Public Interest Disclosure

DISCUSSION PAPER ON A PROPOSAL FOR NEW PUBLIC INTEREST DISCLOSURE LEGISLATION

December 2011

FOREWORD

Australia is a signatory to the United Nations *Convention Against Corruption*. This requires signatories to put in place appropriate measures to provide protection against any unjustified treatment of any person who reports, in good faith and on reasonable grounds, to an appropriate authority any facts concerning an offence contrary to the public interest. In the ACT this mechanism with corresponding levels of protection is currently achieved through the *Public Interest Disclosure Act 1994* (PID Act). The PID Act allows people to make protected disclosures about criminal or disciplinary matters that arise from dishonest or biased conduct or poor administration by public officials.

PID is a difficult area to regulate because while the Government encourages reports of serious maladministration if they are occurring, people often feel inhibited making disclosures for fear of recrimination. PID also can sit awkwardly alongside provisions in public sector legislation about the obligation on public servants to maintain confidentiality and not bring the service into disrepute. As a result, PID is often unhelpfully conflated with leaking of information to the press or to non-government members of the Assembly, limiting the abilty of Government to conduct full and rigorous investigations to identify and stamp out wrongdoing in the public sector.

It is important that we draw a distinction between genuine disclosures in the public interest to the appropriate authority that might investigate them, and leaking. Leaking of information is not the same as genuine whistle blowing and may well constitute a serious criminal offence or a breach of general obligations on members of the ACT Public Service under the *Public Sector Management Act 1994*.

The Government has been considering how best to address these issues and modernise the PID Act for some time. An amendment bill was introduced into the Legislative Assembly in 2006 that attempted to broaden the scope of the legislation. However, post-introduction, Griffith University's 'Whistling While They Work (WWTW) Project' released an issues paper in 2006 comparing the legislation (including available bills) in all Australian jurisdictions, which found that the 2006 ACT Bill in significant respects did not improve on the 1994 PID Act. Accordingly, the bill was not progressed and lapsed when the Assembly rose for the 2008 election.

The ACT Public Sector Management Group is working on a new bill that will replace the existing PID Act with a scheme that delivers best practice, addressing the identified deficiencies of the current model. The guiding principles of the new bill are:

- that genuine public interest disclosures should be encouraged and facilitated
- the public interest disclosure scheme is reserved for serious matters where internal resolution is, or is likely to be, unsuccessful
- purely internal and personal individual ACTPS employment-related complaints and grievances will rarely constitute public interest disclosures, and are better handled in other processes
- that people who make serious allegations of maladministration that are in the public interest to disclose and resolve are adequately protected and treated respectfully
- that people who make a public interest disclosure are entitled to be briefed (confidentially if necessary) on the progress and outcomes of their disclosure
- if a disclosure is genuine, it is in the public interest that the findings of any investigation are made public
- the Commissioner for Public Administration will be informed of all matters that could amount to a public interest disclosure to decide on whether the process under the legislation is activated and provide appropriate advice on handling the issues
- the Head of Service will be informed of all public interest disclosure proceedings.

An exposure draft of the proposed scheme has been developed. This paper is intended to assist all individuals and organisations to understand the intent of the scheme and issues that need to be further considered.

I invite everybody who has an interest in this issue, including members of the ACT Public Service, to have a say on the development of the scheme. Your views are important and will inform how best to deliver a scheme that serves the public interest and protects the individuals who are altruistic in disclosing conduct which threatens the public interest.

I encourage you to make a submission.

Ms Katy Gallagher MLA
Chief Minister

22 December 2011

HOW TO MAKE A SUBMISSION

In formulating your submission you are encouraged to refer to the issues and questions that are raised in this discussion paper. However, submissions are not limited to the questions and comments on any aspect of the paper are most appreciated.

You are also encouraged to support your views and suggestions with any evidence, data or experience you have available to you.

