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27 FEB 2023

Public Interest Disclosure Review Secretariat
Strategic Policy and Legal Services
Department of Justice and Attorney-General
PIDActReview@justice.qld.gov.au

Dear Secretariat

Thank you for your email of 30 January 2023 about a Review of the *Public Interest Disclosure Act 2010* (PID Act).

Queensland Fire and Emergency Services (QFES) appreciates the opportunity to make a Submission to the Review of the PID Act. In general, QFES finds the current PID Act to be an effective tool in uncovering wrongdoing and protecting disclosers. QFES Officers have reviewed the issues paper and can provide the following advice to assist the Honourable Alan Wilson KC in forming conclusions and making recommendations.

Question 2 – Is the title of the legislation suitable? Should any other terms, such as ‘whistleblower’ or ‘wrongdoing’ be included in the title or used in the legislation?

QFES believes the current title of the legislation is suitable and should not include any other terms, such as ‘whistleblower’ or ‘wrongdoing’. QFES believes the inclusion of emotive language in legislation is not helpful.

Question 5 – What types of wrongdoing should the PID regime apply to? Should the scope be narrowed or broadened? Why and how?

QFES believes the current scope of wrongdoing described in the PID is satisfactory and does not need to be narrowed or broadened.

Question 7 – Is there benefit in introducing a public interest or risk of harm test in the definition of a PID?

QFES believes introducing a public interest or risk of harm test in the definition of a PID would add additional complexity that is not required. The current approach allows for an agency to assess PID status based on a clear definition, and this is working well for QFES.

Question 10 – Should the definition of public officer be expanded to include those performing services for the public sector whether paid or unpaid, for example volunteers, students, contractors and work experience participants? Should former public officers be covered?

QFES has a very large and highly valued volunteer base. The relative risk of significant detriment, such as economic detriment, arising from a reprisal for disclosing wrongdoing for a volunteer, as compared with a public officer, is relatively low and rarely occurs. Should the definition of public officer be expanded to include those performing services for the public sector as a volunteer, this would likely have resourcing impacts that QFES would need to consider.



Office of the
Commissioner

**Queensland Fire and
Emergency Services**

Emergency Services Complex
125 Kedron Park Road Kedron

GPO Box 1425 Brisbane
Queensland 4001 Australia

Telephone 13 QGOV
Website www.qfes.qld.gov.au

ABN 93 035 163 778

Question 11 – Should relatives of disclosers, or witnesses be eligible to make PIDs? Should they, or anyone else, be entitled to protection under the PID regime?

QFES believes the current provisions under the PID regime are adequate for QFES purposes. Providing protection to relatives of disclosers seems to be an impractical proposition for an agency who has responsibility for its employees in the workplace and little scope to take responsibility for activities that occur outside of the workplace. Broadening the scope of who has protection under PID regime, would most certainly add complexity and practical issues for an agency in assessing risk to the person, and putting measures and strategies in place to protect those persons. Policy makers should consider how agencies would accurately assess risk in a Risk Assessment, and what control they realistically have over risk control measures external to the agency's scope of responsibility.

Question 17 – Are the requirements for making, receiving and identifying PIDs appropriate and effective?

QFES believes the current requirements for making, receiving, and identifying PIDs are appropriate and effective. It is noted that broadening who a discloser can disclose to (third parties, such as the media) could pose issues to the integrity of an investigation where the agency might not wish to alert the subject officer to the concerns until critical evidence is gathered.

Question 18 – Who should be able to receive PIDs? Do you support having multiple reporting pathways for disclosers? Is there a role for a clearing house or a third party hotline in receiving PIDs?

QFES believes creating a clearing house or hotline for receiving PIDs would provide for undue complexity and delay in the affected agency providing appropriate protections or may have a detrimental effect on the investigation process. Agencies already have a well-documented internal process for determining the merits of granting PID status. Having a clearing house or hotline would provide confusion to reporters and directs them away from their organisation and the internal reporting processes that already exist. There are other options to make complaints that can then be triaged to the respective organisations to assess, for example, the Crime and Corruption Commission Queensland. Without consultation with the affected agency, it might be difficult for a clearing house or hotline to determine whether the matter reported is a PID. Should such a model be considered, it should be carefully considered whether that assessment should be made binding, considering the lack of context and understanding a clearing house or hotline would have. QFES would not support changing the current pathways for reporting, unless there is sufficient evidence to suggest that the current reporting pathways are problematic and need improvement.

Question 20 – Should the PID legislation require a written decision be made about PID status as recommended by the Queensland Ombudsman? What would the implications be for agencies?

