

MEDIA RELEASE**2 AUGUST 2018****ACT Health's management of allegations of misconduct and complaints about inappropriate workplace behaviour**

Today a report on the **ACT Health's management of allegations of misconduct and complaints about inappropriate workplace behaviour** was tabled in the ACT Legislative Assembly.

Dr Cooper says 'ACT Health did not effectively manage allegations of misconduct against two officers of the former Performance Information Branch. Furthermore, complaints of inappropriate behaviours made by one of the former officers against the former Director-General and former Deputy Director-General, Corporate were also ineffectively managed.'

'In going forward ACT Health needs to articulate the desired culture and values to be fostered across the organisation. As part of disseminating this information, there should be an emphasis on how allegations of misconduct are to be managed, for making and responding to complaints of inappropriate behaviour. Additionally it would be timely for the Public Sector Standards Commissioner and the Professional Standards Unit to raise awareness of their roles and the merits of early contact with them, especially for allegations of serious misconduct' said Dr Cooper.

The summary of the **ACT Health's management of allegations of misconduct and complaints about inappropriate workplace behaviour** audit, with audit conclusions, key findings and recommendations is attached to this media release.

Copies of **ACT Health's management of allegations of misconduct and complaints about inappropriate workplace behaviour: Report No. 9/2018**, are available from the ACT Audit Office's website www.audit.act.gov.au . If you need assistance accessing the report please phone 6207 0833 or go to 11 Moore Street, Canberra City.

EXTRACT OF SUMMARY CHAPTER

SUMMARY

In mid to late 2016 concerns associated with the accuracy of ACT Health's performance information and reporting were identified. The former ACT Health Director-General has outlined their concerns, which are presented in paragraph 2.50.

On 29 July 2016, ACT Health wrote to two officers of the former Performance Information Branch, ACT Health to notify them of misconduct allegations against them. These allegations related to errors in the *March 2016 ACT Health Services Quarterly Performance Report* (i.e. the Third Quarter 2015-16 report). The two former officers had key responsibilities for the production and accuracy of this report and other ACT Health performance information.

The two former officers made claims of inappropriate workplace behaviour on the part of the former ACT Health Director-General and former Deputy Director-General Corporate, ACT Health.

Comments provided by entities who were provided with the *draft proposed report* and *final proposed report* (or relevant extracts) were considered and the substance of their comments included in this report. In including comments provided the Audit Office did not seek evidence to assess whether such statements are correct or not.

Overall conclusion

ACT Health did not effectively manage allegations of misconduct initiated by the former Director - General and former Deputy Director-General, Corporate against two former Performance Information Branch officers who were involved in preparing performance information and reporting, the accuracy of which was of concern to these executives. Furthermore, complaints of inappropriate workplace behaviours made by one of the former Performance Information Branch officers against the former Director-General and former Deputy Director-General, Corporate were also ineffectively managed.

Despite significant concerns held about the accuracy of performance information and reporting, to provide transparency and demonstrate accountability, it was important that appropriate processes be undertaken and documented for the management of the allegations of misconduct against the former officers; this did not occur.

In going forward, ACT Health needs to confirm and articulate the desired culture and values to be fostered across the organisation. As part of disseminating this information, there should be an emphasis on how allegations of misconduct are to be managed, including the processes to be used for making and responding to complaints of inappropriate workplace behaviour. Additionally, it would be timely for the Public Sector Standards Commissioner and the Professional Standards Unit to raise awareness of their roles and the merits of early contact with them, especially for allegations of serious misconduct.

Chapter conclusions

THE MANAGEMENT OF ALLEGATIONS AGAINST FORMER EMPLOYEES

ACT Health did not effectively manage allegations of misconduct against two former officers in the Performance Information Branch. While it is apparent that the former Director-General and former Deputy Director-General, Corporate had significant concerns regarding the preparation of performance information and reporting, for which the Performance Information Branch was responsible, the decision to initiate a misconduct investigation into the two officers based on these concerns was precipitous.¹ There is no contemporaneous documentation to justify potential misconduct or the initiation of the misconduct investigation.