Submissions may be made in a variety of ways:

1. Written submissions using the template

The attached template may assist in preparing your submission. It covers all major issues. You are welcome to answer all questions or just the parts that interest you.

2. Written submissions in any form

Please provide reasons or explanations in your submission to assist in understanding the nature of your views.

3. Make a Submission in person or over the phone

The Public Sector Management Branch of Chief Minister and Cabinet Directorate is happy to meet with you in person or over the phone to discuss your views. Please contact us (on the number below) after 9 January 2012 to make an appointment between **20 February and 9 March 2012**. A written summary will be made of this meeting, which will then be treated as a submission.

All submissions (including summaries of submissions made in person) will be made publicly available.

The closing date for submissions is close of business **26 March 2012**.

Submissions may be lodged by:

Mail: Public Interest Disclosure: Consultation
Public Sector Management
Chief Minister and Cabinet Directorate
GPO Box 158
Canberra ACT 2601

E-mail: psm@act.gov.au

The Exposure Draft of the proposed legislation, discussion paper and other information about the consultations may be found at http://www.legislation.act.gov.au/ed/db_43761/default.asp.

Inquiries about the discussion paper can be made by email to psm@act.gov.au or telephone on 02 6205 0358.

EXPOSURE DRAFT DISCUSSION

Whose conduct can be disclosed under the PID legislation?

The current *Public Interest Disclosure Act 1994* (PID Act) applies to disclosures about possible wrongdoing by a **public sector entity or official**. Consistent with the current legislation, the proposed bill does not extend to cover alleged wrongdoing in the private sector.

The Whistling While They Work Project (WWTW) took an expansive approach to defining the public sector, encompassing anyone who carries out functions on behalf of the Government, and/or at the Government's expense. The proposed bill accordingly takes a very board view of the public sector and extends this term to include Members of the Legislative Assembly (MLAs).

Under the proposed bill a ***public sector entity*** is either an ***ACTPS entity*** or a ***Legislative Assembly entity***.
It is proposed that an ACTPS entity means any of the following:

- an administrative unit;
- a territory authority;
- a territory-owned corporation;
- a subsidiary of a territory-owned corporation;
- a territory instrumentality;
- a statutory office-holder.

It is proposed that a Legislative Assembly entity means any of the following:

- a member of the Legislative Assembly;
- the Legislative Assembly secretariat;
- a person employed under the Legislative Assembly (Members' Staff) Act 1989.

A **public sector officer** is defined by the proposed Bill to mean:

- a person who is or has been—
    - an employee of the public sector entity; or
    - a contractor or volunteer carrying out a function of the public sector entity; or
- a person prescribed by regulation.

The proposed bill deliberately does not apply to disclosures about the conduct of members of the judiciary. The *Judicial Commissions Act 1994* provides a mechanism for reviewing complaints about a matter that relates, or may relate, to the behaviour or physical or mental capacity of a judicial officer. The *Australian Capital Territory Self-Government Act 1988* (Cwlth) limits the ability of the ACT Legislative Assembly to make laws in relation to investigating the conduct of the judiciary other than through a Judicial Commission. Accordingly, the Judiciary are not included in the proposed bill as a public sector entity.

Question 1 – Does the proposed bill provide for complaints to be made against all appropriate public sector groups? In particular, should a person be able to make a PID about the conduct of a Legislative Assembly entity?

Who should receive protection under PID legislation?

If a person receives protection under PID legislation they are protected from retaliation or recrimination in connection with the disclosure made.

The current PID Act (and the 2006 Bill) allows any person to lodge a public interest disclosure. This is broader than the recommended scope under WWTW, which suggested limiting disclosure rights to members of the public sector only. However, broad coverage is considered appropriate for the

ACT given the proximity of the citizenry to Government information. In other words, there is a high likelihood that someone from outside Government through personal connections could come across information that should be disclosed in the public interest.

Question 2 – Should anyone be able to make a PID or should protection be limited to people who find out about such information through their employment?

