

## Review of Public Interest Disclosure Act -UQ response

Questions	Response
<p><b>3.1 Policy objectives of the Act</b></p> <ol style="list-style-type: none"> <li>1. Are the objectives of the PID Act valid and is the Act achieving these objects? Has the PID Act been effective in uncovering wrongdoing in the public sector?</li> <li>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?</li> <li>3. Are changes needed to ensure public confidence in the integrity of the PID regime?</li> <li>4. Are any changes needed to the PID Act to make it more compatible with the Human Rights Act 2019?</li> </ol>	<ol style="list-style-type: none"> <li>1. Yes, objectives are valid, and it is largely effective, but obligations can be quite onerous for large organisations and there is a need for greater balance between maintaining the objectives of the Act and the administrative responsibilities associated with it. Workplace complaints (grievances) should not be PIDs unless there is some additional feature of systemic maladministration or public interest.</li> <li>2. We suggest it revert to Whistleblower Act as this is easier for people to understand, and more applicable across Qld agencies e.g. people ask if the 'public' in the title means it is publicly recorded/publicly available.</li> <li>3. More awareness/education needed for public to understand the regime and have confidence in protections associated with it. An audit (by Ombudsman's office or CCC may assist in identifying changes needed/provide confidence).</li> <li>4. Nil to add</li> </ol>
<p><b>3.2 What is a public interest disclosure?</b></p> <ol style="list-style-type: none"> <li>5. What types of wrongdoing should the PID regime apply to? Should the scope be narrowed or broadened? Why and how?</li> <li>6. Should a PID include disclosures about substantial and specific dangers to a person with a disability</li> </ol>	<ol style="list-style-type: none"> <li>5. University relies heavily on contractors, and also has large HDR student cohort but these are not captured within the University's definition of public officers. The University does not believe university students should be included in the legislation. It is not practical or appropriate.</li> <li>6. Disability/environment disclosures -nil comments.</li> </ol>

<p>or to the environment? Why or why not?</p> <p>7. Is there benefit in introducing a public interest or risk of harm test in the definition of a PID?</p> <p>8. Should a person be required to have a particular state of mind when reporting wrongdoing to be protected under the PID regime? Are the current provisions appropriate and effective?</p>	<p>7. Yes, there may be some value in former employees being included (possibly within a timeframe of ceasing employment) within a set period of time. However, when a person ceases to be an employee, they are at much less risk of being harmed and it is virtually impossible to provide that person with protection from a reprisal by a subject officer as the reprisal is likely to take place in an unrelated setting. If that were the case, then there would be avenues for the discloser to pursue via QPS.</p> <p>8. Current protections are appropriate and effective</p>
<p><b>Who can make a public interest disclosure?</b></p> <p>9. Who should be protected by the PID regime? Should the three categories of disclosers (public officer, employees of government owned corporations or Queensland Rail, and any person) be retained? Why or why not?</p> <p>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?</p>	<p>9. No issues</p> <p>10. No, it shouldn't be expanded to these groups. As previously raised there may be value in extending to former public officer (with limitations)</p> <p>11. In some cases, relatives should be eligible e.g. if PID has disability/illness or death and has instructed relative/guardian. They should then be entitled to same protections.</p>

<p>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?</p> <p>12. Should different arrangements apply to role reporters? Why and how?</p>	<p>12. Different arrangements should apply for role disclosers, with same protections to apply (but this would need careful thought as to practical application). For example, an internal auditor raising a discrepancy vs. a vulnerable role discloser reporting against senior/prominent people (same obligation; different risk profile and treatments to consider).</p>
<p><b>3.4 Experiences of people who witness and report wrongdoing.</b></p> <p>13. How would you describe your experience in reporting wrongdoing under the PID Act? Do you have any suggestions for improvements?</p> <p>14. What factors impacted your decision to report or not report wrongdoing? Did you encounter any barriers or obstacles during the process? How can the PID regime encourage disclosers to come forward?</p> <p>15. Were you supported effectively during the process? Would alternative or additional support have been helpful?</p> <p>16. Did you feel your disclosure was taken seriously, assessed in a timely way, investigated fairly and addressed appropriately?</p>	<p>Nil to offer</p>

### 3.5 Making, receiving and identifying PIDs.

17. Are the requirements for making, receiving and identifying PIDs appropriate and effective?
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?
19. At what point in time should the obligations and protections under the PID regime come into effect?
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?
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?
22. Should the PID process for government owned corporations or Queensland Rail be different to those for public sector entities? Why or why not? Are the current arrangements appropriate and effective?

17. Yes

18. Nil to add.

19. At time of disclosure

20. Yes, there should be a written decision re PID status -already being done by UQ with advice to the PID.

21. A discloser should be required to confirm that they have been in contact with the entity where they referred their PID, before reporting it to a journalist. This will reduce the opportunity for a PID to have been made to the media, when the agency may have through no fault of their own, not been aware that the PID had been e.g. if a PID has been made via e-mail and was never received due to technical issue, or if the person to whom the PID was made is on an extended absence and is not reading e-mails.

22. Current processes for GOCs are complicated and difficult to manage. It causes unnecessary delays as can only be made to the GOC or CCC e.g. not to Qld Treasury who manages the complaints for several GOCs. It would be beneficial to simplify the process which may encourage PIDs and decrease administrative burdens/delays in dealing with matters.

