

2024

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

ELEVENTH ASSEMBLY

**STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY - REPORT NO. 31
INQUIRY INTO THE INTEGRITY COMMISSION'S CONFIDENTIAL REPORT INTO
OPERATION KITE – GOVERNMENT RESPONSE**

**Presented by
Andrew Barr MLA
Chief Minister**

Introduction

The Standing Committee on Justice and Community Safety of the Tenth Legislative Assembly of the Australian Capital Territory (the Committee) held specific responsibilities relating to the ACT Integrity Commission (the Commission). These included, but were not limited to, the examination of matters related to corruption and integrity in public administration, inquiry into and reports on matters referred to it by the Assembly, and performance of all functions required of it pursuant to the *Integrity Commission Act 2018* (the Act).¹

On 5 August 2024, the ACT Integrity Commissioner provided a confidential investigation report to the Committee. It was titled *Confidential Report into Operation Kite* (the Commission report). Under section 192 of the Act the Commission may prepare a confidential investigation report if it has decided to exclude certain information from an investigation report that may prejudice a proceeding,² or identify certain people,³ or that is contrary to the public interest.⁴ The Commission report is confidential. The Integrity Commission must provide a confidential investigation report to the relevant Assembly Committee⁵ and is taken for all purposes to have been referred to the Committee by the Legislative Assembly for inquiry.⁶

On 4 September 2024 the Committee released Report No. 31, *Inquiry into the Integrity Commission's Confidential Report into Operation Kite* (the Committee report). The Committee report notes that the Commission report was made confidential to protect the privacy of vulnerable witnesses. The Committee report retained the confidentiality in the substance of its engagement with the Commission report for those same reasons cited by the Commission to prevent the identification of people involved in the matter.⁷ The Committee report provides a high-level description of the matter investigated in Operation Kite and makes two recommendations.

The standing orders of the ACT Legislative Assembly require a Government Response to be tabled within four months where there are specific recommendations directed towards the Government.⁸ This Government Response fulfils that requirement by considering the Government position of the Eleventh Legislative Assembly on each of these recommendations.

Summary of Findings in the Investigation named 'Operation Kite'

The substance of the matter investigated involved a former ACT Public Servant who was employed by the Community Services Directorate (CSD). The Commission report revealed conduct that involved a conflict of interest and fraud and concluded with a recommendation that the CSD 'consider the sufficiency of its conflict of interest, fraud and anti-corruption

¹ See paragraph 9 of [the Resolution for the Establishment of the Committee](#), 2 December 2020.

² Integrity Commission Act 2018, [Section 192\(1\)\(a\)](#) defined in [Section 185](#).

³ Integrity Commission Act 2018, [Section 192\(1\)\(b\)](#) defined in [Section 186](#).

⁴ Integrity Commission Act 2018, [Section 192\(1\)\(c\)](#) defined in [Section 187](#).

⁵ Integrity Commission Act 2018, [Section 192\(3\)](#).

⁶ Integrity Commission Act 2018, [Section 192\(4\)](#).

⁷ [Committee Report](#), Para 1.1.

⁸ Standing Order 254B, [Standing Orders and Continuing Resolutions of the Legislative Assembly of the Australian Capital Territory](#), 6 June 2024.

conduct controls' to prevent similar situations arising.⁹ While the Committee Report notes there was conduct described by the Commission as 'reprehensible',¹⁰ the Commission report did not find conduct which met the thresholds of 'serious corrupt conduct' under section 10 of the Act¹¹ and that the report did not include a finding of corrupt conduct.¹²

ACT Government Response

The Committee members had full access to the substance of the Commission Report and made two recommendations to the ACT Government based on their engagement with the material.

Recommendation 1

The Committee recommends that the Community Services Directorate consider the sufficiency of its conflict of interest, fraud and anti-corruption controls to prevent corruption arising as recommended by the Integrity Commission in their confidential report.

Government Position: Agree

The ACT Government agrees with recommendation one. CSD undertook an Internal Audit reviewing the Directorate's compliance with the ACT Integrity Framework and ACT Public Service Integrity Governance Policy, with the report finalised September 2023. CSD subsequently commenced an integrity framework reform, designed to strengthen fraud and anti-corruption controls (including conflict of interest processes) and mature prevention activities across the Directorate. This review is due to be completed by end of December 2024, with a 2025 plan of integrity related activities finalised by February 2025.