Both the current PID Act and the 2006 Bill proposed to treat anonymous disclosers differentially to disclosures who reveal their identity. This was criticised by WWTW as 'suggesting that anonymous disclosures are inherently illegitimate' (p11). WWTW also commented on the uncertainty around protection for disclosers in relation to further information provided after their initial disclosure, and for witnesses giving evidence in relation to someone else's disclosure. The bill proposes to adopt the WWTW approach to standardise the level of protection available to all people involved in the investigation process.

Question 3 – Should witnesses receive the same level of protection as initial disclosers? Should anonymous disclosure be treated like any other disclosure where possible?

What can be the subject of a protected disclosure?

The current PID Act and the 2006 Bill were both criticised in the WWTW 2006 Issues Paper for not having defined categories of wrongdoing or conduct that could be disclosed on public interest grounds. The 2006 Bill in particular was singled out as it applied to any 'conduct contrary to the public interest' which WWTW said was too difficult to administer given often competing definitions about 'public interest'.

The current PID Act was also identified as problematic on the basis that a disclosure had to comprise information of a scale that someone was likely to face disciplinary or criminal charges or possible termination proceedings. There may be times when a potential discloser might have important information that the Government would want brought forward, but does not have enough detail to indicate that someone's actions were culpable to this extent.

In addition, according to WWTW the major problem with the Act and 2006 Bill provisions is that they do not expressly include a category for maladministration, which is normally what the Ombudsman and other authorities are asked to consider in this context. Under the WWTW 2006 Issues Paper, the types of wrongdoing that should be able to be the subject of a disclosure are:

- illegal activity
- corruption or official misconduct
- misuse or waste of public funds/resources
- maladministration
- dangers to public health and safety and
- dangers to the environment.

These concepts have been picked up in the definition of disclosable conduct in section 8 of the proposed bill, which offers the following definition:

For this Act, ***disclosable conduct*** means conduct of a public sector entity or public official that is any of the following:

(a) official misconduct;

(b) maladministration that adversely affects a person's interests in a substantial and specific way;
(c) a substantial misuse of public funds;
(d) a substantial and specific danger to public health or safety;
(e) a substantial and specific danger to the environment.

Question 4 – Are the categories of wrongdoing extensive enough? Are there other kinds of conduct that would or could amount to wrongdoing that would not fall within the proposed definition? Should any of the proposed categories of disclosable conduct be removed?

How do we ensure the PID process is invoked appropriately?

One of the most challenging elements of developing a PID scheme is providing sufficient prescription to ensure matters which are genuinely in the public interest are investigated. Often the difference between what is a private matter appropriate for pursuit through individual channels and what is in the public interest will be a matter of degree, or sufficient context.

The integrity and value of a PID scheme to the community is undermined if the scheme is used for individuals to pursue personal grievances or vendettas. However, this risk must be balanced against the potential that what appears at first blush to be a personal grievance may in fact be the window into a systemic issue that a PID would appropriately address; or that conduct which would not warrant a PID as a one off incident but may do so after repeated occurrences of the same behaviour.

Additionally, there will be times that conduct will be conduct that can be the subject of a public interest disclosure, but will also have had immediate and detrimental effect on an individual who witnessed the conduct prior to making the disclosure, for example, they may have had their employment unjustly terminated. While the public interest may be advanced by an investigation under the PID scheme, the individual's interests may be better served through another mechanism depending on the remedy he or she is seeking, for example pursuing unfair dismissal if reinstatement is desired. The identification of which matters are investigated as a PID cannot be blind to the needs of the individuals who make the PID.

Currently, the PID Act provides that a disclosure may not be investigated if it is:
- frivolous or vexatious;
- misconceived or lacking in substance;
- trivial;
- more appropriate to be dealt with through other means;
- already resolved; or
- the subject of a determination by a court or tribunal, and the investigation would reopen the issue.

