrity and the threshold levels at which an Integrity Commission may be engaged. Further, the Select Committee would need to clearly define the jurisdiction the Integrity Commission could oversee and whether such an entity would deal with complaints at all.

Currently there is no consistent definition of 'corruption' within Australia and state and territory anti-corruption commissions provide their own definitions in their respective legislation. The Transparency International define corruption as 'the abuse of entrusted power for private gain', while the World Bank defines a 'corrupt' practice as the 'offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party'<sup>18</sup>.

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<sup>18</sup> Establishment of a National Integrity Commission (2016), Law Council of Australia

The *Independent Commission Against Corruption Act 1998* (NSW) defines corrupt conduct as:

- a) *any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority; or*
- b) *any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions; or*
- c) *any conduct of a public official or former public official that constitutes or involves a breach of public trust; or*
- d) *any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other persons.*<sup>19</sup>

The *Queensland Crime and Corruption Act 2001* defines corrupt conduct as conduct of a person that:

- a) *adversely affects or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of –*
  - i. *a unit of public administration; or*
  - ii. *a person holding an appointment; and*
- b) *results, or could result, directly or indirectly, in the performance of functions, or the exercise of powers mentioned in paragraph a) in a way that –*
  - i. *is not honest or is not impartial; or*
  - ii. *involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or*
  - iii. *involves a misuse of information or material acquired in or in connection with the performance or functions of the exercise of powers of a person holding an appointment; and*

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<sup>19</sup> *Independent Commission Against Corruption Act 1988* (NSW);  
[http://www.austlii.edu.au/au/legis/nsw/consol\\_act/icaca1988442/s8.html](http://www.austlii.edu.au/au/legis/nsw/consol_act/icaca1988442/s8.html)

- c) *is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and*
- d) *would, if proved, be –*
  - i. *a criminal offence; or*
  - ii. *a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holding of an appointment.*<sup>20</sup>

Under the *Law Enforcement Integrity Commissioner Act 2006* (Cwlth), a staff member engages in corrupt conduct, if the staff member engages in:

- a) *conduct that involves, or that is engaged for the purpose of, the staff member abusing his or her office as a staff member of the agency; or*
- b) *conduct that perverts, or that is engaged in for the purpose of perverting, the course of justice; or*
- c) *conduct that, having regard to the duties and powers of the staff member as a staff member of the agency, involves, or is engaged in for the purpose of, corruption of any other kind.*<sup>21</sup>

Similar definitions of corruption may be useful for application in the ACT.

To ensure appropriate jurisdiction for the proposed Integrity Commission and prevent overlap of integrity bodies within the ACT, there is also merit in establishing a clear definition of ‘public official’.

Noting the Select Committee’s Issues Paper, a ‘public official’ could be defined as government officers, the public service, police, judges and politicians. Consideration may need to be given whether to include magistrates and their staff and Legislative Assembly Member’s staff in the definition of a ‘public official’. If government officers are included in the definition of a ‘public official’, the threshold criteria could be further defined as officers

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<sup>20</sup> *Crime and Corruption Act 2001* (QLD):

<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CrimeandCorruptionA01.pdf>

<sup>21</sup> *Law Enforcement Integrity Commissioner Act 2006* (Cwlth):

[http://www.austlii.edu.au/au/legis/cth/consol\\_act/leica2006419/](http://www.austlii.edu.au/au/legis/cth/consol_act/leica2006419/)

who hold positions with the ability and means to exert influence (e.g. senior executive officers and statutory office holders including boards, committees and tribunals). The majority of other staff across the ACTPS will be covered by existing misconduct or investigation provisions.

As part of the development of possible threshold levels, the Select Committee is encouraged to consider the establishment and operation of Integrity Commissions in other jurisdictions, particularly within Tasmania. The Tasmanian Government highlighted to the Joint Select Committee on Ethical Conduct that some principles were developed to form the basis of its Integrity Commission model. The principles were:

- recognition that prevention is as important as dealing with allegations of unethical behaviour;
- the need to build on existing structures and mechanisms;
- the need for proportionality;
- a cautious approach to strong investigative or coercive powers;
- clarity and consistency about which public bodies are to be covered; and
- independence from the Government of the day<sup>22</sup>.

