

Our ref: CM2023/3309

Mr Ian Govey AM  
Chief Executive Officer  
Australian Government Solicitor

Email: [ICActReviewSecretariat@act.gov.au](mailto:ICActReviewSecretariat@act.gov.au)

Dear Mr Govey,

**Submission to the *Public Interest Disclosure Act 2012 (PID Act)* Review**

I am writing to provide a submission in response to the '*Public Interest Disclosure Act 2012 - Discussion Paper*' published as part the 2023 PID Act review.

As the Public Sector Standards Commissioner (PSSC), I am independent of the ACT Public Service, reporting directly to the Chief Minister on matters defined under the *Public Sector Management Act 1994*. In addition, under powers granted to me through ACT Public Sector (ACTPS) industrial agreements, I routinely receive referrals from the Head of Service (or their delegates) alleging possible breaches of Section 9 of the *Public Sector Management Act 1994* by employees, and requests for investigation under relevant enterprise agreements and the *Public Sector Management Standards 2016*. I also receive and assess complaints and communications raising concerns about the conduct of ACTPS staff, executives, and business units. In addressing these matters, I have the authority and established processes for assessing and acting on such matters, including a process for referring matters for investigation by appropriately trained and experienced officers, overseeing investigations and other inquiries and reviewing actions taken. In addition, I have primary authority as misconduct delegate under ACTPS Enterprise Agreements (EA) in determining whether misconduct has occurred and referring such matters to the Head of Service for disciplinary action.

As you will be aware, prior to the current arrangements which came into effect in March 2021, PIDs were conducted effectively by the PSSC with support from the Professional Standards Unit. With the amendments only recently being made to the PID Act to transfer PID assessment, investigation, and oversight functions from the PSSC to the Integrity Commissioner, further legislative amendments should be driven by a clear and identifiable need for change. As noted in the discussion paper, the ongoing stability and consistency in the administration of integrity schemes is vital to their success.

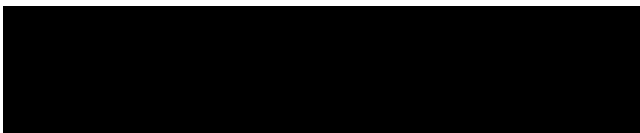
Sections 28 and 29 of the PID Act, provide the Integrity Commissioner with substantial oversight and review powers, including the ability to set aside decisions, provide advice regarding disclosures and direct a public sector official to take action in relation to disclosable conduct. The critical requirement in relation to the execution of these powers

is one of transparency and accountability, ensuring public confidence is maintained and decision makers are seen to be independent and unbiased.

Currently, disclosures which the Integrity Commission determines do not relate to a Legislative Assembly entity and are not related to corrupt conduct may be referred to the Head of Service, the Public Sector Standards Commissioner, or other related entity for consideration and/or investigation. The discussion paper notes there is a need to lessen this circular referral process and remove potential duplication of work. Should it be determined appropriate, the PSSC is certainly well placed to receive and assess disclosures and determine the most appropriate means for management. *(Where serious or systemic corrupt conduct is indicated, a referral to the Integrity Commission would be made, as mandated under section 62 of the IC Act.)* Irrespective of where responsibility for this assessment process is allocated, adequate and appropriate resourcing is essential in ensuring public trust and confidence in the PID process is maintained and timelines are reasonable.

It is important for continued public confidence that PIDs are properly and expediently dealt with, ensuring appropriate consideration and protection is given to those who make disclosures and those who are the subject of the disclosures. It is my view that with adequate and appropriate resourcing, both the PSSC and the Integrity Commission are viable alternatives to undertake this important work. The discussion paper raises the legitimate issue of whether there are more efficient ways of providing the services to support such disclosures in the public interest. The PSSC, supported by the PSU, is clearly an option available in this context to contribute to enhanced options for the administration of PIDs, should changes to the current arrangements be considered beneficial.

Yours sincerely,



Ian McPhee  
ACT Public Sector Standards Commissioner  
10 July 2023