Documentation (an ACT Health Preliminary Assessment *proforma*) that purported to support undertaking a misconduct investigation was produced approximately three weeks after the decision was made to undertake the misconduct investigation and suspend the officers. Given the decision and actions already undertaken this means the documentation was redundant.

ACT Health referred the allegations, including the ACT Health Preliminary Assessment *proforma*, to the Professional Standards Unit for investigation. The Professional Standards Unit's processes complied with the requirements of the *ACT Public Service Administrative and Related Classifications Enterprise Agreement 2013-2017*. This included the two officers being given the opportunity to respond to the allegations and review key documentation. The result of the investigation was a determination that one former officer had not engaged in misconduct; there was no formal resolution for the other officer as, although the investigation was completed and findings were made, the independent Delegate did not make a determination as to misconduct because the officer's employment contract with ACT Health had expired.

The investigation took around five months to complete which, although lengthy, is reasonable considering its technical nature and complexity, delays in receiving relevant documentation from ACT Health, requests for additional time to respond by the two former officers and the Christmas and New Year shut-down period.

¹ In a response to the final proposed report on 27 July 2018, legal representatives on behalf of the former Director-General advised 'The use of the word 'precipitous' is a totally inappropriate categorisation of [the former Director-General's] decision to refer the two [officers] for misconduct investigation. ... there was nothing precipitous about [their] decision making. It was a deliberate decision, taken upon advice, based on ever increasing evidence of a complete governance and management failure in the performance area despite assurances to [themselves] and then Minister to the contrary, and designed to ensure that substantial payouts utilising tax payer funds were not inappropriately paid to staff'.

THE MANAGEMENT OF COMPLAINTS ABOUT THE FORMER DIRECTOR-GENERAL AND FORMER DEPUTY DIRECTOR-GENERAL, CORPORATE

ACT Health's management of complaints regarding inappropriate workplace behaviours (including allegations of bullying) made by the former Senior Manager, Business Intelligence was not effective.

Procedures in ACT Health's *Standard Operating Procedure – Anti Discrimination, Bullying and Harassment (SOP)* were not followed by the former Director-General or former Deputy Director-General, Corporate in responding to a written complaint by the former Senior Manager, Business Intelligence in July 2016 about the conduct of the former Deputy Director-General, Corporate. Given that the SOP is ACT Health's policy it was incumbent on the executives to follow the intent of its procedures, even though the SOP specifically refers to a complainant as 'the staff reporting an act of bullying behaviour to their manager [Audit emphasis]' and not the executive.

Key discussions (in May 2016 and July 2016) between ACT Health Human Resource officers and the former Senior Manager, Business Intelligence, regarding complaints (including allegations of bullying) were not adequately documented. While retaining adequate documentation of such allegations is always important it is particularly so if the allegations are related to executives.

The former Public Sector Standards Commissioner implemented appropriate processes in responding to complaints about the former Director-General and former Deputy Director-General, Corporate's behaviours, noting that the complaints 'were very low level' and 'they weren't able to develop a case that this was bullying'. However, the former Commissioner's communication advising the two former officers that a determination had been made that the matters they had raised did not constitute a public interest disclosure was confusing. Clarity was therefore not provided to the two officers.

Key findings

THE MANAGEMENT OF ALLEGATIONS AGAINST FORMER EMPLOYEES

Paragraph

In mid to late July 2016 the former Senior Manager, Business Intelligence was in discussions with ACT Health Executives for the purpose of facilitating their departure from the organisation. In an interview under oath or affirmation on 16 April 2018, the former Director-General recalled that the former Senior Manager, Business Intelligence's demeanour had changed: 'I just noticed that [they] went from someone who was positive and contributing, to somebody who just didn't seem happy. Which is why I was happy to give [them] the package ...' The ACT Government Solicitor provided advice and drafted a Deed of Release to effect the former Senior Manager's departure. The acting Executive Director, People and Culture had a telephone discussion with the former Senior Manager on 22 July 2016 where agreement was reached and a payment of approximately \$126,000 was to be made.