The matter of considering proportionality in relation to any investigative functions and powers is an important one. The Tasmanian Government uses an example of a junior public official making an unauthorised use of the photocopier which is considered an inappropriate use of public resources. However, if an Integrity Commission were to investigate this matter, this would be considered a disproportionate response when the matter could be dealt with within the existing management or oversight structures<sup>23</sup>.

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<sup>22</sup> Second Reading Speech (2009), Integrity Commission Bill 2009, Parliament of Tasmania, [http://www.parliament.tas.gov.au/bills/Bills2009/pdf/notes/85\\_of\\_2009-SRS.pdf](http://www.parliament.tas.gov.au/bills/Bills2009/pdf/notes/85_of_2009-SRS.pdf)

<sup>23</sup> Ibid.

In 2015, the Joint Standing Committee on Integrity in the Parliament of Tasmania completed a three year review of its Integrity Commission which was a requirement of the enabling legislation. A number of submissions to the Joint Standing Committee raised issues with the investigative functions and powers of the Integrity Commission which fall into the following categories:

- duplication and overlap with functions of other integrity agencies;
- seriousness and proportionality in regards to matters dealt with by the Integrity Commission;
- cost of the model;
- the need for re-investigation in State Service Code of Conduct matters following an investigation by the Integrity Commission; and
- the use of evidence obtained in Integrity Commission investigations in criminal matters<sup>24</sup>.

Proportionality in dealing with complaints is outlined in the enabling legislation, the *Integrity Commission Act 2009*, in Tasmania. However a recent independent review of this legislation considered that the legislation did not provide sufficient guidance on how proportionality could be achieved. Specifically, a submission into the review from Mr Bugg AM QC observes the following:

*"The Act does not give the Board any role in defining the parameters of the Commission's role in dealing with complaints of misconduct (as opposed to serious misconduct) or any capacity to limit the conduct of the Commission within the confines of proportionality and avoidance of duplication which the public and the Parliament were assured of in the Second Reading Speech."*<sup>25</sup>

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<sup>24</sup> Joint Standing Committee on Integrity, Three Year Review – final report (2015), Parliament of Tasmania, p.24 <http://www.parliament.tas.gov.au/ctee/Joint/Reports/Final%20Report%203%20Year%20Review%20-%20Tabled%20version.pdf>

<sup>25</sup> Independent review of the Integrity Commission Act 2009, Report of the Independent Reviewer - The Hon William Cox AC, RFD, ED, QC (2016). [http://www.integrityactreview.tas.gov.au/\\_data/assets/pdf\\_file/0006/347649/Report\\_of\\_the\\_Independent\\_Review\\_of\\_the\\_Integrity\\_Commission\\_Act\\_2009\\_-\\_May\\_20162.PDF](http://www.integrityactreview.tas.gov.au/_data/assets/pdf_file/0006/347649/Report_of_the_Independent_Review_of_the_Integrity_Commission_Act_2009_-_May_20162.PDF)

These are matters worthy of further consideration by the Select Committee within the ACT context.

In relation to the powers of an Integrity Commission, a relevant consideration is the extent to which the new body should have powers to compel information akin to those held by existing statutory bodies in the ACT. These powers are proportionate to ensure a reasonable limitation on human rights, particularly the presumption of innocence. For example, material compelled by the Human Rights Commission can generally not be used against the person in other civil or criminal proceedings.

### **Referral system**

A consideration for the Select Committee is the extent to which an Integrity Commission could refer matters to other existing integrity bodies within the ACT when they have determined that the matter does not meet the definition of corruption and associated threshold criteria. If a high level mechanism exists to examine complaints, often a number of complainants will decide they will complain to the highest authority. Often when allegations are made, it is initially difficult to establish their extensiveness and seriousness. It is only after an initial assessment that a decision may be made that there is a more appropriate alternative mechanism to consider the complaint. The initial assessment process would need to be undertaken as quickly as possible in order for the complainant to understand whether or not such a corruption entity would accept the allegation.

For mechanisms that currently examine misconduct by ACTPS staff, there may need to be an ability to refer complaints to the PSSC and vice versa to an Integrity Commission if established. It would be useful if consideration could be given to establishing a protocol for an Integrity Commission that refers any public service staff-related matters that does not meet the definition of corruption and associated thresholds to the PSSC to enable misconduct or other investigations to be undertaken.

