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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

**ACT Integrity Commission Special Report Operation Luna - Part One
Government Response**

**Presented by
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Minister for Skills and Training
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Background

On 23 June 2022 the ACT Integrity Commission ('Commission') announced it had decided to investigate the circumstances surrounding the awarding of over \$8.5 million in consultancy contracts by the Canberra Institute of Technology (CIT) to entities associated with Mr Patrick Hollingworth, namely ThinkGarden and Redrouge Nominees Pty Ltd. The Commission named the investigation 'Operation Luna'.

On 27 June 2024 the Commission presented to the Speaker of the ACT Legislative Assembly a Special Report titled 'Special Report - Operation Luna (Part One) ('the Report') in accordance with section 213 of the *Integrity Commission Act 2018* (IC Act). This Report was prepared pursuant to s 206 of the IC Act and addresses the conduct of the former Chief Executive Officer (CEO) of the CIT, Ms Leanne Cover, and the former Chair of the CIT Board, Mr Craig Sloan, in relation to performance of duties of disclosure to the CIT Board and to the responsible Minister regarding significant matters connected to certain contracts, (noting there were changes to the ministerial title over time, but referred to as the Minister for Training in this response).

This is the first report of the Commission that relates to Operation Luna. In its Report, the Commission concluded that Ms Cover engaged in serious corrupt conduct as it is defined under section 10 of the IC Act.

Section 215 of the IC Act requires that;

- a) if a special report is presented to the Legislative Assembly under section 213; and
- b) the special report made a finding of serious or systemic corrupt conduct in relation to an ACT public service entity,

The responsible Minister of that entity must, within four months of the report's presentation, present a response to the Legislative Assembly.

This Response is provided in accordance with s215 of the IC Act. Importantly, Operation Luna is an ongoing investigation and accordingly this response is confined to the matters examined and conclusions reached in the Report.

The Government notes that on 7 June 2022, the Minister for Skills also referred the matter of the CIT contracts to the Auditor General by way of an amendment to a motion of the Legislative Assembly. The Auditor General subsequently undertook Performance Audit – Activities of the Government Procurement Board, Report No.5/2023 released on 20 July 2023. This report included a case study of the same CIT procurement proposals and contracts also considered by the Integrity Commission in Operational Luna. The findings and recommendations of the Performance Audit were formally responded to by the ACT Government, with all recommendations agreed, and subsequently amendments were made to the *Government Procurement Amendment Act 2024* to enact certain recommendations that required a legislative response. This response to the Integrity Commission's Special Report does not duplicate the response to the Auditor General's Performance Audit which can be read separately.

Introduction

This is the first report of the Commission to contain an adverse finding against a public official. Specifically, this relates to Ms Cover's disclosure to the CIT Board (Board) of certain important or significant matters connected to the contracts with entities associated with Mr Hollingworth.

There are a range of other matters referenced within the Report that the Commission notes require continued investigation. Given the Report only makes findings on the conduct of Ms Cover and Mr Sloan, the ACT Government awaits any future findings or recommendations on other aspects relating to the awarding of contracts by the CIT to entities associated with Mr Hollingworth.

Integrity Commission's findings

Ms Leanne Cover (former CEO of the CIT)

The Commission found that Ms Cover engaged in serious corrupt conduct. Serious corrupt conduct is defined in section 10 of the IC Act as corrupt conduct that is likely to threaten public confidence in the integrity of government or public administration. Corrupt conduct is defined in section 9 of the IC Act and paragraphs (a) and (b) must be satisfied. First, the person's conduct must be conduct that could constitute a criminal offence, a serious disciplinary offence, or reasonable grounds for dismissal or termination. Second, the conduct must also satisfy paragraph 9(1)(b), which includes (but is not limited to) conduct that constitutes the exercise of functions that is not honest or impartial, constitutes a breach of public trust, or constitutes a misuse of information.

Regarding Ms Cover, the Commission found;

'...the conduct of the CEO in concealing from the Board matters in relation to the procurement of the fifth and sixth contracts could have constituted "reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of, a public official" within the meaning of s 9(1)(a)(iii). The lack of candour in the response forwarded to the Minister by the Chair on 5 March also constituted an independent instance of conduct within s 9(1)(a)(iii). ...'¹

'...Ms Cover's conduct also constituted dishonest conduct within the meaning of s 9(1)(b)(i) and, also, constituted a "breach of public trust" within s 9(1)(b)(ii)(A) and/or "the misuse of information or material acquired ... in the course of performing ... [her] official functions" within s 9(b)(ii)(B).'²

'Her corrupt conduct adversely impacted the exercise by the Board of its supervisory function (as provided by s 77(1)(c) of the FM Act [*Financial Management Act 1996*]... Accordingly, this conduct was "likely to threaten public confidence in the integrity of government or public administration". It follows that Ms Cover was guilty of serious corrupt conduct within s 10 of the IC Act.'³

¹ ACT Integrity Commission, '*Operation Luna – Special Report (Part One)*', page 271.

