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Agency

Mr Ian Govey AM
Independent Reviewer
GPO Box 158
Canberra ACT 2601

By email: icactreviewsecretariat@act.gov.au

Dear Mr Govey

Review of Public Interest Disclosure Act 2012 – Discussion Paper

I refer to your letter of 16 June 2023. Thank you for the opportunity to provide feedback on the Discussion Paper.

Please find attached at Annexure A Suburban Land Agency's comments in reply to the *Public Interest Disclosure Act 2012 – Discussion Paper*. We note the question numbering in the Discussion Paper doubles up on questions 7 and 8. Accordingly we have done the same in our comments.

If you would like to discuss further, please contact Ms [REDACTED], Executive Branch Manager, Governance, Corporate and Legal Services via email: [REDACTED].

Yours sincerely

John Dietz
Chief Executive Officer
6 July 2023

We acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. We acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.



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SLA RESPONSE TO THE PUBLIC INTEREST DISCLOSURE ACT 2012 – DISCUSSION PAPER

QUESTIONS FOR CONSIDERATION	SLA RESPONSE
<p>1. Where should responsibility for PIDs sit? In particular, should a distinction be drawn between those involving corruption allegations and those that do not?</p> <p>2. Are matters of education, oversight and decision substitution appropriately allocated to the Integrity Commission in light of the operation of the legislation?</p>	<p>A1. In the circumstance where the Integrity Commission does not investigate PIDs which do not involve allegations of corruption, SLA would welcome restoring the responsibility for PIDs to the PSSC. Recognising the risks identified in the discussion paper, SLA considers the benefits of streamlining the processing of PIDs through the PSSC to be of greater benefit.</p> <p>A2. Consistent with the above comment, SLA considers the responsibility for education, oversight and decision substitution is best placed with the entity which has responsibility for PIDs generally. In SLA's view, these functions should also sit with the PSSC, at least so far as non-corruption PIDs are concerned.</p>
<p>3. Should the PID Act impose a time limit on a disclosure officer to assess a disclosure and if they determine it is disclosable conduct pass it on to the managing PID entity?</p> <p>4. Should the PID Act include a requirement that a disclosure officer inform someone who has made a disclosure that the disclosure officer did not consider it to be disclosable conduct?</p>	<p>A3. SLA considers that a statutory time limit would provide clarity around the assessment stage for a PID. Assuming the responsibility for PIDs will sit with the PSSC in future, the PSSC could have power to grant extensions of time where warranted.</p> <p>A4. SLA considers that the discloser should be informed if a decision is made that the allegations do not involve disclosable conduct.</p>



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<p>5. Should the PID Act include a requirement for a disclosure officer to declare a conflict of interest when assessing a disclosure?</p>	<p>A5 Given that the Public Sector Management Act already imposes obligations on public sector employees with regard to conflicts of interest, SLA does not consider there is any additional benefit in having a separate requirement for disclosure officers to make a conflict of interest declaration.</p>
<p>QUESTIONS FOR CONSIDERATION</p>	<p>SLA RESPONSE</p>
<p>a. If yes, what would be the best method for managing such a scheme? Should conflicts be reported to the Integrity Commission or managed by the relevant agency?</p> <p>6. Should the role of disclosure officer be removed from the scheme with reports made directly to the Integrity Commission?</p> <p>7. Should the investigating entity be required by the PID Act to declare an actual or perceived conflict of interest prior to investigating a PID?</p> <p>a. If so, should the investigating entity also be required to prepare a conflict of interest management plan?</p>	<p>A5(a) Not applicable.</p> <p>A6 SLA would not support removing the disclosure officer from the scheme. SLA’s view is that the agency is best placed to investigate the alleged conduct, having regard to the management of any conflict of interest.</p> <p>A7 SLA does not consider that it is necessary to prescribe this additional step in the PID Act.</p> <p>A7(a) Not applicable.</p>



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<p>8. Should the PID Act clarify that the Integrity Commissioner may reallocate a PID investigation to another investigating entity if the initial entity is unable or declines to investigate?</p> <p>a. Alternatively, should the PID Act enable the investigating entity to refer the matter to another entity in consultation with the Integrity Commission?</p>	<p>A8 This is not a matter of concern to SLA.</p> <p>A8(a) Not applicable.</p>
<p>QUESTIONS FOR CONSIDERATION</p>	<p>SLA RESPONSE</p>
<p>7. Should the PID Act include an avenue to allow disclosure to the responsible Minister if a statutory officer holder or the Head of Service is found to have been involved in disclosable conduct?</p>	<p>A7 SLA considers that the current risk, that such a disclosure might be in breach of the confidentiality provisions of the PID Act (s.44), should be clarified to protect the heads of public sector entities. SLA has an independent Board and in our view, disclosure should be permitted to be made to the Board in these circumstances. In the case of Board members being involved in potentially disclosable conduct, it should appropriately be referred to the Minister.</p>
<p>8. Are the oversight and review mechanisms sufficient to manage any risks arising from the current mechanism for deciding to end an investigation? If so, how should they be addressed?</p>	<p>A8 SLA considers the current provisions to be adequate, noting that the PID Act includes safeguards that allow the Integrity Commissioner, at any time, to review a decision by another investigating entity to end its investigation of a PID under section 20(2). Also, a person may make a complaint to the Ombudsman.</p>