There may be merit in establishing a protocol to refer matters to other existing oversight bodies that fall within their statutory functions (i.e. complaints associated with the financial statements of an entity or accounting irregularities received by an Integrity Commission could be referred to the Auditor-General) to ensure that each matter is handled by the most appropriate body in an efficient and effective way, and vice versa. In developing a referral mechanism it would be desirable to recognise the independence of existing oversight bodies so they may continue to exercise appropriate discretion as to the matters they investigate.

### **Ethics and Integrity Prevention, Education and Capacity Building**

A role for an Integrity Commission could be to foster high standards of behaviour of public officials, aligned with community expectations, with a view to lifting the public trust in our institutions, and trust in the people within the institutions. There could be a role for an Integrity Commission to undertake ethics and integrity education and awareness. A number of the existing Integrity Commissions across Australia already promote ethical behaviour and practices and have a strong educative role across the parliament and government structures.

In determining a role for an Integrity Commission, the Select Committee could explore the role of the Human Rights Commissioner which looks at systemic issues, undertakes awareness raising and promotes better practice in addition to addressing limitations on human rights. Consideration could be given to an Integrity Commission carrying out complementary or similar integrity-related functions.

### **Operating model**

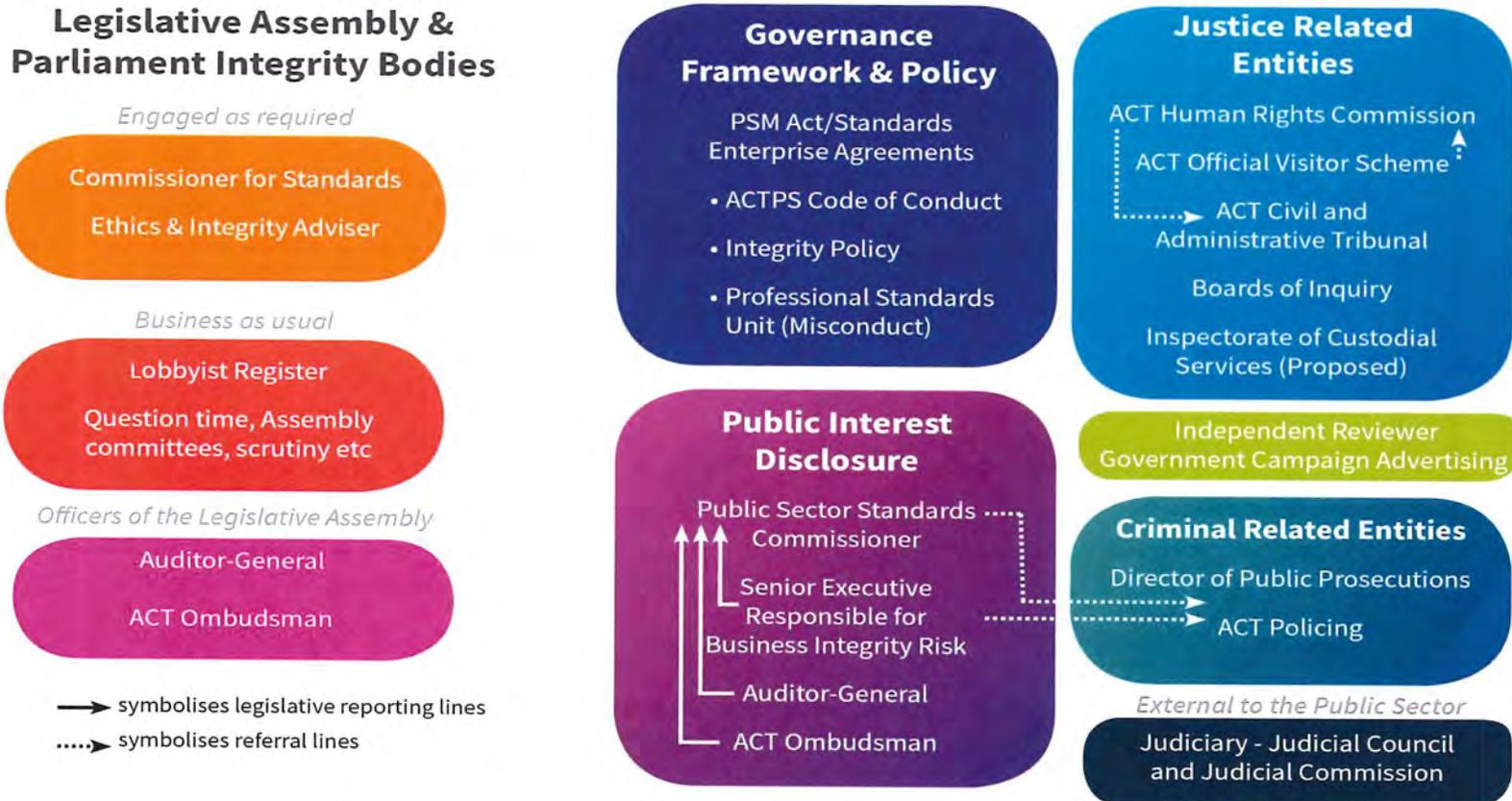
In the development of different operation models for an Integrity Commission, the Select Committee may consider whether a Commission is to be established on a full-time or part-time basis. Given the small size of the ACT and the low number of referrals to the Legislative Assembly Ethics and Integrity Adviser and the Commissioner for Standards, a possible model could be for the Integrity Commission to be stood-up on an as needs basis with staff seconded from other entities as necessary. This is similar to the arrangement used for the Commissioner for Standards.