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The acting Executive Director, People and Culture emailed the former Director-General and former Deputy Director-General, Corporate, to advise of this outcome on the afternoon of 22 July 2016. The payment of approximately \$126,000 was not made as the departure of the former Senior Manager, Business Intelligence did not proceed as then planned.

On 25 July 2016 the former Executive Director, Performance Information emailed the former Director-General and Deputy Director-General, Corporate advising that 'I would like to be considered for a redundancy'. At a meeting with the former Deputy Director-General Corporate and the acting Executive Director, People and Culture on 25 July 2016 the former Executive Director, Performance Information was advised by the former Deputy Director-General, Corporate that 'opportunities exist for [them]' and '[they are] well respected and liked' and advised '[they have] options, no pressure or hurry to make decision'. Notwithstanding these assurances the former Executive Director reiterated in an email to the Director-General on 28 July 2016 that they 'would still like to be considered for a redundancy rather than other options due to the abolition of my position'.

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On 13 July 2016, an ACT Health officer commenced acting in the role of the Executive Director, Performance Information and Decision Support, due to the absence on personal leave of the former Executive Director, Performance Information. A key task of the acting Executive Director, Performance Information and Decision Support Branch was to review the draft *March 2016 ACT Health Services Quarterly Performance Report* (the 3rd Quarter Performance Report). In undertaking this task the acting Executive Director identified several errors throughout the draft report including; internal inconsistencies and incorrect figures; unsubstantiated statements; and errors in labelling graphs. These errors caused the acting Executive Director, Performance Information and Decision Support to have doubts as to the veracity of the report.

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In a response to the draft proposed report on 5 June 2018 legal representatives on behalf of the former Director-General advised of the former Director-General's growing concerns with respect to the accuracy of performance information and reporting in ACT Health from May 2016. The former Director-General identified performance information and reporting errors that became public in May 2016 with respect to the *December 2015 ACT Health Services Quarterly Performance Report* (i.e. the Second Quarter 2015-16 report) as well as assurances that they felt were provided by the former Executive Director, Performance Information (and former Senior Manager, Business Intelligence) in relation to these errors. The former Director-General advised that 'it was because of this ongoing pattern of data integrity flaws being raised with [the former Director-General] that [they] decided to commence misconduct proceedings'.

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The legal representatives on behalf of the former Director-General, and the former Deputy Director-General, Corporate, in responding to the draft proposed report advised of their growing concerns with respect to performance information and reporting and the actions of the former Executive Director, Performance Information and Senior Manager, Business Intelligence. 2.77

In a response to the draft proposed report on 5 June 2018, legal representatives on behalf of the former Director-General advised ‘there were a number of matters around potential failures of governance that were being brought to [their] attention in late June and July of 2016. But the main issue was [their] belief that the then Minister of Health and [they] had been misled by personal advice from [former Executive Director, Performance Information] and [former Senior Manager, Business Intelligence] that the errors were only one-offs — not systematic failures of governance’. 2.78

In a response to the draft proposed report on 1 June 2018 the former Deputy Director-General, Corporate advised ‘Between 16 May 2016 and 29 July 2016, a series of emails regarding the integrity of the quarterly reporting eroded my confidence in its accuracy and reliability, and over time I began to form the view that [former Executive Director, Performance Information] and [former Senior Manager, Business Intelligence] may have failed to meet their obligations under section 9 of the PSM Act in the preparation of quarterly reporting, and in their assurances to the former Health Minister’. 2.79

In response to the draft proposed report the former Executive Director, Performance Information and former Senior Manager, Business Intelligence disagreed that they provided the above claimed assurance to the former Director-General and Deputy Director-General, Corporate with respect to the performance information and reporting. 2.80

On 30 July 2016 (five days after the Executive Director, Performance Information was advised ‘opportunities exist for [them]’ and ‘[they are] well respected and liked’) the two former members of the former Performance Information Branch received written notification of a misconduct investigation against them. Accounts as to the rationale behind undertaking a misconduct investigation differ between the former Director-General, former Deputy Director-General, Corporate and ACT Health Human Resource officers. While it is apparent that concerns had been raised as to ACT Health performance information and reporting processes, for which the two staff members had responsibility, it is not clear how their actions were identified as potential misconduct and warranted investigation. No contemporaneous documentation was produced at the time of the written notification of misconduct against the two former staff members justifying undertaking a misconduct investigation. Nor was early advice of the Professional Standards Unit sought in order 2.109

to ensure that the allegations were clearly linked to a potential breach of the ACT Public Sector Code of Conduct, suffice to warrant an investigation into their conduct and the suspension of both former officers.