The 2006 Bill broadened the grounds for not investigating a disclosure, including a catch-all provision where to investigate would not be in the public interest having regard to all the circumstances of the case. This last ground was particularly criticised by WWTW for allowing too much scope for an investigation to be refused.

The WWTW 2006 Issues Paper recognised the tension between misconduct that is in the public interest to be investigated and which is also conduct connected to a purely personal grievance. The paper also appreciated that often the reasons for someone bringing a PID is that the information is affecting them personally. However, to ensure the integrity of PID schemes, it recommends focusing on the subject of the disclosure to determine what treatment it receives rather than the motives of the discloser or the remedies available to him/her.

WWTW also suggested a split approach to how disclosures will not be acted upon. It identified a set of circumstances where information should not amount to a PID, and therefore should not be investigated and the discloser should not receive legal protection, being where the information:

- is false or misleading and the discloser is aware of this;
- by adopting either a subjective or objective test, does not create a reasonable belief that serious wrongdoing has occurred;
- is a policy dispute entirely or in substance;
- is a personal grievance entirely or in substance; or
- is frivolous or vexatious.

The Issues Paper further identified some situations where an investigation could be declined, but the discloser may need legal protection against possible reprisal which is where:

- the information is incorrect and the discloser was unaware of the mistake;
- the matter is trivial;
- the matter is old; or
- the matter has already been investigated or litigated or is more appropriate for litigation.

The proposed bill picks up the recommendations made by WWTW in section 7 through the definition of 'public interest disclosure'. In particular, section 7(1)(a) provides a subjective test for identifying a PID and section 7(1)(b) provides an objective test for identifying that wrongdoing has occurred. Satisfaction of either test will be sufficient for a PID to be made out.

Given the very generous level of protection available to make a PID, it is appropriate that it should be limited to very specific circumstances where there is a genuine public interest at stake. The proposed bill also makes it clear that the PID process is not designed for resolving conflict between two parties, and therefore cannot offer fit-for-purpose protection to both sides of a dispute.

Question 5 – Does the definition of 'public interest disclosure' respect the importance of a public interest component of a disclosure without inappropriately curtailing what can be disclosed?

How should disclosures be received, handled and investigated?

The current PID Act allows a PID to be made (or transferred) to the relevant responsible agency based on the information in the disclosure, with the default authorised person to receive a PID being the Director-General or equivalent position in the agency. The Commissioner for Public Administration and the Auditor-General are also responsible agencies for the purposes of this Act. The 2006 Bill added a power for the Director-General or equivalent to appoint a declared contact person to receive a PID through a notifiable instrument.

WWTW recommended that PID legislation or accompanying procedures should be quite specific about who can receive a PID, including identifying individuals. The rationale for this is to facilitate a PID being made without the need for multiple inquiries (thereby limiting spread of information) where possible. Allowing for multiple identified contact points within an organisation can also be useful where the Director-General is implicated in the PID subject matter.

The current PID Act gives much responsibility to agencies for dealing with a PID. WWTW recognised that these are often complex matters, which a line agency may not have much skill or experience in dealing with, and which could put the officer dealing with a PID in an awkward position with respect to the rest of his or her agency. WWTW recommended more central oversight of these matters to support people making disclosures and the staff handling and investigating them alike.

Accordingly, it is proposed that the Commissioner for Public Administration be the co-ordination point for all PIDs being investigated in the ACT Public Service. Agencies will be required to inform

the Commissioner as soon as practicable when notified of complaints that could result in a PID to decide whether the PID Act applies and provide advice on how the matter should be handled. It is proposed that internal procedures will be established to support these procedures, rather than including these matters in the primary legislation.

Under section 11 of the proposed bill a PID can be received by:

(a) for a disclosure that relates to an ACTPS entity—
  (i) the commissioner; or
  (ii) the head of service; or
  (iii) the auditor-general; or
  (iv) the head of an ACTPS entity; or
  (v) a person declared under subsection (2) for an ACTPS entity;

(b) for a disclosure that relates to a Legislative Assembly entity—
  (i) the clerk of the Legislative Assembly; or
  (ii) the auditor-general; or
  (iii) a person declared under subsection (2) for a Legislative Assembly entity;

Question 6 – Does the bill propose enough choice in relation to who within the public sector can receive a PID?