QFES believes the Ombudsman's recommendation of 'requiring an agency that assesses a disclosure to provide a written decision to the discloser within a month about whether it has been assessed as a PID, including reasons and information about review rights' is reasonable and largely in line with current practice. Should the PID Act be amended in line with the recommendation, however, QFES recommends the inclusion of a provision allowing the extension of an assessment timeframe with the agreement of a discloser. This would allow an agency to increase the timeframe in cases where the discloser may not be in a position to provide sufficient information within a month, for example, when the discloser has suffered trauma or is seeking medical treatment and is unable to provide sufficient information for the agency to accurately assess PID status.

Question 21 – Are the provisions for disclosures to the media and other third parties appropriate and effective? Are there additions or alternatives that should be considered?

QFES believes the current provisions for disclosures to the media and other third parties are appropriate and effective. The current model allows time for agencies to act against serious wrongdoing before the subject officer or other involved parties become aware. This assists in securing critical evidence and ensures that affected staff are not unnecessarily distressed to hear about issues in the media, before the agency can take action to protect them.

Question 24 – Are agencies able to provide effective support for disclosers, subject officers and witnesses? Are any additional or alternate powers, functions or guidance needed?

QFES believes the current provisions in the Act provide for effective support for disclosers, subject officers, and witnesses. Disclosers have a variety of support needs, and the current Act is supportive of agencies providing support in a range of areas.

Question 25 – Should the PID Act include duties or requirements for agencies to: a. take steps to correct the reported wrongdoing generally or in specific ways? b. provide procedural fairness to the discloser, subject officer and witnesses? c. assess and minimise the risk of reprisals?

QFES believes that including duties or requirements in the PID Act for agencies to correct wrongdoing in specific ways would be problematic, due to the broad definition of a PID and the broad nature of what constitutes corrupt conduct and maladministration. Procedural fairness is already a requirement in handling workplace investigations and employee grievances in the Queensland Public Service, so QFES does not believe it is necessary to include requirements of this nature in the PID Act.

Question 26 – Should a discloser be able to opt out of protections afforded under the Act, such as the requirement to receive information or be provided support? Should this only apply to role reporters, or to any type of discloser?

QFES believes that any discloser should be able to opt out of specific protections afforded under the Act if they wish, but should continue to be afforded all other protections under the Act. For example, a discloser may want to opt out of receiving any further information due to the emotional impact or trauma this would cause, but other protections should remain in place. QFES believes this should apply to any type of discloser.

Question 28 – Are the current provisions about confidentiality adequate and fit for purpose? Should any improvements be considered?

QFES believes the current provisions about confidentiality are adequate and fit for purpose. QFES notes that there are instances in which confidentiality of a PID cannot be maintained due to the circumstances of the matter, or when the identity of the discloser is obvious. This is a difficult situation for all involved in the investigation and management of the matter. Any proposed changes to the provisions about confidentiality would need to allow for flexibility to account for instances where confidentiality cannot be maintained, but should ensure the continued protection of the discloser.

Question 29 - Is the definition of reprisal appropriate and effective? Do any issues arise in identifying, managing and responding to reprisals?

QFES believes the definition of reprisal is appropriate and effective.

Question 30 - Is there a role for an independent authority to support disclosers in Queensland? If so, what should its role be?

QFES believes an independent authority to support disclosers is not necessary as agencies already undertake the functions outlined in the issues paper. In addition, QFES believes that an independent body could provide advice that may contradict or interfere with the strategies adopted by an agency for the support of a discloser.

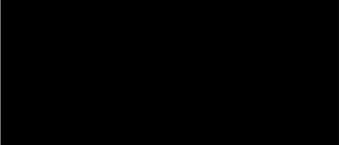
Question 41 – Should the PID legislation include incentives for disclosers? If so, how should they operate?

QFES does not believe providing incentives for disclosers is appropriate. QFES notes that most studies show that disclosers are most often motivated by their own personal sense of integrity and a genuine desire to protect the public. Most individuals raise concerns about corrupt conduct or maladministration because they are unwilling to participate in conduct they believe is wrong or because they genuinely believe they have an ethical obligation to report it. QFES believes that in considering whether the PID Act should include incentives for disclosers, it is important to consider the potential for adverse or deleterious outcomes of such a position. For example, incentivizing disclosure may make agencies vulnerable to false claims, may frustrate efforts at internal compliance, or may dissuade an employee from reporting wrongdoing in a timely manner.

I hope that the above information assists with the Review process. I would be pleased to participate in any further consultation process that may be undertaken in relation to the PID Act Review and I look forward to hearing from the Honourable Alan Wilson KC about the outcomes of the Review.

Should you require any further assistance, please contact Ms Rebecca Morello, Principal Policy Officer on telephone [REDACTED] or email [REDACTED]

Yours sincerely



Greg Leach AFSM
Commissioner