



Response of the ACT Integrity Commission to Questions on Notice raised in the hearing of the Standing Committee on Justice and Community Safety on Thursday 25 February 2021

Question 1: Reports referred to external entities (page 26 of Annual Report 2019-20) (QTON JACS 14)

The Commission referred six corruption reports to another entity under s. 70(b)(i) and s. 107 of the *Integrity Commission Act 2018* in the 2019-2020 reporting period. All six referrals were to the Public Sector Standards Commissioner.

The Commission's Annual Report incorrectly stated that seven corruption reports had been referred to another entity. With respect to a seventh corruption report, the legislatively mandated consultation process for referrals had occurred in the reporting period, however, the referral itself did not occur until the next reporting period. This discrepancy was identified in the course of the Commission preparing its response to this question on notice. The Commission will issue a corrigendum to correct the relevant references in its Annual Report for the 2019-2020 reporting period.

Question 2: Appeal mechanisms for Commission decision to dismiss a report; avenues for judicial review (QTON JACS 15)

The *Integrity Commission Act 2018* (the Act) provides for the making of "corruption complaints" in ss 58 to 59. These may be made by a member of the public either directly or indirectly (via a "relevant entity"). In certain circumstances, the head of a public sector entity or an SES member is obliged to notify the Commission of any matter suspected on reasonable grounds to involve serious corrupt conduct or systemic corrupt conduct: s 62. Notifications must also be made by a member of the Legislative Assembly who also suspects such conduct by another member of the Legislative Assembly or the staff of a member: s 63.

The Act provides, in Div 3.1.3 of Part 3.1 for the dismissal, referral or investigations of complaints or reports. Dismissal is required under s.71 in certain circumstances. Although the Commissioner is empowered under s 53 to delegate his or her powers in relation to dismissal, no such delegation has yet been made so that all dismissals are in fact made by the Commissioner.

There is no legal impediment to a decision by the Commissioner to review a dismissal but the procedure presently in place is that no review will take place unless the informant provides additional, significant information justifying a review. Where a complaint has been dismissed, the complainant must be informed of the decision and the grounds for it: s 72(1). The complainant is also informed that the decision can be reconsidered if new and significant information is provided.

The Act does not provide for any appeal from the decision of the Commissioner to dismiss a complaint. Nor is there a legal basis for judicial review of such a decision for the reason, essentially, that a complainant has no relevant legal interest in the decision.

A complaint under s 257 may be made to the Inspector about the exercise of the function to assess a complaint. Without limiting the grounds, such a complaint may be made on the basis that the decision was contrary to law, unreasonable, unjust, oppressive or improperly discriminatory, based on improper motives, constituted an abuse of power or was otherwise improper. However, the Inspector has no power either to change the decision of the Commissioner or substitute a different decision.