WWTW also supports that the media and Parliament should be able to receive a PID, which has long been the case in NSW. In their 2010 legislation, Queensland included provisions for the media and Parliament to receive a PID where:

- a disclosure to the appropriate public service receiver must have been made first;
- the receiver has declined to investigate or deal with the disclosure, or has not recommend any action after an investigation, or has not notified the discloser of any action in relation to the disclosure within 6 months of the disclosure being made;
- the discloser's primary reason for going to the Assembly or the media was so that appropriate action could be taken; and
- going to the Assembly or media means that action was, is, or could be taken.

Part 5 of the bill proposes amendments along these lines. The provisions indicate that the discloser may make a disclosure to a member of the Legislative Assembly or a journalist, of substantially the same information that was the subject of their public interest disclosure, if a discloser has made a public interest disclosure to a disclosure officer and:

- has been told that the disclosure will not be investigated or
- has been told that no action will be taken in relation to the disclosure or
- has not been told within 6 months after the day the disclosure is made whether or not the disclosure will be investigated or dealt with or
- has been told the disclosure will be investigated but has not been told about the progress of the investigation for a period of more than 6 months or the investigation has not been completed with 6 months from the date the discloser made the disclosure.

Question 7 – Should a PID be able to be made to the Assembly or a journalist? If so, do the preconditions in the proposed bill provide sufficient safeguards to ensure that disclosers are required to exhaust PID processes within the public sector first?

In terms of how investigations are handled, the 2006 Bill proposed to introduce stand-alone investigation powers in respect of public interest disclosures. As per WWTW recommendations, the proposed bill retains what is in the current PID Act instead, so that investigations are carried out similar to other complaints, with supplementary powers and processes as required.

The need to keep information obtained under the PID process confidential has also impeded resolution of complaints as it affects the ability to seek external advice. WWTW remarked on this trend, saying that it has undermined processes rather than providing the protection intended.

Like the current PID Act, the proposed bill requires that an agency must receive a PID if the discloser believes it is making the disclosure to the correct agency and that an agency must investigate a PID that satisfies the requirements of the legislation. The bill also allows for a matter to be referred to a different entity if it would be more appropriate for the other entity to undertake the investigation.

Question 8 – Will these measures ensure that all PIDs are investigated promptly by the appropriate public sector body?

Under section 18 of the proposed bill, a range of grounds are provided for not investigating a PID once it is received:

18 Investigating entity may decide not to investigate etc

(1) An investigating entity may decide not to investigate a public interest disclosure, or may end the investigation of the disclosure, if—

(a) the discloser has withdrawn the public interest disclosure; or

(b) the discloser has not told the disclosure officer the discloser's name and contact details and the investigating entity is reasonably satisfied that this lack of information makes it impracticable for the disclosure to be investigated; or

(c) the investigating entity is reasonably satisfied that the disclosable conduct in the public interest disclosure is trivial; or

(d) the investigating entity is reasonably satisfied that the disclosed information is wrong in a material way and investigation of the disclosure is not warranted; or

(e) the investigating entity is reasonably satisfied that the age of the disclosed information makes it impracticable for the disclosure to be investigated; or

(f) the investigating entity is reasonably satisfied that the substance of the disclosure has already been investigated under the Act or another territory law; or

(g) there is a more appropriate way reasonably available to deal with the disclosable conduct in the disclosure.

Paragraph (g) has been included to cover situations including where:

- a different legislative process may offer better remedy for the person making the disclosure, for example, pursuing unfair dismissal;

- a different legislative process may already exist to address the situation which has been raised, for example issues raised about a doctor employed by the Territory may be more appropriately dealt with under the *Health Practitioner Regulation National Law (ACT) 2010*; or
- the matter relates to a personal grievance of the discloser not to a matter of public interest and the matter would be more appropriately dealt with another way, including informally or as a discipline issue.