<p><b>3.6 Managing, investigating and responding to PIDs</b></p> <p>23. Are the requirements for managing, investigating and responding to PIDs appropriate and effective?</p> <p>24. Are agencies able to provide effective support for disclosers, subject officers and witnesses? Are any additional or alternate powers, functions or guidance needed?</p> <p>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?</p> <p>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?</p>	<p>23. Agree that consideration should be given to reforms to enable disclosers in a workplace investigation to repeat their concerns to limited members of their usual support network (this frequently comes up in IU interviews). In practice, is likely happening anyway.</p> <p>24. Yes, the University is able to provide effective support currently but an agency to provide support independently would be of value. The University would appreciate more assistance/guidance on support and clearer legislation on requirements for subject officers and witnesses.</p> <p>25. The University would see value in the provision of recommendations/suggestions in the Act on ways to deal with scenarios would be useful.</p> <p>26. Yes</p>
<p><b>3.7 Protections for disclosers, subject officers and witnesses</b></p> <p>27. Are the current protections for disclosers, subject officers and</p>	<p>27. Current protections for witnesses need to be clearer within legislation. UQ has had to rely on QO support for guidance in relation to protections for witnesses.</p>

<p>witnesses appropriate and effective? Should additional or alternative protections be considered?</p> <p>28. Are the current provisions about confidentiality adequate and fit for purpose? Should any improvements be considered?</p> <p>29. Is the definition of reprisal appropriate and effective? Do any issues arise in identifying, managing and responding to reprisals? 30. Is there a role for an independent authority to support disclosers in Queensland? If so, what should its role be?</p> <p>30. Is there a role for an independent authority to support disclosers in Queensland? If so, what should its role be?</p>	<p>28. Provisions for confidentiality could be made clearer. The Cmlth regime has higher anonymity requirements and criminal offence provisions. The exemption to disclosing identity of a discloser/whistle-blower should be clearer.</p> <p>29. The University agrees with suggestion for onus of proof to be on subject officer. It is well understood about how to assess and manage a risk of reprisal however there could be further clarification on how to deal with an alleged or actual reprisal.</p> <p>30. Yes, an independent authority to support disclosers would be of value -to provide advice, manage enquiries, support throughout process.</p>
<p><b>3.8 Remedies</b></p> <p>31. Are the remedies available to disclosers under the PID Act reasonable and effective? Are any changes needed?</p> <p>32. Do the evidentiary requirements for remedies need amendment?</p> <p>33. Are the provisions permitting complaints to the Queensland Human Rights Commission appropriate and effective? What role should alternative dispute resolution play in resolving disputes?</p>	<p>Nil to offer</p>

<p>34. Do you support an administrative redress scheme for disclosers who consider they have experienced reprisals?</p>	
<p><b>3.9 Role of the oversight agency</b></p> <p>35. Are the Queensland Ombudsman's functions and powers suitable and effective for the purpose of the oversight body?</p> <p>36. Are there any conflicts between the Queensland Ombudsman's advisory and review functions for PIDs? If yes, how could these be managed or resolved?</p> <p>37. Do the roles of integrity bodies overlap during the PID process? Are changes needed or do the existing arrangements work effectively?</p> <p>38. Are the Standards published by the Queensland Ombudsman effective? Are changes needed?</p> <p>39. Do you agree with the recommendations of the Queensland Ombudsman's 2017 review?</p>	<p>35. Yes</p> <p>36. Nil to add</p> <p>37. We are aware there has previously been concerns raised by some agencies re reporting requirements for both CCC/QO but this appears to be lack of understanding/awareness of agency responsibilities. Difficulties can arise when PID made about another agency and the agency where PID is employed must deal with the matter.</p> <p>38. The current Standards are effective.</p> <p>39. Yes, largely but not with recommendation 9. The definition of 'public officer' at s.7 of the PID Act should not be amended to encompass all persons performing duties in and for public sector entities, whether paid or unpaid, so as to include volunteers, contractors (including the employees of organisations engaged under contracts for service), trainees, students and others in employment-like arrangements in the public sector.</p>
<p><b>Practical considerations</b></p> <p>40. Should the PID legislation be more specific about how it interacts with any other legislation, process or scheme?</p>	<p>40. Some agencies may be captured by both the Commonwealth and State legislation. There are differences in the regimes re who can make a disclosure, what constitutes a disclosure, who can receive a disclosure, protections, criminal offences. It would be helpful for agencies to have clarification on which legislation should apply/or how to apply both together.</p>

<p>41. Should the PID legislation include incentives for disclosers? If so, how should they operate?</p> <p>42. Are current arrangements for training and education about the PID Act effective? How could they be improved?</p> <p>43. How could an effective PID scheme provide for the needs of First Nations Peoples, culturally and linguistically diverse people and those in regional or remote communities?</p> <p>44. Is the PID Act accessible and easy to understand? How could the clarity of the Act be improved?</p>	<p>41. Incentives for disclosers are not in the spirit of the legislation and may encourage false/frivolous complaints.</p> <p>42. The training provided by QO is excellent -more training, particularly focused training for support officers would be of value.</p> <p>43. No comment offered.</p> <p>44. Sec 65 of the Act needs to be modified. It is unclear who the section applies to as it does not explain the meaning of ‘involvement in the administration of the act’. This could mean it only applies to people who are obtaining confidential information in an official capacity.</p> <p><i>Section 65 provides that if a person obtains <b>confidential information</b> because of their involvement in the administration of the PID Act they must not make a record of the information, or intentionally or recklessly disclose the information to anyone, except in certain specified circumstances.</i></p>