

22 March 2023

Ian Govey AM
Independent Reviewer
Chief Minister, Treasury and Economic Development
GPO Box 158 Canberra ACT 2601

By email: ICActReviewSecretariat@act.gov.au

Dear Mr Govey,

RE: Review of the *Integrity Commission Act 2018* and the *Public Interest Disclosure Act 2012*

Thank you for the opportunity to provide our submission to the review of the *Integrity Commission Act 2018* ('IC act') and the *Public Interest Disclosure Act 2012* ('PID act').

Legal Aid ACT ('LAC') provides services to the ACT Community's most vulnerable and disadvantaged individuals as they navigate the justice system. We inherently value equality before the law and believe this extends to the ACT Government and its transparent administration. We support the ACT Integrity Commission and welcome this scheduled review of its operation.

We make brief comments below in response to the terms of reference.

2(a) The operation of the IC act in relation to the broader ACT Public Sector (ACTPS) Integrity Framework.

LAC suggests there would be benefit in clarifying the interrelation between the PID and IC Act. Arguably there are areas of overlap which may complicate the 'whistle-blower' investigation process. We understand the Public Interest Disclosure Amendment (Review) Bill 2022 is currently also under review.

2(b) and (c) Increased powers under the *Telecommunications (Interception and Access) Act 1979* (Cth).

LAC understands the Integrity Commission has called for powers under the Telecommunications Act in their past two annual reports. Given that the relative powers are currently available to all Australian integrity commissions, other than Tasmania who do not want it and the Northern Territory who are in the process of acquiring it, it seems reasonable that their requested is fully considered.

The key issue, we suggest, would be the necessary operating capacity (cost and staffing) of the ACT Commission, to utilise those powers to make their investigations as effective as possible. Further a necessary consideration would be the specification of terms and conditions upon which these powers were to be exercised, and the governance/oversight; interstate models provide some valuable guide lines for checks and balances.

2(d) The role of the Inspector.

LAC agrees that the ACT Ombudsman is well placed as the inspector for the Integrity Commission. Trust in this oversight is strengthened by having these scheduled reviews by an independent assessor.

2(e) The provision of legal assistance to witnesses.

LAC submits that the ACT Integrity Commission should consider providing more substantive legal assistance to witnesses throughout the investigative process.

We appreciate that s171 of the IC Act provides that witnesses may be entitled to reimbursement for legal assistance in connection to their appearance. However, this assurance provides no further information on the parameters of that reimbursement or how that legal assistance should be obtained.

In comparison, the NSW equivalent act specifies that a witness may apply to the Attorney General for legal or financial assistance.¹ The factors that influence whether that application will be approved are then listed, including any hardship to the witness if the assistance is declined, or the significance of the evidence they are likely to give. This is supported by clear directions on their website that it will be the Office of the General Counsel and the Department of Justice that may provide a lawyer free of charge.²

It should be acknowledged that the investigations and hearings function are inquisitorial proceedings. Such proceedings will be less intimidating for a witness unless legal guidance or assistance is provided. Whether the hearings are public or private, they can have lasting repercussions for witnesses' careers and reputations. It would be regrettable if an individual's experience of the integrity commission was dependent on them having the knowledge and financial ability to coordinate and employ their own legal advice.

LAC appreciates that the funding for legal assistance has been raised by the Integrity Commission in their 2021-2022 Annual Report, and the Chief Minister, Treasury and Economic Development Directorate are considering the proposal³. LAC would like to confirm its support for an independent administrative process, and open communication with the ACT Government and Integrity Commission over the provision of legal assistance to those involved with their investigations.

2(f) Wellbeing arrangements for those involved in investigations.

As mentioned above, being involved in an investigation or hearing for the Integrity Commission can be daunting and overwhelming where someone has no specialist support.

At the Integrity Commission's conception, the ACT Government said it was taking inspiration from the Victorian Independent Broad-Based Anti-Corruption Commission ('IBAC') as both areas had obligations under human rights legislation⁴. There remain some lessons that can be taken from

¹ NSW Independent Commission Against Corruption Act 1988 No 35 s52(1) and (2)

² [Information for people involved in investigations - Independent Commission Against Corruption \(nsw.gov.au\)](#)
[Apply for Assistance \(nsw.gov.au\)](#)

³ * [2021-22 Annual Report \(act.gov.au\)](#)

⁴ [Hansard - 27 November 2018 \(act.gov.au\)](#) page 4828

IBAC's efforts to support individuals' wellbeing while involved in investigations which could be brought into the ACT.

Victoria's Independent Broad-based Anti-Corruption act makes multiple references to considering a person's wellbeing when deciding between a public or private hearing or when publishing any information about a person.⁵ This is supported on their website, where their 'information for witnesses' begins with – 'IBAC takes its responsibility to look after the welfare of everyone involved in our work seriously. This includes protecting the welfare of witnesses.'⁶

We suggest that a more proactive and holistic approach to support for those involved in an investigation or hearing is warranted. The Integrity Commission's website could be enhanced by providing more information about wellbeing arrangements or supports for witnesses.

Conclusion

Overall, we appreciate the Integrity Commission's vital work in strengthening public confidence in the ACT Government and feel confident in their first 3 years of work. Issues of timeliness and delay may well be a factor of current capacity and funding. We would welcome an effort to expand wellbeing arrangements and legal assistances for witnesses involved in investigations and hearings.

Should you have any questions in relation to these submissions, please do not hesitate to contact me at [REDACTED]

Yours sincerely



Dr John Boersig PSM
Chief Executive Officer
Legal Aid ACT

⁵ Independent Broad-based Anti-Corruption Commission act 2011 s117(c), s117(38)(3) and 162 (7)(b)

⁶ [Information for witnesses, including welfare support available | IBAC](#)