² ACT Integrity Commission, '*Operation Luna – Special Report (Part One)*', page 271.

³ ACT Integrity Commission, '*Operation Luna – Special Report (Part One)*', page 273.

Government Response

The ACT Government accepts the Commission's findings in relation to Ms Cover's conduct. The Report provides a detailed factual chronology of events underpinning these findings. It includes extracts of testimony and analysis weighing the probative value accorded to explanations given by those examined. The report details the statutory obligations that were breached relating to appropriate candour, transparency, and honesty required of the CEO. These breaches by the CEO were made in the context of requests for specific consideration by the Minister for Training, and his office, about the need for adherence to procurement process, probity, and value for money in contemplating resourcing of the CIT change management program.⁴

The *Financial Management Act 1996* (FM Act) provides that matters relating to Ms Cover's employment as CEO was the responsibility of the CIT Board. The ACT Government relies on a Territory Instrumentality Board to ensure that an appropriate individual is appointed to the role of CEO, and that the CEO fulfills their functions to the appropriate standard. The CIT Board's visibility and awareness of matters relating to Ms Cover's fulfilment of her duties as CEO is central to the ability of the Board to be effective in discharging those obligations.

The Commission found that in relation to Ms Cover's reporting to the Board, a pattern of conduct had developed such that the Board could not apply the appropriate level of scrutiny to the awarding of the relevant contracts.⁵ The report found that the only plausible explanation for non-disclosure to the board of important matters was intentional concealment for the purpose of avoiding, if possible, the risk that the Board might prevent the sixth contract from eventuating.⁶ The Report notes this risk became all the more likely had the Board been aware of the actual terms of the sixth contract in respect of what it described as the very large and highly questionable payment in advance.⁷ The Government accepts the findings about the CEO's concealment of information from the Board and the impact this had on the Board's effectiveness in oversight of relevant matters.

It is important that a Minister remains at arm's length from the day-to-day operations of a Territory Instrumentality, particularly concerning the selection of a preferred tenderer through a procurement. The *Canberra Institute of Technology Act 1987* (CIT Act) provides the Minister for Training only some ability to provide broad overall guidance on how the CIT meets its functions. In particular, the CIT Act authorises the Minister to give a direction to the CIT in relation to the exercise of its functions. On 18 August 2022, the Minister for Training issued the *Canberra Institute of Technology Ministerial Direction 2022 (No 1)* (the Direction) to the CIT. The Direction requires the CIT's reporting to the Board to include procurements for goods and services of over \$1 million, and procurements for consultancies of over \$500,000. The Direction is intended to provide an additional safeguard to ensure financial transparency for the CIT Board. The CIT Board has also since enacted greater financial controls on expenditure by the CEO.

⁴ ACT Integrity Commission, *'Operation Luna – Special Report (Part One)'*, page 78 (Minister Steel letter to Mr Sloan), page 132 (meeting between Minister Steel and Ms Cover and Mr Sloan), page 199 (telephone conversation between Ms Jennifer Rayner and Ms Cover).

⁵ ACT Integrity Commission, *'Operation Luna – Special Report (Part One)'*, page 267.

⁶ ACT Integrity Commission, *'Operation Luna – Special Report (Part One)'*, page 267.

⁷ ACT Integrity Commission, *'Operation Luna – Special Report (Part One)'*, page 267.

The Government notes that Ms Cover resigned from her position as CEO of the CIT on 18 June 2024 and is no longer employed by the ACT Government.

Mr Craig Sloan (former Chair of the CIT Board)

The Commission made no finding of corrupt conduct against Mr Sloan.