Question 9 – Does section 18 balance the desire to properly investigate public interest disclosures whenever possible, with the desire to reserve the PID process for matters which are genuinely in the public interest, and with respect for the welfare of the discloser?

The proposed bill is intended to provide a framework that will ensure all parties to a public interest disclosure investigation, and in particular the discloser (unless the disclosure was anonymous), are kept well informed of the progress and decisions made in relation to the investigation. This is an area where significant improvement from the existing scheme is sought.

Recent ACT cases have highlighted a deficiency around keeping complainants informed of progress on investigations. There is high sensitivity around privacy issues in the ACT Public Service, and the need to protect employee information is acknowledged. However, it is creating a degree of disillusionment among complainants that they take the risk of bringing a PID but are disenfranchised from the process and precluded from obtaining closure from it.

Under the proposed bill, once an investigation has been received:

- the investigating entity may refer the disclosure to the chief police officer if they are satisfied, on reasonable grounds, that the disclosable conduct the subject of the disclosure involves, or could involve, an offence;
- if the investigating entity is not the entity that the disclosure relates to, the investigating entity must tell the entity that the disclosure relates to if the investigating entity decides not to investigate the disclosure, or to end the investigation of the disclosure and why;
- if the investigating entity is not the entity that the disclosure relates to, the investigating entity must tell the entity that the disclosure relates to about the progress and outcome of the investigation;
- the investigating entity must tell the discloser (unless the disclosure was made anonymously):
  - which entity is undertaking the investigation;
  - if a decision not to investigate a disclosure, or to end the investigation of the disclosure is made, including the reasons for making the decision; and
  - if a disclosure is investigated the progress of the investigation at least once every 3 months; and the outcome of the investigation.
- the investigating entity must tell the Commissioner for Public Administration:
  - about a referral of a public interest disclosure to another public sector entity or to the chief police officer; a decision not to investigate a disclosure;
  - the progress and outcome of an investigation of a disclosure;
  - any action taken, or proposed to be taken, in relation to the disclosable conduct that is the subject of the public interest disclosure.

The proposed bill also recognises there are circumstances, including the protection of privacy, when information should not be shared. Under section 24 a person, including a discloser, need not be told about information in relation to a public interest disclosure if telling the person would

be likely to adversely affect a person's safety or to adversely affect the investigation of an offence or possible offence. Additionally, a discloser must not be told about information in relation to a public interest disclosure if telling the discloser would identify a person that has given information in relation to the disclosure or could allow the identity of the person to be worked out or is contrary to a law applying in the Territory.

Question 10 – Are the proposed new information requirements sufficient? Do they balance the discloser's interests and the rights of individuals identified or implicated in the investigation?

What is the level of legal protection to be afforded to disclosers?

PID legislation provides an avenue for disclosure of confidential and/or sensitive information without incurring civil or criminal liability. WWTW takes an extremely protective stance in relation to complainants and witnesses, as part of encouraging people to come forward with information. Accordingly, while the usual actions to stop or compensate for anti-reprisal are canvassed, WWTW takes the further step of suggesting that agencies should be required to undertake risk assessments for reprisals when a PID is accepted. The rationale is that this would assist with preventing reprisal. Arguably though, this would already be covered by work safety duties, and is therefore currently being considered for inclusion in internal procedures rather than the primary legislation.

In keeping with high levels of protection for complainants, WWTW also favours an approach where PID provides an absolute defence for defamation (which is in place in NSW, VIC, QLD and SA). The defence would only apply to the disclosure process, and not where information that is the subject of a disclosure is provided outside of that process. However, given that truth is not a defence to defamation in the ACT, this approach may not be suitable.