In an interview under oath or affirmation, the former Director-General has advised that they thought it would be 'unethical' to allow the two staff members to depart the organisation with 'voluntary redundancy' payments when the former Director-General had concerns that the actions of the staff members may have amounted to misconduct. (While an exit from the organisation had been agreed with the former Senior Manager, Business Intelligence, no such exit had, at that time, been agreed with the former Executive Director, Performance Information). Accordingly, the former Director-General advised that they were seeking a 'short, sharp' investigation into their activities to 'reassure me that ... I'm not sitting on an absolute time bomb here of, you know, deliberate incompetence'. The former Deputy Director-General, Corporate advised that no other options such as performance management or reassignment to other duties were considered because '[the former Senior Manager, Business Intelligence] for all intents and purposes, I think in their own mind was somewhere between negotiating a VR and wanting to go' and the former Executive Director, Performance Information had 'made a decision that they wanted to just leave, you know'.

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In responses to the draft proposed report both the former Executive Director, Performance Information (29 May 2018) and Senior Manager, Business Intelligence (28 May 2018) disagreed with assertions that they were unwilling to return to work or otherwise assist in resolving issues with performance information and reporting before their departures from the organisation.

2.111

The *ACT Public Service Administrative and Related Classifications Enterprise Agreement 2013-2017*, which applied to the former Senior Manager, Business Intelligence (as a non- Executive employee of the ACT Public Service) requires the conduct of a preliminary assessment 'in cases where an allegation of inappropriate behaviour is made' in order to 'determine whether further action is required'. Following the conduct of the preliminary assessment a range of possible future actions may be taken, one of which is an investigation. A Minute into the matter, which included a completed ACT Health Preliminary Assessment *pro forma*, was completed by the acting Executive Director, Performance Information and Decision Support Branch on 22 August 2016. The Brief identified the problems associated with performance information and reporting but did not specifically refer to, or discuss, allegations of potential misconduct on the part of the two officers with respect to the *Public Sector Management Act 1994*, *Public Sector Standards 2006* or the *ACT Public Service Administrative and Related Classifications Enterprise Agreement 2013-2017*.

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On 24 August 2016 the former Deputy Director-General, Corporate ticked the 'requires investigation' box on the ACT Health Preliminary Assessment *pro forma* and noted that 'Noting serious concerns raised by Minute (22.8.2016) and the very serious implications for ACT health operationally and for government generally, I am satisfied that this now warrants independent investigation'. This Minute, and the attached Preliminary Assessment *pro forma*, were produced more than three weeks after the former Senior Manager, Business Intelligence (and the former Executive Director, Performance Information) were suspended and informed that they would be subject to a misconduct investigation.

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On 24 August 2016 a *Workplace Investigation or Review Request* document, signed by the former Deputy Director-General, Corporate as Delegate, was submitted to the Professional Standards Unit to formally request an investigation into the actions of the two former Performance Information Branch employees. The attachment to this *Workplace Investigation or Review Request* was the ACT Health Preliminary Assessment *pro forma* signed by the former Deputy Director-General, Corporate on the same date. Following its receipt of the *Workplace Investigation or Review Request* document, the Professional Standards Unit undertook a series of actions to determine an appropriate strategy for the investigation and to engage a suitably qualified investigator to conduct the investigation. This included liaising with ACT Health to further develop and articulate the nature of the allegations against the two former staff members. These were further clarified and articulated and based, in part, on the findings of PwC's *Process and Controls Review: Status of the ACT Health Quarterly Performance Report* (22 August 2016). On 16 September 2016, the former Deputy Director-General, Corporate wrote to the former officers further clarifying the allegations against them.