The Commission found Mr Sloan failed to exercise due care and diligence in the performance of his statutory responsibilities as the Chair of the CIT Board.⁸ Specifically, he was found to have neglected to adequately and truthfully inform, the Minister for Training, of important matters that affected the exercise of Mr Sloan's functions under section 82 of the FM Act as Chair of the CIT Board.⁹

This failure was in response to the Minister's letter of 19 February 2021 and Mr Sloan's March response. In the report the substance of the letter sent by Mr Sloan with reference to the Minister for Training is provided in full, it included the passage extracted below:

*In terms of the specifics of your questions, I am confident that the procurement processes to engage the service provider were consistent with all procurement policy and practices and that given the enormity of the transformation work, the investments in CIT via these contracts represent value for money. The attached report provides more detail about the inputs, outputs and outcomes of each contract.*¹⁰

As summarised by the Report, Mr Sloan gave a personal assurance of his confidence that "the procurement processes to engage the service provider were consistent with all procurement policy and practices and that... these contracts represent value for money."¹¹ In giving this undertaking Mr Sloan had failed to notify the Minister's correspondence to the CIT Board, nor to undertake a review or audit of adherence to ACT procurement policies. He relied on Ms Cover's assurances, which the Commission found he should have advised in his correspondence and the omission to do so was thus misleading with respect to the level of assurance of probity afforded to the Minister.¹²

The Commission considered this could constitute reasonable grounds for dispensing with the services of, or otherwise terminating the services of, Mr Sloan.¹³ However, the Commission was not satisfied to the requisite degree that this constitutes a 'breach of public trust' within s 9(1)(b)(ii)(A) of the IC Act since the evidence did not warrant a finding that Mr Sloan's omission was intentional or reckless.¹⁴

Government Response

The Commission made no finding of corrupt conduct against Mr Sloan, although did find some of his conduct failed the statutory requirements of due care and diligence. The ACT Government accepts the Commission's findings in relation to Mr Sloan's conduct.

Under Part 9 of the FM Act the Board of a Territory authority is entrusted with significant duties of oversight over their respective Territory authority, noting that the Government sits

⁸ ACT Integrity Commission, 'Operation Luna – Special Report (Part One)', page 274.

⁹ ACT Integrity Commission, 'Operation Luna – Special Report (Part One)', page 274.

¹⁰ ACT Integrity Commission, 'Operation Luna – Special Report (Part One)', page 100.

¹¹ ACT Integrity Commission, 'Operation Luna – Special Report (Part One)', page 100.

¹² ACT Integrity Commission, 'Operation Luna – Special Report (Part One)', page 100.

¹³ ACT Integrity Commission, 'Operation Luna – Special Report (Part One)', page 274.

¹⁴ ACT Integrity Commission, 'Operation Luna – Special Report (Part One)', page 274.

at arms' length from the authority to ensure appropriate independence. The Board's role includes to ensure, as far as practicable, that the authority operates in a proper, effective and efficient way, and ensure, as far as practicable, that the authority complies with governmental policies. The Chair of a Board has additional functions, including to ensure the responsible Minister is kept informed about the operations of the authority.

The Minister for Training, after specifically inquiring into the matter and requesting its consideration by the Board in correspondence to the then Chair, was not properly kept informed about the operations of the CIT with respect to its consultancy contracts with entities associated with Mr Hollingworth. The substance of the Minister's request directed the Board's attention to public value for money, procurement probity, and previous contract performance outcomes. The Special Report states the Minister's queries in the letter were plainly matters of considerable importance to him, and it follows, to the Board.¹⁵

The ACT Government expects all Board members, including the Chair, to exercise their functions with the degree of honesty, care and diligence required to be exercised by a director of a corporation in relation to the affairs of the corporation. This is an express requirement of a board member under section 85 of the FM Act.

The Government notes that Mr Sloan's term of appointment as Chair of the CIT Board expired on 30 June 2022, and he ceased to serve on the Board from that date.

Conclusion

The Commission made no recommendations in its Report. The conclusions found that Ms Cover engaged in serious corrupt conduct and Mr Sloan failed to bring information to the Minister's attention which was a serious failure.

Future findings in Operation Luna may include recommendations in relation to the events and decisions made concerning the awarding of contracts by the CIT to entities associated with Mr Hollingworth. The ACT Government awaits completion of work and conclusion of Operation Luna by the Integrity Commission and is ready to respond to any further findings or recommendations made by the Commission.

The matters considered in the Report, and the rigorous scrutiny the Commission applied to the circumstances of the awarding of these contracts at CIT represents a realisation of the ACT Government's commitment to build an independent ACT Integrity Commission. The Report is detailed, explicit in the reasoning which underpins its findings, and in producing verbatim relevant evidence adduced, providing transparency for the community. The Commission has given thoughtful consideration in weighing the need to identify public officials in light of the impact of doing so publicly. The ACT Government accepts the approach taken by the Commission in this report as both thorough and considerate to the impact on individuals engaged by the Commission in this investigation.

¹⁵ ACT Integrity Commission, *'Operation Luna – Special report (Part One)'*, page 95.