In terms of anti-reprisal offences, the ACT, like most other jurisdictions, makes it a criminal offence to cause detriment to someone on the basis that a PID has or could be made. The 2006 Bill put a slightly higher threshold, requiring a person to have intended to deter or punish the discloser for their actions to comprise an unlawful reprisal. WWTW has commented that this is too difficult a requirement to prove, yet this is a criminal offence, and it is appropriate that a higher level of intention should apply.

WWTW does go further to endorse a reverse onus in these types of actions, given that the person alleged to have committed the reprisal will have the best access to proof. However, this will not be pursued given the ACT Human Rights context.

The current PID Act also allows for damages in tort where an unlawful reprisal has occurred, and injunctions to prevent further reprisal action. The bill proposed to continue this approach.

WWTW also supports jurisdictions providing for avenues of redress through their industrial relations systems or equal opportunity tribunals. The 2006 Bill sought to implement this through the *ACT Discrimination Act 1991* employment provisions. However, with further consideration, given that reprisal is a criminal offence and the complainant can seek damages for loss, it has been decided that it is more appropriate for these matters to be heard only in a court.

The 2006 Bill provided for loss of legal protection where there was a failure to assist with an investigation. WWTW criticised this approach for being too broad. In this context, Part 7 of the proposed bill provides a range of protection for disclosers in a variety of circumstances.

The proposed bill provides protection from civil or criminal liability and administrative action (including disciplinary action or dismissal) on the basis of making a public interest disclosure. The proposed bill also provides that in a proceeding for defamation, a discloser who makes a public interest disclosure has a defence of qualified privilege for publishing the information disclosed.

To balance these, the discloser forfeits the protections if :

- a discloser makes a public interest disclosure and a person investigating the disclosure under this Act asks the discloser for assistance in the investigation by providing information in a stated manner and in a stated period of time and the discloser fails, without reasonable excuse, to provide the assistance; or
- if the discloser gives information to a person investigating a public interest disclosure that the discloser knows is false or misleading.

This is subject to a court being able to make an order to preserve the discloser's protection if the court considers that the discloser's conduct has not materially prejudiced the investigation of the public interest disclosure and is of a minor nature.

A person's liability for their own conduct is not affected by the person's disclosure of that conduct under this Act.

Question 11 – Is the proposed level of protection from liability appropriate?

The proposed bill also offers a person who makes a public interest disclosure protection from detrimental action. In the proposed bill ***detrimental action*** is action that involves—

(a) discriminating against a person by treating, or proposing to treat, the person unfavourably; or
(b) harassing or intimidating a person; or
(c) injuring a person; or
(d) damaging a person's property.

The proposed bill takes protecting a discloser from detrimental action very seriously and imposes a maximum penalty of 100 penalty units on a person who retaliates against a discloser.

The proposed bill sets out that detrimental action is a tort and damages may be recovered in a proceeding in a court of competent jurisdiction and that On application, the Supreme Court may grant an injunction to prevent the detrimental action being taken.

Question 12 – Does the bill appropriately protect a discloser from retaliation for making the disclosure?

Public Interest Disclosure: Discussion Paper

SUBMISSION

All submissions will be made publicly available.
Submissions must be received by close of business 26 March 2012.

Email: psm@act.gov.au

Mail: Public Interest Disclosure: Consultation
Public Sector Management
Chief Minister's Department
GPO Box 158
Canberra ACT 2601

Name:

Organisation:

Postal Address:

Contact (phone/email):

OPENING/GENERAL COMMENTS:

Question 1 – Does the proposed bill provide for complaints to be made against all appropriate public sector groups? In particular, should a person be able to make a PID about the conduct of a Legislative Assembly entity?

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Question 10 – Are the proposed new information requirements sufficient? Do they balance the discloser's interests and the rights of individuals identified or implicated in the investigation?

Question 11 – Is the proposed level of protection from liability appropriate?

Question 12 – Does the bill appropriately protect a discloser from retaliation for making the disclosure?