

2019

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

STATEMENT

**ASSEMBLY RESOLUTION OF 3 APRIL 2019
REVIEW OF THE *PUBLIC INTEREST DISCLOSURE ACT 2012***

**Presented by
Andrew Barr MLA
Chief Minister**

28 November 2019

The ACT Government is committed to the highest levels of transparency, integrity and confidence in public administration in the ACT, and our record of reform in this space demonstrates our unwavering focus on this commitment.

In recent years, we have made significant reforms to our Freedom of Information laws – which are now the most transparent in Australia; and we have passed major legislation to establish the ACT Integrity Commission – which will begin in just a few days, and the Act for which has been described by the new Integrity Commissioner as the most carefully drafted he has ever seen.

We have been progressing these reforms in a calm, methodical and well thought out way.

The ACT Government agreed to a review of the *Public Interest Disclosure Act 2012* in its response to Recommendation 78 of the Select Committee on an Independent Integrity Commission’s report tabled on 31 October 2017.

The Government agreed the issues for consideration in the review would include relationships between existing integrity bodies in the ACT, including sharing of information and referral of complaints, oversight and accountability mechanisms, and gaps in the current framework to determine solutions.

On 3 April 2019, the Assembly passed a resolution seeking an update before the end of the 2019 calendar year on the progress of the Government’s review.

This paper provides that update.

Peg Consulting were engaged from 6 May 2019 to undertake the review of the *Public Interest Disclosure Act*. The terms of reference for the review required the independent reviewers to, amongst other things, consider:

- (a) any potential conflict of interest (real or perceived) relating to decision makers and disclosure officers under the Act;
- (b) the findings of the Moss Review examining the operation of the Commonwealth's Public Interest Disclosure framework and whether those lessons could or should be adopted in the ACT;
- (c) the application of the *Public Interest Disclosure Act* to the *Integrity Commission Act* – in particular, its relationship with protected disclosure provisions that may apply to any informants assisting the Integrity Commissioner or anyone consequently at risk; and
- (d) the suitability of an ACT Integrity Commission for the purposes of receiving disclosures pursuant to the *Public Interest Disclosure Act*.

The terms of reference also required the independent reviewers to consider relevant recommendations from the ACT Legislative Assembly Select Committee Inquiry into Independent Integrity Commission (31 October 2017) and the ACT Legislative Assembly Select Committee Inquiry into the establishment of an Independent Integrity Commission (31 October 2018).

The independent reviewers opened public consultation on the review for a six-week period between 8 June and 19 July 2019 and an advertisement was placed in *The Canberra Times* on 8 June 2019.

Letters about the review inviting written submissions were also sent to stakeholders and a Review website and email address were established.

Over the course of the review, the independent reviewers met with several key stakeholders and fourteen written submissions were received.

As well as considering the Moss Review of the Commonwealth framework, the independent reviewers also reviewed PID legislation in other Australian and overseas jurisdictions.

The final report was received on 30 September 2019.

The Report presents a comprehensive assessment of the PID Act and notes the complexity of the current whistleblowing arrangements. The Report also identifies where sections of the PID Act and the IC Act conflict or overlap.

The recommendations focus on amendments to the Public Interest Disclosure Act which will support the achievement of a pro-disclosure culture and system.

However, the report appropriately notes that while legislation can play a normative role, for cultural change to occur, public sector agencies must commit to a pro-disclosure culture that goes beyond legislation.

This includes leading by example, promoting education on notification obligations and protections, a commitment to transparency, and appropriate investment to ensure appropriately skilled investigations occur.

The Report makes 35 recommendations that focus on amendments that might be made to improve the current operation of the PID Act and make the PID Act and the IC Act work better together in the short term. The approach taken in the Report is aimed at providing clarity to disclosers and disclosure officers.

The Report recognises the Integrity Commission as the pre-eminent integrity body in the ACT and considers how our Public Interest Disclosure Framework sits within our integrity framework with the Integrity Commission at its apex.

The ACT Government is currently considering all the Report's 35 recommendations and the report along with final legislation will be presented

to the Assembly by June 2020 and will provide greater clarity around the public interest disclosure processes that are currently complex and lengthy.