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On 26 September 2016 the independent investigator contacted the former Senior Manager, Business Intelligence and former Executive Director, Performance Information informing them that they had been engaged by ACT Health to undertake the misconduct investigation. The letter was accompanied by the Terms of Reference for the investigation. Between 29 September 2016 and 6 February 2017 the independent investigator undertook the investigation into the officers. The two former officers were given the opportunity to respond in writing to the allegations and were provided with access to relevant documents.

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The requirements of section H2.1 of the *ACT Public Service Administrative and Related Classifications Enterprise Agreement 2013-2017* were met in relation to the conduct of the investigation (although it is noted that these requirements only applied to the former Senior Manager, Business Intelligence, as a former non-Executive ACT Public Service employee). While there are no specific timeframe requirements for the conduct of a misconduct investigation, this investigation was conducted in a relatively timely manner, once the referral was received from ACT Health by the Professional Standards Unit on 24 August 2016. The investigation took

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around five months to complete which, although lengthy, is reasonable considering its technical nature and complexity, delays in receiving relevant documentation from ACT Health, requests for additional time to respond by the two former officers and the Christmas and New Year shut-down period.

Dr James Popple (Principal Reviewer, CPM Reviews), who was engaged by the Audit Office as a subject matter expert to review the processes undertaken in relation to the misconduct investigation, advised that both former employees were afforded procedural fairness in the management of the allegations against them, noting that both officers were given details of the allegations against them and given the opportunity (which they took) to respond and an independent investigator was engaged to conduct the investigation. Dr Popple advised 'the process was an extended one and, no doubt, caused the employees considerable stress. But the process did not cause the employees any practical injustice'. Dr Popple further advised 'even though the investigation process was procedurally fair, the decision to conduct the investigation was problematic'.

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THE MANAGEMENT OF COMPLAINTS ABOUT THE FORMER DIRECTOR-GENERAL AND FORMER DEPUTY DIRECTOR-GENERAL, CORPORATE

Paragraph

In late May 2016 the former Senior Manager, Business Intelligence had a conversation with an ACT Health Human Resources officer in relation to the behaviour of the Deputy Director-General, Corporate. The ACT Health Human Resources officer in an interview under oath or affirmation recalled that the former Senior Manager, Business Intelligence was seeking advice as to how they could make a complaint about the former Deputy Director-General, Corporate (and, in doing so, expressed concern that they could not make a complaint to the former Director-General). The former Senior Manager, Business Intelligence has since advised that they were making a complaint at the time. The ACT Health Human Resources officer recalls that they provided advice to the effect that the issues could be raised with the Head of Service or Public Sector Standards Commissioner and that this advice was satisfactory to the former Senior Manager, Business Intelligence. No contemporaneous records were kept in relation to the conversation and the ACT Health Human Resources officer did not raise the matter with their supervisor or other managers within ACT Health, including the former Deputy Director Director-General, Corporate.

3.24

On 1 July 2016 the former Senior Manager, Business Intelligence sent an email to the former Deputy Director-General, Corporate complaining about their behaviour. The former Deputy Director-General, Corporate did not respond to the former Senior Manager, Business Intelligence but forwarded the email to their direct supervisor, the former Director-General, along with a suggestion as to how the complaint could be handled. In an interview under oath or affirmation, the former Director-General advised that they sought advice from ACT Health Human Resources and then spoke directly to the former Executive Director, Performance Information about the

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incident. There is no evidence that a response was provided to the former Senior Manager, Business Intelligence in relation to the complaint.

The handling of the complaint by the former Deputy Director-General, Corporate and former Director-General did not align with existing ACT Health policy and was not effective. While the former Deputy Director-General, Corporate and former Director-General met some of the 'Information Gathering requirements' of the *Standard Operating Procedure – Anti Discrimination, Bullying and Harassment (SOP)* (February 2011), there is no evidence of how other requirements of the policy were addressed, including:

- 'the expectations both parties had/have for resolving the issue';
- 'any actions each of the parties agreed to for gaining resolution'; and
- 'management follow up and any further recommendations'.