If an Integrity Commission or other integrity arrangement is established, the Select Committee is encouraged to consider providing a mechanism for reviewing its establishment and operating arrangements, after a period of time, to ensure that it is meeting its obligations and is functioning in the way that it was intended. A similar review process has also been adopted by other jurisdictions.

Appendix A – Diagram of existing integrity framework

# Integrity Entities

## Integrity in the ACT Public Sector



## Appendix B – Breakdown of entities with respect to powers of a ‘Model Commission’ outlined in the Select Committee’s issues paper

Entity	Own motion investigations	Compel attendance	Holds public hearings	Warrants to search properties and seize evidence	Engage in covert tactics	Directly investigate the most serious matters	Make disciplinary decisions and manage a mediation	Conduct research and risk reviews	Engage in ethics training	Prosecute complainants who are patently vexatious
PSSC	No	Yes	No	No	No	Yes	Yes	Yes	Yes	No
Commissioner for Standards	No	No – however the Commissioner may request documents or answers to questions	No	No	No	Yes	No	No	Yes	No
Ethics and Integrity Adviser	No	N/A	N/A	No	No	N/A	N/A	No	Yes	N/A
Independent Advertising Reviewer	N/A	N/A	N/A	N/A	N/A	No	No	N/A	N/A	N/A

Entity	Own motion investigations	Compel attendance	Holds public hearings	Warrants to search properties and seize evidence	Engage in covert tactics	Directly investigate the most serious matters	Make disciplinary decisions and manage a mediation	Conduct research and risk reviews	Engage in ethics training	Prosecute complainants who are patently vexatious
ACAT	Yes	Yes	Yes	No	No	No	Yes - in relation to people who are licensed or registered under an authorising law	No	No	No - ACAT can only dismiss or strike out applications or parts of applications that are frivolous or vexatious
Boards of Inquiry	No	Yes	Yes	Yes - the Chairperson may issue search warrants which authorise seizure of relevant things	No	Depends on inquiry's terms of reference	No	No	Depends on inquiry's terms of reference	No
HRC	Yes	Yes	Not provided for in legislation although related to powers to compel attendance	No	No	Yes	Yes – in relation to health practitioners jointly with AHPRA. Although not strictly disciplinary and depending on their terms, formal recommendations may have disciplinary themes. In jointly considering complaints, if the two bodies cannot agree, the relevant board must be to take the most serious action recommended	Yes – the HRC's role is to improve services	Yes	No – but the HRC must close complaints that are 'the frivolous, vexatious or not made honestly'

Entity	Own motion investigations	Compel attendance	Holds public hearings	Warrants to search properties and seize evidence	Engage in covert tactics	Directly investigate the most serious matters	Make disciplinary decisions and manage a mediation	Conduct research and risk reviews	Engage in ethics training	Prosecute complainants who are patently vexatious
Official Visitors	Yes	Yes – indirect power to enter visitable place and it is an offence to fail to answer any question by an official visitor	No	No	No	No	No	No	No	No
Inspectorate of Custodial Services (TBA)	TBA, likely Yes	TBA, likely Yes	TBA	TBA	TBA	TBA	TBA – however will not be able to manage a mediation program	TBA, likely Yes	TBA	TBA, likely No
Judicial Council and Judicial Commission	No	Yes	Yes	Yes	No	Yes	Yes	No	Yes – The Council has an obligation to provide information about complaint handling	No – but may dismiss or discontinue a complaint

