

Centre for Privacy, Accountability and Transparency
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10 January 2023

Honourable Alan Wilson KC
C/O – Department of Justice and Attorney General
State Law Building
50 Ann Street
BRISBANE QLD 4000

By email: PIDActReview@justice.qld.gov.au

Dear Honourable Judge Wilson

RE: REVIEW OF THE PUBLIC INTEREST DISCLOSURE ACT 2010 (QLD)

We refer to the terms of reference dated 23 November 2022 in relation to review of the *Public Interest Disclosure Act 2010 (Qld)*.

The Centre consists of a network of whistle-blowers and lawyers operating in the public service in Queensland. We have provided support, including arranging pro-bono legal services, for whistle-blowers in Queensland since 2019.

In our view, the public interest disclosure process is a vital component of the integrity and operation of the Queensland public service. Sadly, we have watched a decline in the standards and processes of various integrity units across Queensland in this period which prompted us to make submissions to the Coaldrake Review and Fitzgerald Inquiry in 2022. In particular, we have seen various practices over the past few years become common place in ways that defeat the purpose and intention of the *Act*, including:

1. Integrity units electing to grant PID status and elect to investigate PIDs then engaging in lengthy but deflated investigations without appropriate or adequate timelines for completion. We are aware of “investigations” taking up to five (5) years or longer without an outcome report.
2. We have evidence of integrity units asserting to PID disclosers that investigations are “legally privileged” and making a variety of claims aimed at silencing disclosers on dubious legal grounds.
3. We have observed an increase in the practice of asserting that outcomes have been carried out but refusing to disclose the nature of such outcomes on the basis that they are “confidential and privileged”. In some instances, we have also discovered through RTI and other sources that the assertion of action being taken in response to a PID was false or misleading and clearly aimed solely at preventing disclosure under sections 20(1)(b)(ii) and 20(2) of the *Act*.
4. On several occasions, we have been made aware that subject officers of a PID have been permitted to be involved in the creation and conduct of investigations relating to their own conduct. We view such arrangements as being a clear conflict of interest.

5. We also note the CCC has been lethargic in relation to actions taken on PID matters, preferring to refer such matters back to relevant entities under the devolution principle. This has become increasingly problematic as integrity units are now largely sought to report and be directed by executive officers having lost independence in respect of their activities.
6. On occasion, the extensive delays in investigation have forced PID disclosers beyond limitations periods for the purpose of QIRC or QHRC claims in respect of reprisals. Despite assurance from integrity units, we are not aware of any entity waiving such time limits in respect of claims while at the same time insisting on confidentiality of relevant processes.
7. We have observed various instances of indirect reprisals being levelled at PID disclosers, ranging from exclusion from further recruitment and promotions through to variation or reduction of duties.

In our view, these practices are driven by a desire to avoid any reputational damage to government departments at all cost. The price of these practices has been avoidance of any admission of wrongdoing and severe reprisal action taken against whistle-blowers.

The Centre are proponents of several key legislative changes, including:

1. Time limits being applied to PID Investigations with an onus and burden resting on the investigating entity to extend an investigation beyond a period of six months.
2. Automatic extension of limitations periods for making claims of reprisal to account for involvement in public interest disclosures.
3. A strict requirement for full description of actions taken in response to a PID investigation.
4. We also suggest an extension of the publication immunity to the description of outcomes taken in relation to a PID investigation, irrespective of results.

We suggest that the experiences of the Centre are poignantly relevant to item (h) of the scope of the Terms of Reference for the current Review. On this basis, we request that the Centre, or persons who have been through the PID system who are part of the Centre, be invited for consultation in relation to this Review.

We look forward to the issues paper and further steps in the present Review. If we can be of any assistance, please do not hesitate to contact us directly on 0407 092 261 or [REDACTED]

Yours faithfully,

[REDACTED]
Alexander (Sandy) Stewart
LLM, LLB, BA (Justice)

Director
Centre for Privacy, Accountability and Transparency