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9. Is the current material on the definition of disclosable conduct under the PID Act clear and easy to understand?	A9 SLA does not consider any change to the definition of 'Maladministration' is necessary.
10. Are there any gaps in the current definition of disclosable conduct? a. If so, what should be captured?	A10 SLA is not aware of any relevant gaps in the definition which have impacted SLA. A10(a) Not applicable.
11. Should the PID Act and IC Act remain separate, or be combined into one piece of legislation?	A11 As previously noted, SLA would welcome the responsibility for PIDs being restored to the PSSC. If that occurs, SLA considers that the IC Act and the PID Act should remain separate pieces of legislation.



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QUESTIONS FOR CONSIDERATION	SLA RESPONSE
12. Should decisions by the Integrity Commissioner about whether a matter is a PID be subject to review?	A12 This is not a matter of concern to SLA.
13. Is it sufficient to have the ability to apply for review under the Administrative Decisions (Judicial Review) Act or should an internal review process within the Integrity Commission be added?	A13 This is not a matter of concern to SLA.
14. Does the provision on work-related grievances (section 8) require further clarification?	A14 SLA does not consider any change to this provision is required.
15. Are the current thresholds for protections and immunities in Part 7 of the PID Act sufficient?	A15 SLA does not consider any change to this provision is required.
16. Do those who make a disclosure require additional protections, especially from retribution or employment related consequences? a. If so, what sort of protections should be available?	A16 SLA does not consider any change to this provision is required. A16(a) Not applicable.



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QUESTIONS FOR CONSIDERATION	SLA RESPONSE
17. Should section 44 be amended to apply to journalists and MLAs?	A17 This is not a matter of concern to SLA.
18. Should any provisions be put in place to protect individuals from the risk of reputational damage if a public disclosure is made to a journalist or an MLA before the matter is investigated?	A18 This is not a matter of concern to SLA.
19. How should PIDs, particularly in relation to any disciplinary action, be handled for MLAs and their staff?	A19 This is not a matter of concern to SLA.
20. Should the head of a public sector entity be redefined to exclude the Clerk as the responsible entity with regard to MLAs and their staff?	A20 This is not a matter of concern to SLA.
21. Should there be a power in the PID Act to allow for the disclosure of information to third parties by the Integrity Commissioner? a. If yes, i. in what circumstances should this power be enlivened? ii. should the PID Act define which third parties may receive the disclosure of information?	A21 This is not a matter of concern to SLA.



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QUESTIONS FOR CONSIDERATION	SLA RESPONSE
22. Should the IC Act expressly provide that an investigating entity is able to provide information and updates to a public sector entity that is required to take action under section 24?	A22 Given the uncertain application of s.44 of the PID Act in this space, SLA would welcome an amendment which would allow the Integrity Commissioner (or other investigating entity) to share the outcome of an investigation with a public sector entity so that entity may meet its obligations to take action under section 24 of the PID Act (these obligations include taking action to prevent the disclosable conduct occurring in the future, and taking appropriate disciplinary action if it is found the disclosable conduct occurred).
23. Who is best placed to undertake an investigation into disclosable conduct relating to the Ombudsman? a. Should the PID Act include a similar provision to the IC Act to allow a special investigator to be appointed for matters related to the Ombudsman? i. If so, who should make the appointment?	A23 This is not a matter of concern to SLA.
24. Should section 27A(1)(b) be amended to make it clear that all three elements are required, and that is not a list of three separate alternatives?	A24 SLA would welcome an amendment which provides this clarity.



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QUESTIONS FOR CONSIDERATION	SLA RESPONSE
<p>25. Should the legislation be amended to specify that a complaint can only be investigated under either the PID Act or the IC Act, but not both?</p> <p>a. If no, should a person be able to claim the protections under the PID Act in relation to disclosure made contrary to a requirement under the IC Act?</p>	<p>A25 SLA considers that a complaint should be treated as either a PID or a corruption complaint, but not both. This is due to the interaction between the 2 Acts being cumbersome and inefficient.</p> <p>A25(a) SLA considers that a person should be able to claim protections under the PID Act where disclosure is made contrary to the IC Act. Consistent with the above comment, this will afford protection to persons who make a corruption complaint which ultimately becomes a PID.</p>