While the former Director-General states that they considered the allegation in the email dated 1 July 2016, consulted with ACT Health Human Resources staff and spoke to the former Executive Director, Performance Information directly on the matter, they did not meet the requirements and recommendations of the ACT Health *Standard Operating Procedure – Anti Discrimination, Bullying and Harassment* (February 2011) to:

- inform the staff/s concerned that no disciplinary action will be taken, and that an investigation will not take place;
- discuss with all parties the behaviours expected from them to repair and maintain a professional working relationship; and
- arrange a follow up discussion to ensure expectations have been met.

There is no evidence that ACT Health considered informal resolution processes in response to the allegation of 1 July 2016 and it is apparent that principles of the ACT Health *Standard Operating Procedure – Anti Discrimination, Bullying and Harassment* were not met, specifically that:

- 'wherever possible, complaints should be resolved by a process or discussion, cooperation and conciliation. The aim is to reach an acceptable outcome that minimises any potential detriment to ongoing relationships'; and
- 'both the staff member raising the complaint (the complainant) and the person/persons against whom the complaint is made (the respondent) will receive appropriate information, support and assistance in resolving the grievance'.

The legal representatives on behalf of the former Director-General noted that the definition of 'bullying' for the purpose of the *Standard Operating Procedure – Anti Discrimination, Bullying and Harassment (SOP)* (February 2011) is 'repeated, unwelcome behaviour of a person/s' and because the former Senior Manager, Business Intelligence only raised one instance of witnessed behaviour the procedure did not apply. The legal representatives on behalf of the former Director-General also noted that the *Standard Operating Procedure – Anti Discrimination, Bullying and*

Harassment (SOP) (February 2011) ‘contemplates that a complainant under the SOP is a person who raises a complaint with their manager’ and that because neither the former Director-General nor former Deputy Director-General, Corporate was the manager of the former Senior Manager, Business Intelligence they had no responsibility for actioning or responding to the information.

Such an interpretation of the *Standard Operating Procedure – Anti Discrimination, Bullying and Harassment (SOP)* (February 2011) misses the intent and spirit of the procedure and its emphasis on implementing appropriate processes to recognise and manage complaints of inappropriate behaviours. The language of the email makes it clear that a complaint was being made about the behaviours of the former Deputy Director-General, Corporate and this was not effectively managed for the reasons outlined in paragraphs 3.38 to 3.41.

3.45

On 18 July 2016, during a conversation with the acting Executive Director, People and Culture, the former Senior Manager, Business Intelligence raised concerns about their treatment by senior ACT Health executives (the former Director-General and former Deputy Director-General, Corporate). The conversation occurred in the context of the former Senior Manager, Business Intelligence seeking a ‘voluntary redundancy’ from the organisation and an associated payment. In an interview under oath or affirmation the acting Executive Director, People and Culture advised that they considered the information that was provided and asked for specific examples of the incidents. The acting Executive Director, People and Culture considered that the allegations were general and lacked specificity. The acting Executive Director, People and Culture made brief, handwritten contemporaneous notes associated with the conversation. They advised that they had a conversation in which they ‘would have pretty much read out the theme of [the complaints] to the former Director-General and former Deputy Director-General, Corporate’. There is no documentation of this conversation or of the consideration of the allegations i.e. why they did not amount to potential bullying.

