Mr Ed Cocks MLA
Chair, Standing Committee on the Integrity Commission and Statutory Office Holders

Via email: LACommitteeIntegrity@parliament.act.gov.au

Dear Chair

Thank you for your letter of 29 April 2025 inviting me to provide an opinion on the optimal approach to resolving two recommendations under consideration by the Committee that arose from the 2024 Strategic Review of the ACT Auditor-General.

The first recommendation relates to section 35 of the *Auditor-General Act 1996* (the Act) and the second relates to operational complaints against the Auditor-General. I provided comment regarding both recommendations when I met with the Committee on 25 March 2025.

Recommendation 1 – section 35 directions

Section 35 relates to directions about protected information. Protected information is defined in section 34 of the Act to mean 'information that is disclosed to, or obtained by, a person to whom the section applies because of the exercise of a function under [the] Act by the person or someone else'.

Section 35 allows for the Auditor-General to give a direction to a person in receipt of a draft of all or part of a performance audit report, prohibiting or restricting that person from disclosing the information contained in the report. Section 35 directions are not frequently used. We have found them useful when sharing draft reports (or extracts) with private individuals or organisations that are not part of the ACT public sector. It is rare for a section 35 direction to be issued to an individual who is a member of the ACT Public Service, a member of the Executive arm of government or an MLA. One instance where this did occur was the audit in relation to the implementation of the Human Resources Information Management System Program (Report No.10/2023).

The implication of this was that officials were prevented from briefing the Minister as to the content of the draft report. This concern on the part of officials led to the Head of Service raising the matter with Mr Blake, the Strategic Reviewer, who felt a need to comment on the issue in his report.

In conducting a performance audit there is usually many months of interaction between the auditors and officials in the agency that is the subject of the audit. The audit scope and criteria, the process of document discovery and the information exchanges between auditors and officials create an environment where any competent public servant would be in a position to brief a Minister at any time during the audit process up until a section 35 direction was issued. There is no impediment to do so if a section 35 direction is not in operation. Indeed, if the subject matter of the performance audit was in any way controversial or sensitive it would be quite normal for the Director-General or an appropriate officer to brief the Minister. It should be noted that a section 35 direction is typically not issued until a draft report is circulated, which is at a late stage of the audit process.

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Accordingly, I do not believe that it is necessary to change the way in which Section 35 operates and in my opinion, it would be advisable not to amend Section 35 of the Act merely to accommodate the briefing of Ministers concerning the content of a draft performance audit report.

Recommendation 3 – complaints about the Auditor-General

The second recommendation relates to complaints and allegations of an operational nature about the Auditor-General. As I advised the Committee on 25 March 2025 there is quite a long history to this recommendation. To assist the Standing Committee, the Audit Office has prepared a briefing paper that outlines the history and proposes a process for dealing with operational complaints. I would note that sections 9B, 9BA, 9BB and 9BC of the Act deal with substantial and serious issues related to the conduct of the Auditor-General and these sections remain, in my view, both relevant and appropriate and it would be proper for the relevant Legislative Assembly Committee to conduct an inquiry if a matter were raised under one of these sections.

Complaints of an operational nature could also be investigated by a relevant Legislative Assembly Committee. The Standing Committee on the Integrity Commission and Statutory Office Holders would be the appropriate Committee and would be a logical forum to conduct such an inquiry. An alternative canvassed in the paper is to refer the complaint to the Commissioner for Standards. The Legislative Assembly has had a Commissioner for Standards since 2014. The Commissioner investigates complaints against members of the Legislative Assembly and has developed protocols for investigating such complaints. No discussion has occurred with the Commissioner as to their willingness or capacity to undertake such a role.

In my opinion a practical approach would be for the Standing Committee on the Integrity Commission and Statutory Office Holders to initially receive the complaint and make a determination to either deal with the complaint itself or, if the Committee feels the circumstances warrant, refer the complaint to the Commissioner for Standards with a request for a recommendation to be made by the Commissioner to the Standing Committee on the course of action to be adopted.

Yours sincerely

M. L. Harris

Michael Harris
Auditor-General
26 May 2025