Recommendation 2

The Committee recommends that the ACT Government put in place measures to ensure that ACT Public Service recruitment processes and ACT Government Board appointments are able to adequately identify and determine suitability of any candidates who have previously received an adverse finding by Integrity Commission reports, including confidential reports.

Government Position: Agree

The ACT Government agrees to recommendation two. Decisions about the suitability and eligibility of candidates for appointment within the ACT Public Service or on ACT Government Boards and Committees must be made in accordance with the ACT Employment Framework.¹³ There are requirements for candidates to declare criminal convictions¹⁴ or previous findings of misconduct in ACT Government recruitment

⁹ [Committee Report](#), Para 1.5.

¹⁰ [Committee Report](#), Para 1.4.

¹¹ [Committee Report](#), Para 1.4.

¹² [Committee Report](#), Para 1.4.

¹³ The ACT Public Service (ACTPS) employment framework consists of several separate elements that govern recruitment, including Part 2 of the [Public Sector Management Standards 2016](#), Parts 4 and 5 of the [Public Sector Management Act 1994](#), Part 19.3 of the [Legislation Act 2001](#), the [Governance Principles – Appointments, Boards and Committees](#), and the [ACTPS Enterprise Agreements](#) – for example, clauses C6 and P3 of the [Administrative and Related Classifications Enterprise Agreement 2023-2026](#).

¹⁴ [Public Sector Management Act 1994 \(ACT\)](#), [Section 68\(2\)\(b\)\(iii\)](#).

processes.¹⁵ The impact of such declarations on appointments is decided with due regard for the legal requirements of natural justice,¹⁶ the application of relevant industrial relations laws,¹⁷ and human rights.¹⁸ Intersections between these requirements are complex and need to be appropriately applied to individual circumstances.

The ACT Government will introduce additional requirements for candidates to declare adverse findings by the Integrity Commission. The ACT Government will work with the Integrity Commission regarding how this declaration can be made as part of recruitment processes, within the terms of confidentiality notices issued by the Integrity Commission.

In relation to boards and committee appointments the Government will review the Governance Principles: Appointments Boards and Committees in the ACT.

Implementation will involve consideration of legal frameworks and possible legislative amendments, if required, as well as consultation with relevant stakeholders.

In 2023 the ACT Government engaged Mr Ian Govey AM to undertake reviews of the Act¹⁹ and the *Public Interest Disclosure Act 2012*.²⁰ These reviews generated a legislative reform program to implement the proposals agreed by the ACT Government.²¹ The ACT Government will include the proposal contained in recommendation two within the work of this reform program.

Conclusion

The ACT Government notes the use of a mechanism to provide confidentiality in reporting on investigations by the Integrity Commission, as was used in Operation Kite to protect vulnerable witnesses. The processes followed by the Committee have adhered to this confidentiality whilst also providing recommendations to Government concerning findings of the Commission report as they relate to sufficiency of conflict-of-interest, fraud, and anti-corruption controls at CSD. The Committee proposed changes to ensure the adequacy of information in relation to recruitment processes involving candidates who have had adverse findings made against them by the Integrity Commission. The Government has agreed and committed to the ACTPS introducing a new declaration in recruitment processes relating to such adverse findings. The Government also commits to further examine this issue in the ongoing law reform work program stemming from the review of the Act. The ACT Government thanks the Committee of the Tenth Assembly for the report, especially in navigating important sensitivities to protect vulnerable witnesses.

¹⁵ *Public Sector Management Act 1994* (ACT), [Section 68\(2\)\(b\)\(iii\)](#).

¹⁶ ACT Government, '[ACTPS Recruitment Policy and Guidelines](#)' p. 28-29

¹⁷ Employment in the ACTPS is governed under the *Fair Work Act 2009* (Cth) and *Public Sector Management Act 1994* (ACT).

¹⁸ *Human Rights Act 2004* (ACT), [Section 27B](#).

¹⁹ Ian Govey, 2023, [Integrity Commission Act Review](#).

²⁰ Ian Govey, 2023, [Public Interest Disclosure Review](#).

²¹ [ACT Government response to the Independent Review of the Integrity Commission Act 2018](#).