

**Submission
No 7**

INQUIRY INTO PUBLIC INTEREST DISCLOSURES BILL 2021

Organisation: The Law Society of New South Wales

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THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PuLC:JWvk051121

5 November 2021

The Director
Portfolio Committee No. 1 – Premier and Finance
Parliament House
Macquarie Street
Sydney NSW 2000

By email: portfoliocommittee1@parliament.nsw.gov.au

Dear Director,

Inquiry into the Public Interest Disclosures Bill 2021

Thank you for the opportunity to provide a submission to the inquiry into the Public Interest Disclosures Bill 2021 (**PID Bill**). The Law Society's submission is informed by its Public Law Committee. We write to support the passage of the PID Bill for the reasons set out below.

In the Law Society's view, the new disclosures scheme proposed by the PID Bill appears to be a significant improvement to the current public interest disclosures regime, particularly by broadening the scope of who can receive and investigate public interest disclosures. We agree with the assessment of the Ombudsman in the *Special report by the NSW Ombudsman on the Public Interest Disclosures Bill 2021*¹ that the current *Public Interest Disclosures Act 1994* (NSW) (**PID Act**) is too limited in respect of who a disclosure can be made to.

The PID Bill also appears to provide better and clearer guidance to agencies responsible for dealing with public interest disclosures. For example, the greater level of prescription in the legislation in respect of the handling of public interest disclosures should assist agencies in not only implementing better handling processes of the disclosures, but also in appropriately assessing whether those disclosures should be referred to other agencies. Our members inform us that in their experience, under the current scheme, assessing whether a disclosure falls within the terms of the current PID Act has often raised questions about what constitutes a public interest disclosure, and how it should be handled.

We echo the Ombudsman's observations that implementation of the new legislation will require significant additional funding for both the Ombudsman, and for agencies.² Training and support by the Ombudsman of agency staff across NSW will be essential to the overall success of the new scheme. Agencies will be required to formulate new policies, and to review existing processes and agency service contracts. The Law Society understands that

¹ NSW Ombudsman, *Special report by the NSW Ombudsman on the Public Interest Disclosures Bill 2021*, (Sydney, 19 October 2021), 8.

² *Ibid*, 13-14.

currently, agencies often navigate the current scheme with little support as to how certain matters should be dealt with, and can be left to make decisions with very little training having been provided to the officers involved in receiving, assessing, and investigating public interest disclosures. Training those agency staff who handle public interest disclosures should be an ongoing and regular process to remind staff of the intention and purpose of the new legislation and how it should be interpreted.

The Law Society notes in particular that integrity agencies will require additional levels of resourcing. Even aside from the additional responsibilities that are likely to arise out of the new PID scheme, the adequate funding of integrity agencies continues to be the subject of discussion by Government. An increased reporting rate of wrongdoing could further exacerbate an already stretched integrity system. This Committee will be aware that, for example, the NSW Independent Commission Against Corruption has released a number of reports outlining its budgetary concerns,³ which have impacted on its ability to investigate serious corrupt conduct. The Law Society's view is that integrity agencies play a critical role in the proper functioning of our public institutions. It is necessary that they receive adequate resourcing, and we support the recommendations of the NSW Legislative Council Public Accountability Committee in its report, *Budget process for independent oversight bodies and the Parliament of New South Wales* (March 2020).

Thank you for the opportunity to provide comments.

Yours sincerely,

Juliana Warner
President

³ NSW Independent Commission Against Corruption Special Report - *The need for a new independent funding model for the ICAC* (May 2020 - Section 75 report) and NSW Independent Commission Against Corruption Special Report No. 2 - *A parliamentary solution to a funding model for the ICAC* (November 2020 - Section 75 report).