



QUEENSLAND POLICE SERVICE

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Submission 63



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Our Ref:

Your Ref:

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Public Interest Disclosure Review Secretariat
Strategic Policy and Legal Services
Department of Justice and Attorney-General
GPO Box 149
BRISBANE QLD 4001

Dear Honourable Alan Wilson,

I refer to your email advising that your office has commenced a review of the operations of the *Public Interest Disclosure Act 2010* (PID Act) and calling for submissions for stakeholders to inform this administrative review.

I thank you for the opportunity to provide feedback on the review and acknowledge that the Queensland Police Service submission will be made public and shared across agencies to inform the review. Please find attached our Service submission.

If you require any further information, it is requested you contact Acting Inspector Kath Ford, Internal Witness Support Unit, Health Safety and Wellbeing at [REDACTED]:

Yours sincerely



KATARINA CARROLL APM
COMMISSIONER

OFFICIAL

QUEENSLAND POLICE SERVICE

Submission to

Review of the Public Interest Disclosure Act 2010

MARCH 2023



The Queensland Police Service (QPS) thanks the Reviewer for the opportunity to provide the QPS's feedback about the issues paper and comment on the current state of the *Public Interest Disclosure Act 2010* (PID Act) and key challenges the QPS has experienced in the application of this framework.

The QPS has undertaken a broad analysis of the issues paper and our feedback is organised under key themes of policy objectives, administrative functions and constraints, managing support of PIDs, and foreseeable impacts arising from proposed changes to the PID scheme in Queensland.

Policy objectives of the PID Act

Police Service Administration Act v Public Interest Disclosure Act

1. The QPS is unique in that it operates under a dual legislative framework when responding to complaints around QPS employee wrongdoing.
2. In addition to complying with the provisions in the PID Act, the QPS is also obliged to manage complaints in accordance with the *Police Service Administration Act 1990* (PSAA). The QPS observes several overlaps between these two frameworks, creating complexities in the management of complaints.
3. The PSAA provides a framework for QPS members who report breaches of discipline/misconduct that do not meet the threshold of corrupt conduct. The PSAA further provides protection from victimisation as well as the obligation to report misconduct/wrongdoing.
4. The PID Act provides an offence section (S41 Offence of taking reprisal) for corrupt conduct (indictable offences), compared to simple offences which are managed under the PSAA.
5. In practice, there is yet to be a prosecution for the offence of taking reprisal under the PID Act. While this makes it difficult to assess whether the Act affords adequate protection from reprisals the QPS acknowledges the PID Act could be perceived to be a deterrent for reprisals.

QPS Processes

6. The QPS established the Internal Witness Support (IWS) unit to support QPS members who fulfill their reporting obligations under section s.6A.1 of the PSAA 'Duty concerning breaches of discipline or misconduct'.
7. The IWS unit provides guidance and support to QPS members who:
 - report a matter under s.6A.1 of the PSAA (known as the 'discloser');
 - are at risk of reprisal due to the nature of the matter reported under s.6A.1 of the PSAA and their involvement (e.g. victims, witnesses, notifiers etc).
8. The IWS unit also plays a vital role in ensuring the QPS fulfills its obligations under the PID Act.

9. Where a matter reported under s.6A.1 of the PSAA is subsequently assessed by the Crime and Corruption Commission as 'Corrupt Conduct', the QPS member who initially reported the matter (the 'discloser') is entitled to 'PID Status'.
10. When a QPS member is assessed as having PID status, IWS will proactively contact the member with important information about their status. Section 32 of the PID Act outlines the reasonable information that the IWS unit must provide.
11. The responsibilities and scope of the IWS team are independent from the complaints and discipline processes, and the IWS team works with and through several of the wellbeing teams to provide their services and support to QPS members.
12. The PID Act provides comprehensive coverage for supporting members who report wrongdoing that satisfies a PID. The difficulty is that the definition of a PID is broad and open to interpretation.
13. The QPS considers the addition of the term "Whistleblower" within the Act's title would be helpful to readers as it is a more familiar and recognisable layperson's term than "Public Interest Disclosure".
14. The Reviewer may wish to consider the application of PID protections to individual employment grievances and whether there is scope to exclude these types of complaints from the scheme, where matters clearly fall outside the remit of wrongdoing considered to be a PID.
15. The QPS considers that Alternative Dispute Resolution could assist these types of employment grievances to that relate solely to a personal matter rather than a broader systemic concern.
16. The QPS considers that the PID framework would benefit from greater clarification and the inclusion of examples, particularly in relation to the terms 'substantial and specific' dangers to the health and safety of a person with a disability or to the environment, as this terminology is broad and subjective.
17. Under the PID Act, each agency is responsible for the individual management and assessment of PIDs.
18. The QPS considers there to be a lack of clarity around agency responsibilities and that an oversight agency could provide greater advisory support to ensure consistency across all departments in the management of PIDs. This is particularly so given that public sector entities deal with complaints under other legislation such as the PSA, PSAA and CCC Act.

