

Submission to the Select Committee on an Independent Integrity Commission

To: Secretary, Select Committee on an Independent Integrity Commission
by e-mail: committees@parliament.act.gov.au

I recommend that the ACT Government establish powers, either complementary to or within an independent integrity commission, to:

- A. **Provide legal training for government officials** on how to identify and comply with their legal obligations, including those under the ACT Public Service Code of Conduct and under Section 9 of the Public Sector Management Act;
- B. **Strengthen the ACT Public Service Code of Conduct**, including provision for independent assessments of allegations of breaches of the code of conduct; and
- C. **Reduce the complexity of legislation**, so that it can be properly understood and efficiently implemented by the people responsible for implementing it.

The attached examples demonstrate the need for such actions:

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With my best regards



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A. Provide legal training for government officials

provide training for government officials on how to identify and comply with their legal obligations, including those under the ACT Public Service Code of Conduct and under Section 9 of the Public Sector Management Act.

Example 1: Creating codes that did not comply with the Planning and Development Act.

Section 55 of the Planning and Development Act requires precinct codes (other than concept plans) to contain the detailed rules that apply to development proposals the code applies to, and/or the criteria that apply to development proposals the code applies to, other than proposals in the code track.

Notifiable instruments NI2010-382, NI2011-81, NI2011-193, NI2011-257, NI2011-309, NI2012-164 and NI2012-209 created more than sixty suburb precinct codes that did not comply with Section 55.

Draft Territory Plan Variation 302 (Notifiable Instrument NI2011-573) created more than sixty suburb precinct codes that did not comply with Section 55.

Example 2: Improper use of technical amendments

Use of technical amendments avoids the accountability requirements under the Planning and Development Act, for the planning and land authority to inform the Minister of planned variations to the Territory Plan, and for the minister to inform the Legislative Assembly.

Section 87 of the Planning and Development Act defines what variations to the Territory Plan may be made as Technical Amendments. Its list of permitted variations does not include the creation of new codes, new types of planning instruments, or new precinct maps.

Notifiable instrument NI2010-382 shows that on 16 July 2010 the planning and land authority used a technical amendment to create the Casey Precinct Code, which was the Territory Plan's first suburb precinct code.

Notifiable instruments NI2010-382, NI2011-81, NI2011-193, NI2011-257, NI2011-309, NI2012-164 and NI2012-209 used technical Amendments to create further suburb precinct codes.

The summary on the second page of notifiable Instrument NI 2012-622 shows that it used a technical amendment (TA 2012-06) to create a new development code, to create new precinct codes and to amend zone development tables.

The amendments to zone development tables created a new type of planning instrument, called a "precinct map," and authorised precinct maps to over-ride zone development tables. The technical amendment created a layer of nineteen district precinct maps, that collectively covered the entire ACT and so provided for exemptions to zone development tables anywhere in the ACT. It also created 106 redundant suburb precinct maps which provided for exemptions to zone development tables, that might conflict with exemptions provided for in district precinct maps.

B. Strengthen the ACT Public Service Code of Conduct

strengthen the ACT Public Service Code of Conduct, including provision for independent assessments of allegations of breaches of the code of conduct.

Note that the mandatory word “*must*” appears repeatedly in Section 9 of the Public Sector Management Act and in the Commonwealth Public Service Code of Conduct, but does not appear in the current ACT Public Service Code of Conduct, where it is replaced by the merely advisory word, “*should*.”

Example 3: Investigation of breaches of the code of conduct

The outcome of an investigation into the following matters was a finding that “*I am satisfied that all Environment and Planning Directorate officials have acted in accordance with the ACT Code of Conduct in relation to the issues that you have raised.*”

Those issues included:

Issue	Extract from Code of Conduct
Using a technical amendment (TA 2012-06 – see above) to create new codes, create a new type of planning instrument, and to create new precinct maps	<p><i>We all should:</i></p> <ul style="list-style-type: none"> • <i>know our obligations and powers under the relevant law or policy</i> • <i>understand any procedures required by law for making the decision</i>
Stating that “ <i>TA 2012-06 ... simply relocated existing provisions in the Territory Plan into precinct codes.</i> ”	<i>We all should ... provide accurate information</i>
Endorsing the above statement when its veracity was questioned, and repeatedly refusing to correct it.	<i>We all should ... provide accurate information (and promptly correct errors if they are made; ... speak up – doing nothing is not an option</i>
Two officials were alleged to have breached the code of conduct by making or endorsing the above statement, and by failing to correct it. One of the two officials investigated the other’s alleged breaches. The investigating official’s report made no reference to conflict of interest.	<i>We all should ... be aware of, and properly manage, potential conflicts of interest ... be aware of any perceived or real conflicts of interest</i>
The official who investigated the veracity of the statement that “ <i>TA 2012-06 ... simply relocated existing provisions in the Territory Plan into precinct codes</i> ” omitted the word “ <i>simply</i> ” from the statement.	<i>We all should ... provide accurate information</i>
On the basis of having omitted the word “ <i>simply</i> ” from the statement by that technical amendment TA 2012-06	<i>We all should ... provide proper reasons for our decisions ... not appear to be biased</i>

Issue	Extract from Code of Conduct
<p>“[simply] relocated existing provisions in the Territory Plan into precinct codes,” found that the statement was “not inconsistent with the notifiable instrument.”</p>	
<p>Implying that the person who had alleged breaches of the code of conduct had made “unwarranted accusations of misleading conduct,” and threatening to “consider taking further action” if such claims were publicly repeated.</p>	<p><i>We all should ... be considerate and courteous in all our interactions.</i></p> <p>[Additional note: Section 243 of the Public Sector Management Act provides that “An action or proceeding does not lie against a person for or in relation to any oral or written report made in good faith by that person on or in relation to ... conduct of an officer or employee.”]</p>

C. Reduce the complexity of legislation

reduce the complexity of legislation, so that it can be properly understood and efficiently implemented by the people responsible for implementing it

Example 4: Complexity of planning regulations

Planning regulations are unnecessarily complex. In order simply to confirm that the land use proposed for a development in a suburb is permitted for its location, an assessor must:

- a) confirm the zoning of the location of the proposed development;
- b) confirm that the land use is permitted in the development table for that zone;
- c) correctly identify the relevant suburb precinct map, and confirm that the land use is not prohibited in the suburb precinct map;
- d) correctly identify the relevant district precinct map, and confirm that the land use is not prohibited in the district precinct map;

Note for example that for a development in the suburb of Watson, depending on the exact location the relevant district precinct map may be either the Canberra Central District Precinct Map or the Majura District Precinct Map.

- e) correctly identify any other precinct map/s that apply to the location, and confirm that the land use is not prohibited in those precinct maps.

Approximately one in five approvals is given to a building or development application that does not comply with the complex planning and building regulations.

This estimate is based on the following information:

- the planning and land authority’s internal audit team advised that it conducts performance audits of ten per cent of approvals
- each monthly audit focuses on only a rolling subsection of the regulations (e.g. roofs)
- each audit (of about sixty approvals) finds at least one instance of non-compliance

- assuming that it takes twelve monthly audits to cover all sections of the regulations, then a full audit of sixty applications could be expected to find at least twelve (one in five) approvals of non-compliant applications.

Example 5: Complexity of road rules

Almost half of drivers are of below average intelligence. If a driver fails to comply with road rules, the result may be injury or death.

Yet these drivers of below-average intelligence are expected to remember, understand and comply with hundreds of road rules, such as:

353 References to pedestrians crossing a road

(1) If a driver who is turning from a road at an intersection is required to give way to a pedestrian who is crossing the road that the driver is entering, the driver is only required to give way to the pedestrian if the pedestrian's line of travel in crossing the road is essentially perpendicular to the edges of the road the driver is entering – the driver is not required to give way to a pedestrian who is crossing the road the driver is leaving.

(2) In these Rules, a reference to a pedestrian crossing a road includes a reference to a person who is crossing only part of a road (for example, a person walking to a safety zone or a median strip, or to the middle of a road to display a hand-held stop sign).