

Guide to the Integrity Legislation Amendment Bill 2024

On 5 September 2024, the ACT Legislative Assembly passed the Integrity Legislation Amendment Bill 2024. From 26 September 2024, the amendments to the *Integrity Commission Act 2018* (the Act) are in effect. Many amendments to the legislation are already reflected in the current processes of the Commission. Now, there are clearer statutory requirements concerning these processes and other operational aspects of the Commission.

The Amendments – External impacts

Witness welfare (in effect March 2025)

- While the Commission currently has a Witness Wellbeing Policy about how it protects the wellbeing of people involved in matters before the Commission, having this policy is now a statutory requirement.
- Consultation with an experienced psychiatrist or psychologist on a revised version of the Witness Wellbeing Policy to be conducted.
 - The policy must also deal with the matters to be considered by the Commission in making a decision about whether identifying a person in a report is likely to cause unreasonable damage to a person's wellbeing (investigation report, special report or annual report).
- The policy will now be assessed annually by the Inspector.

Mandatory reporting (to the Commission)

- There is no need to make a mandatory report to the Commission if the mandatory reporter believes, on reasonable grounds, that someone else has already made the same report and had the same reasons for their suspicion.

Reporting

- The Commission now has the discretion to give all or part of a proposed investigation report, proposed special report and/or proposed annual report, on request, to someone else nominated by the person to assist them in preparing their comments on the proposed report. A non-disclosure notice will be issued to these people, in this instance.
- Information included in special or annual reports must not compromise an investigation (was previously “compromise another investigation under this Act”).
- The Commission's annual reports must now include any extension notices for preliminary inquiry notices or examination summons (being whether the extension was granted as requested, granted for a shorter period or denied).

Information disclosure (to the Commission)

- The Head of a public sector entity, or anyone who assists them, when providing information to the Commission under Section 195, now has the same protection and immunity as a witness in a proceeding in the Supreme Court if they disclose information to the Commission that is relevant and appropriate.

Non-disclosure notices

- A non-disclosure notice needs to be given to any person who receives a proposed report or part thereof (proposed special report, investigation report or annual report). This would include a person or public sector entity that the report relates to, a person who has a direct interest in the proposed report, or a person who is given part of, or all of the proposed report to assist the person in preparing their comments on the proposed report.
- The Commission does not need to issue a non-disclosure notice:
 - if telling a person their corruption report is being dismissed; or
 - if giving an update on the progress of an investigation and the person has already received a non-disclosure that is still valid (it has not expired or been revoked).
 - The Commission must tell the person that the previous non-disclosure continues to operate and applies to the new information.

Preliminary inquiry notices, confidentiality notices and examination summonses

- To serve a preliminary inquiry notice on a person, the Commission must:
 - suspect on reasonable grounds that a document or thing **may be** necessary (was previously 'is necessary') to decide whether to dismiss, refer or investigate and is satisfied that it is reasonable to do so before issuing a preliminary inquiry notice.
 - suspect on reasonable grounds that a document or thing **may be** necessary (was previously 'is necessary') for the investigation and is satisfied that it is reasonable to do so before issuing an examination summons.
- Preliminary inquiry notices and examination summonses must be served at least **10 business days** before completion is required (was previously 7 days).
- Preliminary inquiry notices and examination summonses must note the Commission has a discretion to excuse attendance after the production of a document or thing in the contents of a preliminary inquiry notice or examination summons.
- A person may request an extension for the completion of a preliminary inquiry notice or an examination summons.

- A written response from the Commission is required, either agreeing to the request, agreeing to a shorter extension, or refusing the request.
- The ability to request an extension does not apply to a person who receives an examination summons that requires immediate attendance.
- The Commission may give a person a confidentiality notice if they are delivering a document or a thing to the Commission in response to a preliminary inquiry notice or an examination summons.
 - A person who receives a notice to produce an item to the Commission may request to send someone else to deliver the summonsed items, and that the Commission may place a confidentiality notice on the person delivering the items summonsed.

Permitted disclosure when complying with a confidentiality notice, preliminary inquiry notice, or an examination summons

- A person who is complying with a confidentiality notice, preliminary inquiry notice or an examination summons has additional exemptions for the disclosure of restricted information:
 - to a doctor or psychologist if the person seeking assistance with their health or wellbeing.
 - to their insurer, if the person has made a claim about a matter related to the restricted information under the *Workers Compensation Act 1951 (ACT)* or the *Safety, Rehabilitation and Compensation Act 1988 (Cth)*.

Protected information

- Relating to dealing with offences for divulging protected information, a further defence has been included which provides that a person does not commit an offence if they divulge the protected information because they believe on reasonable grounds that doing so is the only reasonable way to deal with an emergency (e.g. a person in need of urgent medical treatment or a person threatens to harm themselves or another person).

Public examinations

- The Commission must give written notice to the Inspector of any public examination and the reasons for doing so **at least 10 business days** before the public examination, and before issuing any associated summons or making any public statement about the examination summons (was previously 7 days).

The Amendments – Internal impacts

Commissioner appointment

- The appointment of a new Commissioner is now more merit based (preference was previously given to a person who had held the position of a judge).

Acting Commissioner appointment

- Appointments must not be for a period of longer than 2 years (previously 6 months).
- A person is not eligible to be appointed if they have been an Acting Commissioner for a cumulative period of 7 years.
- Multiple people can be appointed as Acting Commissioners at the same time.
- The Speaker must inform the Inspector of the appointment.

Staff eligibility

- The restriction of appointing current ACT public servants as staff of the Commission has been removed (previously not able to employ anyone who has been an ACT public servant in the last 5 years).
- The Commission is unable to employ anyone who has been a Member of the Legislative Assembly, or staff of a Member of the Legislative Assembly, in previous 2 years to commencing at the Commission. This restriction does not include a temporary member of staff, which means someone who worked for an MLA for no longer than 3 months in the 12 months prior to starting at the Commission.

Personal interest guidelines

- The Commission is now required to make guidelines about the financial and other personal interests declarations (previously guidelines were required for “personal interest” only).
 - As with the previous guidelines for “personal interest”, this will be a notifiable instrument and must be published on the Commission’s website.

Declaration of interests

- The Commissioner must now give financial and personal interests to the Speaker and Inspector within 5 business days (used to be 7 days and there was no requirement to give to the Inspector) after:
 - appointment as Commissioner
 - the first day of financial year
 - the day there is a change in interest.
- Staff of the Commission must now declare financial interests in addition to personal interests (previously just personal).

Conflict of interest register

- It is now a statutory requirement to keep a staff register of all financial or other personal interests that conflict, may conflict, or may be perceived to conflict with any staff member's function (previously only a register of the personal interests of the Commissioner was required).
- The Inspector's annual operational review of the Commission must now include a review of the Commission's new conflict of interest register, and the register must be available for inspection by the Inspector at any time.

Reporting requirements (Commission to Inspector)

- The Commission's monthly written reports to the Inspector must now include any extension notices for preliminary inquiry notices or examination summons (being whether the extension was granted as requested, granted for a shorter period, or denied) for the month prior.