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On 4 August 2016, the former Executive Director, Performance Information and former Senior Manager, Business Intelligence met with the Public Sector Standards Commissioner to discuss their concerns about the behaviours of the former Director-General and former Deputy Director-General, Corporate. In an interview under oath or affirmation on 18 April 2018, the former Public Sector Standards Commissioner advised that they had separate discussions with the former Director-General and former Deputy Director-General, Corporate in relation to the issues that were raised. The former Public Sector Standards Commissioner advised that ‘given that there were I think three or four specific complaints [that] didn’t show a pattern over a long period of time of – of intimidation or, you know, anything that could – could be perceived as bullying, I really took them as a different perception of manner’. In doing this, however, it is noted that faced with conflicting stories of the events, the Commissioner decided that they would take no further action in relation to the

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allegations made by the former employees. In a response to the draft proposed report on 29 May 2018 the former Public Sector Standards Commissioner advised 'I was not made aware of any witnesses to the incidents by the complainants and having interviewed them and the subjects of the complaints I understood the matters to have been exhausted as much as they could have been'.

On 7 September 2016, a letter was sent to the former Public Sector Standards Commissioner from the legal representative of the former Executive Director, Performance Information and former Senior Manager, Business Intelligence. The letter purported to make a public interest disclosure under the *Public Interest Disclosure Act 2012*. The former Public Sector Standards Commissioner made a decision that the purported public interest disclosure from the two officers in September 2016 was not a public interest disclosure under the *Public Interest Disclosure Act 2012*. In doing so, the former Public Sector Standards Commissioner advised the Audit Office under oath or affirmation that 'They were very low level. They weren't able to – in my mind they weren't able to develop a case that this was bullying'. This was a decision that was open and available to the Commissioner. Notwithstanding that the former Public Sector Standards Commissioner did not consider the matters raised to be a public interest disclosure, the former Commissioner referred to aspects of the *Public Interest Disclosure Act 2012* (paragraphs 20(f) and 20(g)) as the rationale for not investigating the matter further. Paragraph 20(f) refers to 'the investigating entity [in this case the former Commissioner] is reasonably satisfied that the substance of the disclosure has already been investigated under this Act or another law in force in the ACT' and Paragraph 20(g) refers to 'there is a more appropriate way reasonably available to deal with the disclosable conduct in the disclosure'. The use of two different sections of the Act is considered to create ambiguity.

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Recommendations

RECOMMENDATION 1 ACT HEALTH TRAINING FOR EXECUTIVES AND MANAGERS

ACT Health should implement training for executives and managers for the handling of allegations of potential breaches of the ACT Public Sector Code of Conduct. This training should include:

- a) managing and documenting the conduct of preliminary assessments;
- b) the need to fully consider options available prior to proceeding with a misconduct investigation (e.g. underperformance management); and
- c) processes for managing and documenting allegations of breaches of the ACT Public Sector Code of Conduct.

RECOMMENDATION 2 PROFESSIONAL STANDARDS UNIT GUIDANCE MATERIAL

The Public Sector Standards Commissioner should review guidance material for ACT Government agencies with respect to the documentation of allegations of potential breaches of the ACT Public Sector Code of Conduct. The guidance material should address:

- a) the need to document the relevant and clear connection between an employee's behaviours and any alleged breach of the ACT Public Sector Code of Conduct;
- b) the role of Directors-General to consider and investigate the actions and conduct of staff in the first instance and refer allegations that are particularly serious or complex to the Public Sector Standards Commissioner in a timely manner; and
- c) the need to communicate with the Professional Standards Unit as early as possible when allegations of potential breaches of the ACT Public Sector Code of Conduct may be referred to the Public Sector Standards Commissioner for actioning.

RECOMMENDATION 3 RECEIVING AND MANAGING ALLEGATIONS OF INAPPROPRIATE WORKPLACE BEHAVIOURS

ACT Health should implement awareness training for Executives and managers to reinforce requirements for receiving, documenting and managing reports of inappropriate workplace behaviours.

Response from entities

In accordance with section 18 of the Auditor-General Act 1996, the Auditor-General provided a copy of the draft proposed report and final proposed report to the Interim Director-General, ACT Health, Director-General, Chief Minister, Treasury and Economic Development Directorate, the Public Sector Standards Commissioner, the former Public Sector Standards Commissioner and the former Director-General, ACT Health. They were offered the opportunity to provide a statement for consideration for inclusion in the Summary Chapter. No succinct comments for inclusion in the Summary Chapter were received. Where additional substantive comments were provided, these have been included in this audit report.