Administrative functions and constraints

Determining PID status – Discloser/witness/role reporters

19. One of the complexities in managing complaints under the PID scheme is identifying which persons require a 'PID' status, in that they are notified their matter may be determined at a later stage to be subject to the PID Act, should reprisal occur.
20. Currently, PID status can be afforded to several different individuals involved in a matter including disclosers, witnesses and QPS members who report disclosures as part of a function of their duties. Examples of such individuals include role reporters such as Professional Practice Managers (PPM) and Ethical Standards Command (ESC), those who undertake auditing, inspections of work units, review of body-worn camera matters, and client service officers.
21. To bring clarity to the assessment process for PIDs, it may be beneficial to refine the scope of PID status and reconsider the need for PIDs to be given to role reporters and particularly in matters where reprisal is unlikely to occur.
22. PID status could then be considered in relation to the potential risk of reprisal to ensure those at greatest risk of harm can be afforded protection, whilst ensuring there is no significant impost to agencies in ensuring all persons involved in a matter are sufficiently informed and protected, which in the context of the QPS can be a long chain of nominated persons from the discloser through a series of reporting officers.
23. A public interest or risk of harm test to support this process could particularly provide benefit in determining which matters require PID status against those that may be of an individual nature such as workplace complaints that fall outside the scope of 'public interest'. A public interest or risk of harm test could also alleviate ambiguity in the application of a PID to people who are 'self-disclosers' with no risk of reprisal or 'anonymous disclosers' whereby PID protections cannot be provided.

Definitions and Processes

24. The QPS considers the definition of 'any person' within the PID Act as per Section 12 is broad. Condensing this definition to include how protections and support can be provided to members of the public, would be beneficial as the IWS Unit currently provides support to internal QPS members only who are disclosers/witnesses/complainants or at risk of reprisal, not including subject QPS members. Other QPS business units, including line managers and the QPS member unions, offer support to both disclosers and subject members.
25. The QPS anticipates that there may be several impacts should the definition of 'public officer' within the PID Act as per sections 7 and 13 be expanded to include volunteers, students and work experience participants. These impacts would privacy considerations as well as resourcing and administration imposts. There would also be an impost on the kinds of support that can be provided particularly to members of the public or officers of other agencies.

26. Section 13 of the PID Act outlines information that may be disclosed and who may disclose it. PIDs are often made by public officers in the ordinary course of their duty or function i.e. a role reporter. Under the current arrangements role reporters are entitled to the same protections and support as an individual discloser. The QPS requires mandatory reporting under the PSAA, however under the PID Act regime, considerable resources and administrative works are required for 'role reporter' PIDs, particularly those who report on multiple occasions in the course of their duties.
27. The QPS considers, particularly in the case of role reporters, that disclosers should be able opt out of protections, that is, not require outcome information and support.

Disclosers and protections afforded

28. There are currently some internal inconsistencies in opinions regarding PID Act protections applying only to the initial discloser compared to witnesses also receiving PID protections for the same matter (even though they did not disclose or may not have information relating to the PID). The QPS seeks clarification about the 'discloser' in matters as distinct from persons who are identified as witnesses and notifiers, such as role reporters.
29. The QPS would appreciate guidance from the oversight agency as to the nature of protections to be afforded persons in circumstances involving unsubstantiated matters or personal workplace grievances including the duration for which such protections are to remain in place.
30. In the case of multiple allegations made by a discloser, it is unclear if the PID Act protections apply to all allegations under a complaint, or if protections are provided only for the PID-related allegations. The QPS has identified multiple cases where the initial complaint is determined to be a PID, then additional complaints may arise that do not fall under the remit of a PID. The difficulty then arises as to which complaint they are afforded the protection of the PID Act.

Policy/legislation

31. Currently, the QPS provides a written decision to those disclosers who are assessed as attracting PID status. Should the PID Act be amended to include the requirement for a written decision to be made regarding the PID status of all complaints, as recommended by the Queensland Ombudsman, there would likely be significant implications for the QPS in requiring additional resources to manage what is anticipated to be a substantial increase in administrative loads to contact every witness/discloser/complainant in every complaint.
32. In addition to complying with internal reporting requirements under the PSAA, the QPS is required to manually enter data into the Queensland Ombudsman's RaPID database system. QPS submits a whole of government IT solution ought to be developed, with appropriate restrictions enabled, to ensure consistency in processes across government agencies and avoid duplication and facilitate appropriate data sharing with the Ombudsman for reporting purposes.

Administrative functions and constraints

Rights/Protections/Confidentiality

33. The QPS supports the PID Act having some protections for subject officers such as protecting subject officer's identity, support provided to subject officers, subject officers being advised of the outcomes and protections from detriment if a PID is not substantiated.
34. The QPS considers that the PID scheme could also include duties or requirements to enforce a positive requirement to support and protect PIDs (Whistleblowers) through risk management strategies. The QPS would appreciate further clarification on what protections should be afforded to external PIDs (persons not employed by the agency) by the relevant organisation.
35. One component of the PID scheme is that a person with a PID status must maintain confidentiality with other internal and external parties. This becomes unclear when the disclosure can be subject to other matters including workplace grievances and injuries, WorkCover claims and Right to Information/Information Privacy applications. The QPS considers greater emphasis on confidentiality and clarity around when PID status can be disclosed would be of benefit to both disclosers and managing agencies.
36. The QPS is supportive of a single independent authority or 'Whistleblower Protection Authority' to support disclosers of wrongdoing. Depending on the scope of the authority's function this could help to:
 - Streamline the support of PIDs that will cater for diversity in organisations and public disclosers.
 - Provide consistency in the assessment and management of PIDs - reducing the risk of incorrect identification, assessment or dismissal of complaints.
 - Enable sufficient skill level in the support and welfare of disclosers (including psychological) as well as skill to accurately identify PIDs.
 - Provide better and consistent support to disclosers particularly from a diversity perspective.
 - Provide advice regarding individual rights and reprisal.
 - Ensure confidentiality is maintained from the outset rather than the discloser reporting through their chain of command.
37. An independent authority would also create opportunities to oversee and guide agencies for the purpose of assessing and managing PIDs and necessary reporting. This would provide consistency and help streamline processes across government in the application of the PID scheme, including offences. It would also assist in providing for the needs of vulnerable persons such as First Nations Peoples, culturally and linguistically diverse people, people with disabilities and those in regional or remote communities.