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Member for Kurrajong

Mrs Giulia Jones MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Mrs Jones

I am writing in response to the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) Scrutiny Report 41 (Report), which included further comments in relation to the Public Interest Disclosure Amendment Bill 2020 (the Bill).

The Committee has requested further information on what considerations would be relevant to an assessment of the public interest that are not otherwise reflected in the Bill, and why an appeal from the Integrity Commissioner's decision on the public interest would not be inconsistent with their other roles under the *Public Interest Disclosure Act 2012* (Public Interest Disclosure Act) and the *Integrity Commission Act 2018* (Integrity Commission Act).

Public Interest Test

It is not the intention of the Public Interest Disclosure Act to address matters of a personal nature, including individual harassment complaints or individual workplace grievances. As noted by the Committee in its Report, the meaning of *disclosable conduct* in section 8 of the Public Interest Disclosure Act has been amended to specifically exclude personal work-related grievances of the person disclosing the conduct. As outlined in the explanatory statement accompanying the Bill, these matters are more appropriately dealt with through other existing mechanisms, such as the appeal and review processes set out in ACT Public Service Enterprise Agreements.

The provision only operates to exclude disclosures made by ACT public servants that are categorised as 'personal work-related grievances'. The provision does not exclude matters of a personal nature more broadly. For example, it does not exclude a disclosure made by a member of the public that is of a personal nature.

ACT Legislative Assembly

London Circuit, Canberra ACT 2601, Australia GPO Box 1020, Canberra ACT 2601, Australia
Phone +61 2 6205 0011 Fax +61 2 6205 0157 Email barr@act.gov.au



@ABarrMLA



AndrewBarrMLA



actchiefminister



As the Committee detailed in its Report, a disclosure of maladministration or a substantial and specific danger to public health or safety, or the environment, by definition, is likely to affect others. However, the public interest test provides an additional safeguard to ensure that the wrongdoing does affect others and that the legislation is not being used for tactical or strategic purposes that are not in line with the intentions and objects of the Public Interest Disclosure Act.

The purpose of the additional requirement that a disclosure needs to be in the public interest is to ensure that the discloser is not solely or personally affected by the wrongdoing and that the wrongdoing that is disclosed also affects others. The public interest essentially seeks to prohibit the abuse of the legislation by aggrieved individuals and strengthens the exclusion of personal matters from the scope of the legislation.

Review/Appeal of Integrity Commissioner's Decisions

The Committee notes that the Bill does not provide for any appeal or review of the Integrity Commissioner's decision that a disclosure was not disclosed in the public interest. The Committee further notes that, in its view, the role of the Integrity Commission in deciding whether a disclosure of disclosable conduct is a public interest disclosure is not substantially different from their role under the Integrity Commission Act.

Under the Integrity Commission Act, the Integrity Commissioner is responsible for (amongst other things), investigating conduct that is alleged to be corrupt and referring suspected instances of criminality or wrongdoing to the appropriate authority for further investigation and action. Under section 6 of the Integrity Commission Act, one of the objects includes achieving a balance between the public interest in exposing corruption in public administration and the public interest in avoiding undue prejudice to a person's reputation.

This is not dissimilar to the role the Integrity Commissioner plays under the Public Interest Disclosure Act in deciding whether a disclosure of disclosable conduct is a public interest disclosure. In both roles, the Integrity Commissioner is responsible for making an assessment of wrongdoing and where appropriate, taking further action in relation to the wrongdoing.

Given the Integrity Commissioner's decisions under the Integrity Commission Act are not reviewable, it would not be appropriate or consistent to include provisions in the Bill for appeal or review of the Integrity Commissioner's decision that a matter was not disclosed in the public interest.

I thank the Committee for its report and careful consideration of the Bill. I trust these responses address the matters raised in the Report.

Yours sincerely

Andrew Barr MLA
Chief Minister