



Andrew Barr MLA

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Minister for Social Inclusion and Equality

Minister for Tertiary Education

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Ms Ingrid Haythorpe and Ms Tahnya Donaghy
Peg Consulting
Public Interest Disclosure Act Review
GPO Box 158
Canberra ACT 2601
Email: PIDActreview@act.gov.au

Dear Ms Haythorpe and Ms Donaghy

I am writing to submit the ACT Government submission to the Review of the *Public Interest Disclosure Act 2012* (PID Act).

The ACT Government is committed to an independent review of the PID Act to ensure the integrity framework of the Territory remains best practice and continues to position the PID Act in a contemporary and human rights compliance context. The PID Act provides for anyone who observes wrongdoing in the public sector to be able to make a disclosure about that conduct. This type of disclosure is important in ensuring open, transparent and accountable public administration.

With the commencement of the *Integrity Commission Act 2018*, greater clarity is required about when complaints are made under the PID Act or made under the *Integrity Commission Act 2018*. The Integrity Commission's focus is serious and systemic corrupt conduct that would bring the Territory's decision-making processes and reputation into serious disrepute and the Commission can consider any conduct since the commencement of self-government in 1989.

The *Protected Disclosure Act 2012* (Vic), Division 2 - How and to whom a disclosure may be made under this Part, has specific provisions about to whom a disclosure is made. Under this Act, there are provisions about disclosures that must be made to the Victorian Independent Broad-based Anti-Corruption Commission (IBAC) and similar provisions could be considered for inclusion in the PID Act.

The PID Act seeks to promote public interest and enhance public confidence in public administration by reporting wrongdoing. An amendment to the object of the PID Act could be proposed to promote a pro-disclosure culture and references to related provisions in other legislation, such as the public service values in section 7 or public sector conduct in section 9 of the *Public Sector Management Act 1994*. I also welcome your consideration of the adequacy of witness protection under the PID Act.

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By way of example, the *Public Servants Disclosure Protection Act 2005* (Canada) aims to promote ethical practices and this Act also defines wrongdoing plainly. The Office of the Public Sector Integrity Commissioner of Canada advises that this Act is intended to address wrongdoing that could seriously impact the public's confidence in the integrity of the public service and that it is not intended to address matters of a personal nature, including individual harassment complaints or individual workplace grievances as there are other ways to address these issues.¹

In addition, you may wish to consider the 2016 *Independent Review of the Public Interest Disclosure Act 2013* (Cth) (Moss Review) which proposed a principles-based approach for the PID Act to ensure that decision-makers considered the well-being and support of disclosers and witnesses. Mr Moss also referred to the NSW legislation taking a principles-based approach to guide confidentiality and procedural fairness.

During the 2017 ACT Legislative Assembly *Select Committee Inquiry into an Independent Integrity Commission*² (2017 Committee), the Clerk of the ACT Legislative Assembly raised concerns about section 11 (1)(b)(i) and section 13(b) of the PID Act where the Clerk may be responsible for investigating Members of the Legislative Assembly (MLAs) or staff employed under the *Legislative Assembly (Members' Staff) Act 1989*.

In this context, it would seem appropriate to review the referral power of the Clerk contained in these sections and to review section 25 of the PID Act, the power of the Public Sector Standards Commissioner to oversight matters relating to MLAs and their staff. The 2017 Committee also raised the question about removing the conduct of MLAs from the definition of disclosable conduct. There does not appear to be a compelling case to do so, particularly as relevant legislation in other jurisdictions includes members of parliament.

It would be beneficial to propose a statutory review provision for the PID Act which was suggested by the 2017 Committee. This type of provision would provide for a regular review of the Act. In addition, the Review may also wish to consider the sharing of information and referral of complaints with other integrity bodies; oversight and accountability mechanisms; and human rights compatibility.

You will be aware, that the findings of your review will inform any amending legislation which I will introduce into the ACT Legislative Assembly before the end of June 2020.

I look forward to your report on the review of the *Public Interest Disclosure Act 2012*.

Yours sincerely



Andrew Barr MLA
Chief Minister

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¹ <http://www.psic-ispc.gc.ca/en/confirming-wrongdoing>

² https://www.parliament.act.gov.au/in-committees/select_committees/an-Independent-Integrity-Commission/Inquiry-into-an-Independent-Integrity-COMMISSION